

TRADE IN EDUCATION SERVICES

A CONSULTATION PAPER

ON

HIGHER EDUCATION IN INDIA AND GATS: AN OPPORTUNITY



IN PREPARATION

FOR THE ON-GOING SERVICES NEGOTIATIONS

AT THE WTO

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Higher Education in India and GATS: An Opportunity

I. Introduction:

Investment in education leads to the creation of human capital, which is an important input into socioeconomic development of a nation. In many developing countries, including India, education in general, and higher education in particular, is predominantly in the public sector, though the trend is fast changing. Thus education was believed to have been bypassed by the miracle of the market and is an example of what Dreze and Sen (1998) call a market-excluding arrangement, rather than a market-complementary arrangement. Developed countries, on the other hand, have been able to have market-complementary arrangements in education as a result of which widespread literacy levels have been achieved.

While it is true that the high literacy levels in the market-friendly western countries and the liberalized Asian economies were achieved as a result of active state intervention, the private sector came to play an increasingly important role. The reason for the dismal performance in developing countries is ironically due to either the wrong kind of state intervention, or too little state intervention. This is ironic because the State is omnipresent in most other activities. Thus, one can observe that the state in India has its fingers in varied activities such as ship building and hotel management. On the other hand, the public expenditure on education is only about 3% of the GNP. More particularly, only 0.37% of GDP is spent on higher education in India and this has been falling in recent years.

In this paper, we discuss various issues related to trade in higher education services. With a billion dollar industry involving foreign education providers, distance learning and franchisees, we discuss the status of higher education in India and argue that GATS could provide an opportunity to put together a mechanism whereby private and foreign investment in higher education can be encouraged subject to high quality standards and efficient regulation. We first discuss the role of education as human capital and its place as a merit good. We then discuss the state of higher education in India and argue that private and foreign education providers can play an important role in augmenting the capacity in the higher education system and improve access. We then offer a comparison with other countries and find that access in India is still very poor, as compared to a number of developing countries. After this, we look at the global market for the export of education and find that the US, Australia, New Zealand and UK are the major exporters and developing countries such as India and China are the major importers. We then discuss GATS and higher education and discuss various proposals on the table as well as the importance of the Lisbon Convention. We conclude by way of suggestions and recommendations.

II. The Importance of Higher Education:

II.1 Education as Human Capital:

The issue of human capital as an input into economic development was raised as far back as 1776 by Adam Smith. In trying to explain the cause of prosperity of nations, he isolated two factors: one, the importance of economies of scale and two, the importance of skill formation and human qualities. The second factor is popular today as 'human capital'. Thus it is the comparative advantage in human skill, which gives nations an edge while trading with others, rather than just a difference in physical endowments and the quantity of factors of production. The latter interpretation of gains from trade is the one given by economists of the classical tradition such as Ricardo.

The classical tradition has been long debunked by recent trade and growth theorists, who have emphasized scale advantages and gains from specialization (Solow 1957; Krugman 1987; Lucas 1988), much as Smith had done two centuries back. The neoclassical model specified by Solow (1956) found a large 'residual' in explaining economic growth. Later work by Solow (1957) himself and other growth theorists (Romer 1986; Krugman 1987) attributed this 'residual' to education and human capital. This crucial link between human capital and economic progress implies that we should look at the role of public policy in expanding education and promotion of learning achievement. In respect of education, the issue of provision is closely linked to the nature of the service, i.e. whether education is a public good or a merit good and how to ensure adequate provision. Let us briefly address this issue before going further.

II.2 Education as a Public Good or a Merit Good?

Public goods are goods that would not be provided in a free market system, because firms would not be able to adequately charge for them. This situation arises because public goods have two characteristics, namely: non-excludability, which means that once the goods are provided, it is not possible to exclude people from using; and non-rivalrous, which means that consumption of the goods by one person does not diminish the amount available for the next person.

On the other hand merit goods are those that would be under-consumed if it is provided in a free market, because the consumer takes into account only benefits accruing to him and ignores the positive externalities of such consumption. The government therefore feels that such goods and services ought to be subsidized or provided free at the point of use. It is clear that a merit good does not lend itself to easy classification on the basis of excludability or rivalrousness. Depending on the decision of the government, a merit good could either be excludable or non-excludable. Again, a merit good would be non-rivalrous, but only until the point where consumption by one person does not diminish the amount available for others. Take the case of education, which is considered a merit good. It could either be excludable (if government charges a fee) or non-excludable (if no fee is charged). Again, education consumed by a student would be non-rivalrous only till a point, where the number of students/teacher is manageable. Once

there are too many students per teacher, the consumption of education services by one student would progressively diminish as the number of students rises.

In short, education is generally considered more a merit good rather than a public good. However, this is based on the assumption that the government steps in to provide education services, because it is 'good' for society. If this assumption is relaxed, education could as easily be considered a private good, which is both excludable and rivalrous. Indeed, higher education does display many characteristics of private goods in a number of countries.

III. Higher Education in India¹:

III.1 The Early Years

Even though India has a strong tradition of higher education since ancient times, western and secular education, with an emphasis on scientific inquiry came to India only with the British. In fact, the first college imparting western education in India was set up in Serampore in Bengal in 1818. The social reforms movement of the 18th century also accelerated the process of setting up of modern Universities and Colleges. In 1857, the three Central Universities of Calcutta, Bombay and Madras were set up, which had 27 colleges affiliated to them. Subsequently, more Universities and Colleges were set up. In 1947, there were 19 Universities in India.

III.2 Expansion of the Higher Education System: The Current Status

Since independence, the higher education system has grown rapidly. By 1980, there were 132 universities and 4738 colleges in the country enrolling around five percent of the eligible age group in higher education.

Today, India is the third largest higher education system in the world (after China and the USA) in terms of enrollment. However, in terms of the number of institutions, India is the largest higher education system in the world with 17973 institutions (348 universities and 17625 colleges). This means that the average number of students per educational institution in India is also lower than that in the US and China.

Before going further, it will be useful to discuss the types of institutions imparting higher education in India. These are as follows:

- Universities under the Government
- Private Universities
- Deemed Universities (Aided)
- Deemed Universities (Unaided)
- Colleges under Government

¹ This Section has taken the statistics and facts from Pawan Agarwal's "*Higher Education in India: The Need for Change*". ICRIER Working Paper. June 2006.

- Private Colleges (Aided)
- Private Colleges (Unaided)
- Distance Learning
- Non-University Sector (Polytechnics and Industrial Training Institutes)
- Foreign Institutions

Student enrolment grew at an estimated rate of 7 per cent between 1987 and 1993 but has now declined to 5.5 per cent compound rate of growth. Today, there are 10.5 million students enrolled in all higher education institutions, with the teaching staff numbering 321,000. **In spite of this phenomenal growth, the total enrolment forms only about 11 percent of the relevant age-group (17-23) population.** Tables 2 and 3 illustrate the status of various educational institutions in India.

Table 2 : Growth of higher education institutions and enrolment in India

HEI – Higher education institution

Year	Universities	Colleges	Total HEIs	Enrolment (in Million)
1947-48	20	496	516	0.2
1950-51	28	578	606	0.2
1960-61	45	1,819	1,864	0.6
1970-71	93	3,277	3,370	2.0
1980-81	123	4,738	4,861	2.8
1990-91	184	5,748	5,932	4.4
2000-01	266	11,146	11,412	8.8
2005-06	348	17,625	17,973	10.5

Source: UGC (Universities include central, state, private and deemed-to-be universities as also institutions of national importance established both by the central and the state legislatures.)

Table 3: Typology and growth trends of higher education institutions

Type	Ownership	Financing	Number of institutions*	Number of students*	Growth trends
Universities under the Government	Public	Public	240	1,000,000	Not growing
Private Universities	Private	Private	7	10,000	Emerging on the scene
Deemed Universities (Aided)	Private or Public	Public	38	40,000	Growing slowly
Deemed Universities (Unaided)	Private	Private	63	60,000	Growing rapidly
Colleges under the Government	Public	Public	4,225	2,750,000	Not growing
Private Colleges (Aided)	Private	Public	5,750	3,450,000	Not growing
Private Colleges (Unaided)	Private	Private	7,650	3,150,000	Growing rapidly
Foreign Institutions	Private	Private	150	8,000	Emerging on the scene
Total			18,123	10,468,000	

Source: Pawan Agarwal "Higher Education in India: The Need for Change". ICRIER Working Paper. June 2006

Table 4 Growth in enrolment, enrolment ratio GNP per capita (Select countries)

Country	Enrolment (in million)		Increase %	GER-2001 %	GNP per capita (US\$), 2001
	1990/91	2001/02			
USA	13.71	15.93	16.2	81	34,280
China	3.82	12.14	217.7	13	890
Japan	2.90	3.97	36.8	49	35,610
India	4.95	10.58	113.6	11	460
UK	1.26	2.24	78.1	64	25,120
France	1.70	2.03	19.4	54	22,730
Italy	1.45	1.85	27.7	53	19,390
Brazil	1.54	3.13	103.0	18	3,070
Indonesia	1.59	3.18	99.7	15	690
Philippines	1.71	2.47	44.3	31	1,030
Australia	0.49	0.87	79.1	65	19,900
Malaysia	0.12	0.56	358.9	27	3,330

Source: Pawan Agarwal "Higher Education in India: The Need for Change". ICRIER Working Paper. June 2006

A recent McKinsey-NASSCOM study has shown that the total addressable global offshoring market is approximately US\$ 300 billion, of which US\$ 110 billion will be offshored by 2010. India has the potential to capture about 50% of this market and in the

process generate direct employment for about 2.3 million people and indirect employment for about 6.5 million people. However, high quality manpower would be required for such jobs.

While India is endowed with a large and growing base of skill professionals (21.4 million graduate workers in 2000), there are conflicting views about the quality of its endowment. According to McKinsey (2005), only 25% of Indian engineers, 15% of its finance and accounting professionals and 10% of Indian professionals with general degrees are suitable to work for multinational companies. The fact that many Indian professionals do not possess the global skill and quality is also evident from the fact that, despite large pool of middle managers available at home, some Indian firms are beginning to recruit them from abroad. The issues concerning scarcity of quality human resource have come out clearly in our consultations with various professional associations and industry bodies, particularly NASSCOM. There is a consensus in these consultations that reforms in higher education are required since this would lead to better human resource development. To address issues relating to higher education in the wider context of promoting trade in services, the Department of Commerce has been having extensive consultation with all other stakeholders, including Ministry of Human Resource Development and private sector players. The last such consultation was held on 28.8.2006.

III.3 The Financial Situation:

Public spending on higher education is justified on the grounds that it generates positive externalities since it is a merit good. Equally, there is an argument that public spending on higher education should be discouraged since private benefits far outweigh social benefits. Consequently, public subsidization of higher education benefits the rich, particularly in elite higher education systems in India (Tilak, 2005). Moreover, since higher education has low price elasticity, cost recovery through higher fees will not reduce enrollments. Hence, private funding of higher education is not only more efficient, but also more equitable. Even though there are compelling arguments on both sides, the Government has accepted higher education as a merit good and continues to fund it. However, the financial situation is strained and in need of a quick solution.

Escalating costs on the one hand, and shrinking budgetary resources on the other, characterize the higher education system in India. The share of higher education in total planned resources increased from 0.71% in the first Five-Year plan to 1.24 % in the fourth Five-Year plan. But ever since, it has declined continuously to 0.53% in the seventh Five-Year plan and further down to 0.35% in the eighth Five-Year plan (1992-97), though the actual expenditure has increased by more than 100 times from Rs.140 million in the first Five-Year plan to Rs. 15,000 million in the eighth Five-Year plan at current prices, and 6.5 times in terms of real prices. **Thus, although higher education in India is characterized by massive public investment, this investment is still regarded as much below the required levels.**

As the recent discussion in the context of reservations in higher education institutions has shown, raising the seats in institutions of higher learning by about 50%

would require about Rs 20-25000 crores. Since this huge amount cannot be provided by the public exchequer at one go, a mix of the following steps would seem to be necessary: increasing seats in government colleges/universities in a phased manner, allowing these institutions to raise their own resources and finally provide a more liberal regime for private and foreign education providers. Indeed, **NIEPA has recommended that institutions of higher education should make efforts to raise their own resources by raising the fee levels, encouraging private donations and by generating revenues through consultancy and other activities.**

III.4 Comparison with Other Countries:

India's higher education system compares favorably with the other countries of South Asia and Africa in its enrolment. However, the South East Asian countries show much higher enrolment: Philippines (31%), Thailand (19%), Malaysia (27%) and China (13%) as compared to 11% in India. The situation in the developed countries is, of course much better. The following tables indicate the state of higher education in various countries.

India also has one of the lowest public expenditure on higher education per student at US\$ 406, which compares unfavourably with China (US\$2728), Brazil (US\$3986), Indonesia (US\$666) and Malaysia(US\$625). Tables 4 and 5 indicate the position of India in comparison with other developing and developed countries.

Table 5. Expenditure on higher education

Country	% of GDP on Higher Education	Public expenditure on higher education per student (2002/ 03)	GDP per capita, 2002(US\$)
USA	1.41	9,629	36,006
China	0.50	2,728	989
Japan	0.54	4,830	31,407
India	0.37	406	487
Germany	1.13	11,948	24,051
UK	1.07	8,502	26,444
France	0.99	8,010	24,061
Italy	0.87	7,491	20,528
Brazil	0.91	3,986	2,593
Russia	0.62	1,024	2,405
Canada	1.88	15,490	22,777
Korea	0.34	1,046	10,006
Indonesia	0.28	666	817
Philippines	0.43	625	975
Australia	1.19	7,751	20,822
Malaysia	2.70	11,790	3,905

Source: UNESCO Institute of Statistics (UIS). Data used are most recent available – data may vary between 1998/99 and 2002/03.

Given that India's public spending, GER levels and private sector participation are low, even when compared to developing countries, there appears to be a case for

improving the effectiveness of public spending and increase the participation of private players, both domestic and foreign.

IV. Export of Education Services:

The emerging demographics have ensured that the demand for higher education is greater in ‘younger’ countries as compared to graying countries. Similarly, the supply of education services is greater in graying countries since there are fewer young students to enroll in Universities. Indeed, the US is the largest exporter of education services in the world. The other large exporters are UK, Australia and New Zealand. Developing countries such as India and China are the largest importers of education in the world. A study by the New York based International Institute of Education (IIE) that Asian countries have 325,000 students in U.S. colleges, including 80,000 from India, 63,000 from China, 53,000 from South Korea and 42,000 from Japan. The following table shows the number of India students abroad in the last two years:

Table 6: Indian Students Abroad

Name of Country	2003-04	2004-05
USA	79736	80466
UK	11000	15000
Australia	17853	22279
New Zealand	2405	2567

Source: WENR (World Education News and Reviews), IDP Australia, IIE

The Universities in the exporting countries see a huge opportunity and are going all out to attract students from developing countries such as India and China. For example, in March, 2006, 25 universities from the US, including names such as Indiana and Perdue, arrived in India on a tour of metro cities to recruit Indian students for various courses. The tour was arranged by a US-based professional organization that provides not only logistics support, but also helps in mobilizing audiences and assists interested students in the visa application process. Universities from Australia, New Zealand, the UK and Europe are also organizing such road shows to attract students.

The US is the world's number one educational destination and attracts about half a million students every year. In 2004, nearly 14 per cent of all international students in the US were from India. A majority of these students seek graduate degrees, but there is mounting interest for undergraduate courses. In 2004-05, 80,466 Indian students enrolled in colleges and universities in the US. Education itself generated as much as \$13.4 billion in export revenues for the US in 2003. The US has therefore benefited enormously as a result of these revenues, which have come in through Mode 2. Hence, when evaluating the net benefits from trade in services, the US should factor in these gains and not just overstate the job losses through outsourcing under Mode 1. Even through Mode1, the US economy has gained enormously by way of greater surpluses generated by US

businesses. In addition, the gains from US businesses investing abroad through Mode 3 should also be kept in mind.

It is therefore quite clear that there is a huge excess demand in India for quality higher education, which is being met by foreign campuses. Most students from India pay their way through these programmes thereby keeping these foreign universities going and even subsidizing foreign students. The services negotiations could be used as an opportunity to invite foreign Universities to set up campuses in India, thereby saving billions of dollars for the students traveling abroad. In fact, this would be a win-win situation for both sides since foreign Universities would get a chance to expand their markets and Indian students would get world class higher education at a fraction of the cost in foreign Universities located abroad. A balance would however have to be struck between domestic regulation and providing adequate flexibility to such Universities in setting syllabus, hiring teachers, screening students and setting fee levels.

V. Higher Education in Other Countries:

Internationalization of higher education is occurring rapidly through the spread of international branch campuses. Most such campuses have been established since the mid-1990s and they are concentrated in the Middle East and Southeast Asia, with growth currently occurring in India, China and Central Asia. U.S. and Australian universities have the largest number of branch campuses, with smaller numbers operated by institutions based in the United Kingdom, Malaysia and Singapore. Most are branches of universities but some are polytechnics or vocational training colleges. Singapore's Ngee Ann Polytechnic, for example, is establishing a campus in Shenyang (China), primarily for Chinese students, but also for their Singaporean students to gain international experience. The Malaysian-based University College of Technology & Innovation has embarked on an Indian Ocean strategy, with overseas campuses in Colombo (Sri Lanka), Karachi (Pakistan), Panipat (India) and Perth (Australia). Some Indian institutes have also set up campuses abroad, primarily imparting education in Information Technology (NIIT, Aptech).

Even developed countries are continuing with reforms in higher education. Despite the fact that the USA has the finest system of higher education in the world, it has set up a commission to ensure that America remains the world's leader in higher education and innovation. For this purpose, the USA intends to make an investment of US \$134 billion in higher education over the next ten years. Faced with deteriorating standards and low accountability in its public sector higher education, UK government has now allowed the universities to compete for students and charge variable fees, bringing an end to the regulated fee regime in the UK.

In many developing countries in Asia, (Japan, Philippines and South Korea) and Latin American (Chile, Brazil and the Dominican Republic) private higher education has become the main venue for increasing access to higher education. These countries have majority enrolment in private sector. Agarwal (2006) has discussed that two trends in higher education have been observed worldwide: (i) towards transformation from elite to

mass (or even universal) and (ii) privatization. Countries have responded to these challenges in various ways. Some examples are:

KOREA:

Korea has one of the highest gross enrolment ratios in higher education in the world with more than 80 per cent of it being in the private sector. In 1995 the Government began loosening controls since the problems from heavy regulation were becoming unmanageable. The government gave small incentive grants to reward performance and introduced competition among universities and colleges by making them more autonomous and more competitive.

MALAYSIA:

Foreign Universities can set up campuses as branches by invitation. Twinning Arrangements with Universities abroad is also possible. Five foreign Universities have set up Branch Campuses, namely Monash, Curtin and Swinburne Universities of Australia, SAE Institute of Australia and University of Nottingham, UK.

There are 17 public Universities, including 6 university colleges with enrollment of 300,000. In addition, there are 600 private institutions with similar levels of enrollment. Private institutions can be set up by:

- Large corporations or organizations closely linked to Government (e.g. Petronas Technology University, Telekom Malaysia etc.)
- Large corporations that are public listed companies
- Political Parties (e.g. MIC's TAFE College Seremban, MCA's Kolej Tunku Abdul Rahman, and UMNO's UNITAR etc.)
- Independent Private Colleges
- Local branches of Foreign Universities

There is a strong presence of the private sector in Malaysia, which is not the case in India. The situation in Malaysia should therefore be seen in totality along with the presence of the private sector and the higher access levels in general. (Malaysia has a GER of 27% as compared to 11% of India).

CHINA:

China is creating new universities of different kinds to cater to different needs. The government has declared education, science and technology to be the strategic driving forces of sustainable economic growth. It is now working towards loosening of statutory control over their higher education systems.

The most recent legislation governing FEPs in China was released in 2003. The legislation governing FEPs in China (2003) contains the following features:

- Foreign institutions must partner with Chinese institutions;

- Partnerships must not seek profit as their objective;
- No less than half the members of the governing body of the institution must be Chinese citizens;
- The post of president or the equivalent must be a Chinese citizen residing in China;
- The basic language of instruction should be Chinese;
- Tuition fees may not be raised without approval.

However, this is not the whole story. There are a number of institutions in China (including NIIT from India), which provide education on commercial terms. Moreover, there is inadequate data on the scale of activity of FEPs in China. There are a total of 72 joint programs that are approved by the Ministry of Education (Garrett, 2004). In addition, there are a number of other non-approved programs or those programs that are approved at other levels of government (Municipal, Provincial or Local Governments). This is made amply clear by the data from the Australian Vice-Chancellor's Committee (AVCC) in May 2003, which states that 27 Australian Universities offer 200 current offshore programs in China, 157 (79 percent) of which involve either Australian bachelor's or master's programs.

It is reasonable to assume that America, United Kingdom and other major source countries are also offering non-approved degree provision on a similar scale. Hence the level of FEPs activity is far in excess of that reported by the Ministry of Education. It appears that the regime for FEPs is far more liberal and flexible than that indicated above.

SINGAPORE:

There is no regulation governing FEPs and Singapore has also not offered any commitments under GATS in Higher Education.

Applications for setting up higher education are considered on a case by case basis. The regime, on the whole, is quite liberal and flexible and it is for the students to satisfy themselves about the programmes before enrolling as the Ministry of Education in Singapore does not have a system of accreditation of overseas universities. Similarly, it is for the employer to decide whether the degree holder meets the qualification most relevant to his needs.

Singapore has declared its intention to attract 150,000 international students by the year 2012, and has an articulated series of plans in place to achieve the target. To date Singapore has attracted campus presences of France's INSEAD, the USA's Stanford University, Massachusetts Institute of Technology and University of Chicago Graduate School of Business, and Australia's University of New South Wales.

AUSTRALIA:

Australia has taken full market access commitments in higher education under GATS except for national treatment under Mode 3 (Commercial presence).

Universities are recognized by State specific legislation and are “self-accrediting” i.e. universities are not subject to on-going recognition requirements and are responsible for their own quality. Australian Universities have the authority to accredit their own programmes. The Australian Universities Quality Agency (AUQA) is responsible for higher education quality assurance in Australia and for transnational operations. AUQA audits are voluntary.

Australia is currently the third-largest exporter of higher education services, after the US and the UK and education exports at A\$5.9 billion in 2004, is its fourth largest source of export earnings.

INDONESIA:

Foreign education institution providing services must establish partnership with local partner and both the foreign educational institution and the local partner must be accredited by the Ministry of Education.

NEW ZEALAND:

In New Zealand, FEPs can either work with an already registered private educational institution or establish a university. Any programmes to be delivered, whether solely or in partnership with a New Zealand organization, will need to go through the relevant programmes approval and accreditation procedures. Resulting qualification will be benchmarked to New Zealand standards. New Zealand has the ability to take overseas quality assurance processes already undertaken into account when assessing for approval a programme originating overseas.

JAPAN:

It is a fact that many of the foreign branch campuses were closed by the mid-1990s. The reason for this was that under the territorial principle since the educational qualifications of foreign education providers were not regarded as being equivalent to Japanese degree or as equivalent to the degree of the foreign institutions in its home country itself. This was problematic for the students at branch campuses wishing to transfer or advance to the Japanese higher educational institutions in that the degree or credit earned at branch campuses (even when validated by their home institutions) was not officially recognized in Japan.

The regime has since been liberalized. Recent amendment of the ministerial ordinances has provided another option for foreign institutions' branch campuses by being designated as foreign university Japan branches, with their degrees and credits

recognised as equivalent to those of their home institutions. TUJ, the first American university (which established branch in Japan in 1982) became the first such institution designated by the Minister of Education in February 2005. Other examples in this regard include McGill MBA Japan programme at the site of Sophia University (Japan) provided by McGill University (Canada), and International (Tri-Continent) MBA with a summer session at TUJ provided by the Fox School of Temple University (U.S.) in collaboration with Ecole National des Points et Chaussées School of International Management (France) and the Welingkar Institute of Management (India). Other foreign institutions providing such programmes are Royal Melbourne Institute of Technology (Australia) and Beijing University of Chinese Medicine (China). The recent deregulation measures are expected to give more incentives to foreign quality providers to develop distinctive programmes in the Japanese higher education market.

VI. GATS and Higher Education:

VI.1 Overview of the GATS

The GATS is a multilateral agreement under the WTO that was negotiated in the Uruguay Round and came into effect in 1995. It was essentially inspired by the same objectives as the General Agreement on Tariffs and Trade (GATT), which is its counterpart in merchandise trade:

- Creating a credible and reliable system of international trade rules
- Ensuring fair and equitable treatment of all participants (principle of non-discrimination)
- Stimulating economic activity through guaranteed policy bindings
- Promoting trade and development through progressive trade liberalization.

GATS applies in principle to all service sectors, with two exceptions: Article I (3) of the GATS excludes “services supplied in the exercise of governmental authority”. These are services that are supplied neither on a commercial basis nor in competition with other suppliers. Cases in point are social security schemes and any other public service, such as health or education that is provided at non-market conditions. Further, the Annex on Air Transport Services exempts from coverage measures affecting air traffic rights and services directly related to the exercise of traffic rights.

GATS consists of three parts:

- the framework, containing the general principles and rules.
- national schedules, which list a country’s specific commitments on access to their domestic market by foreign providers.
- Annexes, in which specific limitations for each sector can be attached to the schedule of commitments.

Countries choose the sectors and modes of services trade they wish to include in their schedules as well as the limitations to market access and national treatment they wish to maintain. It is only by reference to the individual country schedules that one can

know not only the service sector(s) that will be committed, but also the extent of commitment a country is prepared to make. There is no compulsion to take commitments in one or the other sector so that members are free to leave entire sectors out of their GATS commitments. Moreover governments may limit commitments to one or more of the four recognized modes of supply. Commitments may also be withdrawn or renegotiated. In short, there is ample flexibility built into the GATS architecture.

The agreement contains a number of general obligations for all services, the most important of which is the Most Favoured Nation (MFN) rule. Apart from these obligations each member state defines its own obligations through the commitments undertaken in its schedule. Market access and national treatment obligations for instance apply only to the sectors in which a country chooses to make commitments.

VI.2 Categories of education and commitments on the different sectors

Trade in education is organized in five categories of service, based on the United Nations Provisional Central Product Classification (CPC):

- Primary education, covering preschool and other primary education services, but excluding child care services;
- Secondary education, including general higher secondary, technical and vocational secondary and technical and vocational services for disabled;
- Higher Education, covering post secondary technical and vocational education services as well as other higher education services leading to university degree or equivalent;
- Adult Education covers education for adults outside the regular education system;
- Other Education; which covers all other education services not elsewhere classified; nonetheless education services related to recreation matters are not included.

During the Uruguay Round only 29 member countries of the WTO (considering EC as a single member country) made commitments in education and only 21 of these included commitments in higher education. It is interesting to note that Congo, Lesotho, Sierra Leone and Jamaica have made full unconditional commitments in higher education, perhaps with the intent of encouraging foreign providers to help develop their education systems. Australia's commitment for higher education covers provision of private tertiary education services, including university level. The European Union has included higher education in their schedule with clear limitations on all modes of trade except 'consumption abroad', which generally means foreign tuition paying students. Only four (Australia, New Zealand, USA and Japan) of the 21 countries with higher education commitments have submitted a negotiating proposal outlining their interests and issues.

WTO members have chosen to impose considerably more limitations on trade in educational services in modes 3 and 4 than in modes 1 and 2. This is also the common picture for trade in other services. Furthermore, member countries have in general put

slightly more limitations on trade in primary and secondary education than on higher and adult education.

VI.3 Trade barriers in Education Services

There are some barriers that are applicable to all sectors, while other impediments are specific to the education services sector. The barriers with general application are:

- The majority of generic barriers are from an exporter country's point of view and focus on the supply modes "cross border supply" and "commercial presence":
- There is a certain lack of transparency of government regulatory, policy and funding frameworks
- Domestic laws and regulations are administered in an unfair manner
- Subsidies are not made known in a clear and transparent manner
- Tax treatment which discriminates against foreign suppliers
- Foreign partners are treated less favourably than other providers

The principal barriers to trade in higher education services as regards ***cross-border supply*** (mode 1: e.g. distance delivery or e-education; virtual universities) are the following:

- Inappropriate restrictions on electronic transmission of course materials
- Economic needs test on suppliers of the services in question
- Lack of opportunity to qualify as degree granting institution
- Requirement to use local partners, with at the same time a barrier against entering into and exiting from joint ventures with local or non-local partners on a voluntary basis
- Excessive fees/taxes imposed on licensing or royalty payments
- Restrictions on use/ import of educational materials

The principal barriers to ***consumption abroad*** (mode 2, e.g.: students studying in another country) are

- Measures that restrict the entry and temporary stay of students, such as visa requirements and costs, foreign currency and exchange controls
- Recognition of prior qualifications from other countries
- Quotas on numbers of international students in total and at a particular institution
- Restrictions on employment while studying
- Recognition of new qualification by other countries

For ***trade via commercial presence*** (mode 3: branch or satellite campus; franchises; twinning arrangements), common barriers include

- The inability to gain the required licences to grant a qualification
- Subsidies provided solely to local institutions
- Nationality requirements
- Restrictions on recruitment of foreign teachers

- Government monopolies
- Difficulty in obtaining authorization to establish facilities
- Prohibition of higher education, adult education and training services offered by foreign entities

Barriers to mode 4, i.e. *presence of natural persons* (e.g. teachers travelling to foreign country to teach) are

- Measures that restrict the entry and temporary stay and work for the service suppliers, such as immigration barriers, nationality or residence requirements, quotas on number of temporary staff, employment rules
- Economic needs test
- Recognition of credentials
- Minimum requirements for local hiring being disproportionately high
- Repatriation of earnings is subject to excessively costly fees or taxes for currency conversion

It is worth noting that four countries, namely USA, Australia, New Zealand and Japan have put specific negotiation proposals on the table. These may be seen in Annex 1.

VI.4 GATS and International Conventions:

There are many international initiatives relating to the recognition of courses, programmes, studies, diplomas and degrees in tertiary education which are as follows:

- Regional convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean, Mexico city, 19th July, 1974;
- International Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States Bordering on the Mediterranean, Nice, 17 December 1976;
- Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Arab States, Paris, ee December 1978;
- Regional Convention on the Recognition of Studies, certificates, Diplomas, Degrees and other Academic Qualification in Higher Education in the African States, Arusha (Tanzania), 5 December 1981;
- Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific , Bangkok, 16 December 1983; and
- Convention on the Recognition of Qualification concerning Higher Education in the European Region, Lisbon 11th April, 1997;

The Lisbon Convention is the latest one which was developed by the Council of Europe and UNESCO and adopted by national representatives meeting in Lisbon in 11th April, 1997. The Convention has since been ratified by 27 countries and signed by 14 more. Signatories include the European Union, many East European countries, Australia,

Canada, Israel and the United States. This convention facilitates international exchanges of students and scholars by establishing standards for the international evaluation of secondary and post-secondary credentials.

This convention based on co-operation and trust between national systems, may help to secure quality and at the same time hinder the building of barriers against trade in higher education. If GATS builds on the Lisbon Convention, it may stimulate free trade between signatory parties and quality assurance at the same time by enforcing a practice in accordance with the Lisbon Convention – albeit through mechanisms external to the Convention.

VI.5 India and Higher Education under GATS:

India has no commitments under the Uruguay Round in higher education services. However, hundred per cent FDI (foreign direct investment) in higher education services on automatic route is allowed in India. Also, foreign participation through twinning, collaboration, franchising, and subsidiaries is permitted. India has received requests from several countries like Australia, Brazil, Japan, New Zealand, Norway, Singapore, and the US. A similar request in higher education services was repeated in the plurilateral negotiations held recently at the WTO.

However, misgivings on the issue persist. Even though India included higher educational services in its Revised Offer in August 2005, many civil society groups continue to express reservations on the grounds that this would open floodgates for entry of foreign higher education providers into India. Their entry was opposed for their being insensitive towards cultural and educational ethos in India and the fear that this would lead to the commodification of education in India. It is also feared that education could be positioned as a ‘trade off’ for gains in another sector. However, we need to remember that public education services provided free of cost on a non-commercial basis and not in competition with other service suppliers is outside the purview of GATS. In addition, the role of domestic regulation has been explicitly recognized for ensuring equity, consumer protection, standards etc. in provision of public services. Given that India needs all the investment that it can get in the higher education sector, such fears and reservations seem to be somewhat overstated. What we should be aiming at is a sound regulatory framework with transparent rules and a stringent accreditation mechanism, which would protect the interests of students.

VII. Conclusion: Suggestions and Recommendations:

Trade in higher education is already taking place through the movement of students, teachers, programmes and even institutions. Global trade in higher education is large; it is estimated at more than US\$30 billion per annum. The major exporters of education are the USA, UK, Canada, New Zealand and Australia. China, India, the Philippines, and Indonesia are the major importers.

India should also put in place a sound regulatory framework to govern private players (both domestic and foreign), which can focus on setting the rules of the game and have student interest as the main objective.

Further, a viable financing model, with a mix of public and private participation has to be put in place. Cost recovery through suitable tuition fees and access to loans for students would help in alleviating the financial constraints faced by higher education institutions.

This paper attempts to generate a discussion on India's trade potential in education services and to truly understand the situation of this sector, inputs from all stakeholders is necessary. Towards this end, the following issues or questions relating to education services may be considered for formulating comments:-

1. What are the areas of potential for expanding education services in India? Are we in a position to meet these demands internally?
2. Whether India should allow Foreign Education Providers in a phased manner, after domestic reforms are in place or not at all?
3. What should be the way in which foreign educational institutions can deliver services in India: through a joint venture or a wholly owned subsidiary?
4. What would be the role of the UGC/AICTE and that of the regulatory body in the home country of the foreign education providers?
5. How would the issues of liability and student welfare be handled in cases involving foreign educational institutions?
6. What should be a logical response to the various requests made on India at the WTO under the on-going plurilateral negotiations? (The requests received include expansion of the coverage of higher education to include both post-secondary technical and vocational education services and other education services and removal of present market access limitations such as fees do not lead to charging capitation fees or profiteering etc.)
7. Whether negotiations under General Agreement on Trade in Services (GATS) could be used as an opportunity by India to attract investment in higher education and also explore export markets?
8. Whether efforts should be made to harmonize our licensing and qualification requirements and procedures to world standards so as to create linkages of higher education to export of professional services? (Example: NASSCOM's initiative of the National Skills Registry for IT / ITES to improve recruitment practices and build the confidence of global companies in Indian professionals).
9. How much flexibility can be given to foreign education providers in the areas of setting fees, admission, hiring of teachers, course and syllabi?
10. Whether it would be desirable to have an accreditation mechanism to ensure quality?
11. Whether compulsory self-disclosure by private education providers (both Indian and foreign) could be introduced to address the problems of misrepresentation? (For example, in USA, students' 'Right to Know' requirement under the provisions of the Higher Education Act of 1965 and Freedom of Information Act

- requires the disclosure of financial assistance and institutional information to students.)
12. How can the accreditation mechanism be strengthened? Is there a role for private accreditation agencies?
 13. Is there a market for Indian education services abroad?
 14. If yes, what is the potential for expansion to get market access in other countries?
 15. In future, which countries will be important export destinations for education services? What type of education services can be anticipated for exporting in the future?
 16. What are the barriers being faced by the Indian educational institutions, in opening campuses abroad?

Negotiating proposals

1. The proposal from Australia

It is well recognised that governments play a significant role in financing, delivery and regulation of education, either alone or in partnership with private or non-governmental organisations. Therefore the negotiations should not prevent member countries from establishing their own education policy objectives; furthermore they should not prevent member countries from providing public funds for education to meet domestic policy and regulatory objectives.

The proposal reflects the importance of education in the preparation for life as a citizen, transmission of values and culture. It aims at providing individuals in all countries with access to a wide range of educational options and to the best education services wherever they are provided and through whatever mode of supply they are provided. Australia proposes, furthermore, that given that there are significant linkages between the regulatory framework governing international trade in education services and other services sectors (for example, the telecommunication/audiovisual sector and movement of persons), there is a need for the education services negotiation to be viewed within the context of a comprehensive services round.

Benefits recognised:

- Facilitating access to education and training courses that in qualitative and quantitative terms are not otherwise available in the country of origin
- Providing a competitive stimulus to institutions with flow-on benefits to all students

Long-term benefits recognised include:

- Fostering a knowledge and appreciation of other languages, cultures and societies; students will benefit professionally and culturally
- Facilitation of exchange of people, ideas and experiences, which means richness of diversity at national and international levels, international cross fertilisation of academic knowledge
- Networking relationships among individuals, groups and institutions which can facilitate future economic, political and socio-cultural alliances

Governments must retain their sovereign right to determine their own domestic funding and regulatory policies. Nevertheless there is a will to liberalize trade in higher education; therefore a number of obstacles that should be removed are listed, such as:

Consumption abroad

- Visa requirements regulating the free flow of international student
- Foreign exchange requirements regulating the free flow of international students
- Qualification recognition issues which act as a deterrent to gaining qualifications at overseas institutions

Commercial presence

- Limits on ownership: foreign equity
- Rules on twinning arrangements which restrict the development of these institution to institution arrangements;
- Lack of transparent government regulatory, policy and funding frameworks

Presence of natural persons

- Visa regulations restricting the free flow of academics;
- Restrictions on the use/import of educational materials (academic tools of trade)

Cross-border supply

- Erection of new barriers as governments respond to growing use of the Internet for delivering education services;
- Restrictions on the use/import of educational materials (academic tools of trade)

Quality is not mentioned.

2. The proposal from New Zealand

Education is seen as vitally important. The critical role of education in economic and social development is pointed out.

A balance is needed between pursuing domestic education priorities and exploring ways in which trade in education services can be further liberalised.

New Zealand claims that the reduction of barriers to trade in education does not equate to an erosion of core public education systems; instead international trade in education services can provide a means of supplementing and supporting national education policy objectives. Furthermore it recommends a more elaborated definition of the 'Other education' category.

Quality is not mentioned.

3. The proposal from the USA

Education is to a large extent seen as a government function. Still, most countries allow private education to coexist with public education. Private education supplements public education systems; a risk of displacement is not seen.

The role of government is not in doubt; the proposal seeks to supplement public education systems and to give opportunities for suppliers to make their services available to students in other countries. The proposal intends to help upgrade knowledge and skills through these educational and training programs, while respecting each country's role of administering appropriate public education for its citizens.

It demands clarification of the coverage, since particular types of education (e.g. liberal arts business, professional...) are not specified. The classification of education services should clearly cover and distinguish two types of services: training and educational testing services.

The proposal lists a number of obstacles it considers should be removed in future; it proposes that WTO members that have not yet made any commitments, formulate their commitments on the basis of this list:

- Prohibition of higher education, adult education, training services offered by foreign entities
- Lack of an opportunity for foreign suppliers of higher education, adult education and training services to obtain authorization to establish facilities within the territory of the Member country
- Inappropriate restrictions on electronic transmission of course materials
- Economic needs test on suppliers of these services
- Measures requiring the use of a local partner
- Denial of permission for private sector suppliers of higher education, adult education and training to enter into and exit from joint ventures with local or non-local partners on a voluntary basis
- Where government approval is required, exceptionally long delays are encountered and when approval is withheld, no reasons are given for the denial and no information is provided on what must be done to obtain approval in the future
- Tax treatment that discriminates against foreign suppliers
- Foreign partners in a joint venture are treated less favourably than the local partners
- Franchises are treated less favourably than other forms of business organization
- Domestic laws and regulations are unclear and administered in an unfair manner
- Subsidies for higher education, adult education and training are not made known in a clear and transparent manner
- Minimum requirements for local hiring are disproportionately high, causing uneconomic operations

- Specialized, skilled personnel (including managers, computer specialists, expert speakers), needed for a temporary period of time, have difficulty obtaining authorization to enter and leave the country

Repatriation of earnings is subject to excessively costly fees and/or taxes for currency conversion

Excessive fees/taxes are imposed on licensing or royalty payments.

Quality is not mentioned

4. The proposal from Japan

The importance of improvement of the quality of education and research is recognized and the need for education to correspond to the rapidly changing needs of society is stressed. Therefore the Proposal suggests promoting a certain level of liberalization, while taking various governmental policy measures. It recognizes the importance of the government's role in education, especially in primary and secondary education. Any measures in the education services should be considered with primary interest in maintaining and improving the quality of the service.

Due considerations:

- Maintenance and improvement of the quality of the education activities in each country
- Protection of consumers to ensure that they are not damaged by services of low quality
- Measures to ensure international equivalence of degrees and diplomas
- Differences of educational systems should be taken into consideration
- Rises the question of how to maintain the quality of higher education supplied across borders
- Necessity of an information network on higher education supplied across borders is seen.

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