

## **GATS & HIGHER EDUCATION: AN ANALYTICAL STUDY WITH REFERENCE TO INDIAN CONTEXT**

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### **Abstract**

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*Trade in educational services is an important issue for India. In this context this paper analyses the intricacies of the general agreement on trade in services as applicable to educational sector and higher education in particular. It also discusses the status of higher education in India and how GATS could provide an opportunity whereby private and foreign investment in higher education can be encouraged subject to high quality standards and efficient regulation.*

### **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. In India 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.

### **The Importance of Higher Education**

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. 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.

### **Higher Education in India**

In the Golden Age of India, universities at Nalanda and Takshashila were famous all over the world, attracting students from foreign countries as well. In fact, universities (Vishwa Vidyalayas), by definition, have to be international in character. Prior to independence, children of the rich and students earning fellowships did go to United Kingdom for higher education and returned with a wider worldview of things. After independence, students went abroad on Commonwealth and Fullbright scholarships and returned home to transplant their training and experience to the domestic conditions. And, the latest phase began when (post) graduate students started going abroad for higher studies with dollar assistantship in their pocket, never to return.

### **The Current Status**

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 46906 institutions (Lists of 642 Universities, 34908 colleges and 11356 Stand Alone Institutions have been published in ALL INDIA SURVEY ON HIGHER EDUCATION 2011- 12).

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 Centre Government
- Private Universities
- Deemed Universities (Aided Colleges under Government)
- Private Colleges (Aided)
- Private Colleges (Unaided)
- Distance Learning
- Non-University Sector (Polytechnics and Industrial Training Institutes)
- Foreign Institutions

Today, there are 28.56 million students enrolled in all higher education institutions. In spite of this phenomenal growth, the total enrolment forms only about 20.4 percent of the relevant age-group (18-23) population.

### **Globalization and Higher Education**

- Higher education is already a global business. The days when higher education was a matter of national policy and government regulation are rapidly fading. Higher Education provisioning is now globalised and in many ways, a commercialized affair and the way that the State had in the goings on is vastly diminished. On the name of

globalization, USA with 691,000 foreign students is a leading exporter of Education service followed by China 265,000 in the year 2009

- The number of Indian student in USA in 1996-97 was 30641, but in 2012, this number reached to 103968.
- India continues to remain the largest student sending country of origin, while the number of students from some countries (like China, Saudi Arabia, Pakistan, UAE, Egypt, Indonesia and Thailand) in USA experienced sharp decline from 23% to 17% from year 2000 to 2011.

According to the International Finance Corporation (IFC), the growth is now soaring: 2 million university students-approaching 2% of the world's total of around 100 million studying outside their home country in 2003. Since the late 1990s the higher education market is growing by 7 per cent a year. The While private profit seeking companies have entered the education business, even government-controlled universities are seeking independence from governmental authority. However, many countries including India continue to control the fee structure of their universities causing financial stress to foreign students, who are generally made to pay much higher fees than local students. This has resulted in many universities openly soliciting entry of foreign students and publicizing the offers widely in the media.

The student is now the customer or client. With globalization, Universities are spreading their reach beyond geographical and political borders. Universities realize that they can examine many more students than they can teach. Hence many of them are collaborating with other institutions or franchisees to teach their courses under their brand name without getting involved in the direct business of imparting the education.

### **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.

To understand GATS, it is essential to understand what kind of education services will be covered by GATS and what is meant by higher education services.

#### **Key aspects of GATS of trade in services Modes**

There is a two-way classification of trade in educational services. First, educational services are classified in various categories such as:

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

It must be understood that GATS does not make it mandatory for member countries to open-up all the educational categories. In fact, one can reject opening-up of all the categories. Based on a country’s assessment about prospective gains, specific categories can be opened up.

The second classification is based on the nature of trade in (educational) services. Article 1.2 of GATS defines four ways in which a service can be traded, known as ‘modes of supply’.

(WTO, 1998) These four modes of trade apply to all service sectors in GATS are as shown in table below:

**Mode of Supply**

<b>Mode of Supply</b>	<b>Explanation</b>	<b>Examples in Higher Education</b>	<b>Barriers</b>
<b>1. Cross Border Supply</b>	-the provision of a service where the service crosses the border ( does not require the physical movement of the consumer)	-distance education -virtual universities -online courses through Internet -educational testing services, -educational materials that are provided overseas. - sale of paperback editions of books and sale of educational CDs.	<ul style="list-style-type: none"> <li>• Inappropriate restrictions on electronic transmission of course materials.</li> <li>• Economic needs test on suppliers of the services in question.</li> <li>• Lack of opportunity to qualify as degree granting institution.</li> <li>• Requirement to use local partners, with at the same time a barrier against entering into and exiting from joint ventures with local or nonlocal partners on a voluntary basis.</li> <li>• Excessive fees/taxes imposed on licensing or royalty payments.</li> <li>• Restrictions on use/ import of educational</li> <li>• Materials.</li> <li>• Measures that restrict the entry and temporary stay of students, such as visa requirements and costs, foreign currency and exchange controls</li> <li>• Recognition of prior qualifications from other countries</li> <li>• Quotas on numbers of international students in total and at a particular institution</li> <li>• Restrictions on employment while studying</li> <li>• Recognition of new qualification by other</li> <li>• Countries</li> <li>• The inability to gain the required licenses to grant a qualification</li> <li>• Subsidies provided solely to local institutions</li> <li>• Nationality requirements</li> <li>• Restrictions on recruitment of foreign teachers</li> <li>• Government monopolies</li> </ul>
<b>2. Consumption Abroad</b>	-provision of the service involving the movement of the consumer to the country of the supplier	-students who go to another country to study and spending on educational fees and all related expenses of their stay	
<b>3 Commercial Presence</b>	-the service provider establishes or has presence of commercial facilities in another country in order to	-local branch or satellite campuses -twinning partnerships - franchising arrangements with local institutions	

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	render service		<ul style="list-style-type: none"><li>• Difficulty in obtaining authorization to establish facilities</li><li>• Prohibition of higher education, adult education and training services offered by foreign entities.</li><li>• Mainly related to the tight immigration policy traditionally followed by developed countries and the issue of the recognition of qualifications of the third world professionals.</li></ul>
<b>4. Presence of Natural Persons</b>	-persons travelling to another country on a temporary basis to provide service	-professors, teachers, researchers working abroad	

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These are the four categories of services defined under GATS/WTO. Any barrier in its free flow is considered to be ‘non-tariff barrier’. The goal of free trade is to remove these barriers in order to gain from further liberalization. In the sector of education these generally refer to government regulations, exchange controls, nationality requirements of students and teachers, non-recognition of equivalent qualifications, and rules regarding use of resources and subsidies.

#### **Key Aspects and Rules of GATS**

The overall framework contains a number of general obligations applicable to all trade in services regardless of whether a country has made a specific commitment to sectors or not. These are called unconditional obligations. Fundamental to this discussion is the Most Favoured Nation (MFN) rule.

Each WTO member lists in its national schedules those services for which it wishes to provide access to foreign providers. In addition to choosing which service sector/s will be committed, each country determines the extent of commitment by specifying the level of market access and the degree of national treatment they are prepared to guarantee. The following list the key elements (WTO, 1999c) of the GATS and provides brief explanatory notes.

<b>Coverage</b>	All internationally traded services are covered in the 12 different service sectors. ( e.g. education, transportation, financial, tourism, health, construction)
<b>Conditional obligations</b>	There are a number of conditional obligations attached to national schedules

-market access

-national treatment

**Most favoured nation (MFN) treatment** Requires equal and consistent treatment of all foreign trading partners. MFN means treating one's trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all WTO members. This also applies to mutual exclusion treatment. For instance, if a foreign provider establishes branch campus in Country A, then Country A must permit all WTO members the same opportunity/treatment. Or if Country A chooses to exclude Country B from providing a specific service, then all WTO members are excluded.

**National Treatment** Requires equal treatment for foreign providers and domestic providers. Once a foreign supplier has been allowed to supply a service in one's country there should be no discrimination in treatment between the foreign and domestic providers.

**Market Access** Means the degree to which market access is granted to foreign providers in specified sectors. Market access may be subject to one or more of six types of limitations defined by GATS agreement

**Bottom-up and Top-down approach** Bottoms up approach refers to the fact that each country determines the type and extent of its commitments for each sector.. Top down approach refers to the main rules and obligations as well as the progressive liberalization agenda, there will be increasing pressure to remove trade barriers.

### **Competitiveness of Indian Educational Services**

For the ensuing negotiations on trade in services, Indian authorities not only need to respond to the proposals and commitments made by others, but put forward India's own proposal and select commitments that are in the best interest of our country.

### **Educational Testing Services**

India too has a long experience of providing educational testing services. Quality of testing services is well demonstrated by all-India qualifying tests such as the CAT of the IIMs, JEE of IITs, and GATE. If such services can be offered on a year round basis with sufficient computerization and use of internet facilities, India stands to gain from liberalization of such services. However, markets for such services will have to be actively sought. Hence, India

may commit to liberalize these services, but an adjustment period of at least 6 years is necessary for upgradation and marketing of these services to potential clients.

### **Foreign Students on Campuses:**

As far as export of such service by India is concerned, i.e., foreign students coming to India for study, the current prospects are not too bright. However, getting students from developed countries, even from East European countries, would be very difficult as our standards of campus facilities are very poor in general. However, there is a scope for developing high-value niche market for some of the programmes that India may offer. Marketing of programmes on education in Arts and Culture, Sanskrit and other languages and literature, and traditional medicinal sciences like Ayurved could be effectively done by upgrading the campus facilities for some of the specialized institutions in India. Moreover, infrastructure upgradation of our premier and import competing institutions must be done on a priority basis so that they can effectively compete with foreign institutions based in India. Again, for this purpose, India must propose for gradual liberalization. A transition period of at least 6 years is needed to bring our priority institutions on par with the foreign ones in terms of infrastructure and facilities.

### **Establishing Schools Abroad**

India may make a specific proposal to other countries to commit themselves for commercial presence in secondary education. This is in view of the prospect that accredited private high schools of CBSE standard stand a good chance to be exported the world over. More than 100 already exist in other countries. Similar US schools exist in India and elsewhere that are primarily meant for the nonresident US citizens.

### **Teachers and Researchers Working Abroad:**

Although the annex to GATS mentions that movement of natural persons is excluded from GATS, it clearly provides scope for negotiating commitments on movement of persons in specific services. India must put in its proposal to include commitments on movement of teachers and researchers both at the secondary and higher education level. Already, about 10,000 secondary school teachers are working outside the country for sometime now, and, increasingly there is a growing demand for Indian teachers, especially in mathematics, sciences, and English. The trend will continue given the scarcity of teachers in developed world and the sufficient supply of qualified teachers in India.

### **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.

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.

### **Observations**

- There is a strong belief that the commercialization and commodification of higher education will put more importance on economic benefits than on academic, social and individual benefits of higher education and that the national cultural component will be eroded
- It is believed that the increase in new types of cross-border providers and for-profit providers may jeopardize consumer confidence and public trust in the quality of higher education.
- Higher education is seen to be different from other service sectors due to the public mandate and the subsequent role that government plays
- Even though in some countries the demand for higher education surpasses the capacity of the domestic public system, the introduction of foreign private providers requires close attention to monitor the degree of equitable access for students
- Many of the barriers identified for Mode 2 (study abroad) and Mode 4 (movement of people) do not fall within the GATS framework. These include aspects such as visas, work permits, immigration status. It is Mode 3 (commercial presence) which merits the closest scrutiny as this is where the barriers fall primarily within the purview of the GATS agreement. It is pointed that what may be seen as barriers by exporting countries are in fact, fundamental aspects of the regulatory system in the importing country.

- The impact of trade in education services on institutional level autonomy, academic freedom and the employment of academics have been identified as an area requiring further investigation.
- One of the most critical implications is the impact of increased trade on the quality of higher education provision and the recognition of qualifications and accreditation. It is recommended that the quality standards and mutual recognition issues be addressed by the education sector, and dealt with outside the purview of trade agreements. (However, attention needs to be given to the impact of Article VI.4 which addresses ‘qualification requirements and procedures, technical standards and licensing (are) not more burdensome than necessary to ensure that quality of the service.’)
- There are existing regional conventions to recognize academic qualifications and these existing mechanisms need to serve as reference points and a foundation for further work in developing an international education framework in which to work towards quality assurance of higher education.

### **Conclusion**

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.

- There has been very little debate questioning the benefits of increased trade in education, most of the concern is on the respective roles of the government and the market in the regulation and provision of higher education
- Of common concern is the fear that public provision of higher education may be undermined by foreign competition and that national education policy objectives may be a risk.

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