# GATS : ONSLAUGHT ON INTELLECTUAL SELF RELIANCE

C.P. Chandrasekhar

# A foreign hand

Making a commitment under GATS on education could prevent the government from adopting a nuanced policy that can ensure good quality higher education.

IN the latest move in the game to transform higher education in India, the Commerce Ministry has put out a consultation paper aimed at building support for an Indian offer on education in the negotiations under the General Agreement on Trade in Services (GATS). The paper, while inviting opinions on a host of issues, is clearly inclined to offer foreign educational providers significant concessions that would facilitate their participation in Indian education.

In its view: "Given that India's public spending, GER (gross enrolment ratio) 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 increasing the participation of private players, both domestic and foreign."

Public spending - Central and State - on higher education has indeed been low, amounting to less than half a per cent of GDP over the last two decades, even though the government itself targets a spending rate of 1.5 per cent of GDP. If, besides private sector participation, public spending and enrolment are low, the emphasis must clearly be on increasing these with more allocations to education. This is likely to be extremely effective since India has the requisite institutional framework. With around 350 universities and more than 17,000 colleges, institutionally speaking India has one of the largest higher education systems in the world.

The problem is that the average enrolment in Indian higher education institutions is anywhere between one-fifth and one-twentieth that in many other countries. This would mean that if public spending is raised to improve the infrastructure, quantity and quality of personnel, and student intake, quick progress can be made. However, by taking the availability of public resources as given, the emphasis is being shifted to increasing the effectiveness of public spending rather than its quantum, and supporting it with higher user charges and a larger private presence.

The arguments advanced are tiresomely familiar. The availability of higher education is seen as woefully short of demand and need. This is attributed to the fact that public expenditure is (and would remain) inadequate and ineffective, and private provision is constrained. The affiliating college system, which is an ingenious way of combining decentralised management and competition in a mammoth educational apparatus with central control over the substance and quality of education, is presented as chaotic. The substance of education is seen as irrelevant in the sense that it does not train students for the job market, whose needs are seen as being easily characterised. And all of these inadequacies, it is presumed, can be substantially addressed with greater private presence, especially foreign presence.

As always the case with the behaviour of the votaries of accelerated liberalisation, the fuss over this issue is unclear. Foreign educational providers are permitted to enter and have entered India, even if not in large measure. India permits 100 per cent equity holding for foreign direct investors under the automatic route in the educational services area. It therefore allows for commercial provision of educational services by foreigners and the repatriation of surpluses or "profits" earned through such activity.

What then is not permitted currently? To start with, no educational service provider if recognised as a university by the University Grants Commission (UGC) or is offered recognition by organisations like the All India Council on Technical Education (AICTE) can operate on a "for-profit" basis. Surpluses can be generated based on fees charged, but those surpluses will have to be ploughed back into the institution.

Moreover, obtaining and adopting the nomenclature "university" in

India has its regulatory implications. Section 2(f) of the UGC Act, 1956, defines a University to mean an institution established or incorporated by or under a Central Act, a Provincial Act or a State Act. Going by this section, for an institution to identify itself as a university in India, it would have to be set up by a Central or provincial legislative Act.

## Deemed university status

There is one other route to university status. Based on the recommendations of the Radhakrishnan Commission a provision was included under Section 3 in the UGC Act that institutions which have a unique and distinct character of their own could be deemed to be a university and enjoy the concomitant privileges without losing their distinctive character.

Originally, this option was to be exercised only in the case of "institutions which for historical reasons or for any other circumstances are not universities, yet are doing work of high standard in specialised academic fields comparable to a university and the granting of the status of university would enable them to further contribute to the cause of higher education which would mutually enrich the institution and the university system". In the 35 years between 1956 and 1990, only 29 institutions were granted the deemed university status.

However, the provision has been put to use more often in recent times, with even private institutions being deemed as universities. Further, since 2000, deemed university status has been granted even to de novo institutions. In the 15 years after 1990, 63 institutions were declared deemed universities. More recently, over the period 2000 to 2005, 26 institutions have been notified as deemed universities. Many of these institutions provide undergraduate education or training of a vocational kind.

What is more, certain State governments have been liberal in encouraging the establishment of private "universities". In Chhattisgarh, the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyam) Adhiniyam, 2002, allowed the State government to establish a university through a mere notification in the State official gazette. As a result, more than 100 private universities were established in Chhattisgarh alone through a single umbrella Act, which has since been challenged with adverse implications for the student body in some of these "universities".

While foreign providers can use these routes to obtain university status, there are two implications they would have to take into account. First, since a university has either to be established by an Act or be deemed to be a university by the University Grants Commission, they would be subject to the regulatory system for formal "universities" as it evolves through interventions by the executive and the judiciary. There cannot be a framework that applies to foreign universities which is any less regulatory or more open than what applies to domestic private universities.

Moreover, this environment may undermine the fundamental objective driving foreign entry. Foreign universities and higher education establishments are unlikely to enter the country and establish a long-term, sustainable presence for purely altruistic reasons. In their search for profit and its repatriation, they are bound to make a case under the ongoing GATS negotiations to permit the easier entry of commercial educational providers with repatriation rights. This could result in a conflict between the decision to permit entry by foreign educational service providers and the terms of such entry, on the one hand, and the current understanding of the role institutions of higher education should play.

## Obligation of the state

India has always maintained that higher education is an obligation and duty of the state that must be financed substantially by the exchequer and that commercialisation and profiteering are not legitimate goals of universities. B.N. Kirpal, Chief Justice of India in delivering the judgment in the T.M.A. Pai case on behalf of the majority, states, inter alia, that "Article 19(1)(g) employs four expressions, viz., profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is per se regarded as an activity that is charitable in nature [See The State of Bombay v. R.M.D. Chamarbaugwala (1957) SCR 874: AIR (1957) SC 699]. Education has so far not been regarded as a trade or business where profit is the motive." There are instances of substantial fees being charged from students but these are justified in terms of covering costs and building infrastructure with no element of profit-making.

Since universities in India, including private universities cannot function as commercial establishments, it should be obvious that foreign educational service providers cannot be allowed to function as profit-making enterprises with the right to repatriate surpluses to their parent institution. If foreign providers are willing to adopt charitable status and be subject to the domestic regulatory frame, their case can be considered on the same principles that apply to domestic private providers. But given the commercial implications of the GATS negotiations, India cannot make any commitment without rethinking the principles it has held and continues to hold on the educational front.

Does this mean that foreign players would be unwilling to enter the higher educational area? It does not. What they may do (and are doing) is establish a presence in the form of private commercial providers of educational services who are not officially recognised by the government. There are a number of institutions in the country, both domestic and foreign, currently operating in this form. The successful ones are those that are seen as providing a training that is recognised by employers, as reflected in the proportion of their students who get placed and the salaries at which such placements occur.

Since those arguing for privatisation of education are most often also those who argue for greater "commercial relevance" of education, this should be a completely acceptable form of ensuring both competition and quality in the market for private educational services. What needs to be noted is that India does not have to make any additional commitments to provide foreign players the opportunity to offer these kinds of services.

## Weak arguments

The case for special concessions under GATS arises, therefore, only if the government wants a foreign presence that goes beyond what is detailed above. There are two grounds on which such an extension of the area of freedom for foreign players has been defended. The first is that foreign investment in education is necessary in order to supplement the inadequate amounts currently being spent on higher education by ostensibly resource-starved governments. This is seen as crucial to meet the excess demand for good higher education. The second is that the best foreign players would not come in adequate measure if they are not accorded the status provided to all public and many private educational providers in India. This is seen as unfair to those who are willing to pay for such an education. It is also seen as foreclosing a much-needed contribution by foreign providers, even if at high cost.

The point regarding inadequacy of resources is, if anything, weak. It ignores the possibility of substantially increasing resources in the hands of the state, by raising India's relatively low tax-GDP ratio, for example. And it overlooks the possibility of reallocating resources from what many consider less essential areas to a priority area like education.

The second argument, which is more material, is the view that there is a demand from resident Indians for education of the kind offered in universities abroad, but is currently accessible only to those who obtain the necessary funding or have the requisite own resources to travel abroad to access such education at relatively high cost. Increasing access to such education through means other than consumption abroad is seen as a democratic project. Needless to say, this presumes that the kind of education being offered on Indian soil by foreign educational providers is equivalent in quality and certification to that which can be accessed abroad - even though this is not necessarily the case. In fact, there could be misuse of a foreign brand to purvey relatively poor quality education at high cost.

Moreover, the reason why such educational access is being demanded needs to be addressed. It is indeed true that the National Science Foundation of the United States reported (in its publication Science and Engineering Indicators 2006) that more than 63,000 of the 279,000 foreign graduate students enrolled in U.S. universities in 2004 were Indians. But it also pointed to the fact that of the 3,238 Indian recipients of science and engineering doctorates in the U.S. in 2003, nearly 90 per cent planned to stay on in that country, with two-thirds having definite plans to stay.

If the demand for a foreign education is because such a degree is necessary to access jobs outside the country, then provision of such degrees need not be a priority for the government. If, on the other hand, such access is demanded because the quality of domestically provided higher education is not adequate in terms of availability or quality, then the case is for redressing that inadequacy, rather than adopting a policy that may in fact further weaken domestic education. No one can deny that there are in the country enough instances of institutions of higher education that are considered comparable to the best internationally.

Moreover, some degree of access to top-quality international educational resources is possible through collaboration agreements between domestic and foreign universities, which allow Indian students to benefit from the faculty, the courses and even the "brand" of the better foreign universities, just as students from those universities can access the best Indian expertise.

In sum, while considering demands from more well-to-do sections for domestic access to the services of foreign educational providers, the government needs to assess the private and social benefits of acceding to this demand after taking into account the social costs that such a policy may entail.

When confronted with these arguments, it is often held that India should permit entry of foreign educational providers in order to obtain reciprocal and equal rights in those countries for Indian universities. There is a growing recognition of the teaching strengths of sections of the Indian higher education system. This could mean that in the evolving "knowledge economy" India may have advantages as an international educational service provider that can help absorb some of the educated unemployed into this activity as well as serve to earn the country valuable foreign exchange.

For this reason, it is argued, India should not shut itself to the international provision of educational services through cross-border supply or through the establishment of a commercial presence, supported with the movement of natural persons.

It hardly bears stating that India's priority today is not that of becoming an exporter of educational services, but of ensuring good quality higher education for its young citizens. Making a commitment under GATS could tie the hands of the government and prevent it from adopting a nuanced policy that can serve that objective. So, as in the past, it should abjure from making any such commitment. We need to look elsewhere to generate an export thrust. ■

Dinesh Abrol

## Commercialisation Of Higher Education:

# Implications Of The GATS 2000 Negotiations

Most of us see education as first and foremost a public service, which is responsible on the one hand for providing young people with the skills needed for economic success, on the other for building the foundations of a civil society and of national participation. An understanding of the past, of culture, and of democratic values, among other elements of education, is part of education, and these elements cannot be subsumed in the workings of global market place. However, the big business in higher education driven by the motive of profiteering has much less interest in the maintenance of such traditions. Further, there has also emerged an influential section of the Indian middle class that can today realize the perceived benefits of increased access to the emerging tendency of internationalization of the labour markets for selected professions. And this section is already quite open to embrace the big business run higher educational institutions. The Indian government also already permits 100 % foreign direct investment (FDI) controlled institutions to be established in the country. The emerging force of big business is quite keen to develop the opportunities becoming available for private and foreign direct investment for the establishment of "for-profit institutions" in the sector of higher education in India. Amidst this change now the sector of education has been introduced on the negotiating table for the first time in the World Trade Organization (WTO) under the General Agreement on Trade in Services (GATS) 2000 negotiations.

At stake in the World Trade Organization (WTO) negotiations on trade in educational services is how the country is itself going to think about 'education' in the coming period. Serious concerns arise therefore also regarding the consequences of GATS based opening of the higher education system. An important concern is that the interconnected trends of privatisation, commercialisation, globalisation and deregulation of higher education would be accelerated in a big way. The process of GATS linked liberalization has also its important reinforcing factors in the emerging tendencies of reduced public investment and autonomous external and internal liberalization of higher education. In India, the potential for commercialisation and profiteering would be therefore far greater after the signing of the GATS 2000 negotiations agreement. The government has so far preferred to keep its regulations to the minimum due to the requirement to encourage private investment to satisfy the increased demand for higher education. The GATS linked deregulation, in combination with the process of accelerated liberalisation, is also therefore capable of significant adverse consequences for the system of higher education in India. These adverse consequences would appear in terms of both; the proliferation of poor quality institutions and the reduction in access of education for the poor in general and socially discriminated in particular.

The efforts of big business to push the sector of education as a whole for its opening up to the global education service providers have the danger of locking the people of India forever into a path of dependent educational development. Even if the future governments are interested to reverse the commitment and come out of the obligation of opening up of the sector of education to the forces furthering commercialisation they would find it difficult. The exit out of a sector that has been committed for opening up under the GATS 2000 negotiations would involve paying compensation to the trading partners. Because of this the GATS based liberalisation of higher education is likely to have also the consequences of deepening very much further the processes of unequal and dependent integration of the capabilities of Indian people into the world capitalist economy at a higher pace.

In this paper we underline the implications of the endorsement in the Central Advisory Board of Education (CABE) of the offer made by the Indian government as a part of the current round of the General Agreement on Trade in Services (GATS) 2000 negotiations to liberalize the sector of education for the entry of foreign education service providers. In our assessment, the Central Advisory Board of Education (CABE) has failed to assess the adverse consequences that the offer to open up the sector of education through the GATS process entails. The way the CABE Committee on Autonomy of Higher Educational Institutions has gone about to deal with the issues arising out of the GATS 2000 negotiations raises serious concern. The CABE report ignores the consequences of endorsement of GATS linked liberalization for the quality and equity and of the other related implications of the acceleration of trends of commercialisation, deregulation, privatisation and globalisation of higher education for the path of Indian development. The Indian Parliament and the State Legislatures need to be involved in the process of decision-making on GATS 2000 negotiations.

## Big Business As A Driving Force

Education becoming internationally traded commodity Globalisation of higher education is detectable in expanding trade in higher education, the growing influence of international actors in the regulation of higher education such as the WTO and the World Bank as well as many multinational corporations. It is visibly evident that a growing number of individuals are studying for foreign qualifications without travelling overseas (between 1980 and 1995, the numbers of overseas students world-wide grew from 0.93 to 1.5 million, an increase of over 60 %). This can be done on their own by enrolling on pure distance education courses or, increasingly, by studying (on a full or part time basis) at local public or private education institutions which have established collaborative links or partnerships with one or more universities/colleges overseas and / or have been accredited by overseas examination bodies. Twinning arrangements are becoming common in South-east Asia; these institutional arrangements enable foreign private higher-education establishments to offer courses leading to degrees issued by a foreign university. Institutions with twinning arrangements adopt the program design of the "partner" abroad to validate the "in-country" courses, validating also the instructional methods and examination standards. These twinning arrangements have allowed the foreign institutions to offer franchises for even specific courses and programmes to local "partners".

Multinationals enter into education through ICT Part of this phenomenal boom is explosion of for-profit distance learning. Distance learning has emerged as a very dynamic area, benefiting from the development of new information and communication technologies (ICT) such as cable and satellite transmissions, audio and video conferencing, computer software and CD-ROMs, and the Internet. In Australia, 22 universities are today involved in the provision of distance education to international students. All of these universities use new technology, such as e-mail and the Internet, in the delivery of distance education to international students. There is the emergence of institutional arrangements between public and private entities, both within and across national boundaries. The WTO report (1998) gives an account of how world over such partnerships between educational institutions and private firms are making big inroads in to more liberalized education. A commonly cited example is of the partnership developed between 17 governors of Western US states and private entities such as IBM, AT&T, CISCO, Microsoft, and International Thompson; it reaches students through the Internet and distance learning technologies. Another example is of the Universitas21 initiative, which has been set up as a company incorporated in the United Kingdom with a network of 18 universities in 10 countries. Collectively, it enrols about 500,000 students each year, employs some 44,000 academics, and has a combined operating budget of almost US $ 9 billion. Universitas21 has been established for the purpose of developing international curricula for graduates educated and trained to operate in a global professional workforce, with credentials that are internationally portable and accredited across a range of professional jurisdictions.

## The US As A Leading Exporter Of Educational Services

These developments make it clear that powerful business interests world over are all set to convert this huge sector in to an industry. International trade in higher education was estimated at US$ 30 billion in 1999, equivalent to 3 % of total services trade in OECD countries. Grand Alliance for Trade in Education (GATE) estimates international trade in education services to touch very soon the figure of US $ 50 billion. The United States is the leading exporter of education services, followed by the United Kingdom, Germany and France. In the U.S., the export of education services reached $11.7 billion in 1998, ranking fifth among exported services. Education and higher education services offer great business opportunity for the US. In 1996, from the export of education and training services worth $ 7.5 billion it netted a surplus of $ 6.6 billion. The US has great compulsion to pursue the trade in education services particularly, as it supports 4 million jobs in the US economy. The main export markets for US higher education are in Asia (China, Japan, Korea, India, Taiwan, Thailand, Indonesia and Malaysia), accounting for over 64 % of all USA exports of education services, followed by countries in Europe and Latin America. It seems that opportunities for the expansion of trade in education will continue to arise on account of the growing demand for education in the countries like Brazil, China, India, Korea, Malaysia, etc.

However, as the US is now beginning to face increasing competition from other countries such as Australia and the United Kingdom, there is a growing restlessness within the big business groups concerning the lack of open markets. Presently the competition is mainly for the students from Asian countries where the big business is interested to open and stabilize on priority the route of commercial presence or foreign direct investment. Through the WTO negotiations the big business is seeking to bring down the national barriers that are in place today and are coming in the way of the achievement of a rapid expansion of the market for private higher education within these developing countries.

Demands made by big business in GATS 2000 US education companies are in the leadership to press for the GATS 2000 to meet the following demands: Facilitation measures for foreign subsidiaries, short term employment migration of teaching personnel and cross-border supply by video, CD-ROM and Internet; The authorities in other countries should recognize qualifications and certificates from US institutions; Intellectual property rights on US education materials should be implemented internationally, while custom restrictions, currency controls and investment conditions should be relaxed ( see CSI 2000, p27).

The interest of private sector is currently focused on higher and adult education, with companies wanting to see a new "training" category included in the GATS classification scheme. The category of training is intended for the entry into a highly lucrative market in company-related technical training that is organized either by the company's own employees or by external service providers. It should be therefore quite obvious from the details provided in this section that the big business is already a force in the sector of education, and that the GATS 2000 negotiations are taking place when the dynamic of liberalization is already underway in a big way.

## GATS Negotiations: Scope And Directions

Scope of negotiations on education under 'GATS' The GATS 2000 divides the education 'market' into five categories or sub-sectors of service based on the United Nations Provisional Central Product Classification: Primary Education (covers pre-school and other primary education services), Secondary Education (covers general higher secondary, technical and vocational secondary, technical and vocational services for the disabled), Higher Education (covers post secondary technical and vocational education services, other higher education services leading to university degree or equivalent), Adult Education (covers education for adults outside the regular education system) and Other Education (covers all other education services not elsewhere classified). The three categories that are most relevant for the current round of GATS re-negotiation in the sector of education are 'higher education', 'adult education' and 'other education'. To liberalize trade in educational services the GATS 2000 defines the broadest possible starting point. It covers not only cross-border trade but also all possible means of supplying a service, including the right to establish a commercial presence on the export market.

In terms of the Agreement as a framework for negotiations, the WTO identifies four forms of trade in services (sometimes also called as the four modes of supply or consumption) for which the member counties may take specific commitments: cross border supply (mode1: distance learning or e-education; virtual university), consumption abroad (mode 2: students studying in another country), commercial presence (mode 3: branch or satellite campus; franchises, twinning arrangements) and presence of natural persons (mode 4: teachers travelling to foreign countries to teach). The four modes of service supply or consumption described above apply to each of the categories. Potential for accentuation of imbalances in GATS

The 'GATS' is not a neutral agreement; it is designed to benefit the emerging exporters of educational services like the US and Australia much more. Trade liberalization for whose benefit or at what cost are key questions. As evidence take the example of the US proposal on education. The proposal put forward on educational services within theframework of 'GATS' 2000 by USA-a key player in the WTO negotiations-is seeking the acceptance of a general 'no limitations clause' from the Government of India. India is being asked to refrain from putting limitations of any kind, be related to market access restrictions on the entry of foreign services or service suppliers into the domestic market or related to national treatment related laws, rules, or regulations that effectively discriminate against in favour of domestic services and services suppliers, or provides for market competitive conditions that favour domestic over foreign service and service providers. The US is even asking for commitments in those sub-sectors that are not, at present, part of the United Nations Central Product Classification (UNCPC). The US is demanding the inclusion of 'training' and 'testing' services in the scope of educational services to be liberalized. The inclusion of these two important services in the category of 'other educational services' has a risk that if accepted, existing public funded institutions in India may even be found guilty of de facto National Treatment violations arising from cross-subsidization between training activities and education and of unfair privileging its own examination and testing services in the country's domestic system of education.

It may be worth recalling here that the US has not made any commitment to open up for primary to higher education. The US has made a proposal to open up only for 'Adult and Other education' allowing market access under 'consumption abroad' mode, 'commercial presence' mode with some limitations and unbound 'presence of natural persons' mode-except for horizontal commitments. National regulations identified as barriers The proposals of US, Australia and UK identify several of the legitimate national regulations followed in the education sector in developing countries as obstacles, which are necessary limitations from the point of view of the national interest and economic needs.

Their proposals are seeking an agreement in the WTO from the member states providing for sweeping and broad liberalization in the form of horizontal commitment across all the four modes: cross border supply (distance learning), consumption abroad (students studying abroad), commercial presence (off-shore campuses, etc) and presence of natural persons (mobility of teachers). The provisions relating to general obligations of most favoured nation (MFN), transparency, dispute settlement and monopolies, conditional obligations attached to national schedules in respect of market access and national treatment and limitations attachable to market access commitments are fundamental to the discussion needed to be carried out in the country on the implications of encouraging the international trade in educational services. Uncertainties continue to exist regarding the rules in terms of whether the Government of India would be allowed to implement new regulations in respect of content, cost control and allocation of subsidies, recognition of qualifications, quality assurance and accreditation, mobility of professionals and protection of culture and intellectual independence. Not only is the outcome of negotiations uncertain, even the general provisions of GATS are still open to interpretation of the dispute settlement mechanism. For example, there is considerable uncertainty within the WTO itself as to the extent to which National Treatment impacts on subsidies. If National Treatment provisions are applied to the whole of Indian higher education system, it could mean that foreign, for profit educational institutions will be able to compete for government aid along side Indian educational institutions. It is also possible that this will trigger the reduction of public funding for both public and private educational institutions. This situation will catalyze the introduction of higher fees, with the effects of higher level of dualism and increased inequality of access in higher educational institutions. Further, the new situation has the risk of making cross-subsidization deeply impractical.

## India's Position In GATS Negotiations

What is already at the negotiating table from the side of India? India is requesting to seek market access commitments for higher education from: US, EC, Canada, Pacific, African, Arab and neighbouring countries. There are clear pointers of evidence that in the long run GATS may even damage quality and affect the government's ability to regulate in the public interest. For example, it is not clear to what extent the government would be allowed to extend less-favourable treatment to foreign-based e-universities compared to universities actually physically based in India. The Government of India is yet not wary of getting in to the negotiations on market access within all the four modes of supply of higher education services. It is merrily going ahead with the process of bilateral negotiations on the offers. It is presuming that the foreign education providers would flock to India to offer the Indian students courses in frontier technologies such as biotechnology, computer sciences, material sciences, etc. It is also hoping to control the foreign providers through the incentive of putting the condition of ceiling of 74% on foreign investment to attract them in frontier areas. It seems to have forgotten that to realize technology import and obtain technological capabilities for adaptation and improvement India had to practice the direct regulation of technological behaviour of foreign companies. Indirect controls in the form of foreign direct investment ceilings were hardly efficacious for the purpose of obtaining at least technological know-how. There is also experience of last fifty years that foreign companies do not want to part usually with their frontier technologies; how can we forget the experience of steel, oil, electronics, drugs, supercomputing and so on. Today on the top of GATS there is also TRIPs in the WTO to give them protection over their proprietary software in the field of learning technology.

Disconcerting trends in higher education policymaking. As already told, the Indian government already allows 100% foreign direct investment (FDI) in education. Foreign institutions have been allowed to exist under 'recognized by AICTE and UGC' category of institutions. Currently, the government allows these institutions to be established under the provision of 5 years contract, which also provides for the termination of the same contract using the clause of a review after three years, if adversely affected. In fact, since the beginning of nineties the country has been even continuously witness to a rising trend of the governments according to the business interests (Ambani-Birla Report on Education) a major role in the making of education policy. In India, these developments have paved way for the private investment for profit to grow in certain segments of the higher education (HE) sector in a big way. There is a mushrooming of 'self financing' engineering, management, medical and other professional institutions that work on the principle that they have to finance themselves by generating revenue through student fees and service sales. Now, there is a pressure for the extension of the market mechanism to the public sector in Indian HE as a means of increasing 'efficiency'. To reform the HE sector the government is forcing these institutions to use privately sourced funds and management expertise. The HE institutions are encouraging their own faculty to look toward increasing their use of private funds to start new courses that already have a marketable value.

In fact, our problem with the report of the CABE committee on Autonomy of Higher Educational institutions is that this committee has also recommended most of the above developments as its own policy level suggestions for implementation to the government. Further, in general, today there is a desire in the established elite circles that India should market abroad higher education, particularly in the areas of Music, Art and Culture and Science and Technology. India's request includes seeking commitments of market access for the establishment of institutions of Management Education, Ayurveda, Indian System of Education, Art and Culture, Architecture, Engineering, IT Education, Yoga and Foreign Languages Education, Agriculture and Rural Development Education.

## Implications Of GATS For Higher Education

Who has stakes in GATS? Education is an annual budget of one thousand billion dollars worldwide. The sector employs more than 50 million teachers, and above all it has a billion potential customers in the form of students. The main goal of GATS 2000 negotiations is to pave way for the progressively higher level of trade liberalization in the sector of educational services. The Government of India is being asked to provide freedom of operations to all those investors who have an agenda of profit making and are essentially looking for commercially attractive opportunities to put their money in the business of higher education. It is the big business and not the scientific and teaching communities who have a stake in the improvement of opportunities for trade in educational services. Trade in educational services will replace the process of international co-operation in education that the developing countries have till date utilized to develop their public sector institutions, for example Indian Institutes of Technology in India.

The question of real gains from GATS During the period of last twenty years, because of the policy of insufficient public investment and the acceleration of the trend of deregulation of higher education the Indian system of higher education has already lost quite heavily. Among the influential sections of middle classes a loss of confidence pervades in respect of the quality of higher education being imparted in the state universities and other professional institutions. In such a situation, the emerging force of big business in higher education has entered India. An important issue arising out of the introduction of education as a sector for the request-offer process by the Government of India in the GATS 2000 negotiation is therefore about the nature of contribution that we can expect the foreign direct investment (FDI) to make to the sector of higher education in India.

An analysis undertaken by National Institute of Educational Planning and Administration (NIEPA) of the programmes offered by foreign universities is quite revealing. It shows that the courses of studies offered mostly relate to hospitality services, management, medical and information technology; in many courses two degrees in the same period being offered; no conditions of minimum qualification in terms of percentage of marks; the duration of degree programme in terms of number of years may be even less than what is prescribed for such degrees in India; etc. Further, it is also clear that the students who flock for a foreign degree and approach many of these organizations are generally not the students with high performance at the higher secondary level. Majority of the students are those who could not get through the competitive examinations or did not get admission in Indian colleges and universities due to their relatively poor performance.

Further, there is also evidence building in favour of the assessment that the foreign education service providers would not be able to provide the quality education that they are capable of supplying and offer at home to the students joining their institutions. Take the case of Australia, which took a lead in the establishment of offshore campuses in the countries of Southeast Asia. Studies undertaken for the evaluation of quality of education imparted in these international institutions indicate that not only these institutions have proved to be unviable investments for the Australian higher educational institutions but also they are now beginning to cut down on the facilities provided abroad with the aim to reduce their costs. This has obviously impacted on the quality of higher education being imparted through the offshore campuses of these Australian higher education institutions.

Of course, we can also raise the question that whether through the GATS negotiations a country like India can make the pattern of FDI to shift to the establishment of educational services in India for areas connected to high technology sectors using knowledge that is being generated on science frontiers where we can derive a lot of benefit. To attempt an answer to a question like this one has to keep in mind that there are two types of forces involved in the determination of FDI flows to a country like India in the areas of knowledge intensive service activities. First of all, in areas that are under discussion the governments of EU and US can have a determining role. Members' experience suggests that the EU and US have been so far reluctant to lift the restrictions on these areas. As these governments have declared many of these areas as highly restricted for access because of the dual use nature of competencies involved we will have to overcome the hurdle of security related exceptions which the GATS negotiations cannot deal with. Recent past experience of international cooperation also indicates that the US and EU institutions have been reluctant to provide unfettered access to students coming from abroad for studies from countries which can catch up with the developed world. This has been the experience of countries like even South Korea and Taiwan who have been politically and strategically quite close to the US Administration. Second, the GATS negotiations cannot compel the service providers to provide for establishment of facilities for such areas to any country and they are free to decide on the destinations for foreign direct investment in all areas. Further, in areas where the facilities are both instrumentation and human resource intensive we can expect anyway quite a few barriers to come in the way of establishment of such kind of educational services in a country like India.

Some may cite the examples of increased R&D investments by foreign companies in India as evidence that is completely contrary to this argument. Arguments apart on whether the R&D investments being made are beneficial for the purposes for which R&D is to be done it should be kept in mind that many restrictions have to be observed by the persons working in these R&D centres. The aim of these centres is to serve in-house purposes; spill over effects are tightly controlled which makes horizontal knowledge transfer, if not impossible, extremely difficult. Evidence of the trend of increased R&D investments by foreign companies is not an argument that can contradict the arguments placed here that why we should not expect the FDI to flow in areas of education relating to imparting knowledge in respect of competencies for high technology sectors. It will be thus quite futile on our part to expect the GATS 2000 negotiations to yield a very different pattern of FDI in education than what we have experienced so far. Pattern of demand for the participation of foreign institutions Since the big business is only keen to expand its reach in those sectors of higher and adult education categories which do not involve the upgrading of facilities and resources for India in any substantive way, the next question that we still need to ask is whether by the entry of foreign educational institutions there would also be any kind of harm done to the Indian system of higher education. In order to attempt an answer to this question we will have to look in to the implications of foreign direct investment for those areas where the future markets are expected to lie for a country like India.

In India, the global players would be interested in capturing the markets for education of personnel needed for selected professional services where there is already a trend of internationalization of competencies due to the changing requirements of multinational corporations. In the fields of scientific and technological education, their pick is likely to be limited to mature fields where India has substantial capabilities in the national sector of public sector institutions. It is an attempt to capture the market that can be also served easily by the local players. Further, since the GATS facilitated entry of foreign education service providers is taking place in the background of accumulation of many kinds of deficits in the Indian system of higher education, several deficits have developed in the system and where the markets for higher education are already emerging rapidly. The emerging requirements of internationalisation of professional services are also aiding the process of globalisation of higher education sector. The sector of professional education in management, business process outsourcing, audit and accounts is a significant customer in waiting for the for-profit educational institutions that the global players want to set up in India to tap the bright young student who are fluent in English language. But this demand can be however met by a variety of routes including the route of international cooperation. If it comes to making a choice within the scope of liberalisation, it is even possible to allow for profit institutions through the route of autonomous liberalisation. Under this route the Indian government would be independent and free to regulate the entry of big business as the people desire. Indian higher education at high risk The risk to higher education sector is also higher because the country has to meet in a short time the new demands arising on account of the emerging massification of higher education. It is currently required to undergo also a period of intense change and expansion. In India, higher education is still a rapidly growing sector. Of course, this market is coming up due to the decline in governmental expenditure. In view of the declining public spending (share of higher education in total planned resources has continuously decreased from 1.24% to 0.35% in the ninth five year plan), parents and students are increasingly looking to private education for a solution. Seventy five percent of tertiary colleges are private. The trend is to increase the portion of costs borne by individuals. High-income families are tending to capture largely most of the benefits.

However, this has not allowed the system to realize in anyway the claimed benefits of enhancement of responsiveness to demand for skills qualification, of choice and diversity and of increase in accountability. The system is in fact experiencing a trend towards substantial decline in the quality of higher education.

The real challenges posed by the knowledge economy segment lay mostly unattended; there is no substance in the claim that a country like India would be able to tap global knowledge through trade, competition and private funding. In India, the system has been unable to expand so far the options for student finance The system of education that is being propped up by private colleges is in no way more supportive than the earlier public sector institutions of expanding the much talked options of student finance through student earnings whilst a student and students' future earnings.

Yet, on the whole the corporate sector in education sees a huge potential for making profits from the expanding opportunities in India and other similar developing countries. In the next section, we assess the challenge of GATS negotiations to arrive at the possible demands that the government needs to consider seriously.

## India And The Challenge Of GATS Negotiations

Furthermore, it is a matter of serious concern that the Government of India has so far failed in the GATS negotiations to get any kind of assurances from the developed countries member states in respect of the following: the grant of differential treatment at the time of negotiations in respect of non-reciprocal market access to developing countries, which means proper flexibility to open up fewer sectors and fewer transactions, and to attach conditions to market access; the grant of a right to introduce the new regulations on supply of services to developing countries within their territory to meet the national objectives, for example to regulate the curriculum, extra and co-curricular activities offered by the foreign providers in the larger national economic, social and cultural interests; the grant of a commitment to differentiate in the negotiations for all relevant purposes between the public owned and supported system of education and the private owned for profit education system; the grant of a commitment to allow developing countries to use a differential system of taxes and cost subsidies with the aim of reducing cost distortions and to offer the conditions of level playing field to local education providers; the grant of a commitment to allow the developing countries to insist on the presence of a local partner for ensuring the appropriateness of curriculum and to treat the representation of national people, who may be nominated by the government in the management of the institution; and the grant of a commitment of not to insist any more in any way on the acceptance of 'no limitations clause'.

Analysis of the negotiations on the request proposals for the commitments sought from India seems to suggest that at the moment as the things stand the government may be effectively forced to not only make commitments in all the critical areas of higher, adult and other education services but also remove many of the national regulations identified as barriers to trade that today provide for equity of access, quality, diversity of subjects, academic freedom and promotion of social goals to the Indian people. This is further confirmed by the fact of the way the policymaking circles are already opening the sector of education for the benefit of foreign companies. Emergence of a permanent framework for liberalization Lastly, often to boost their case in these established elite circles it is also argued for the GATS based agreement on education on the plea that under the conditions of autonomous liberalization the process of internationalization of higher education is rapidly already anyway taking place. However, it remains to be noted by these supporters that the agreements under General Agreement on Trade in Services (GATS) and other World Trade Organization (WTO) rules can have the impact of locking-in the educational policy in to a framework which, once established, is nearly impossible to alter, except by the agreement of all member states. Pushed by the emerging exporters of education, particularly the US, the UK and Australia, the 'GATS 2000' is the first comprehensive multilateral negotiation on education in the trade framework at the global level. The intent of GATS is to facilitate ever-more opportunities for trade. The GATS provides a general framework and an agenda intended to progressively liberalize international trade in services. The process of progressive liberalization involves two aspects-extending GATS coverage to more service sectors and decreasing the number and extent of measures that serve as obstacles to increased trade. Article XIX of this Agreement clearly calls for "Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the Agreement establishing the WTO and periodically thereafter with a view to achieving a progressively higher level of liberalization. Article XIX is clear, establishing as it does that "Such negotiations (for progressively higher liberalization) shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access". This means that the GATS 2000 negotiations should be seen as the first step or launching of a process in liberalization rather than as its final outcome.

## Demands Made On The Government In Respect Of WTO Negotiations

The current round of negotiations under the General Agreement on Trade in Services (GATS), which started in the year 2000, called also GATS 2000, is scheduled to be completed by January, 2005. Currently, the Government of India is in the advanced stage of making 'offers' to other countries for bilateral negotiations on market access and national treatment in the sector of education. Needless to say, as a result in this situation the sector is already vulnerable to negotiating deals being struck across sectors. Even to predict the extent of risks facing the sector of education the people of India clearly need to know the details of the offers, which are in the process of being negotiated behind closed doors by the officials who may be only trade specialists and not connected at all with education. However, in the context of controlling the potential damage of irreversibility that the GATS brings with its concurrence within the area of education, it is also worth recalling that for India there has always existed in the framework of GATS an option of not to participate in the process of request-offer-commitment for the sector of education. GATS still provides for that countries can decide which sectors they will agree to cover under GATS rules. It is still not too late for the Government of India to reconsider the participation in negotiations under for GATS in respect of the sector of education. Since there is enough evidence that a country like India is much more vulnerable to all the problems that a dualistic, underdeveloped educational system can experience on account of the democratic deficit and increased technological dependence, we propose to the Government of India to opt for not to participate in the process of request-offer for this sector. Consistent with this understanding and keeping in view all the above stated objections, in the context of GATS 2000 negotiations as a first important step we demand from the Government of India to withdraw at least from the process of making further commitments in the sector of higher education services or in the related categories of Adult Education Services.

Finally, as a way out it is important to keep in mind that the General Agreement on Trade in Services negotiations allow the government to follow the positive list approach which means that it has the option of not to open up the sector of education through the World Trade Organization (WTO). The peoples' movement can press for and generate pressure for keeping out of the GATS based process of opening up in respect of the sector of education. Undoubtedly the route of seeking international partners through bilateral negotiations and international cooperation in scientific research and education for the development of higher education is still a well-tested path for the country to achieve and maintain equity and quality in the sector of higher education. Our stand should be to make the Government of India to strictly restrict the entry of foreign educational institutions to the processes of international cooperation. ■

Vijender Sharma

# WTO, GATS and Future of Higher Education in India

Corporate sector has discovered a trillion dollar industry. It is yet to be fully explored and exploited. This industry is in the area of education as 'service' with a huge global market in which students, teachers, and non-teaching employees constitute resources for profit making. In this industry, the students are consumers, teachers are expert speakers, the institutions or companies catering to education service are service providers, and the teaching-learning process is no longer for the building of a nation but a business for profit making.

Education, at all levels, will continue to grow, also because it cultivates human mind and makes them important and useful in all out development of a country. But for the corporate sector it will grow as a big service industry. Global public spending on education at present is estimated to exceed one trillion US dollars, that is about Rs. 47,00,000 crores representing the cost of over 50 million teachers, one billion students and hundreds of thousands of educational institutions throughout the world. Predatory and powerful transnational corporations are targeting public education, particularly higher education, for profit making. Though pre-dominantly government supported service, most governments are, as a consequence of trade liberalization, withdrawing from it. The government of India through extensive privatization, commercialisation and deregulation is supporting this.

The service sector accounts for more than 70 percent of production and employment in the advanced industrial countries. This sector accounts for two thirds of the European Unions' (EU) economy and jobs, almost a quarter of the EU's total exports and a half of all foreign investment flowing from the EU to other parts of the world. More than one third of economic growth of the United States over the last five years has been due to service exports. In 1996, the United States provided exports of education and training services that reached $8.2 billion. It had a trade surplus in education of some $7 billion. The higher education was the fifth largest service exported by the US. Therefore, the pressure of the United States on WTO Member countries in relation to trade in education service is very clear.

## WTO and GATS

The World Trade Organization (WTO), established by replacing General Agreement on Trade and Tariffs at the Uruguay Round in 1994, is a forum for the corporate interests to push their corporate agendas down the throat of developing countries and people without any democratic accountability. The General Agreement on Trade in Services (GATS) covered in the WTO, also a product of the Uruguay Round, is a legally enforceable agreement aimed at deregulating international markets in services, including education. Before this agreement, trade agreements used to be in relation to tariffs and eliminating other barriers for the goods produced in one country and sold in other countries. Some services used to be exchanged but there was no mechanism for trade in services because services are place specific and were considered to be non-tradable. According to the European Commission the GATS is "first and foremost an instrument for the benefit of business."

Objective of GATS is to liberalise trade in services as quickly as possible. It is clear from the preamble of GATS that it is a "multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization" and with a 'desire' (Read: compels its Members) for "the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations." Equipped with WTO-enforced trade sanctions, the "multilateral negotiations" would expand the takeover of service delivery by transnational corporations in such critical areas as: health care; hospital care; home care; dental care; child care;

elder care; education - primary, secondary and post-secondary; museums; libraries; law; social assistance; architecture; energy; water services; environmental protection services; real estate; insurance; tourism; postal services; transportation; publishing; broadcasting and many others.

The WTO has defined and drawn up the rules so as to give itself enormous powers. According to the WTO website, "The GATS is the first multilateral agreement to provide fully enforceable rights to trade in all services. It has a 'built-in' commitment to continuous liberalisation through periodic negotiations. And it is the world's first multilateral agreement on investment, since it covers not just cross-border trade but every possible means of supplying a service, including the right to set up a commercial presence in the export market." The WTO has explicitly stated that one of the advantages of the GATS is that it will help "overcome domestic resistance to change". (Emphasis added)

The US, the European Union (EU), Japan and Canada are the main forces behind the GATS. Though WTO membership consists of nation states, its agenda is shaped by the transnational corporations (TNCs) of these countries that sit on all the important "advisory" committees and determine detailed policy. While denying access to decent healthcare, education, housing, and long-term care to millions of workers and their families the world over, the agreement will confer ever-greater political power on these corporations as they control and dictate public policy. The role of the State is attacked and its services criticised, public education systems are being systematically under-funded like in India.

GATS has two components: (i) The framework agreement containing 29 articles and (ii) a number of Annexes, Ministerial decisions, etc., as well as the schedules of commitments by each Member government, which bind them to allow market access and/or remove existing restrictions to market access. This agreement covers all services including education.

## Basic Rules Of GATS

Basic rules of GATS will apply to services like education in following distinct ways:

1. A general framework of obligations that applies to all member countries of WTO includes two principles of "Most Favoured Nations (MFN) Treatment" and "National Treatment".

As per Article II, subsection 1 of GATS on "Most Favoured Nations": "each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country." That is, there should be no discrimination between the Members of the agreement.

As per Article XVII, subsection 1 of GATS on "National Treatment": "each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers." That is once a service provider from a Member country enters another Member country under specific commitments, it cannot be discriminated from other domestic service providers in the other country. (Emphasis added)

The rules of "most favoured nations" and "national treatment" are aimed at eliminating all restrictions on big business. Under these rules, governments must treat each nation's corporations equally, which will effectively end all attempts by the developing countries to insulate their economies to some degree from the world market. There are a host of "market access rules" making it illegal to restrict competition or place national restrictions of any kind on foreign ownership. Indeed the US is demanding the abolition of any special treatment for the so-called developing countries.

2. Each Member country will have to make a request offer for a particular service to be a part of the agreement. That is, a Member country can decide which service sector it would like to cover under GATS rule.

3. As per Article IX of GATS, a Member maintaining practices which may "restrain competition and thereby restrict trade in services" is directed to "enter into consultation with a view to eliminating" them when requested by another member. In case of disagreement between members, the Council for Trade in Services under Article XXII "shall refer the matter to arbitration" and decision of which "shall be final and binding on the Members." (Emphasis added)

4. Members have to ensure that all measures are administered in reasonable and impartial manner, establish judicial/ arbitral/ administrative institutions for review to ensure it and not introduce any regulation that affect operation of an agreement.

## Forms of Trade in Services

In terms of Article I, subsection 2 of GATS, the WTO has defined trade in services in the following four forms "as the supply of a service":

1. "from the territory of one Member into the territory of any other Member." Called Cross Border Supply, this service in education includes any type of course provided through distance education, or Internet, or any type of testing service and educational materials that can cross national boundaries. When the institution of a Member country A provides distance courses, etc. to another Member country B, then A is deemed to be exporting education service to B.

2. "in the territory of one Member to the service consumer of any other Member." Called Consumption Abroad, this refers to the education of foreign students. When the students of a Member country A move to another Member country B, then B is said to be exporting education service to A.

3. "by a service supplier of one Member, through commercial presence in the territory of any other Member." Called Commercial Presence, this refers to the actual presence of foreign supplier in a host country. This would include foreign universities or providers of a Member country A setting up courses through branches or franchisees or entire institutions in another Member country B. A would be deemed to be exporting education service to B.

4. "by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member." Called Presence of Natural Persons in WTO jargon, this refers to when foreign teachers of a Member country A move to teach in another Member country B. A would be deemed to be exporting education service to B.

## All Education Under GATS Umbrella

Article I.3 defines "services" to include "any service in any sector except services supplied in the exercise of government authority;" and "a service supplied in the exercise of government authority" means "any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers."

That is, only when the services are entirely provided by the government, they do not fall within the GATS rule. For a service to be out of the purview of the GATS rule it has to be entirely free. However, when the services have been provided either by the government partially or some prices are charged (as happens in education where some fees is charged) or provided by the private providers shall fall under the GATS rule.

The idea behind this is the creation of an open, global marketplace where services, like education, can be traded to the highest bidder. GATS covers the educational services of all countries whose educational systems are not exclusively provided by the public sector, or those educational systems that have commercial purposes. Since total public monopolies in education are extremely rare, almost all of the world's educational systems fall under the GATS umbrella. In India, we cannot get exemption in education from the application of GATS because education at all levels, particularly at higher education level, is not entirely free (i.e. some fees has to be paid).

The informal WTO Classification List (W/120) divides educational services into five parts: (a) primary education services; (b) secondary education services; (c) higher education services; (d) adult education and (e) other education services.

## Pressure to Remove Trade Barriers

The WTO has identified certain barriers to trade. These barriers/ obstacles include the restrictions on free movement and nationality requirements of students and teachers, immigration regulations, type of courses, movement of teachers, modalities of payments or repatriation of money, conditions concerning use of resources, direct investment and equity ceilings, the existence of public monopolies, subsidies to local institutions, economic need tests, exchange controls, non-recognition of equivalent qualifications, etc. Because services are not objects, barriers to trading services are referred to as non-tariff barriers. The goal of 'free trade' regime under WTO is to get these barriers removed in order to further liberalize the world economy.

The United States, on 18 December 2000, made a proposal to the Members of the Council for Trade in Services, WTO, in which US has included "all tertiary education, i.e. education beyond secondary education, adult education, and training services" under the umbrella of "higher education". As per this proposal, "Such education and training encompass degree courses taken for college or university credits or non-degree courses taken for personal edification or pleasure or to upgrade work-related skills. Such education and training services can be provided in traditional institutional settings, such as universities or schools, or outside of traditional settings, including at workplace, in the home or elsewhere." (Emphasis added)

The U.S. proposed the inclusion in education services the two types of services: (1) training services which are "less theoretical and more job-related than academic courses, and (2) educational testing services which are used to "evaluate the student as well as the course material," and include "designing and administering tests, as well as evaluating test results."

The US proposal calls for "an open regime in the education and training sector" and demands "market access, national treatment, and additional commitments" from Member countries who have been called upon to "inscribe in their schedules 'no limitations' on market access and national treatment" and to undertake "additional commitments relating to regulation of this sector."

The US has identified several obstacles/ barriers which "make it difficult for foreign suppliers to market their services" which obviously must be removed for "an open regime in the education sector." Some of the obstacles/ barriers are:

1. Prohibition of higher education offered by foreign entities.
2. Lack of an opportunity to obtain authorization to establish facilities within the territory of the Member country.
3. Lack of an opportunity to qualify as degree granting institutions.
4. Inappropriate restrictions on electronic transmission of course materials.
5. Economic needs test on suppliers of these services.
6. Measurers requiring the use of a local partner.
7. Denial of permission to enter into or exit from joint ventures with local or non-local partners on a voluntary basis.
8. Where government approval is required, exceptionally long delays are encountered and when approval is denied, no reasons are given for the denial and no information is given on what must be done to obtain approval in future.
9. Tax treatment that discriminates against foreign suppliers.
10. Foreign partners in a joint venture are treated less favourably

than the local partners.

11. Franchises are treated less favourably than other forms of business organization.
12. Domestic laws and regulations are unclear and administered in an unfair manner.
13. Subsidies for higher education are not made known in a clear and transparent manner.
14. Minimum requirements for local hiring are disproportionately high, causing uneconomic operations.
15. Specialised, 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.
16. Repatriation of earnings is subject to excessively costly fees and/ or taxes for currency conversion.
17. Excessive fees/taxes are imposed on licensing or royalty payments.

Thus, the United States by getting all these so called obstacles or barriers removed, wants to further liberalise the world economy and then control, manage and provide higher education everywhere in the global market and make huge profits. If these obstacles are removed then the system of higher education in developing countries, including India, will crumble and the future of democratic public education will be bleak. In fact, our very protest of corporate run education could be seen as an obstacle to investment.

However there are only 40 countries out of 143 WTO Member countries that committed to trade in education service. Majority of them are from developed countries for all the four sub-sectors except for 'Other Services". The United States has opened up to foreign competition only "Adult education" and "Other education services." Japan has also opened up adult education sector. But in Japan under national law education can only be provided by recognised non-profit-making organizations. This is going to be a major barrier to foreign suppliers at least in that country.

## Indian Scenario

In the beginning of the last decade, some foreign universities tried to market their higher education programmes in India. Representatives of several countries visited India to market certain percentage of their medical and engineering seats. Some foreign universities have also engaged Indian agencies and firms to recruit students to study in their universities. Others have started franchisee or commercial presence in India by allowing students to be enrolled in India and carry out studies for a part of the period in India and completing the other part of the degree in the institutions abroad. In certain cases even full degree institutions in India for giving foreign university conduct their programmes. Some also have twinning programmes between foreign and Indian universities. Some offer programmes through distance mode, through print, computer, television and electronic mode, i.e. the virtual university.

Thus the export of higher education to India by universities of several countries has been through modes of consumption abroad, cross border supply, franchisee, twinning programmes and virtual university. In 1999, about 20,000 students went abroad for education mostly to USA, Australia, UK, Canada and France. However, on an average only 1500 students per year mostly from Gulf and South Asian countries come to India for education. It is not known as to how many Indian students are enrolled under cross border supply, franchisee and other modes. Fee charged from students ranges from Rs. 50,000 to Rs.340,000 per annum.

A recent estimate given by Global Alliance for Transnational Education indicate that about $27 billion worth of higher education is exported to Asia and Pacific by three countries namely USA, UK and Australia. A business of $37 billion trade in tertiary education services in Asia and Pacific region is projected in future.

An analysis of the advertisements issued by foreign universities or on their behalf in India reveals that the courses offered by them mostly relate to hospitality services, management, medical and information technology. Some times concurrent degree programmes, i.e. two degrees in the same period are offered. No conditions of minimum qualification, i.e. percentage of marks, etc. are insisted upon, only 10+2 degree/certificate plus an interview is enough. Quite often the duration for getting degree may also be less than that required in India for the same degree. Largest number of universities advertising in India is from UK followed by Australia, Canada and Austria.

As far as India is concerned, the foreign education providers are interested in higher education with the use of all the four modes of trade. They are targeting at economically affordable group in the society in order to maximize profits. The impact of GATS would be that the non-organised private education providers in India would be the first ones to take an advantage. There would be unfavourable balance of payments as far as trade in education services are concerned. The public education providers would be marginalized in the race due to unequal play rules and ground.

### 10th Five-Year Plan Proposal

In view of the ongoing WTO negotiation on trade in services including trade in educational services, which presents issues that have very serious implications for higher education, some of the recommendations made in the 10th Five Year Plan Proposal are the following:

- "Although India has approved to complete liberalization on Trade in Educational Services, it may not be able to withstand the international pressures unless she prepares well for the second round of WTO negotiations. The matter is urgent and the Government should therefore appoint Committee/ Task Force to advise on (a) negotiation on higher education issues in WTO, and (b) issues relating to erecting the safeguards for the post-negotiations market access regime.

- Serious thinking is required to extend the benefits of higher education to the less privileged section of society. For this an Educational Development Bank should be created.

- Private relevant institutions of higher education should be encouraged provided they adhere to equity parameters determined by appropriate regulatory mechanism.

- Optimum utilization of public infrastructure and manpower in the higher education sector should be ensured.

- Universities should also consider setting up a cell for taking care of internationalization of higher education, both for import and export. Universities may devise ways and means to mobilize their own resources through various means."

Explaining its approach for internationalization of higher education, the 10th Five Year Plan Proposal suggests "special incentives" to universities: "Universities which are willing to raise say 25-30% of their recurring expenditure from the fees of foreign students should be permitted to retain 10% of the collection towards a designated fund for updating equipment and facilities. The university should be within its rights to admit as many foreign students as necessary to raise the target amount. For five years Government should also consider making a matching grant towards their designated fund. This would progressively reduce the dependence of such a university on the Government." (Emphasis added)

For the universities that accept the above scheme, recommends the Proposal, "the NAAC (National Assessment and Accreditation Council) should set up a special and professional method for evaluation so that the foreign students who receive training in India are accepted as 'world class' on their return to home. The evaluation should aim at ensuring not only high academic standards but also decent living conditions for the foreign students."

The Proposal further states, "Deemed universities, which are rapidly growing in number and receive no support from the Government should be encouraged to admit higher percentage of foreign students." It emphasizes that if private enterprise is "willing to set up world-class educational facilities in emerging areas such as IT or biotechnology, where the full cost will be recovered from the fees of foreign students they should be given encouragement." The UGC has allowed deemed universities to set up their campuses in other countries. In view of this, the Proposal wants this facility to be extended to "all universities who wish to export education." It is also proposed that as an incentive for the universities, "their earnings from abroad should not be deducted from the annual government grants for say, 5-10 years", and they should have "access to soft loans" for the purpose.

The Proposal warns, "The paradigm of development has changed. International arrangements in trade in commodities, services and intellectual property rights are occupying greater importance and the place. Some of the State policies and rules have to give way to international arrangements." (Emphasis added)

## NIEPA's Report on Policy Perspective

According to the Report of a "Policy Perspective Seminar on Internationalisation of Higher Education and Operation of Foreign Universities in India" organized by NIEPA, in 2000, education should be seen from the point of view of "promotion of knowledge and development of knowledge and skills among the people which are mutually beneficial and oriented towards development of mankind and also reducing the gap or the factors which cause the gap in knowledge and skills among people. If this point of view is accepted then it is necessary to allow free flow of knowledge cutting across the geographical boundaries of nation states. Though this idea sounds well and high, but in practice it might as well result in selected flow of information/ knowledge and skills from one set of countries to another set of countries in one direction whether in a single or multi-disciplines subjects. If this happens then it might as well result in draining of resources of receiving country as well as strong cultural and political influence by one set of countries on other set of countries." (Emphasis added)

Some of the recommendations made in the Report are:

- Setting up of a "national level mechanism" for registering foreign universities in India and promote the Indian Higher Education abroad."
- Clear guidelines and laws about "VISA, infrastructure facilities, social and welfare programmes and accommodation facilities for students coming to India and students going abroad."
- An "Ordinance should be passed" to allow universities to open their campuses abroad.
- The acceptance of the "certification/ credit given by the respective institutions should form the part of agreement."
- The accredited Indian universities or Institutes of higher education should have "15-20% full payment seats for foreign students in every subject/ programme as a supernumery position not cutting into the available seats of India students."
- In order to have an international context in education, the course content should "focus on requirements of job market and should have provision for innovative and flexible programmes."
- Indian universities should be "allowed to offer programmes through twinning, franchisee as well as distance mode."
- Foreign students studying in India should have "work permit for a period of three months per academic year. Total duration of work permit would not exceed one year six months."

A National Level Meeting of Vice-Chairpersons of State Council of Higher Education, Vice Chancellors and Experts on "Trade in Education Services under WTO Regime" was organized by NIEPA on 11 September, 2001. Though the meeting ended up with constitutions of several committees for in-depth studies on the issue, it considered Higher Education as the only sector for trade under WTO regime. However, the meeting expressed concern that "the socio-economic implications of opening the education system globally and making education service for profit needs to be carefully examined. Even making it a full cost paying service has caused social and cultural trauma in many countries including developed countries. Making open to world competition with high cost of education might cause further social-cultural problems. These may be un-manageable in the developing countries and particularly in India. Global competition, full or profit cost pricing of education has several socio-cultural implications and may adversely affect the Constitutional obligations of equity."

## The Facts About Indian Higher Education

We entered the twenty-first century with unprecedented demand for higher education: general as well as professional. Instead of meeting this demand for higher education and ensuring further growth of the country, the BJP Government at the Centre and UGC have resorted to several measures with ever-faster speed of actions under the dictates of the World Bank and as a part of ongoing negotiations with WTO on trade in services. Raising of fees, autonomy to institutions with practically no controls but wide ranging powers to managements, funding linked mandatory assessment and accreditation, and students loan scheme are some of their decisions taken on the eve of the turn of the century for massive privatization and commercialization of higher education.

"Major efforts have been mounted for mobilization of resources and it has been recommended that while the Government should make a firm commitment to higher education, 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," said the HRD Minister, Murali Manohar Joshi in the Country Paper presented in the UNESCO World Conference on Higher Education held at Paris, in 1998. Justifying privatization of higher education, he added, "It is not only justifiable but desirable to raise money from private sources in order to ease pressure on public spending."  Trying to befool us that privatization will not lead to commercialization of higher education, he said, "The Government wants to encourage private initiatives in higher education but not commercialization." What we are witnessing today is, in fact, commercialization of education at all levels. The BJP Government is in a tremendous hurry to implement the very same World Bank prescriptions we have been fighting against for the last fifteen years. It is further implementing the prescriptions of WTO and GATS for privatization and commercialization of higher education. (Emphasis added)

Mukesh Ambani and Kumarmangalam Birla, in their Report on "A Policy Framework for Reforms in Education" submitted to the Prime Minister's Council on Trade and Industry in April 2000 considered education as a very profitable market. These two industrialists made a case for full cost recovery from students and immediate privatization of entire higher education except those areas of education involving "liberal arts and performing arts." Ambani-Birla Report, if implemented, will convert the entire system of higher education in the country in to a market where only profit making will be the only consideration. Only those who will be able to pay exorbitant amount of fee will enroll in higher education. For Ambani and Birla, education is a very profitable market over which they must have full control and for their industrial requirements "education must shape adaptable, competitive workers who can readily acquire new skills and innovate." In view of this, Ambani and Birla want that legislation should be enacted "banning any form of political activity on campuses of universities and educational institutions". Even the normal trade union activities will not be allowed.

A large number of students enrolled in universities and colleges situated in townships and tehsils are first generation learners. These students could go to institutions of higher education because of the subsidy given to higher education and the prevalent fee structure. But this is also a fact that only about 6% of the students in the age group of 17-23 years could afford to go to universities and colleges. What about those 94% who are left out? They could not bear even the so-called "paltry fees" which the government wants to increase several folds. More than 88% of all students are enrolled at undergraduate level. About 83% of all students are enrolled in colleges. About 82% students opt for liberal arts, commerce and science and the corresponding figure for girl students is 87.2%. Only

5.4% of girl students are doing engineering and medicine. About 90% students are enrolled in general higher education and about 10% are in professional higher education. A substantial number of students from weaker and less privileged classes are availing the benefit of higher education.

However, it must also be noted that the percentage of students belonging to SC/ST category, despite the increase in their absolute number, has decreased from 13.76% in 1957 to 12.25% in 1996 and is still less than that in 1957. Despite the existing fee structure the percentage rise in all India enrolment of students has been decreasing. This percentage has fallen from 7.4% in 1989-90 to 4.3% in 1999-2000. This process has been accelerated by starting profit making institutions called "self financing" institutions, which do not get funds from the government. The number of such institutions started in between 1994-95 and 1999-2000 all over the country is about 3000. This has resulted in the increase of student-teacher ratio from 15.7 : 1 in 1990-91 to 21.7 : 1 in 1998-99. By reducing the subsidy and financial support to the institutions of higher education and with a big rise in annual charges, the students from the lower middle class, weaker and less privileged classes would be denied access to higher education. Therefore, a decrement in the enrolment from even such a low figure of 6%, which is less than the average of that in developing countries in Asia that was 9.7% in 1995, to a lower value would be inevitable.

In order to strengthen national intelligence, to increase contacts with the scientific and intellectual community of the world, and to increase capabilities and upgrade knowledge for further development, our country has no option but to strengthen its public higher education system. In any case these key issues cannot be delegated to private institutions.

## Surrender to WTO and GATS

It is absolutely clear from the recommendations given in 10th Five Year Plan Proposal and the Report of the NIEPA Seminar that the Government is going in the direction of bringing higher education under the umbrella of GATS. Even when no specific commitment is made, the Government has already taken steps in line with the provisions of the GATS. All the modes of trade in education service are being used. The UGC has already issued instructions for reserving 15% seats in addition to already existing ones as supernumery seats for foreign students. Thus the class size and the workload of teachers and employees are going to be increased without any additional funds.

The new UGC guidelines for declaring an institution as a deemed university require that the institution should be of 10 years standing with courses recognized by the relevant accrediting bodies and infrastructure, including building for administration and academic purposes of about 4000 square metres, worth Rs. 50 lakh and corpus fund of Rs. 5 crores in case of professional education and Rs. 3 crores in case of general higher education. For the De-novo institutions in the emerging areas with the promise of excellence, no such conditions are required. These deemed universities are allowed to open their campuses anywhere in the country or abroad. Thus, any existing private institution or a new one with meagre funds and facilities will be encouraged to get the status of a deemed university in order to run courses for profits.

The UGC is not giving any funds for starting new courses or upgrading the existing ones. However, it is ready to spend huge amounts for starting courses on Jyotirvigyan and Karmakand. By starving the universities and colleges of funds, a case is being built for private funding and full cost recovery. The idea of giving incentive to universities ready to export education is to make them financially independent so that the Government is allowed to give up its responsibility towards higher education.

The globalisation has forced the education system to reinvent itself. The main role of universities to create, assimilate and disseminate knowledge is being given up in favour of the marketplace. A full professor of English in an American University earns no more than a starting assistant professor of accounting. More than half the full time faculty is hired on short-term contracts. Universities in the USA woo prospective undergraduate students by promising quality campus life, as if they were selling shares, with the offer of apartments rather than dorm rooms, high tech gadgetry and gyms. Faculty at some schools feel the pressure to keep grade-point averages high to keep the students as their customers happy. The emergence of for-profit competition among the multisite schools, called multiversity or busniversity, like DeVry Institute, Phoenix University and Jones International University, which exist only virtually have made "any time, any place" higher education a near reality. In a market-model university, departments that make money, study money or attract money are given priority. Heads of universities are now assuming the role of traveling salesmen to promote their programmes.

An important cost recovery measure being proposed as an alternative to state financing of higher education and for the benefit of the market in higher education is to give loans to students so that they are able to meet the enhanced fees. This proposal is based on the market principle that those who benefit must pay. It is being advocated that the poor students who cannot pay the fees, instead of dropping out from higher education, should take loans, get jobs and then pay back loans. There are several serious problems associated with this proposal. But education does not guarantee employment. With no employment or no ability to repay, people from relatively poorer sections will be worst affected. The BJP government at the Centre has already declared students loans and the limit of loans has been increased upto Rs.15 lakh. They prefer to cater to economically better-off students. The conditions of guarantee based on co-obligation, the mortgage of immovable property, etc. would further exclude a large section of students. Since dowry is an important social phenomenon in several countries including India, loans to students would work as a 'negative dowry' resulting in decline in the enrolment of girls in higher education. It is being argued that the student loan programme may be revitalized to generate some resources for higher education in the long run. A margin money of 5 to 15% is also proposed. By this measure those who do not have resources to study would be forced to pay further for future investment. Instead of student loan programme the government must bear the full cost of education and the students belonging to the weaker sections should be given scholarships to meet fees and other expenses. In fact the student loans upto Rs. 15 lakh for studying abroad basically develop the higher education of other countries.

Young women in USA and Europe, main forces behind the GTAS and WTO, are resorting to selling their eggs for thousands of pounds a time to childless couples as a way of paying off their fees and student loans they had taken to meet the cost of higher education. The average graduate begins the search for a job with debts of more than 10,000 pounds. According to a report, "American clinics are allowed to reward donors handsomely for the unpleasant and potentially risky procedure. Some of them, aware of British students' financial problems are now targeting women here. Graduates and those with high IQs are in particular demand. Many commissioning couples, desperate to have children, are also prepared to pay premium prices for specific physical attributes and good looks." Depending upon the looks, educational background like Ph.D., 'good' family profile, rare ethnic groups like

Jewish, Asians and east Africans, the women get about 2,400 to 10,300 pounds. Eggs are collected from women by administering drugs to induce artificial menopause. The menstrual cycle is then restarted with more drugs designed to cause multiple eggs to ripen, instead of the normal one-a-month released naturally. A young healthy donor can produce 15 or 20 eggs, sometimes many more, in a single cycle of treatment. This being the situation in USA and Europe as a result of the policies adopted by them regarding privatization and commercialization of education and liberalization of trade in 'education service' under GATS and WTO regime, one can understand what will happen to the enrolment of girls in higher education in India, which has generally remained stagnant near 35% in the last ten years.

## In Conclusion

The world's trade representatives under WTO, who are leading the assault on education, are attempting to establish 'New World Government' based on profit threatening and arm-twisting the nation governments. This would be a government of and for the corporate sector--an extremely undemocratic, authoritarian institution. In this assault, they have discovered the possibility of manufacturing the thinking and attitudes of their consumers, and creating an education system to reproduce standardized people. The whole idea of culture will be threatened as this standardization eliminates cultural focuses, thoughts, language, and educational themes. No longer will truth be sought, except whatever suits the corporate interests. As education standardization is institutionalized through international equivalency, the uniqueness of each educational institution will vanish.

Under the dictates of the World Bank, WTO and GATS, the cherished function of higher education, for the search, creation and dissemination of knowledge and for instilling sensitivity or social awareness in its students in India is under fire today. The steps (e.g. reducing state funding of and limiting access to higher education, heavy cost recovery, loans to students, terming higher education as a non-merit good, assessment and accreditation of institutions, autonomous status to colleges, self-financing courses and institutions, and privatization and commercialisation of higher education, etc.) taken by successive governments at the Centre and actively pursued and implemented by the present BJP government would lead to the dismantling of the state funded higher education system. The World Bank, WTO and GATS dictated policy on higher education must be reversed. As citizens of India, we have to ensure that the Government takes care of public interests and act to protect public services like health and education from the predatory elements that preach the ideology of the marketplace as the solution to every issue. Otherwise, the country would be dependent on developed countries for its requirements in qualified manpower essential for it's all round development. Therefore, the future progress of our country is at stake. We cannot afford to be complacent any longer. It is the responsibility of the whole society to rise to the occasion and take measures so that the process of dismantling the higher education system in the country is reversed. ■

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Dr. Vijender Sharma
Formerly Member, Executive Council, University of Delhi
President, Delhi University Teachers' Association
President Federation of Central Universities Teachers' Associations

Reader in Physics, ARSD College, University of Delhi, New Delhi-110021.
Res.: 187, Sahyog Apartments, Mayur Vihar-I, Delhi-110091
Phone: 2275 3301 (Res.), 9868185505 (Mobile), 2411 1390 & 2411 3436 (O)
E-Mail: vijensharma@yahoo.co.in
vijendersharma@gmail.com

K K Ragesh

# Red Carpet To Private And Foreign Universities

The Supreme Court, in a recent judgement, declared that 112 private universities established in Chhattisgarh under the Chhattisgarh Private Universities Act are illegal. This is a vindication of the stand taken by the academicians and vast sections of students community against the establishment of private universities in our country.

The court quashed the decision of the Chhattisgarh government basically on the grounds that the UGC was not consulted, nor were its guidelines on the establishment of a university followed while giving a green signal to the opening of private universities in the state. The Supreme Court judgement, however, is based only on certain technical flaws in the said act and is not a policy statement against private universities per se. Prior to this judgement, the central government had already initiated steps during the recent education ministers conference held in January to remove legal hurdles in the way of establishing private universities as well as off-campus centres of foreign universities in our country. This proposed move is highly dangerous for the future of education in our society and the task of building intellectual self-reliance of our nation.

## PROPOSAL STILL BEING JUSTIFIED

The academic community, especially students throughout the country, observed the MHRD initiated conference of state education ministers, held in Bangalore on January 10-11, with much anticipation. Even though the conference came up with a consensus on enacting a central legislation to regulate fees and admissions in private self-financing institutions, it is quite unfortunate that the background paper prepared by the MHRD also found place for certain perilous recommendations like granting greater autonomy to deemed universities and making provisions to 'regulate' private universities and foreign educational 'providers' including foreign universities in our country.

The discussion paper circulated in the education ministers conference states that "as the establishment of self-financing private universities would require a broadly uniform set of guidelines for ensuring academic standards, prevention of commercialisation and mismanagement, etc; the enactment of an enabling legislation of general applicability was considered expedient. The Private Universities (Establishment and Regulation) Bill, 1995 was, therefore, introduced in the Rajya Sabha..." Now the government feels that "except for a couple of amendments based on the recommendation of the committee (parliamentary standing committee) and a few amendments correcting certain inadvertent mistakes subsequently found in the bill, no other amendment was required in the bill." It is obvious from the arguments made in the background paper that the government is trying to justify its proposal under the garb of regulating sub-standard private universities and foreign institutions that are already operating in our country.

Due to popular opposition against the enactment of the Private Universities Bill introduced in 1995, the government was forced to keep the issue in the cold storage. Even the BJP-led government dared not open the issue. Even though the Private Universities Bill is still lying before the Rajya Sabha, in the interim period, many state governments have enacted acts in their respective states paving the way for the establishment of private universities. More than 100 private universities were established in Chhattisgarh alone through a single umbrella act. Three private universities were established in Uttaranchal, two in Gujarat and one each in Himachal Pradesh and Uttar Pradesh through separate acts. The Chhattisgarh act (the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyam Adhiniyam, 2002) allowed the state government to establish a university through a mere notification in the state official gazette on the basis of the project report submitted. Such institutions were also allowed to open off-campus centres outside the state. The central government and the UGC never intervened to derecognise these institutions established purely with commercial motives flouting all the requisite norms. Instead, the UGC came up with certain shabby regulations that in effect acknowledged these institutions on the pretence of regulation. Now the UPA government is trying to revive the earlier bill under the pretext of regulating the private universities already established or about to be established under various state acts.

## NO RATIONALE EXCEPT PROFIT

In this context, it is important to take stock of certain developments that have taken place in the realm of higher education in our country in the last few years. Higher education has seen an unprecedented growth in the past ten years. This growth has taken place primarily in the realm of professional and technical education. The World Bank dictated policies of the central government have paved way for this unprecedented and unrestrained escalation in the number of private capitation fee colleges. While the number of engineering colleges had grown from 44 in 1947 to 157 in 1980, they have increased to 1346 by 2004. The same is the case with other courses.

A big bulk of this unprecedented increase is from the so-called capitation fee colleges which comprise more than 90 per cent of this increase. It is significant that the reports of various committees set up by the AICTE and the MHRD have been rather critical of this growth because most of it is unplanned and does not consider the needs of the economy and society. Many committees have expressed serious doubts regarding the 'viability, quality and credibility of the Indian professional education.' Yet, the government today is willing to ignore the observations made by its own departmental committees.

It is obvious from experience in the student movement that private players, who collect exorbitant fees, establish educational institutes primarily to satiate their greed for profits. This is the reason why many of the exorbitantly priced seats in such private institutes lie vacant, in spite of students' aspiration for the attainment of a professional degree. If the government is really intent on expanding the scope of higher education, it has to increase its public spending by allocating more money in the budget. Any argument that depends upon private players to fulfil the responsibility of catering to the educational aspirations of the people is basically fallacious.

The private institutions operating in our country toady have largely replaced merit with money power. The issue of granting permission to the establishment of private universities, therefore, seems to have no rational except that of catering to the demands of powerful private managements.

## OBJECTIVES IGNORED

The constitution of India empowers the central government to ensure that the standard of higher education including technical education is properly maintained. The UGC, MCI, AICTE, etc. were established in order to discharge this responsibility. But after opening up the education sector to the market forces, the UGC, MCI, AICTE, etc. have largely ignored the questions regarding insufficient infrastructure and poor quality of education imparted in these private educational institutes. A free hand given to private institutes has resulted in a decline of the quality in education. Even basic amenities like sufficient and qualified teaching staff and infrastructure facilities are absent. The committee set up by the AICTE to review engineering education points that "In permitting the growth of self-financing institutions, then, the criteria were not defined in a manner to encourage the emergence of high quality institutions with a reasonable control over their management practices... The commercialisation of education became rampant with the collection of capitation fees as a regular practice despite some states attempting to curb them through laws, which were ineffective." All this points to the fact that the government and all its regulating agencies have failed in regulating even simple private institutes. If we are to believe that they will be able to control or regulate private universities in the coming days it would be a case of living in a fool's paradise.

The Kothari commission of 1964 correctly elucidates the basic objectives and functions of universities and their role in national life: "A university stands for humanism, for tolerance, for reason, for the adventure of ideas and for the search of truth. It stands for the onward march of the human race towards even higher objectives. If the universities discharge their duties adequately, then it is well with the nation and the people...Their principal object is to deepen man's understanding of the universe and of himself - in body mind and spirit, to disseminate this understanding throughout society and to apply it in the service of mankind.... They are the dwelling places of ideas and idealism, and expect high standards of conduct and integrity from all their members... Theirs is the pursuit of truth and excellence in all its diversity."

The commission continues and states that the function of a university is "to engage vigorously in the pursuit of truth and to interpret old knowledge and beliefs in the light of new needs and discoveries...to provide the right kind of leadership in all walks of life...to strive to promote equality and social justice and reduce social and cultural differences through diffusion of education..."

## INSTITUTIONALISING MEDIOCRITY

These recommendations were appreciated by the entire academic community and accepted by the government for implementation. No private university can be expected to perform these functions. The experience of private institutes further vindicates this point. The private players will be more concerned with profits and will mould courses to suit the demands of the market. The concerns of corporate houses and big business establishments will dominate the areas of research. Societal needs and interests will be put at stake. Quality of research, a very vital component in assessing the standing of a university, will become the main casualty. As it is, the quality of research in government institutions is suffering due to the apathy of the government. Now, if private universities are permitted we can forget about producing anything substantial for the welfare of the society.

It is argued in the discussion note of the education ministers conference that private parties did not show any interest in establishing private universities in 1995 due to the large number of conditions sought to be imposed on them by the then government. By implication, then, today the government seeks to further loosen the non-existent conditions to make the participation of profit oriented private players more conducive. The discussion paper acknowledges the demand of private deemed universities for the removal of any control on them with regards to admission policy, fee collection, designing of courses and syllabi and appointment of staff. The deemed universities even demand that the government must do away with the practice of giving a NOC for starting any off-campus centre outside the state. The UPA government appears to have a positive disposition towards all these demands, and if they are accepted it will result in chaos in higher education, with quality and accessibility being the biggest casualties. Many sub-standard self-financing institutes will immediately apply for university status instead of continuing as mere institutes, thereby further institutionalising mediocrity and commercialisation in the field of higher education.

## SOCIO-CULTURAL IMPLICATIONS

If foreign universities, as envisaged in the discussion paper, are allowed, it will be suicidal for the intellectual self-reliance of our country. The report of the 'Policy Perspective Seminar On Internationalisation Of Higher Education And Operation Of Foreign Universities In India' states: "Though this idea sounds well and high, but in practice it might as well result in selected flow of information/knowledge and skills from one set of countries to another set of countries in one direction whether in a single or multi-disciplines subjects. If this happens then it might as well result in draining of resources of receiving country as well as strong cultural and political influence by one set of countries on other set of countries."

Thus, opening up of the education sector to foreign players means that the entire edifice of higher education will crumble and the future of democratic public education will be bleak. A meeting of vice-chairpersons of state councils of higher education, vice-chancellors and experts on 'Trade in Education Services under WTO Regime' organised by NIEPA further stated that "Even making it [higher education] a full cost paying service has caused social and cultural trauma in many countries including developed countries. Making open to world competition with high cost of education might cause further socio-cultural problems. These may be unmanageable in the developing countries and particularly in India. Global competition, full or profit cost pricing of education has several socio-cultural implications and may adversely affect the constitutional obligations of equity."

It is interesting to note here that the US and Japan, two of the key countries behind the pushing through of the GATS treaty, under which the foreign universities are sought to be established in our country, did not open up their higher education sector to foreign players. While the US has opened only adult education services for foreign investments, Japan has opened it only for recognised non-profitable organisations. Another important fact that needs to be remembered is that higher education in most of the West European countries is in the public system and this is clearly in the knowledge of our government itself. Thus, on the one hand the developed countries want to exploit the growing demand for higher education in the developing countries to satiate the greed for profits for their own corporations, on the other hand they are not ready to open up their own education sector for other countries. The developed countries, especially the US, have discovered that by capturing the education system of third world countries, they can manufacture thoughts and attitudes conducive to consumerism and produce standardised people who will not challenge their hegemony.

## DON'T BACKSTAB THE PEOPLE

The high ideals of our forefathers about sovereignty and self-reliance will be put at stake. Higher education, that plays an important role in shaping self-reliant thought, will lose its edge and become a tool in the hands of the corporate and imperialist interests. The GATS agreement that forms the basis for permitting trade in services has got many restrictions imposed which are detrimental to the interests of the common people of our country. Article 15 of the agreement states that subsidies provided to any service have 'distortive affect' and hence need to be withdrawn. This effectively means an end to all sorts of scholarships and freeships provided to the students of this country. This provision, if implemented, will virtually sound the death for social justice in our country. The blatant pro-rich bias of the government and its financial interests are at display on one more issue. In the discussion paper, the government proposes in the guideline for the establishment of foreign universities that 80 per cent of the surplus generated by FEPs must be retained within the country. Within the same discussion paper the government sheds its own high rhetoric of 'providing education at no profit and no loss basis.'

The UPA government that has come to power on the basis of a popular vote against the anti-people economic and education policies of the previous government. It should not revert back to the same principles of the previous government. The present government had given rise to many hopes when it had scrapped the Model Act 2004 of the UGC, which was put up for discussion at the behest of the BJP-led NDA government. But unfortunately even before the initial euphoria of defeating the previous government has subsided, it has come up with many measures that are against the interests of the students and the common masses. In fact the present proposal of the government to introduce a Private Universities Bill and permit FEPs in India, does not differ much with the earlier expunged Model Act, except for the fact that the authors are more eager to have their name printed in bold to please their imperialist bosses. This is nothing but back-stabbing the people. ■

Vijender Sharma

Commerce Ministry's Consultation Paper on
Trade in Education Services

# Higher Education in India and GATS: A Disastrous Proposal

The Trade Policy Division of the Department of Commerce, Government of India, has recently circulated a consultation paper on trade in education services titled 'Higher Education in India and GATS: An Opportunity" in preparation for the on-going services negotiations at the WTO. The Consultation Paper, while pointing out the problems of higher education in India, has argued that with a multi-billion dollar industry involving foreign education providers, distance learning and franchisees, "GATS could provide an opportunity to put together a mechanism whereby private and foreign investment in higher education can be encouraged."

It should be noted at the outset that the Government had given revised offers at the WTO on 24 August 2005 opening higher education sector in various respects despite the protests by the people at large. The Government did not resort to consultation process at that time. Now it seems, the Commerce Ministry has come out with this Consultation Paper in order to make a case for further strengthening of what it has already committed at the WTO.

## Education: Merit Good or Private Good?

In 1997, the Finance Ministry, vide its paper 'Government Subsidies in India: Discussion Paper' had proposed that higher education including secondary education as a "non-merit good" for which the government subsidies needed to be drastically cut. Due to the opposition of the CPI(M) and other Left Parties and academia, that Discussion Paper was rejected. The Finance Ministry has again described the education (other than elementary) as "Merit-II good" in its report "Central Government Subsidies in India" submitted in December 2004. This report points out, "While the merit goods deserve subsidization in varying degrees, Merit-I dominates Merit II in terms of desirability of subsidization." That is Merit II goods will not be subsidized by the state at the same level as even Merit-I goods.

The Consultation Paper of the Commerce Ministry has once again raised the debate as to whether higher education is a Merit Good or Private Good. According to it, 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."

Thus a case is being made to relax the aforesaid 'assumption' in order to shift higher education from the category of even 'Merit- II goods' to 'private goods'. More so because, "higher education does display many characteristics of private goods in a number of countries." This would lead to further degeneration of our higher education system rather than solving its problems.

## Higher Education in India

Today, India is the third largest higher education system in the world (after China and the USA) in terms of enrollment which in 2005-06 was over one crore five lakhs. However, in terms of the number of institutions, India is the largest higher education system in the world with 17,973 institutions (348 universities and 17,625 colleges). Of these, there are 63 unaided Deemed Universities with enrolment of 60,000 students, and 7,650 unaided private colleges with enrolment of 31,50,000 students. Thus nearly one-third of total students are studying in unaided private institutions. Therefore, the Consultation Paper concludes that unaided institutions are 'growing rapidly' and others are 'not growing'.

Even with such a huge system in place, the higher education in India is in a miserable condition. 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. Even then after nearly six decades of independence, higher education is not accessible to the poorest groups of the population. Hardly 7-8 percent of the population in the age group of 17-23 years is enrolled in the institutions of higher education.

## Quality Manpower

The Consultation Paper, in order to strengthen the case for trade in education services, quotes a recent McKinsey-NASSCOM study that "the total addressable global offshoring market is approximately US$ 300 billion, of which US$ 110 billion will be offshored by 2010." It asserts that 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"

The Consultation Paper further refers to this study to point out that "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." Therefore, reforms in higher education have been advocated for "better human resource development." However, it has not been justified as to how trade in education services would lead to the production of quality manpower.

## The Financial Situation

Interestingly, the Consultation Paper points out that 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." We have been arguing all along that even with the existing fee structure, only about 7-8 percent of the population in the age group of 17-23 years is enrolled in the institutions of higher education. Raising the fees will not lead to equity, but it will further decrease the enrolment. The public investment in higher education is just about 0.37 percent of the GDP and is much below the required levels.

In the context of reservations in higher education institutions, raising the seats in institutions of higher learning by about 50 percent would require about Rs. 20-25000 crores. Since this huge amount cannot be provided by the public exchequer at one go, the Consultation Paper recommends "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."

This recommendation is clearly in line with its thinking that higher education can be converted in to a 'private good'. The institutions of higher education are being called upon first to increase the number of seats and then raise their own resources. It is childish to believe that with these recommendations the institutions of higher education can survive. It is also not understandable as to how a more liberal regime for private and foreign education providers would help solve reservation problem.

## Comparison with Other Countries

Enrolment in India has been low in comparison with the average of the Asian countries. However, the South East Asian countries show much higher enrolment: Philippines (31%), Thailand (19%), Malaysia (27%) and China (13%) as compared to 7-8 % (11% according to the Consultation Paper) in India. The enrolment figure for USA is 81%, UK 54% and Japan 49%.

India also has one of the lowest public expenditure on higher education per student at US$ 406, which compares unfavourably with Malaysia (US$ 11790), China (US$ 2728), Brazil (US$ 3986), Indonesia (US$ 666) and Philippines (US$ 625). This expenditure in USA is US$ 9629, in UK US$ 8502 and in Japan US$ 4830.

Thus the Consultation Paper shows that India's public spending on higher education and gross enrolment ratio levels are lower even when compared to developing countries. Therefore, the Commerce Ministry should have recommended the need to increase the public spending several times over. However, the Consultation Paper that has been drafted to facilitate the entry of foreign education providers recommends, "there appears to be a case for improving (only, and not increasing-author) the effectiveness of public spending and increase the participation of private players, both domestic and foreign." This recommendation, in any case, does not flow from the status of public expenditure as given above.

## Export of Education Services

The USA 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. According to the Consultation Paper, in 2004-05 the Asian countries had 3,25,000 students in U.S. colleges and universities, including 80,466 from India, 63,000 from China, 53,000 from South Korea and 42,000 from Japan. Further, 15,000

Indian students were enrolled in UK, 22,279 in Australia and 2567 in New Zealand.

In 2004, nearly 14 per cent of all international students in the US were from India. 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 (Consumption abroad).

The Consultation Paper therefore asserts that "there is a huge excess demand in India for quality higher education", which is being met by "foreign campuses". Indian students studying abroad keep these "foreign universities going and even subsidizing foreign students". In comparison with 105 lakh students enrolled in higher education institutions in India, a meager 1.4 lakh students enrolled abroad does not amount to a "huge excess" demand. It is only 1.3 percent! These students could be retained in the country, if the Government had invested in the higher education as promised in its National Common Minimum Programme. In any case, the Consultation Paper has clearly shown that India was not spending even as much as was being spent by other South East Asian countries.

## A Disastrous Recommendation

Even then the Commerce Ministry recommends "services negotiations (in WTO) 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". Therefore, the Consultation Paper recommends striking "a balance" between "domestic regulation and providing adequate flexibility to such Universities in setting syllabus, hiring teachers, screening students and setting fee levels."

WTO has identified certain barriers to trade. These barriers/ obstacles include the restrictions on free movement and nationality requirements of students and teachers, immigration regulations, type of courses, movement of teachers, modalities of payments or repatriation of money, conditions concerning use of resources, direct investment and equity ceilings, the existence of public monopolies, subsidies to local institutions, economic need tests, exchange controls, non-recognition of equivalent qualifications, etc. The goal of 'free trade' regime under WTO is to get these barriers removed in order to further liberalize the world economy. Therefore, the 'adequate flexibility' and a 'balance' between domestic regulations and 'removal of barriers' will prove to be disastrous for the Indian higher education system.

The foreign education providers have been and are insensitive towards cultural and educational ethos of any country. And India is no different for them. This shall lead to the killing of the indigenous nature and functions of Indian universities

## Higher Education in Other Countries

It is noteworthy here to point out that many countries, which allow foreign educational institutions' vigorously protect their national interests and priorities set by their public policies. The case studies of all countries cannot be provided here, but a few examples can be given.

In China the entry of foreign institutions is by invitation only and the conditions under which the foreign educational provider can come to China include: 1) Foreign institutions must partner with Chinese institutions; 2) Partnerships must not seek profit as their objective; 3) No less than half the members of the governing body of the institution must be Chinese citizens; 4) The post of president or the equivalent must be a Chinese citizen residing in China; 5) The basic language of instruction should be Chinese; and 6) Tuition fees may not be raised without approval. There is no provision for online and distance learning.

In Malaysia also the foreign institutions can enter by invitation from the Ministry of Education. Such an institution has to establish a Malaysian company with majority Malaysian ownership and has to be registered with the Government. Permission for each course is required and the courses should be accredited and approved in the home country and recognized by appropriate professional association in Malaysia.

In Singapore also the foreign institutions can enter by invitation and only elite universities are invited. Their collaboration with local partner is permitted, but they cannot use terms like university, college and academy. Applications for setting up higher education institutions are considered on a case-to-case basis. There is no regulation governing foreign education providers and it has also not made any offers under GATS in higher education.

## The Situation In India

At present there are 150 foreign education providers (FEP) in India with 8000 students at an average enrolment of just little over 50 students per institute. With these figures, it is not known as to how the Consultation Paper describes them "emerging on the scene".

These institutions have entered India, since India permits 100 per cent equity holding for foreign direct investors under the automatic route in the educational services and repatriation of surpluses or "profits" earned through such activity. Foreign participation through twinning, collaboration, franchising, and subsidiaries is also permitted.

The problem with the Commerce Ministry and FEPs is that the FEPs cannot call themselves as universities. In India, only a Central or State Act can incorporate a university. They are then under regulation of the UGC or bodies like AICTE and cannot operate for profit. Even if 'deemed to be university' status is given, the institution comes under regulatory control of these bodies. Therefore, there cannot be a less regulatory mechanism with "adequate flexibility" for foreign universities compared to domestic institutions as suggested by the Consultation Paper.

## GATS and Higher Education

Objective of the General Agreement on Trade in Services (GATS) is to liberalise trade in services as quickly as possible. It is clear from the preamble of GATS that it is a "multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization." It covers not just cross-border trade but every possible means of supplying a service, including the right to set up a commercial presence in the export market. The WTO has explicitly stated that one of the advantages of the GATS is that it will help "overcome domestic resistance to change". Though WTO membership consists of nation states, its agenda is shaped by the transnational corporations (TNCs).

A general framework of obligations that applies to all member countries of WTO includes two principles. According the first principle of "Most Favoured Nations (MFN) Treatment" there cannot be any discrimination between the members of the agreement. According to the second principle of "National Treatment" there cannot be discrimination between foreign service providers and other domestic service providers in the country.

The rules of "most favoured nations" and "national treatment" are aimed at eliminating all restrictions. Under these rules, governments must treat each nation's corporations equally, which will effectively end all attempts by the developing countries to insulate their economies to some degree from the world market. There are a host of "market access rules" making it illegal to restrict competition or place national restrictions of any kind on foreign ownership.

Article I.3 defines "services" to include "any service in any sector except services supplied in the exercise of government authority;" and "a service supplied in the exercise of government authority" means "any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers."

That is, for a service to be out of the purview of the GATS rule has to be entirely free. However, when the services have been provided either by the government partially or some prices are charged (as happens in education where some fees is charged) or provided by the private providers shall fall under the GATS rule.

The idea behind this is the creation of an open, global marketplace where services, like education, can be traded to the highest bidder. Since total public monopolies in education (without any fee charged) are extremely rare, almost all of the world's educational systems fall under the GATS umbrella.

## India and Higher Education under GATS

India cannot get exemption in education from the application of GATS because education at all levels, particularly at higher education level, is not entirely free (i.e. some fees has to be charged). The Consultation Paper correctly points out that the market access and national treatment obligations apply only to the sectors in which a country chooses to make commitments. India has already chosen to make commitments in higher education. Therefore market access and national treatment rules shall apply in India which will prove to be disastrous for Indian higher education system.

It has been pointed out in the Consultation Paper that only four (Australia, New Zealand, USA and Japan) of the 21 countries with higher education commitments have submitted a negotiating proposal. The European Union has put clear limitations on all modes of trade in higher education except 'consumption abroad', which means foreign students coming to their countries and paying the full cost. The Consultation Paper has not made it clear as to why these countries have put limitations on foreign direct investment in their countries.

The Consultation Paper asserts 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. But then education has to be entirely free. This is not the case in India, since some fees is charged. That is why, WTO members have chosen to impose considerably more limitations on trade in educational services in modes 3 (FDI /commercial presence). It is also feared that education could be positioned as a 'trade off' for gains in other sectors.

However, the Consultation Paper brushes aside all such real problems of bringing higher education under GATS umbrella. It states, "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." It goes on further that trade in higher education is already taking place through the movement of students, teachers, programmes and even institutions. 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."

## Negotiating Proposals

If one goes through the negotiating proposals of countries annexed with the Consultation Paper, one finds that the Commerce Ministry's claim, that foreign investment would improve quality and there would be no problem to the public funded higher education system in India, gets fully exposed. Three countries - Australia, New Zealand and USA - in their proposals have not mentioned the issue of quality at all. The USA has demanded the removal of all barriers identified by WTO and pointed out above including minimum requirements for local hiring of people causing uneconomic operations.

Obviously, these institutions want to open business houses in higher education for making profits. They want the removal of all such barriers that are uneconomic to their operations.

The Consultation Paper recommends, 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." These old proposals, full cost recovery and students loans, have proved to be against the interests of lower middle class, deprived sections and girls and will lead to their dropout and further privatization and commercialization of higher education.

## Invest More in Higher Education

The World Bank, WTO and GATS dictated policy on higher education prescribed in the Consultation Paper must be reversed. CNR Rao Committee had cautioned against a hasty approach on the issue.

Ministers of State Governments had met in January 2005 and taken a view. A draft Bill seeking to address our national concerns was circulated which sought to regulate the entry of FEPs. Unfortunately, the vested interests apparently succeeded in delaying the same.

India's top priority should be to invest more in higher education, start more public funded colleges and universities and cater to the needs of indigenous people rather than trying to be an exporter of higher education. The UPA government must abandon its policy of foreign direct investment in education and private universities. The unaided deemed to be universities should be reverted back to their original status. India must keep out education at all levels from the ambit of GATS. As citizens of India, we have to ensure that the Government takes care of public interests and act to protect public services like education from the predatory elements that preach the ideology of the marketplace as the solution to every issue. ■

Email: vijensharma@yahoo.co.in
vijendersharma@gmail.com

# What Is GATS: From The Devils' Mouth

(Comments In Italics Are Ours)

1.What is the main purpose of the GATS?

The creation of the GATS was one of the landmark achievements (sic!) of the Uruguay Round, whose results entered into force in January 1995. The GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT): 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; and promoting trade and development through progressive liberalization.

While services currently account for over 60 percent of global production and employment, they represent no more than 20 per cent of total trade (BOP basis). This - seemingly modest - share should not be underestimated, however. Many services, which have long been considered genuine domestic activities, have increasingly become internationally mobile. This trend is likely to continue, owing to the introduction of new transmission technologies (e.g. electronic banking, tele-health or tele-education services), the opening up in many countries of long-entrenched monopolies (e.g. voice telephony and postal services), and regulatory reforms in hitherto tightly regulated sectors such as transport. Combined with changing consumer preferences, such technical and regulatory innovations have enhanced the "tradability" of services and, thus, created a need for multilateral disciplines.

### 2. Which countries participate?

All WTO Members, some 140 economies at present, are at the same time Members of the GATS and, to varying degrees, have assumed commitments in individual service sectors.

### 3. What services are covered?

The 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 such rights.

### 4. Is it true that the GATS not only applies to cross-border flows of services, but additional modes of supply?

The GATS distinguishes between four modes of supplying services: cross-border trade, consumption abroad, commercial presence, and presence of natural persons.

Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);

Consumption abroad refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service;

Commercial presence implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and

Presence of natural persons consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

### 5. Why was it necessary to introduce, apart from the traditional concept of cross-border trade, three additional modes of supply?

The supply of many services is possible only through the simultaneous physical presence of both producer and consumer. There are thus many instances in which, in order to be commercially meaningful, trade commitments must extend to cross-border movements of the consumer, the establishment of a commercial presence within a market, or the temporary movement of the service provider himself.

### 6. Does the GATS affect a Member's ability to pursue national policy objectives and priorities?

The GATS expressly recognizes the right of Members to regulate the supply of services in pursuit of their own policy objectives, and does not seek to influence these objectives. *(the reality is quite contrary with the government of India eager to change many of its policies under the 'pressure' of the GATS treaty the recent case is the suggestions made by the Commerce Department on opening up of higher education)* Rather, the Agreement establishes a framework of rules to ensure that services regulations are administered in a reasonable, objective and impartial manner and do not constitute unnecessary barriers to trade.

### 7. What are the basic obligations under the GATS?

Obligations contained in the GATS may be categorized into two broad groups: General obligations, which apply directly and automatically to all Members and services sectors, as well as commitments concerning market access and national treatment in specifically designated sectors. Such commitments are laid down in individual country schedules whose scope may vary widely between Members. The relevant terms and concepts are similar, but not necessarily identical to those used in the GATT; for example, national treatment is a general obligation in goods trade and not negotiable as under the GATS.

### (a) General obligations

MFN Treatment: Under Article II of the GATS, Members are held to extend immediately and unconditionally to services or services suppliers of all other Members "treatment no less favourable than that accorded to like services and services suppliers of any other country". This amounts to a prohibition, in principle, of preferential arrangements among groups of Members in individual sectors or of reciprocity provisions which confine access benefits to trading partners granting similar treatment.

Derogations are possible in the form of so-called Article II-Exemptions. Members were allowed to seek such exemptions before the Agreement entered into force *(our country did not seek any concessions).* New exemptions can only be granted to new Members at the time of accession or, in the case of current Members, by way of a waiver under Article IX:3 of the WTO Agreement. All exemptions are subject to review; they should in principle not last longer than 10 years. Further, the GATS allows groups of Members to enter into economic integration agreements or to mutually recognize regulatory standards, certificates and the like if certain conditions are met.

Transparency: GATS Members are required, inter alia, to publish all measures of general application and establish national enquiry points mandated to respond to other Member's information requests.

Other generally applicable obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

(b) Specific Commitments

Market Access: Market access is a negotiated commitment in specified sectors. It may be made subject to various types of limitations that are enumerated in Article XVI(2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in the sector; the value of transactions; the legal form of the service supplier; or the participation of foreign capital.

National Treatment: A commitment to national treatment implies that the Member concerned does not operate discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the Member's own service industry. *(all the concessions that are given to our Indian universities would be withdrawn in the name of being in favour to the members own service industry and so would the scholarships be stopped).* Again, the extension of national treatment in any particular sector may be made subject to conditions and qualifications.

Members are free to tailor the sector coverage and substantive content of such commitments as they see fit. The commitments thus tend to reflect national policy objectives and constraints, overall and in individual sectors. While some Members have scheduled less than a handful of services, others have assumed market access and national treatment disciplines in over 120 out of a total of 160-odd services.

The existence of specific commitments triggers further obligations concerning, inter alia, the notification of new measures that have a significant impact on trade and the avoidance of restrictions on international payments and transfers.

### 8. What information is contained in services "schedules"?

Each WTO Member is required to have a Schedule of Specific Commitments which identifies the services for which the Member guarantees market access and national treatment and any limitations that may be attached. The Schedule may also be used to assume additional commitments regarding, for example, the implementation of specified standards or regulatory principles. Commitments are undertaken with respect to each of the four different modes of service supply.

Most schedules consist of both sectoral and horizontal sections. The "Horizontal Section" contains entries that apply across all sectors subsequently listed in the schedule. Horizontal limitations often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. The "Sector-Specific Sections" contain entries that apply only to the particular service.

### 9. When did Members' specific commitments enter into force?

The majority of current commitments entered into force on 1 January 1995, i.e. the date of entry into force of the WTO. New commitments have since been scheduled by participants in extended negotiations (see below) and by new Members that have joined the WTO.

### 10. Can commitments be introduced or improved outside the context of multilateral negotiations?

Yes, any Member is free to expand or upgrade its existing commitments at any time.

### 11. Can specific commitments be withdrawn or modified?

Pursuant to Article XXI, specific commitments may be modified subject to certain procedures. Countries which may be affected by such modifications can request the modifying Member to negotiate compensatory adjustments; these are to be granted on an MFN basis *(our government is not asking for such an adjustment as it feels that these are not needed even though the society is going to bleed due to this agreement).*

### 12. Are there any specific exemptions in the GATS to cater for important national policy interests?

The GATS permits Members in specified circumstances to introduce or maintain measures in contravention of their obligations under the Agreement, including the MFN requirement or specific commitments. The relevant Article provides cover, inter alia, for measures necessary to:

protect public morals or maintain public order;

protect human, animal or plant life or health; or

secure compliance with laws or regulations not inconsistent with the -Agreement including, among others, measures necessary to prevent deceptive or fraudulent practices.

Moreover, the Annex on Financial Services entitles Members, regardless of other provisions of the GATS, to take measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

Finally, in the event of serious balance-of-payments difficulties Members are allowed to temporarily restrict trade, on a non-discriminatory basis, despite the existence of specific commitments.

### 13. Are there special provisions for developing countries?

Developing country interests have inspired both the general structure of the Agreement as well as individual Articles. In particular, the objective of facilitating the increasing participation of developing countries in services trade has been enshrined in the Preamble to the Agreement and underlies the provisions of Article IV. This Article requires Members, inter alia, to negotiate specific commitments relating to the strengthening of developing countries' domestic services capacity; the improvement of developing countries' access to distribution channels and information networks; and the liberalization of market access in areas of export interest to these countries.

While the notion of progressive liberalization is one of the basic tenets of the GATS, Article XIX provides that liberalization takes place with due respect for national policy objectives and Members' development levels, both overall and in individual sectors. Developing countries are thus given flexibility for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation *(our government does neither use this provision to lessen the affects).* Other provisions ensure that developing countries have more flexibility in pursuing economic integration policies, maintaining restrictions on balance of payments grounds, and determining access to and use of their telecommunications transport networks and services. In addition, developing countries are entitled to receive technical assistance from the WTO Secretariat.

### 14. What is the so-called "built-in agenda" of the GATS?

The GATS, including its Annexes and Related Instruments, sets out a work programme which is normally referred to as the "built-in" agenda. The programme reflects both the fact that not all services-related negotiations could be concluded within the time frame of the Uruguay Round, and that Members have already committed themselves, in Article XIX, to successive rounds aimed at achieving a progressively higher level of liberalization. In addition, various GATS Articles provide for issue-specific negotiations intended to define rules and disciplines for domestic regulation (Article VI), emergency safeguards (Article X), government procurement (Article XIII), and subsidies (Article XV). These negotiations are currently under way.

At the sectoral level, negotiations on basic telecommunications were successfully concluded in February 1997 and negotiations in the area of financial services in mid-December 1997. In these negotiations, Members achieved significantly improved commitments with a broader level of participation.

### 15. Why was a new services round necessary?

In services, the Uruguay Round was only a first step in a longer-term process of multilateral rule-making and trade liberalization. Observers tend to agree that, while the negotiations succeeded in setting up the principle structure of the Agreement, the liberalizing effects have been relatively modest. Barring exceptions in financial and telecommunication services, most schedules have remained confined to confirming status quo market conditions in a relatively limited number of sectors. This may be explained in part by the novelty of the Agreement and the perceived need of Members to gather experience before considering wider and deeper commitments. Moreover, many administrations needed time to develop the necessary regulation - including quality standards, licensing and qualification requirements - that ensures that external liberalization is compatible with, and conducive to, core policy objectives (quality, equity, etc.) in socially or infrastructurally important services.

More than ten years have passed since the Agreement's inception, and the economic importance of services - in terms of production, income, employment and trade - has continued to rise. There thus appears ample scope for new and/or improved commitments in new negotiations.

### 16. What has been achieved to date in the new services round?

Under Article XIX, Members are (self-) committed to launch successive rounds of services negotiations with a view to achieving a progressively higher level of liberalization. The first such round was to begin no later than five years from the date of entry into force of the Agreement and, accordingly, started in January 2000. The initial focus was mainly on the built-in agenda with a view to creating a sound basis for the negotiations of new specific commitments. During a stock-taking session in March 2001, Members agreed on the Negotiating Guidelines and Procedures for the new round and discussed a first series of sector proposals which had been submitted by individual countries. ■