SEED *ICWWS*

Trade in Education Services:
Scope and Implications

International Centre for WTO & WIPO Studies
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FOREWORD

Since the beginning of this new decade and especially after the Inter-ministerial Meeting of the World Trade Organization in Doha, there has been a widespread concern among the educational community, policy makers and professional practitioners on the ramifications of the Education Sector coming under the General Agreement on Trade in Services (GATS). On account of occasional news reports on this issue, there were considerable anxiety on the potential inroads of foreign educational service providers in India on the one hand and the opportunities for Indian educational service providers establishing programmes abroad.

At the same time there was no clarity on the meaning of the legal terms such as "Modes of Service', "Horizontal Commitments". "Most Favoured Nation Treatment" and so on. By and large these concerns were related to professional disciplines such as engineering, medicine, architecture, law, pharmacy etc. Added to these uncertainties, different professional groups indicated different types of preferences on the desirability of allowing Foreign Service Providers to operate in the India. There was lack of clarity on the scope of the educational services covered under the GATS, as for instance, whether testing services will be included in the definition of educational service or not. The educational and cultural implications of foreign educational service at the school level and the national cost of such training was not clear.

Fortunately Dr. G.D. Sharma who was then with the National Institute for Educational Planning and Administration (NIEPA) initiated major efforts to gather all relevant information including the WTO Documents and related papers by experts and created a website for widespread dissemination. He was also able to engage in several levels of consultation process with the Ministry of Commerce, the nodal agency for WTO process and with the Ministry of Human Resource Development (MHRD), which was the substantive agency for matters relating to education. He had also started an activity under an NGO 'Society for Education and Economic Development' (Seed) and its International Centre for WTO and WIPO Studies (ICWWS). Main objective of this centre being creating awareness on this about and helping the country through knowledge inputs to arrive at an informed decision.

This volume is a compilation of the presentations by the various experts, relevant views, as well as the basic documents on the subject. Mrs. Gita Bajaj who was Project Director, ICWWS and presently working a faculty in the Management Development Institute has not only edited the proceedings but was also responsible for searching globally and gathering a large volume of useful material relating the GATS process, its fine nuances, and timely information on the view points of other counties.

This volume will be a very valuable reference document for anyone concerned with the educational service and the GATS and especially so in the coming months when the debates are likely to be revived and intensified across he country. Everyone who took pains to participate in this process deserves our gratitude.

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PREFACE

The end of 20th Century has witnessed a major change in International Economic Order as well as governance of the Nation States. It was around early 90s under Uruguay Round of Negotiations, changes started taking shape in the form of developing a World Trade Organisation, which finally took shape in 1995. Prior to that also many countries started breaking the territorial barrier in economic relations. Countries of Europe were among them, which attempted to break the territorial and sovereignty barriers with regard to economic relations. The birth of Euro dollars was one of such examples of breaking this territorial barrier on trade related economic order. All this was facilitated by communication and computer technology, as everything was possible to be communicated in a short span of time and could record everything with the possibility of retrieval of the same on a click of a mouse. This new economic order was attempting to integrate the world under a single umbrella on mutually agreed upon terms of trade relations. Under this new regime, development also took place with regard to services. Earlier the trade bodies like GATT only concerned itself with the trade in goods and merchandise. Services being place and individual specific were never considered as commodity for trade. But with the advent of technology and expansion of services being traded, it became very important to consider this aspect under the trade negotiations. In fact most of the world economy was moving towards services economy and contribution of this sector surpassed the contribution of goods and merchandise. Therefore, when the World Trade Organisation (WTO) was formed, General Agreements in Trade and Services became port of this new world economic relations. Almost 144 countries signed this agreement so as to come together on a common platform to initiate on trade in goods and services respectively under the provision of *General Agreement on Trade in Services (GATS)* and *General Agreement on Tariffs & Trade (GATT)*.

Among 12 major services and several sub-services, education service was considered as one of the very important sector for trade under GATS regime. The provision was made that countries can offer trade in service under four modes, namely, **Cross Border Supply; Consumption Abroad; Commercial Presence; and Movement of Natural Persons**.

It was also mentioned that education can be specified in 5 sectors, namely, Higher Education (including professional education); School Education including Vocational Education; Primary Education, Adult Education and Other education. In the first round as many as 31 countries offered to open their countries for higher education services. The second round negotiation was initiated at Doha. As many as 28 countries requested India to open up their education services. India therefore, had to prepare, its response. Prior to that, it became very essential to fully know the implications of trade in education services

under WTO regime by those in education institutions as well as policy makers. Society for Education, Economic Development, which has been concerned with both education and economic aspects of development in the country, thought it appropriate to set up a Centre relating to WTO and WIPO Studies. Under the auspicious of this centre several discussions and seminars at regional and national levels, supported by AICTE and Ministry of Human Resource Development, Government of India were held. Several hundred of teachers were informed about the implications. Members of committee also learnt from their views and concerns. Present volume is a basic document developed for reference of the academics and institutions of higher education. We hope it will serve the purpose of informing and provoking thinking as well as help initiating action by the academics and institutions of higher education to prepare for competitive world.

We are thankful to all the members of Consultative Committee for their for contribution in this volume. We are thankful to Ms. Gita Bajaj, former Project Director ICWWS, who has taken enormous pain in, compiling and editing the present volume. Thanks are also due to several people who helped in this activity and more particularly, Mr. Sudhir Dagar who developed layout and design.

We have drawn upon the text of GATS and TRIPS of WTO and AICTE & UGC on regulatory aspects. We thankfully acknowledge the same.

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Abbreviations

AICTE	All India Council for Technical Education
AIU	Association of Indian Universities
BIT	Bachelor of Information Technology
CA	Council of Architecture
CBSE	Central Board of Secondary Education
CRS	Computer Reservation System
DEP	Distance Education Programme
DSU	Dispute Settlement Understanding
FIRC	French Information Resource Centre
FTP	Full Time Programme
GATE	Global Alliance for Transnational Education
GATS	General Agreement on Trade in Service
GATT	General Agreement on Tariffs and Trade
GCI	Government College Institute
HND	Higher National Diploma
IBAT	Institute of Business Administration and Training
ICWWS	International Centre for WTO & WIPO Studies
IGNOU	Indira Gandhi National Open University
IIC	India International Centre
IIM	Indian Institute of Management
IIT	Indian Institute of Technology
IPIC	Intellectual Property Integrated Circuits
IPR	Intellectual Property Rights
IT	Information Technology
ITU	International Telecommunication Union
JNU	Jawaharlal Nehru University
MAI	Multilateral Agreement on Investment
MBA	Master of Business Management
MCI	Medical Council of India
MFN	Most Favoured Nation
MHRD	Ministry of Human Resource Development

MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreements
NAAC	National Assessment and Accrediations Council
NCTE	National Council of teaching Education
NGO	Non Governmental Organizations
NID	National Institute of Design
NIEPA	National Institute of Educational Planning and Administration
OPP	Other Postgraduate Programs
PDP	Postgraduate Diploma Programme
PTP	Part Time Programme
QTE	Quality in Technical Education
R & D	Research and Development
RTA	Regional Trading Arrangements
SEED	Society for Education and Economic Development
TNSCHE	Tamil Nadu State Council for Higher Education
UAE	United Arab Amirates
UGC	University Grants Commission
UK	United Kingdom
UNDP	United Nations Development Programme
UNESCO	United National
USA	United States of America
USEFI	United States Educational Foundation in India
UTD	University Teaching Department
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

CONTENTS

Chapter I

TRADE IN EDUCATION SERVICES: SCOPE AND IMPLICATIONS

Trade in Education Services Under the WTO Regime - A Background Paper

G.D. Sharma*

The paper is divided in four parts: (I) Basic Tenets of the WTO Agreements for TRADE in SERVICE; (II) The Indian Scenario; (III) Barrier to Free Trade; and (IV) Issues of Concern for India.

I
Basic Tenets of the WTO Agreements for Trade in Service

The Genesis

The last round of General Agreement on Tariffs and Trade (GATT) in 1994 gave rise to multilateral agreement on Trade under World Trade Organization (WTO). Prior to emergence of World Trade Organization ***there was no multilateral agreement on services.*** The trade agreement historically have been mainly about using the tariffs, eliminating other barriers to trade such as imports on things that would be produced in one place and sold in other places. However, some services were exchanged but there was no arrangement for trade in services because services invariably are place specific and were considered to be non-tradable.

The Scope

WTO came into existence on January 1, 1995. The next round of negotiation in 1966 led to comprehensive agreement on international trade in services. The objective of this agreement is ***progressive liberalization of trade in services.*** It is ***to provide secure and more open market in services in similar manner as GATT has done for trade in goods***. This occurred through the document on General Agreement on Trade in Services (GATS). ***"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 undertaken by each Member government,*** which bind them to the allow market access and/or remove existing restrictions to market access. Although the coverage of the GATS in terms of service sectors is universal, the liberalization commitments follow positive list approach, whereby each participant in its schedule lists the condition market access and national treatment for foreign service suppliers in the sector modes of supply for which it has undertaken a commitment. Ninety-five schedule specific commitments (the European Union has submitted a common schedule of behalf of its 12 Member States) contain the results of the market access negotiation for services. With respect to the level of market openness for a service activity provided by any commitment, it depends on the existing regulatory regime and whether limitations have been placed on market access and national treatment importing country. In fact, the majority of the schedules contain bindings of the existing level of access while others also contain liberalization commitments. Where the binding of commitments, foreign service suppliers – and domestic customers foreign service suppliers – are given an assurance that conditions of entry and operation in the market will not be changed to their

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disadvantage. The ***GATS explicitly provides for successive rounds of negotiation in the future*** with a view achieving a progressively higher degree of liberalization".[1]

This agreement in general covers all the services (presently specified in 19 services) including and ***education services***. This is a first ***multilateral agreement***, which provides ***"legally enforceable right*** to trade in all services*".* Only when the services ***provided entirely by the Government, they do not fall within the GATS rule.*** However, when the services have been ***provided either by the Government partially or some prices are charged*** (as happens in Education) or provided by the private ***providers shall fall under the GATS rule***. Some people argue that any institution that requires payment, like fees, should fall under the GATS as it currently exists.[2]

It is also indirectly a first ***multilateral agreement on investment***, as the WTO literature covers not just cross boarder trade but other possible means of supplying the services including right to set-up a commercial presence in the export market.

GATS in Education Services

As of now the GATS rules will apply to services like Education in following distinct ways :

- First, a general framework of obligations that applies to all member countries of WTO. Each member country has to give treatment of ***Most Favoured Nation (MFN)*** to all other member countries, i.e., there should be no discrimination between members of the agreement except under exclusion of Most Favoured Nation (MFN) concept. This framework also stipulates that there should be a "like ***National Treatment***" i.e., once a service provider from a members country enters another country under specific commitment, it can not be discriminated from other (domestic) service providers in the other country.
- Secondly, that each member country will have to make a ***request offer for a particular service to be a part of the agreement***. That is to say, it is voluntary in nature. It means, the country can decide which service sector they would like to cover under GATS rule.
- Thirdly, a member maintaining practices that restrain competition (and thereby restrict trade in service is directed to enter into consultation with a view to eliminate them, when requested by another member.
- Fourthly, 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.

The WTO has identified, ***as of now,*** four main modes of trade in education that receive legal protection through GATS :

- ***Cross-Boarder Supply*** of a service includes any type of course that is provided through distance education or the internet, any type of testing service, and educational materials which can cross national boundaries.
- ***Consumption Abroad*** mainly involves the education of foreign students and is the most common form of trade in educational services.
- ***Commercial Presence*** refers to the actual presence of foreign investors in a host country. This would include foreign universities setting up courses or entire institutions in another country.
- ***Presence of Natural Persons*** refers to the ability of people to move between countries to provide educational services.

Classification of Education Services

Education services are identified, *as of now* **in five main categories based on the traditional structure of the sector:**

- ***Primary Education*** includes the normal notion of primary education and pre-school education services, but excludes child day care services and adult literacy programs.
- ***Secondary Education*** services include high school education, technical and vocational education, and school-type services for handicapped students.
- ***Higher Education*** includes two distinct groups one relates to the teaching of practical skills in post-secondary, sub-degree technical and vocational education institutions and the other deals with more theoretical educational services provided by universities, colleges and specialized professional schools.
- ***Adult Education*** refers to all education services that are not in the regular school and university systems. This includes both general and vocational subjects, literacy programs, and any education services delivered by correspondence or broadcast. It excludes any programs delivered through the regular education system.
- ***Other Education*** services include anything not mentioned elsewhere, with the exception of recreational matters.[3]

The Classification of Education Services under UN Central Product Classification (UNCPC) is given as Annexure I. *North American Industry Classification System (NAICS)* is also structured on the lines of traditional levels of education. However, the *industry group classification also includes non-instructional services that support education process or system.* Examples of these activities are : the offering of apprenticeship training programmes, foreign language instruction, training for career development (provided either directly to individuals or through employers training programmes), exam preparation, tutoring and educational support services – educational consultations, education guidance, counselling, education testing services – students exchange programmes, among others. *NAICS classification has been mentioned here as we will see in our discussion that US Proposal precisely attempts to include these aspects under tertiary education.[4]*

Economic Philosophy of WTO

The Director General Mike Moor[5] in his speech on 7th May, 2001 outlined the importance of trade and the importance of the multilateral trading system. According to him, "the trading system has probably done more to boost living standards and lift out of poverty than any government intervention. The 17-fold rise in world trade since 1950 has gone hand-in-hand with a 6-fold rise in world output. This has benefitted both developed and developing countries: in both, living standards have risen three-fold; life expectancy in developing countries has risen from 41 to 62 years, infant mortality has more than halved, and the adult literacy rate is up from 40% to 70%." Further he states that studies Jeffrey Sachs and Andrew Warner of Harvard University have found that "developing countries with open economies grew over six times faster in the 1970s and 1980s than those with closed economies". Yet another study covering data from 80 countries conducting by David Dollar and Aart Kray indicated that "the openness boosts economic growth and the income of the poor rise in line with overall growth". According to him, the name of the game in trade policy has been liberalisation. He further states that "pro-market reforms has encouraged faster growth, diversification of exports, and more effective participation in the multilateral trading system". He ***however, warns that trade reforms may not help the countries that: (a) spends all its export revenues on weapons, (b) lacks good governance, (c) have crippling dept overhangs, and (d) lack domestic capacity or infrastructure to take advantage of new market access opportunities.***

Therefore, he urges that "the trade liberalisation must go hand-in-hand with other reforms including *domestic reforms".* He feels that liberalisation and multilateral trade reduce the tension and also make governments more transparent and gives less scope for corruption. ***Situation in a good number of developing and least developed countries is similar to what has been described at (a) – to (d) above. Precisely for these reasons many of the countries fear the likely impact of liberalization and market reforms.***

Economic Significance of Trade in Education Services

It has been estimated that in 1990s 1.5 million students were studying abroad. The United States is a leading exporter of Education service (see Table 1). The highest export of education services is in Asia and pacific (see Table 2). France, Germany and U.K follow this. Austrialia and U.K. are appearing as strong competitors of USA during the recent years.[6]

General Alliance for Trade in Education (GATE) has estimated Trade in Education Services that to the letter of US$ 50 billion in near future. In 1995 a global market for international higher education estimated at US$ 27 billion.

Table 1 : 10 Leading Exporters of Education Services (Consumption Abroad) in the World at the Tertiary Level

Host Country	Year	Total number of Students
United States	1995/96	453,787
France	1993/94	170,574
Germany	1993/94	146,126
United Kingdom	1993/94	128,550
Russian Federation	1994/95	73,172
Japan	1993/94	50,801
Austrailia	1993	42,415
Canada	1993/94	35,451
Belgium	1993/94	35,236
Switzerland	1993/94	25,307

Source: UNESCO Statistical Yearbook (1997).

Table 2 : Origin of Students Consuming Education Services in the Four Main Supplier Countries

Host Country	Year	Country of Origin Number of Students				
United States	1995/96	China 72,315	Japan 45,531	Korea 36,231	India 31,743	Canada 23,005
France	1993/94	Morocco 20,277	Algeria 19,542	Tunisia 6,020	Germany 5,949	Cameroon 4,676
Germany	1993/94	Turkey 21,012	Iran 10,575	Greece 7,961	Austria 6,680	China 5,821
United Kingdom	1993/94	Malaysia 12,047	Hongkong 9,879	Germany 9,407	Ireland 8,987	Greece 8,708

Source : UNESCO Statistical Year book (1997)

Education and Higher Education services offer great business ***opportunity for the US. In 1996, education and training services generated $7.5 billion in export. It netted a surplus of $6.6 billion. The higher education accounted for 5th largest service sector of exports by the US.*** Thus US has great compulsion to pursue the trade in education services particularly***, as it supports 4 millions jobs in US Economy.*** More jobs may be created in US economy if more exports can take place. US interest in this matter is, therefore, very clear.

II
The Indian Scenario

Current Status of Foreign Service Providers of Higher Education in India[7]

During early 1990's some of the foreign universities attempted to market their programmes of higher education in India. ***Delegates of several countries visited India to market certain percentage of seats in Medical and Engineering education in India.*** Some foreign universities have also ***engaged the Indian agencies and firms to recruit students*** to study in their universities. Some foreign universities have ***started franchisee*** in India. Some also ***have twining programmes*** between foreign and Indian Universities. The last among these varieties is to offer ***programmes through distance mode, through print, computer, television and electronic mode*** i.e. the virtual university.

a) Modes of Enrolling Students

There have been ***three different methods of enrolling students*** in India - by organising the registration sessions through an agency in India; through ***tie up with Indian Institutions*** for offering a joint programme and by ***setting up franchisee*** 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 degree conduct programme. There has also been twining programmes ***between American Universities and Indian Universities.***

b) Mode of Transnational Higher Education

Thus the export of higher education to India by universities of several countries has been through modes of : (a) consumption abroad, (b) cross border supply, (c) franchisee, (d) twining programme and (e) virtual university. A rough estimate shows that as ***many as 50,000 students are enrolled for studies abroad***. The data on enrolment of students under 'cross border supply', 'franchisee' and other modes are not readily available. The fee charged from students ranges from ***Rs.50,000 per annum 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 for future.

c) Analysis of Phenomenon

In order to study this phenomenon a study conducted in NIEPA attempted the following :

(a) analysis of advertisements issued by agencies operating on behalf of foreign universities;
(b) case studies of some of the institutions operating in the area of transnational education was carried out; and
(c) efforts made by various organizations in India for regulation and promotion of foreign universities in India and promotion of Indian Higher Education abroad were studied.

Programmes Offered by Foreign Universities in India

There is no database on operation of foreign universities in India. The source through which one can know is publication of advertisements in the newspapers. An analysis of advertisements issued by the foreign universities or on their behalf in India was carried out. The analysis revealed the following :

1. that the courses of studies offered mostly relate to hospitality services, management, medical and information technology;
2. some time concurrent degree programmes i.e. two degrees in the same period are offered. The permission of the concurrent degree does not seem to exist in India;
3. both part time and full time degree programme and certificate programme is offered by these universities;
4. no conditions of minimum qualification in terms of percentage of marks are insisted upon. Simple 10+2 degree with an interview and test is considered for admission;

5. the duration of degree programme in terms of number of years may be less than what is prescribed for such degrees in India;
6. fees proposed to be charged is considerably higher as compared to what is being charged by self-financing institutions in India;
7. a good number of those offering educational programme are working through private agencies in India or through their embassies. Some are also working through academic institutions;
8. of those who advertised in the newspapers, large number of them are from U.K. universities followed by Australia, Canada and Austria. Even medical courses are offered by UAE and Mauritius;
9. except in a few cases academic ratings of the universities are not indicated in the newspapers; and
10. recently, UK has also offered general B.A., B.Sc. and other undergraduate programmes.

Modes of Internationalization of Higher Education in India

Case Studies of some of the institutions and centres dealing with operation of foreign universities in India and Indian Universities abroad were carried. The analysis of case studies revealed that the transnational education or the operations of foreign universities in India is taking place in ***the following modes:*** (i)Consumption Abroad - Information dissemination and recruitment of students through :

(a) Information Centres of various countries set up by embassies
(b) Private Agencies
    (i) Commercial Presence/Franchisee
    (ii) Twining programmes
    (iii) Cross Borders Supply Universities

(a) Campus of A country university in B country
(b) Distance Mode of Learning/Virtual university

Cases falling under these modes are given in Table 3.

Table 3 : Institutions/Agencies dealing with Foreign Universities

Consumption Abroad		**Commercial Presence**	**Twining Programme**	**Cross Border Supply: Distance Mode/ Virtual University**
Information Centre	**Private Agencies**			
1.Canadian Education Center (CEC)	Aust-India Education	1. School of Management	1. AMITY Law School	1. Indira Gandhi National Open University (IGNOU)
2. French Information Resource Centre (FIRC)	2. ITA Integrated Services Pvt. Ltd.	2. Graduate Business School	2. MAHE Manipal Academy of Higher Education	Aligarh Muslim University (AMU) (proposed)
3. United States Educational Foundation in India (USEFI)	3. International Education	3. Skyline Business School		
	4. International Knowledge -ware Foundation	4. International Knowledge-ware Foundation		
	5. X.L. Education Services Pvt Ltd.			

Organizations dealing with Consumption Abroad

Two types of organizations functioning in this area are : (a) centres set-up by embassies which are only provider of information on various aspects of higher education abroad; and (b) organizations providing paid services for giving information and assisting to the students to seek admission abroad :

(a) Information Centers of Various Countries

French Information Resource Centre (FIRC), Canadian Education Centers (CEC) and United States Educational Foundation in India (USEFI) were established by Government of France, Canada and United States of America respectively to provide information and counseling services to Indian students interested in pursuing higher studies abroad.

These centers have education counseling cells providing detailed information on variety of educational programmes and facilities offered by various universities of their respective countries. Students are given information regarding admission requirements, time schedules, academic calendar planning, ways to overcome difficulties pertaining to visa etc. and are assisted in preparing application and other necessary documents. They also give a cost comparison with universities in European countries and America. Personalized counseling is done to ensure that the interested students make the best possible choice for their education. Special workshops, seminars and educational fairs are organized for interaction with visiting foreign students and faculty, for information about: financial aids schemes, Visa, selection of colleges and programs and subject specific queries. In the educational fairs students and parents have the opportunity to meet personally with senior representatives from different colleges and universities and learn more about the institutions of their choice. These centers also have libraries equipped with periodicals, encyclopedia, dictionaries, guides, C.D. ROMs, video and audio-cassettes. French information Resource Center (FIRC) is providing even the internet for public access.

Number of students studying abroad in a few selected countries indicate that more than 20 thousand students migrate each year for studies abroad. Data pertaining to number of persons who have been issued students visa for the last two years are given in Table 4.

(b) Private Agencies

These are commercial organizations and their main business is advertising courses offered by their collaborative foreign universities and rendering paid services to interested Indian students for securing admission and sending them to these foreign universities.

The admission process takes approximately 1 to 3 months. Students are assessed only through informal interviews and no quota or reservation is followed. **The touchstone is whoever can afford it**. However, some universities have strict admission requirements failing which students admission is cancelled. These organizations guide and counsel students, informally about the country, university's profile, cost of study, cost of living and about the climatic conditions. There is no provision for language training in these organizations. Though they help students in getting through Visa no such help in getting work permits or immigration is provided. Once the student reaches the desired university and country, he/she is on his/her own to manage academic or non-academic aspects.

Table 4 : Number of Student Visas Issued by a Few Selected Countries

Country	Year	No. of student Visas issued
USA	Jan. to Sept. 1999	13,573
Australia	1998 1999	4886 Not compiled so far
U.K.	1998 1999 (Jan. to Oct.)	1325 1355
Canada	1998 1999	477 580
France	1998	Approx. 300

Commercial Presence Organizations

The system followed by these organizations is such that students get a degree of a foreign university while the entire course of study is completed in India. These organizations have renewable formal collaboration with foreign universities.

Latest data on number of universities offering general, engineering, management and law education are given below the rest of institutions are given Annexure-II.

Name of the Country	Number of Universities			
	General	Engineering	Management	Law
U.K.	18	17	16	4
USA	18	25	17	-
Australia	28	21	27	13
New Zealand	7	6	3	5

Organizations with Twining Programmes

These organizations work like commercial presence organizations with the difference that some part of the study has to be compulsorily completed in the respective university.

Background of Students Studying for Foreign Degrees

The students who flock for a foreign degree and approach these three types of 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. Another factor is hope of better employment opportunities abroad. The general perception among the students pursuing these courses is that abroad and even in India only a foreign degree can fetch a good job and comfortable life. The strong financial backing from parents and increasing globalization of Indian economy reinforced these beliefs further. Majority of the students wanted to stabilize their career abroad and others wanted to join their family business in India. The fact that Indian Government doesn't recognize degrees awarded by commercial presence organizations did not bother them much. These students opined that the scarcity of jobs in the government sector and positive response of private sector employers towards them will balance the situation.

The way foreign universities are marketing their higher education in India through information centers and by tying up with private organizations to maintain their commercial presence, they have generated a demand for themselves in India in the field of higher education. Limited number of seats in colleges and universities in professional as well as non-professional courses and increasing willingness of parents to send their children abroad for higher studies irrespective of the heavy costs, have further increased the demand for foreign universities in India.

Current Status of India as International Service Providers of Higher Education

a) Foreign Students Studying in India

The statistics on the aspects of number of foreign students studying in India is very scanty some efforts are being made to collect such data by UGC and NIEPA. The available data indicated that over a period of time number of foreign students enrolled in India have declined. In 1995 there were nearly a six thousand students. By 1997 this number has come down to 2908 (see Table 5a and 5b).

Not many Indian Universities seem to have attempted to market their programmes abroad. Some attempts have been done here and there. Hyderabad University is offering a programme for foreign students for a short period. CIEFL is also offering a programme on demand in language training students from abroad. Academic programmes of Indira Gandhi National Open University (IGNOU) are offered in United Arab Emirates (UAE), Qatar, Kuwait and Sultanate of Oman in Middle East Asia. Management, Commerce, Social Science, Tourism Studies and Library and Information sciences, Computer and Certificate in Guidance are some of the programmes that are presently opted by the students in these countries. A Memorandum of Agreement has been signed among IGNOU, Rajiv Gandhi Foundation and Government of Seychelles for offering IGNOU programmes in Seychelles. A proposal to offer IGNOU's academic programmes in Maldives has been accepted by the Govt. of Maldives. Number of Foreign students enrolled by IGNOU in different countries are given in Table 6.

Table 5a : Faculty-wise/Area-wise No. of Foreign Students Enrolled in various courses of study in Indian Universities during 1994-95 to 1996-97

S.No	Faculty	1994-95	1995-96	1996-97
1.	Arts	1857	1700	669
2.	Science	787	784	399
3.	Comm/Management	1339	1070	707
4.	Education	21	18	9
5.	Engg./Tech.	491	468	303
6.	Medicine	556	562	232
7	Agriculture	35	43	60
8	Vet. Science	13	11	4
9	Law	605	525	456
10	Lib. Science	65	51	9
11	Social Work	2	1	1
12	Home Science	12	-	1
13	Journalism/Mass Communication	74	68	11
14	Phy. Education	1	1	-
15	Music/Fine Arts	129	123	20
16	Criminology	5	2	1
17	Demographer	30	28	26
	Total	6022*	5455@	2908**

Notes : * Course details of 68 students are not available
@ Course details of 835 students are not available
** Course details of 826 students are not available

Table 5b : No. of Foreign Students Enrolled in Indian Universities (1988-89 to 1999-2000)

Year	No. of Foreign Students Enrolled in Indian Universities
1988-89	11844
1989-90	12463
1990-91	12899
1991-92	12765
1992-93	13707
1993-94	11888
1994-95	10087
1995-96	5841
1996-97	6701
1998-99	5323
1999-2000	6988

Source : UGC Annual Report, 2001.

Table 6 : Enrolment for IGNOU's Academic Programmes Offered Outside India as on July 1999

Country	No. of Students
UAE	240
Kuwait	100
Sultanate of Oman	140
Republic of Seychelles	18
Mauritius	Admissions are on, session commences from January 2000
Qatar	Admissions are on, session commences from January 2000
Republic of Maldives	Agreement finalized and possible date of commencement of academic session will be July 2000

MAHE is also attracting more than 1000 foreign students from more than 26 countries in their programmes (Hegde, 1993)[8].

b) Twining of Diploma Programme of Edexcel Foundation and Degree Programme of IGNOU

IGNOU has made a 5 year formal agreement with Edexcel Foundation, U.K. in 1999 to offer `Higher National Diploma (HND) in computing and degree in Bachelor of Information Technology (BIT), through Internet. This initiative is part of IGNOU's ambitious plan of introducing virtual campus. So far approximately 1200 Indian students have enrolled for the programmes.

c) Preparedness of Indian Higher Education [9]

A quick survey on preparedness of Indian Higher Education on Trade in Higher Education revealed the following:

1. As out of 238 universities collected on this aspect only 49 responded. Of this 21 has no information to share.
2. **Foreign Students in Indian universities** : There were 257 students in the 11 general universities (including three central universities). Thus there were not more than 23 foreign students per university studying in India. This ratio for agriculture university was 14 per university. For IITs the ratio was much better. There were 51 students per IIT.

   For others it works out as 26 students per institute. Thus except for IITs, which of course are premier institutions of the country, not many foreign students were studying in India.
3. **Fees** : A good number of universities are charging the same Fees as from the domestic students. Some others charge fees ranging between $ 1200-1700 per annum. The range of fees charged by IITs was $ 3000 to 5000 per annum. Some are also charging only $500 per annum.
4. **Modes of Education**: With regard to modes of internationalization of higher education, the main mode is admission of foreign students in India, which is one of the oldest mode of internationalization. The new mode, namely Cross Border Supply and Commercial Presence, Twining Programmes do not seem to be prevailing with many universities in India.
5. **Teaching Collaboration**: The teaching collaboration of general universities with foreign universities is the least. Whereas for IITs, Agricultural universities there is exists some teaching collaborations.
6. **Research Collaboration**: There is presence of some research collaboration in the universities. Of the 49 universities, which responded, 6 of them had collaboration with 5 countries. IITs had better share in research collaboration. They also had 100 per cent foreign funding In general universities there was 50-50 sharing of cost between Indian and Foreign Universities. Agricultural universities also had a fair share of collaboration with mostly 100 per cent foreign funding.

7. **Export of Indian Higher Education:** The IITs are also exporting the programme abroad. In agriculture universities and those in others category are exporting their programmes outside the country. The information about the number of students studying in their Cross Border Supply Programmes is not provided by the universities.

8. **View of the Universities about Internationalization:** Nearly 13 General Universities and 6 Agriculture 11 others expressed the desire to market their programmes of studies abroad. However, most of these have sought support for infrastructure, equipment and the additional funds for the same.

9. **Programmes Proposed to be Exported**: The list of programmes proposed to be marketed by Indian Universities is given in table 7. These pertains to Engineering, Technology, Science, Bio-tech, Maths, Chemical, Languages, Business Management. Agriculture sciences, Horticulture and Forestry.

10. **Allowing Foreign Universities in India:** With regard to allowing foreign universities in India, 2 IITs, 6 Agriculture, 8 General and 6 others universities said that foreign universities should be allowed to market their programmes in India. Others did not seems to agree.

11. **Level Playing Field**: Many of those agreed for allowing foreign universities in India wanted a level playing field, equitable and reciprocal restrictions. They also suggested that to coordinate this Central office may be set up in Delhi. It should also take with other policy makers and VCs for mutual arrangements and better understanding with UGC, CSIR, AICTE and other central agencies. The signing of proper MOUs and recognition by respective bodies in the country may be done through this office. They also suggested that Government should take responsibility in this area and make effective negotiations at the international level.

This is very sketchy survey, as many of the universities have not responded. Besides it solicited very limited information. A detailed sector study would be necessary before arriving at definite conclusions.

III
Barrier to Free Trade

Issues Raised by WTO Paper and US Government Proposal

Council for trade in services of WTO[10] has prepared a paper giving definition, scope and some of the issues regarding international trade in tertiary education. ***Some of the key issues raised for discussion among the member countries are as follows*** :

a) ***Changing Structure of Education Market***

- Do members see a need to take into account the distinctions between private/public, compulsory/non-compulsory, national/international, and degree/non-degree granting education, for the future scheduling of commitments in the sector?
- Possible impact of domestic institutional reforms on international trade in education service.
- Role of distance learning for education in developing countries, and possible contribution of reforms in telecommunications

b) International Trade in Higher Education

- Does the substantial role of government in education - as provider, financial supporter, regulator and promoter - have implications for the treatment of the sector under the GATS?

- What is the impact of liberalization of international trade in education on the quality and availability of education services in developing countries?
- Given the importance of consumption abroad for trade in education services, and the gradual opening of education markets through modes 1 and 3 (cross border supply and commercial presence), how can problems of non-recognition of diplomas/degrees granted by foreign providers be prevented from frustrating the expected gains in the market access? Are these problems sufficiently addressed by GATs disciplines?
- Do members see a need to encourage national education administrators to focus more closely on possible links between ongoing regulatory developments and GATS obligations? Are the entities involved in regulating the sector sufficiently aware of GATs implications?
- How do members assess the experience so far regarding the notification of existing or impending recognition agreements of qualifications of educational standards under Article VII: 4 of the GATS?
- To what extent can the initiatives in UNESCO, and possible other for a regarding issues pertaining to international trade in education services (transnational Education in the UNESCO context), benefit future work in the WTO?

c) Commitments under the GATS

- How far do current commitments reflect actual access conditions?
- How far do they reflect restrictions that scholars and students may consider as particularly onerous? What is the relative importance of domestic regulations falling under Article VI?
- Article XVII of the GATS relates to all measures that modify the "conditions of competition" to the detriment of foreign suppliers of like services. What is the status of measures conditioning (a) financial support to students, and (b) recognition of diplomas/certificates on the nationality of the education service supplier?

Barriers to Trade

The barriers to trade in each of the modes of education have been identified. This has been an ongoing agenda of the GATS. The WTO was helped by Global Alliance for Transnational Education (GATE) in this task. The following barriers have been identified under three modes of trade:

a) Consumption Abroad

- Direct restrictions that limit the ability of students to study in other countries through immigration and visa requirements or currency controls.
- Indirect barriers, including the difficulties encountered in translating degrees into national equivalents.
- Unequal access to resources for students

b) Cross-boarder Supply of a Service

- Restrictive use of national satellites or receiving dishes.
- Restrictions on certain types of educational material
- Needs tests
- Different approval processes for national and foreign educational providers.
- Difficulties in recognition of foreign educational credentials Visa difficulties

c) Commercial Presence

- Measures that limit direct investment in education. Equity ceiling.

- National requirements.
- Need Tests – restrictions on recruitment of foreign teachers
- Existence of government monopolies
- High government subsidization of local institutions

US Governments Proposal[11]

The US Trade Ambassador Charlene Barshefsky announced that :

> "The US specifically wanted free trade in education and health services included in the new round of negotiations. She said barriers hurt US corporation and barriers to American exports. She said our performance in relatively closed world i.e. $265 billion in services exports last year supporting four million jobs – is simply an indicator that how much we can achieve in an open market".

US Government Proposal is to include the following : under tertiary education : "such education and training encompass degree courses taken for colleges 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 workplaces, in the home or elsewhere".

This Proposal wants to include as a part of the concept of education : (i) training services, and (ii) educational testing services. Training services are particularly related to higher education, adult education and other education services, whereas testing services generally are related to all types of education.

The US Government proposal has also identified the following list of obstacles to free trade in higher education services :

- Prohibition of higher education, adult education, and training services offered by foreign entities.
- Lack of an opportunity for foreign suppliers of higher education, adult education, and training services to obtain authorization to establish facilities within the territory of the Member country.
- Lack of an opportunity for foreign suppliers of higher education, adult education and training services to qualify as degree granting institutions.
- Inappropriate restrictions on electronic transmission of course materials.
- Economic needs test on suppliers of these services.
- Measures requiring the use of a local partner.Denial of permission for private sector suppliers of higher education, adult education and training to enter into and exit from joint ventures with local or non-local parterns on a voluntary basis.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 the future.
- Tax treatment that discriminates against foreign suppliers.
- Foreign partners in a joint-venture are treated less favorably than the local partners.
- Franchises are treated less favorably than other forms of business organization.
- Domestic laws and regulations are unclear and administered in an unfair manner.
- Subsidies for higher education, adult education, and training are not made known in clear and transparent manner.

- Minimum requirements for local hiring are disproportionately high, causing uneconomic operations.
- Specialized, skilled personnel (including managers, computer specialists, expert speakers), needed for a temporary period of time, have difficulty in obtaining authorization to enter and leave the country.
- Repatriation of earnings is subject to excessively costly fees and or taxes for currency conversion.
- Excessive fees/taxes are imposed on licensing or royalty payments.

Guidelines for Further Negotiations from Council for Trade in Service

The following seems to have been agreed as guidelines for trade in services in the 28th March 2001 Meeting of GATS.

- The negotiations shall aim to achieve progressively higher levels of liberalization of trade in services.
- The negotiations shall aim to increase the participation of developing countries in trade in services.
- There shall be no prior exclusion of any service sector or mode of supply.[12]

Some Concerns/Reactions

People are showing concerns and reactions sharply on trade in services. One of the such concerns/reactions as uploaded on web page http://www.eclipse.co.uk by Maurice Spurway is given below [13] :

In Whose Service ?

The service industry is big business and heavily dominated by Northern multinationals. These companies want to operate freely within the service sector, but much of it is owned and regulated by governments. Freeing up the trade in services will benefit business and the GATS is designed to do this. Unsurprisingly, corporations have been the driving force behind the agreement.

GATS Negotiations

Negotiations are now underway which aim to extend the 1994 agreement. Governments are under pressure to drastically reorganize the ownership and delivery of services within their countries, and subjects them to even together 'free trade' rules.

At the same time, negotiators from the world's richest countries are pushing for this liberalization process to be speeded up. But the GATS negotiations are extremely complex and technical, with 1400 mistakes already having been made. This puts many developing countries at a serious negotiating disadvantage, as they lack the necessary capacity and/or technical expertise.

The Poor Lose Out

The GATS liberalization agenda threatens basic service delivery. If multinationals are seeking to make a profit out of water, health and education, those without purchasing power are likely to lose out. Recent water privatization in Puerto Rico has meant that poor communities have gone without water while US military bases and tourist resorts enjoy an unlimited supply. A system governed by people's ability to pay will not bring desperately needed services to the world's poorest people.

No Going Back

Moreover, the irreversibility of GATS will ensure that once governments have opened up particular service sectors to WTO rules, there is no going back. The decision of how to organize service delivery is effectively being removed from the political arena. In future, citizens will not longer have the democratic right to decide whether or not services should be regulated.

Stop the GATS a Strophe!

Even though the GATS will have a profound impact on people and parliaments all over the world, few people are aware of its existence. But it is not to change this GATS negotiations have only just begun. Out campaign aims to raise awareness of GATS and to challenge its liberalization agenda.

The Negotiations

As a first step countries have to exchange information about the their education system. Accordingly some of the countries have sent in information with regard to the system of education in their countries. In the most of the countries ***education is public activity or public supported activity.*** Some charge nominal fee from the students and at certain levels of education fees covers a good part of the cost. Yet in some cases full cost is also charged from the students. In the most of countries ***education system works under public regulations***. There are certain requirements as also tax and other benefits offered to educational institutions. ***Therefore even after making commitment governments have to carry out necessary reforms before allowing market access under the GATS. Therefore often a time period is taken before the agreement in operationalized. Many counties have taken time to carryout to necessary changes in their act and regulations before market access is allowed***.

IV

Issues of Concern for India

There are certain issues which need consideration before any response to the proposal is given or negotiations starts. The issues can be classified in the following categories :
Related to :

1. Political economy
2. Economic Efficiency
3. Center-state relationship
4. Academic
5. Sector competitiveness

The issues falling under these categories are discussed here:

Political Economy

India has adopted an economic philosophy of welfare state as well as positive intervention of state in economic development and provisions of services like health, education, water, etc. as these have a bearing on population at large – a good proportion of which can not afford to pay for these services. Besides it is viewed that both education and health largely influence the development process of the country. Hence the state intervenes positively in the provision of these service as also encourages private initiative by providing subvention and concession tax for these activities. Those engaged in these activities are required to run them on no-profit basis if not charity basis. Hence education service does not fall under the category of commercial services which could be traded for benefit. Yet some one who is internationally interested to provide this service on non-profit basis there could be a case for access to the service. But then it will run into conceptual difficulty of international trade, which is basically carried out for profit and owing to comparative advantage. However, if international access is allowed and they are allowed to make profit and then domestic private providers would also be allowed to make profit or international providers have to fall under the non-profit concept under national like treatment concept. This is an issue, which needs to be debated.

Economic Efficiency

The issue of economic efficiency is central to international trade in services. It is often felt that public sector mismanaged and therefore are economically inefficient. Therefore the services should be managed in competitive manner. Public sympathy with public sector institutions is increasingly getting eroded. Therefore, a case is made that even if public has to support this services this should be done through private provider and government can provide voucher to those deserving and needy. And let the system run on internationally competitive basis. The main theme of WTO is that government monopoly should give way to competition. As monopoly breeds corruption and inefficiency, this aspect therefore needs to be debated.

Center-State Relationship

There are political dimensions to trade in services. The sovereignty of the state to take decision with regard to free provision of these services as well location of these services in difficult areas even if economically inefficient. Besides, education is on concurrent list, therefore states acceptance would be necessary. This will also call for amendments of Education Acts of state governments.

Academic

- How do we ensure proper development of internationalization of higher education where mutual sharing of knowledge, skills and research takes place within the objective of mutual benefit for national and global development?
- How do we ensure that the quality and relevant programmes are offered by foreign universities in India and Indian Universities abroad only by recognized/accredited institutions?
- What should be the mechanism of global and national certification and mutual recognition? What type of agencies should undertake this work and also work of facilitation and clearing house for bi-national and multinational arrangements?
- What should be the policy regarding the mutual recognition of sub-degree programmes of tertiary education?
- Roles of MHRD, UGC, AICTE, NAAC, NIEPA, AIU, NGOs and industry organizations in the promotion of accredited transnational education of quality and relevance, need defining.

- What should be the policy regarding recognition of "Cross Border" supply by :
    (a) Setting-up campus by foreign universities in India.
    (b) Recognition of franchisee :
        i. part programme in India and part outside India
        ii. full programme in India and degree of foreign university
    (c) Distance mode and virtual university mode.
- What are the supportive steps that need to be taken for promotion of Indian higher education abroad :
    (a) Information dissemination, change of rules and regulations, visa conditions
    (b) Policy with regard to :
        i. allowing setting up campuses abroad;
        ii. allowing more number of seats for foreign students, financial support for infrastructure development.
    (c) Academic Policy with regard to :
        i. sharing of credits
        ii. awarding joint degrees
        iii. recognition of joint degrees

Sector Competitiveness

- What is the competitiveness of the education sector as a whole and all its the sub sectors, particularly higher education sub sector, as the thrust is on trade in tertiary education sector ?
- What are the modes, namely, (i) consumption abroad, (ii) commercial presence, (iii) cross border supply, and (iv) presence of natural person where each of the sub-sectors is competitive?
- What are our economic and social needs/competitiveness for each of the sub-sectors and each of the four modes?
- There may be many other issues that may need to be addressed. Some of the suggestions with regard to above issues as given in NIEPA Seminar.

Some Facts

The above issues may be deliberated keeping the following facts in view :

- That, almost all the modes, except for setting up of education institutions under the commercial presence by the foreign providers, exists in India in the sub-sector of higher education;
- That, about 100 or more schools, affiliated to CBSE, are operating in different parts of the world. They also employ Indian teachers. It is also estimated that about 10 to 12 thousand teachers are teaching English and other subjects in different parts of the world. Besides, a good number of software professionals are also working in many parts of the world;
- That, the UGC has been authorized to regulate the presence of foreign providers under twining/franchise programmes in the area of higher education;
- That, in general, there is a desire that India should market abroad higher education, particularly in the areas of Music, Art and Culture and Science and Technology. Recently, 15 per cent of seats in Engineering Colleges and Medical Institutions have been kept open for enrollment of students from different parts of the world under NRI/PIO quota, i.e. encouraging the 'Consumption Abroad Mode';

- That, the Minister of Finance has recently announced loan facilities to the tune of Rs.15.00 lakh per student for studying abroad, thereby encouraging 'Consumption Abroad Mode' in the area of higher education by the Indian students;
- That, it is estimated about 10 to 15 thousand foreign students are studying in India. However, a good number of them are under the exchange programmes;
- That, a large number of students are also going abroad. Their number is around 30,000 or so. A good number of them are also paying the full cost. Roughly the estimated amount of Rs. 400.00 crore are remitted as students' fees to other countries;
- That, quiet a large number of non-degree providers like : NIIT, APTECH, etc. are presently providing education on marketable prices. It may be pertinent to mention that a good number of students are also going abroad under non-degree programmes on payment basis;
- That, a thorough analysis of export earnings as well as import payments on Trade in Education Services needs to be carried out so as to weigh the advantages and disadvantages in signing the Trade Agreement on Education Services (TAES) for different sub-sectors and different modes; and
- That, a clear view should be taken with regard to education as a tradable service. Keeping in view the underlying principle of profit, education may be considered as a tradable service in the international market. Once this principle is accepted, it would be hard to deny the same to domestic private education providers.

The name of the game is intelligent and timely response. Are we ready for this ?

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Annexure I

Education Services in the GATS Scheduling Guidelines and CPC

Sectoral Classification List	Relevant CPC No.	Definition/coverage in provisional CPC
5. EDUCATIONAL SERVICES		Preschool education service: Pre-primary school education services. Such education services are usually provided by nursery schools, kindergartens, or special sections attached to primary school, and aim primarily to introduce very young children to anticipated school-type environment. Exclusion: Child day-care services are classified in subclass 93321.
A. Primary education services	921	Other primary education services: Other primary school education services at the first level. Such education services are intended to give the students a basic education in diverse subjects, and are characterized by a relatively low specialization level. Exclusion: Services related to the provision of literacy programmes for adults are classified in subclass 92400(Adult education services n.e.c.).
B. Secondary education services	922	General secondary education services: General school education services at the second level, first stage. Such education services consist of education that continues the basic programmes taught at the primary education level, but usually on a more subject-oriented pattern and with some beginning specialization. Higher secondary education services: General school education services at the second level, second stage. Such education services consist of general education programmes covering a wide variety of subjects involving more specialization than at the first stage. The programme intend to qualify students either for technical or vocational education or for university entrance without any special subject prerequisite. Technical and vocational secondary education services: Technical and vocational education services below the university level. Such education services consist of programmes emphasizing subject-matter specialization and instruction in both theoretical and practical skills. They usually apply to specific professions. Technical and vocational secondary school-type education services for handicapped students: Technical and vocational secondary school-type education services specially designed to meet

		the possibilities and needs of handicapped students below the university level.
C. Higher Education Services	923	Post-secondary technical and vocational education services: Post-secondary, sub-degree technical and vocational education services. Such education services consist of a great variety of subject-matter programmes. They emphasize teaching of practical skills, but also involve substantial theoretical background instruction. Other higher education services: Education services leading to a university degree or equivalent. Such education services are provided by universities or specialized professional school. The programmes not only emphasize theoretical instruction, but also research training aiming to prepare students for participation in original work.
D. Adult Education	924	Adult education services n.e.c: Education services for adults who are not in the regular school and university stem. Such education services may be provided in day or evening classes by schools or by special institutions for adult education. Included are education services through radio or television broadcasting or by correspondence. The programmes may cover both general and vocational subjects. Service related to literacy programmes for adults are also included. Exclusion: Higher education services provided within the regular education system are classified in subclass 92310 (Post-secondary technical and vocational education services) or 92390 (Other higher education services).
E. Other Education Services	929	Other education services: Education services at the first and second level in specific subject matters not elsewhere classified, and all other education services that are not definable by level. Exclusions: Education services primarily concerned with recreational matters are classified in class 9641 (Sporting services). Education services provided by governess or tutors employed by private households are classified in subclass 98000 (Private households with employed persons).

Source: United Nations, Provisional Central Product Classification, 1991.

Annexure II

General, Engineering, Management, Law Courses in Australia (2003)

General	Engineering	Management	Law
1. Canberra Institute of Technology	1. Canberra Institute of Technology.	1. Canberra Institute of Technology	1. MacquarieUniversity (Sydney)
2. Charles Sturt University.	2. The University of Newcastle	2. Charles Sturt University.	2. Southern Cross University
3. Macquarie University (Sydney)	3. The University of South Wales	3. Southern Cross University	3. The University of Newcastle
4. Southern Cross University	4. The University of Sydney	4. Study Group International	4. The University of
5. Study Group International	5. The University of Technology, Sydney (UTS)	5. Sydney Institute of Business and Technology	5. South Wales
6. Sydney Institute of Business and Technology	6. The Northern Territory University	6. The University of Newcastle	6. The University of Sydney
7. The Blue Mountains International Hotel Management School.	7. Queensland University of Technology	7. The University of South Wales	7. The University of Technology, Sydney (UTS)
8. The University of Newcastle	8. The University of Queensland	8. Queensland Institute of Business and Technology	8. Griffith University Brisbane, Queensland
9. The University of South Wales	9. Flinders University	9. Queensland University of Technology	9. Queensland Institute of Business and Technology
10. The University of Sydney	10. The University of Adeliade	10. The University of Queensland	10 The University of Queenslan
11. The University of Technology, Sydney (UTS)	11. University of South Australia	11. Flinders University	11 Flinders University
12. The Northern Territory University	12. University of Tasmania	12. The University of Adeliade	12 University of Tasmania
13. Griffith University Brisbane, Queensland	13. Chisholm Institute	13. University of South Australia	13 Deakin University
14. Queensland Institute of Business and Technology	14. Deakin University	14. University of Tasmania	14 Monash University
15. Queensland University of Technology	15. La Trobe University	15. Chisholm Institute	
16. The University of Queensland	16. Monash University	16. City Institute of Technology	
17. Flinders University	17. RMIT University	17. Deakin University	
18. University of South Australia	18. Swinburne University of Technology	18. Holmesglen Institute of Tafe	
19. University of Tasmania	19. Engineering & Information Technology The University of Melbourne	19. La Trobe University	
20. Chisholm Institute	20. Victoria University of Technology	20. Melbourne Institute of Business and Technology	
21. City Institute of Technology	21. TAFE International Western Australia	21. Monash University	
		22. RMIT University, Melborne	
		23. Swinburne University of Technology	
		24. Victoria University of Technology	
		25. William Angliss Institute of Tafe	

22. Deakin University 23. La Trobe University 24. Monash University 25. RMIT University 26. Swinburne University of Technology 27. Victoria University of Technology 28. TAFE International Western Australia		26. TAFE International Western Australia 27. Perth Institute of Business & Technology	
28	**21**	**27**	**14**

Source :- http://www.indbazaar.com

General, Engineering, Management, Law Courses in UK (2003)

General	Engineering	Management	Law
1. Edinburgh University 2. Canterbury Christ Church University College 3. Wigan & Leign College 4. The American International University in London 5. JMU – Liverpool John Moore'e University 6. Manchester Metropolitan University 7. University of the West of England (Bristol) 8. University of Glasgow 9. University of North London 10. University of Greenwich 11. Middlesex University 12. Nottingham University 13. Leeds University 14. Aston University 15. University of Bradford 16. University College London 17. The London School of Economics 18. Marseille – Provence School of Management	1. University of Warwick 2. Edinburgh University 3. Canterbury Christ Church University College 4. University of Sussex 5. Northumbria University 6. Southampton City College 7. The American International University in London 8. JMU – Liverpool John Moore'e University 9. Manchester Metropolitan University 10. University of the West of England (Bristol) 11. University of North London 12. University of Greenwich 13. Sheffield College 14. South Bank University 15. Leeds University 16. Aston University 17. University of Bradford	1. Canterbury Christ Church University College 2. Heriot – Watt University 3. Northumbria University 4. The American International University in London 5. JMU – Liverpool John Moore'e University 6. University of Cambridge 7. Thames Vally University 8. Manchester Metropolitan University 9. Oxford Brookes University 10. University of North London 11. University of Greenwich 12. Middlesex University 13. Leeds University 14. University College London 15. The London School of Economics 16. Marseille – Provence School of Management	1. University of North London 2. University of Greenwich 3. Middlessex University 4. Leeds University
18.	**17.**	**16.**	**4.**

Source : Times of India, The Hindu, Hindustan Times Newspaper, (February – March, 2003).

General, Engineering, Management, Law Courses in USA (2003)

General	Management	Engineering
1. University of California – (Berkeley) 2. University of Michigan – (Ann Arbor) 3. Georgia Institute of Technology 4. University of Illinois – Urbana-Champaign 5. Indiana University - Bloomington (Kelley) 6. University in Idaho 7. University in Kansas 8. University of Pennsylvania (Wharton) 9. University of Wisconsin – Madison 10. University in Tennessee 11. University in Washington 12. University in Missouri 13. University in Oklahoma 14. University in Nebraska 15. University in Montana 16. Becker College, Worcester, Massachusetts (1784) 17. Hawaii Pacific University – (Honolulu) 18. Johnson & Wales University	1. Charleston Southern University 2. University of Findlay (1882) 3. University of Bridgeport (1927) 4. Harvard University 5. Yale University 6. University of North Carolina (UNC) – Chapal Hill 7. Chicago University 8. Texas University 9. Columbia University 10. Michigan University – (An Arbor) 11. Carnegie Mellon University (CMU) University 12. Northwestern University – (Kellogg) 13. Johns Hopkins University 14. Duke University 15. Dartmouth University – (TUCK) 16. Stanford University 17. New York University (NYU) 18. Cornell University 19. University of California – Los Angels (UCLA) University – (Anderson) 20. Princeton University 21. Massachusetts Institute of Technology (Sloan) 22. University of California – (Berkeley) 23. University of Michigan – (Ann Arbor) 24. Georgia Institute of Technology 25. University of Illinois – Urbana-Champaign 26. Indiana University - Bloomington (Kelley) 27. University in Idaho 28. University in Kansas 29. University of Pennsylvania (Wharton) 30. University of Wisconsin – Madison 31. University in Tennessee 32. University in Washington	1. Charleston Southern University 2. Harvard University 3. Yale University 4. University of North Carolina (UNC) – Chapal Hill 5. Chicago University 6. Texas University 7. Columbia University 8. Michigan University – (An Arbor) 9. Carnegie Mellon University (CMU) University 10. Northwestern University – (Kellogg) 11. Johns Hopkins University 12. Duke University 13. Dartmouth University – (TUCK) 14. Stanford University 15. New York University (NYU) 16. Cornell University 17. University of California – Los Angels (UCLA) University – (Anderson) 18. Princeton University 19. Massachusetts Institute of Technology (Sloan) 20. University of Michigan – (Ann Arbor) 21. Clemson University 22. Champlain College, Burlington, Vermout (1878) 23. Hawaii Pacific University – (Honolulu) 24. Kent State University, (Ohio) 25. University of Bridgeport, (Connecticut)

	33. University in Missouri 34. University in Oklahoma 35. University in Nebraska 36. University in Montana 37. Wake forest university 38. Champlain College, Burlington, Vermout (1878) 39. Hawaii Pacific University – (Honolulu) 40. TROY State University (1887) 41. University of Bridgeport, (Connecticut) 42. Marist College (New York) 43. Rochester Institute of Technology - (New York) 44. Johnson & Wales University 45. American International University (AIU) – Fort Lauderdale, Florida 46. Western International University (WIU) 47. National American University	
18.	**47.**	**25.**

Source : Times of India, The Hindu, Hindustan Times Newspaper, (February-March 2003)

General, Engineering, Management, Law Courses in New Zealand (2003)

General	Engineering	Management	Law
1. Auckland University of Technology 2. University of Auckland 3. University of Waikato 4. Massey University 5. University of Victoria 6. University of Canterbury 7. University of Otago.	1. Auckland University of Technology 2. University of Auckland 3. University of Waikato 4. Massey University 5. Lincoln University 6. University of Canterbury.	1. Auckland University of Technology 2. University of Waikato 3. Massey University.	1. University of Auckland 2. University of Waikato 3. University of Victoria 4. University of Canterbury 5. University of Otago.

Source : http://www.study-nz.com, careerdowell.com

Trade in Education Services under the WTO Regime
– A Consultative Paper[!]

G.D. Sharma[*]
D.N. Rao[**]

Background and Scope

1.0 Traditionally international trade has been in the goods and services. But goods and merchandise formed the major part of bi-lateral and multi-lateral negotiations. Since the establishment of GATT (General Agreement on Tariffs and Trade) under the rounds of negotiations between 1986-93 Uruguay Round of International Trade Negotiations led to agreement for establishment of World Trade Organization. Trade Ministers in Marrakesh, Morocco, approved its creation in April 1994. Finally it was launched in January 1995. This replaced the General Agreement on Tariffs and Trade (GATT), which acted since 1948 as a negotiating forum.

1.1 In WTO Agreement two areas were clearly identified for multi-lateral agreement – one was goods and merchandise and other was trade in services, as services have distinguished features from goods. Services also started constituting a major part of the economy of some of the countries and important part of the international trade. Up to Doha, there have been three ministerials, the first was in Singapore in December, 1996, the second in Geneva in May 1998 and the third in Seattle in December, 1999 (which of course failed) and finally Doha in November 9-13, 2001. Ministerials are the highest decision making body of the World Trade Organization.

1.2 With regard to trade in services, the General Agreement on Trade in Services (GATS), the Doha Ministerial has resolved the following :

Trade in Services

2.0 *"The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January, 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by Members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March, 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by **30 June 2002** and initial offers by **31 March, 2003**."*[1]

2.1 This resolution has set a time frame for submitting initial request for specific commitments by the member countries as June 30, 2002 and initial offers for Trade in Services by 31st March 2003. It

[!] We express our thanks to Prof. Arun Nigavekar, Vice-Chairman, UGC, New Delhi for providing valuable suggestions.
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[1] WTO Secretariat, July 2001.

also clearly mentioned in the framework that is the preamble and articles as well as process of negotiations, under which the negotiations would take place for trade in services. These are generic provisions for all the services and apply for any service, which is negotiated for international trade. These also apply for trade in education services. It may, therefore, be pertinent to discuss these provisions here.

Preamble

3.0 The preamble focuses on :

"participants desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives."[2]

Articles

4.0 ***Article IV*** stresses on increasing the participation of developing countries. Within this three steps are mentioned i.e., (i) strengthening the capacity, efficiency and competitiveness through access of technology; (ii) access to distribution channels and distribution network; (iii) liberalization of market access of sectors and modes of supplies of export interest to them.

4.1 For developed countries it states that : developed country members, and to the extent possible other members, shall establish ***contact points within two years*** from the date of entry into force of the WTO agreement to facilitate the access of developing country members service suppliers to information, related to their respective markets concerning :

(a) Commercial and technical aspects of the supply of services;

(b) Registration, recognition and obtaining of professional qualifications; and

(c) The availability of services and technology.

The ***article XIX*** focuses on:

(i) Members shall enter into successive rounds of negotiations;

(ii) In each round guidelines for negotiations and procedures shall be established; and

(iii) Process of progressive liberalization shall be advanced in each such round of bilateral and multi-lateral negotiations.

[2] Ibid.

Negotiating Guidelines

5.0 The guidelines for the negotiations specify that :

1. Negotiations shall aim to increase the participation of developing countries in trade in services, with a provision of appropriate flexibility for individual developing country members under the article XIX:2.

2. The liberalization shall take place with due respect for national policy objectives, the level of development and the size of the economy of the individual member country.

3. Due consideration should be given to needs of the small and medium-sized service suppliers, particularly those of developing countries.

4. Negotiations shall take place within the structure and principles of the GATS including their rights to specific sectors under which commitments will be undertaken and the four modes of supply.

5.1 The document further spells out that there should be : (a) no prior exclusion of any service sector or modes of supply. With a proviso for special attention to be given to sectors and modes of supply of export interest to developing countries. It also says that Most Favoured Nations (MFN) Exemptions shall be subject to negotiations according to Para 6 of the Annex on Article II (MFN) Exemptions.

5.2 It also says, in such negotiations appropriate flexibility shall be accorded to individual developing country members. Negotiations on safeguards under ***Article X*** shall be completed by 15th March 2002 according to the decision adopted by the Council for Trade in Services on 1st December 2000. It also says that members shall aim to complete the negotiations under ***Article VI: 4, XIII*** and ***XV*** prior to the conclusion of negotiations on specific commitments.

5.3 **Article VI: 4** relate to disciplines on domestic regulations i.e. requirements Foreign Service suppliers (in this case education) have to meet in order to operate in the market. The focus is on qualification requirement, procedures, technical standards and licensing requirements.

5.4 *Articles XIII and XV* **pertain to development of possible disciplines not yet included in the GATS rules, as emergency safeguard measures, government procurement and subsidies. Some of these are discussed in the subsequent paragraphs.**

5.5 Within the negotiating guidelines there are several aspects of Trade in Services. These are namely, ***MFN (Most Favoured Nations)***, ***National Treatment, Transparency***, ***Regulation***, ***Recognition***, ***International Payment and Transfers and Movement of Natural Persons***. It may be pertinent to discuss these terms and their scope for trade in services.

Most Favoured Nations (MFN) Treatment

6.0 In the past, for goods, merchandise and services some concessions were given on tariff and non-tariff barriers to some of the selected countries by many countries in the world. As per WTO Agreement, if a favoured treatment is given to one country, it should be extended to all the countries, which have signed the agreement under WTO. The principle is: favour one, favour all. MFN means treating each trading partner equally. Under this provision of the GATT, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from other WTO member countries. This principle applies even if the country has made no specific commitment to provide foreign providers its access under WTO.

MFN Exemptions – Temporary and One Time

6.0 When GATT came into force a number of countries have preferentially entered into agreement in services that they had signed with the trading partners either bilateral or in small groups. Member countries thought, it was necessary to maintain these agreements temporarily. Accordingly, members have been given them right to continue to give more favourable treatment to a particular country in a particular service by listing MFN exemptions alongwith their first set of commitment. However, in order to maintain the general MFN principle it was stated that exemptions could only be made once and nothing could be added to the list and such exemptions would normally last not more than 10 years. The exemption lists are also part of the agreement. It may be pointed out that this exemption of MFN principle is available only to the trade in services.

National Treatment

8.0 The principle of National Treatment is about treating once own nationals and foreigners equally. In services, it implies that once a Foreign Service provider has been allowed to provide a service in once country there should be no discrimination between Foreign Service supplier and national/local service provider. For example, if a foreign education service provider is allowed to set-up an education institution in India, he has to be given the same treatment, which is given to national/local education service providers in the country. There should be no discrimination between foreign and local/national service providers. However, a country has to apply this principle only when it has made a specific commitment to provide foreigners or Foreign Service providers' access to its service market. It does not have to apply to the national treatment in sectors where it has made no commitments. Even if commitment has been made the provisions of GATS allows some limits on national treatment that means, even if commitment has been made member country can specify the limitations of the national treatment to foreign providers.

Commitment on Market Opening

9.0 Under the provisions of the GATS each country lists the specific commitments on service sectors and activities within those sectors. These commitments guarantee access to country's market in the listed sector and their activities. These commitments also spell-out the limitations on market access and national treatment. For an example, if the Government of India commits itself to allow the foreign university to operate in India i.e. the Market Access Commitment and if the Government of India limits the number of such universities to be set-up in the country than it is a Market Access Limitation. If the Government of India says that it would allow only one branch of the university and no other branches, however, it may allow branches of universities in one's own country, an example of multi-campuses of deemed to be universities, it could be treated as an exception to the National Treatment Principle. The market access commitment along with any limitations and exemptions from national treatment or MFN principles are negotiated as multilateral packages. The commitment, therefore, contains the negotiated and guaranteed conditions for conducting international trade in services. If the agreed conditions have to be changed for worse then government has to give at least three months notice and it has to negotiate compensation with the affected providers of services. However, the commitment can be improved at any time.

Transparencies

10.0 As per principle of transparency under GATS the Government must publish all relevant laws and regulations and set-up enquiry points where foreign service providers can contact and obtain the information about the laws and regulations in a particular service sector and any changes within these laws and regulations have also to be notified to WTO that apply to service that come under specific commitment.

Regulations

11.0 The Laws and regulations are normally made by the country to exert the influence and control over the service providers so that misuse or exploitation of the consumer does not take place. As

per the GATS agreement member country should regulate services reasonably, objectively and impartially. It further states that when the member country government makes an administrative decision that affect the service, it should also provide impartial means for reviewing the decision.

Recognition

12.0 Under the WTO Agreement when two or more member countries government have agreed to recognize each others qualifications, for example, degree in medical, engineering etc. as per the GATS provisions, other members must also be given a chance to negotiate the comparable pacts of recognition. It further states the recognition of other country's qualification must not be discriminatory and it must not amount to protection in disguise. These recognition agreements have to be notified to WTO.

Payment Transfers

13.0 Once a member country has made a commitment to open a service sector to foreign service provider it should not normally restrict the money being transferred out of the country as payment for service supplied in that sector. The only exception is when there are balance of payment differences and even than the restrictions must be temporary and subject to other limitations and conditions.

Movement of Natural Persons

14.0 Under this provision, negotiations are in progress on individual's right to stay temporarily in a country for a purpose of providing service. This agreement also specifies that it does not apply to the people seeking permanent employment or the conditions for obtaining citizenship, permanent residence or permanent employment.

14.1 Besides, the above aspects, GATS have identified several other issues for future negotiations. One set of negotiations would create rules, which have not yet been included in the GATS rules dealing with subsidies, Government procurement, and safeguard measures as mentioned above. Scope of these may be briefly described here.

Government Procurement

15.0 With regard to Government Procurement the Doha Ministerial has limited this scope to transparency in government procurement. It states that:

> *"Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion."*

Safeguards

16.0 On safeguards members have agreed to conclude the negotiations by March 2002. But the results will come into effect the same time as the results of the current services negotiations for which no deadline has been fixed as yet. Rules on safeguards will define the procedures and disciplines under which a member can introduce temporary measures to limit market access in situations of market disruptions.

Subsidies in Service Sector

17.0 With regard to subsidy in services, the WTO has sought answers to four major queries. These are as to whether:

(i) *"a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);*

(ii) *government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);*

(iii) *a government provides goods or services other than general infrastructure, or purchases goods; and*

(iv) *a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.*

or

(a)(2) *there is any form of income or price support in the sense of Article XVI of GATT 1994; and*

(b) *a benefit is thereby conferred".*

Definition and Scope of Trade in Education Services

18.0 After having generic discussions on aspects of provisions of negotiations on services, it may be appropriate to discuss the aspects of education services.

18.1 The WTO has identified four main modes of trade in education that receive legal protection through GATS:

- ***Cross-Boarder Supply*** of a service includes any type of course that is provided through distance education or the internet, any type of testing service, and educational materials which can cross national boundaries.
- ***Consumption Abroad*** mainly involves the education of foreign students and is the most common form of trade in educational services.
- ***Commercial Presence*** refers to the actual presence of foreign investors in a host country. This would include foreign universities setting up courses or entire institutions in another country.
- ***Presence of Natural Persons*** refers to the ability of people to move between countries to provide educational services.

Classification of Education Services

19.0 Education services are identified in five main categories based on the traditional structure of the sector:

- ***Primary Education*** includes the normal notion of primary education and pre-school education services, but excludes child day care services and adult literacy programs.
- ***Secondary Education*** services include high school education, technical and vocational education, and school-type services for handicapped students.
- ***Higher Education*** includes two distinct groups one relates to the teaching of practical skills in post-secondary, sub-degree technical and vocational education institutions and the other deals with more theoretical educational services provided by universities, colleges and specialized professional schools.
- ***Adult Education*** refers to all education services that are not in the regular school and university systems. This includes both general and vocational subjects, literacy programs, and any education services delivered by correspondence or broadcast. It excludes any programs delivered through the regular education system.
- ***Other Education*** services include anything not mentioned elsewhere, with the exception of recreational matters.

19.1 The US proposal has suggested for inclusion of Training and Testing in Education Services. It states that :

> ***"Such education and training encompass degree courses taken for colleges 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 workplaces, in the home or elsewhere".***

19.2 This Proposal wants to include as a part of the concept of education : (i) training services, and (ii) educational testing services. Training services are particularly related to higher education, adult education and other education services, whereas testing services generally are related to all types of education.

Status of Commitments by Various Countries

20.0 The general procedure of Commitment under GATS is that countries submit their schedules under five sub-sectors of education and four modes of supply of education.

20.1 Analysis of WTO documents reveals that 40 schedules have been submitted till July 2001. Out of the 40 schedules those who have made commitment for different sub-sectors are as follows: 30 for primary education, 33 for secondary education and 31 on Higher Education. The least committed (i.e. 16 out of the 40) is the *"other education"* sub-sector i.e. 5th sub-sector. The definition and scope of this sector, however, is not very clear.

20.2 There is a variation in commitment under all the 4 modes for these sub-sectors. Detailed data available for 31 countries show that 21 countries for primary education have made full commitment for *"Cross-Boarder Supply"* and 4 have made partial and 6 of them have made no commitment. Seventeen of them have made commitment for *"Consumption Abroad",* one partial and three no commitment under this mode. Under *"Commercial Presence Modes"* – 7 countries have made full commitment, 12 partial and 2 have not made any commitment. The commitment under the 4th mode i.e. *"Presence of Natural Persons"* does not seem to be there. A similar picture prevails for Secondary Education and Higher Education Services. Out of the 23 countries in secondary education and 21 countries in higher education only 12, 16 and 17 have made full

commitment and rest of them have made either partial or no commitment under the first mode. A similar picture prevails for the 2nd mode and for the 3rd mode. A very few countries have made full commitment i.e. only 7 countries under the 3rd mode. However, 15 countries have made commitment under the 3rd mode i.e. commercial presence under adult education.

20.3 Within each of the sub-sector and modes, the countries have also specified some exceptions/limits.

20.4 Out of the 40 countries that committed to trade in education service, except for *"Other Education Services"* the majority (14 to 15) are from developed countries, for all the four sub-sectors. Those from transition and less developed economies accounted for between 6-8 and 6-7 countries respectively for all the four sub-sectors. The commitments for *"Other Education Services"* i.e. Sub-sector V was made by much less number of Developed, Transitional and Less Developed Economies. Only 4-6 countries committed to this sector. The extent of commitment under each of the modes for these sub-sectors is presently not available.

Table 1 : Economy and Sub-sector-wise Distribution of Commitment by the Countries to Education Sector

Countries Sub-sector	Developed Countries	Transitional Economies	Less Developed Countries
Primary Education Service	14	8	7
Secondary Education Service	15	8	7
Higher Education Service	13	8	6
Adult Education Service	14	6	7
Other Education Service	5	4	6

Source : Based on Data WTO Secretariat, July 2001.

Status of Commitment by India

21.0 India has yet to make the commitment and request offer. This document is circulated to seek wider view on the response of India on the aspects of Trade in Education.

21.1 One of the studies done by ICRIER sees a good prospect for India for trade in education services. However, this study was based on expectations and opinions of the key persons in the institutions. A quick survey done by NIEPA revealed a decline in number of foreign students studying in India. This finding is corroborated by a recent publication brought out by AIU. The data compiled by AIU revealed that actual number of students enrolled has declined to almost half since 1994 to 2001. A detailed analysis of positions of foreign students in India, Indian students abroad, Indian teachers abroad, professional working abroad is being attempted separately.

21.2 Meanwhile, it is important to raise issues arising out of the above situation and their implications so as to enable each of us to respond to the proposal for trade in education services particularly higher education services. Some of the issues and their implications are highlighted here.

Issues

22.0 ***Definition and Scope*** : Education sector has been defined following the UNESCO classification in terms of primary, secondary and higher education. However, the definition of higher education is proposed to be expanded by covering training, testing and out of university education for skill development, for leisure or for any other activity. Keeping in view the position of India, whether this definition should be expanded or not? If expanded what are the implications for the system?

22.1 Similarly, it is also proposed to cover education and advertising agencies engaged in recruitment of students under education service. Whether : (a) market access is to be allowed on training, testing as well as education for leisure or for any other purpose, and (b) students recruiting agencies should be covered under education service?

22.2 The definition of higher education is very broad. It does not distinguish between general, professional and within professional by various branches. Whether it is desirable to further define it into general, professional and within this by specific profession say, medical, law, engineering and so on.

22.3 ***Role in Capacity Building*** : The Article IV of GATS negotiations distinguishes between the role for the developing, developed and least developed countries in terms of capacity building, technology sharing and information sharing. The level of development among the developing countries varies considerably. Whether, assuming a particular role for developing countries for capacity building will help or not? This is particularly so in education as some of the developing countries have capacity in certain areas comparable to that of capacity of developed countries. Their strength can also be used for capacity building of other developing or least developed countries. Whether this clause should be negotiated in terms of formulating a broader clause of mutual efforts to develop the capacity of the country by sharing of technology among the least developed countries by the developing ones and among the developing countries, as also a with the developed countries, where the need is felt most?

22.3 ***Policy Objectives*** : What are the possibilities of allowing market access, keeping in view the national and state level policy on education, national and state acts on education and the level and size of development of education, to foreign countries to India as well as possibility of India having market access to other countries to export its education?

22.5 ***Education Policy Objective and Trade*** : Government Policy in India has been, like in many other countries, to provide education to the population at various levels directly by state or through non-profit making institutions as it constitutes a very important part of developments of human resources and it is very critical to the development of the country. Therefore, all the degree granting institutions and recognized institutions by the state are operating under Trusts, under Societies Act as non-profit making institutions or these are run by the State. However, some institutions have also come up in the private sector to provide education services, as profit-making activities. In this context, whether we should permit market access only to those institutions which are planning to provide education service as non-profit making institutions or whether market access of profit making institutions is to be limited to non-degree non-recognized institutions as they are presently operating due to lack of clarity in the law on this aspect?

22.6 ***Regulations*** : What are the Domestic Regulations in Education at the State and Central levels, which are required to be met, if the market access is permitted to foreign suppliers? Whether these domestic regulations and requirements should also undergo a change to strengthen the domestic education sector to compete with foreign providers of the education services?

22.7 What are the regulations and the requirement of other countries, which are coming in the way of supply of Indian education abroad? Is there a need for developing a common frame of regulations to be followed by member countries. For instance, recognition of Indian Medical Degrees and Professional Degrees abroad.

22.8 ***Strength and Needs of India :*** What are those sectors in education services and modes of supply where India needs the access of foreign suppliers for its development?

22.9 ***MFN Exemption*** : What are those sectors and modes were India has capacity to supply education services abroad? What are those countries for whom India would like to have MFN exemption in order to strengthen the regional ties and the programmes of mutual benefit?

22.10 ***Limitations to National Treatment :*** What are those areas where the national treatment could not be accorded to the foreign suppliers in India, as that is likely to affect existing suppliers of education adversely or may have adverse affects on the society?

22.11 What are those areas where India should limit the entry of the foreign suppliers. Whether geographical access limitations also need to be considered before a foreign supplier of education is allowed market access?

22.12 ***Recognition of Degrees :*** What are the conditions and negotiating points for recognition of Indian degrees by the foreign countries in the area of medical, engineering or any other field and similarly the recognition of degree of foreign countries by Indian Universities? Should it be nationally or should it be as per acts and statutes of various universities i.e., reciprocal basis?

22.13 ***Subsidies :*** The objective of the subsidy provided to educational institutions in terms of grant, transfer of funds or provisions for tax and other concessions is to promote education at various levels, so as to develop capabilities of the people to serve the developmental needs of the country. Whether, this aspect should form the part of negotiations in education sector or not? If it is formed the part, whether a similar kind of concession should be extended the foreign suppliers, particularly to a non-profit making education provider?

22.14 *Safeguards :* Is there a need for negotiating emergency safeguards as in cheap supply of degree or degree with out following the standards and norms as prescribed may harm the interest of quality of education? If yes, what are those safeguards, which need to be considered for negotiation at the time of discussion on the safeguards?

23.0 All these issues needs to be considered, keeping in view the local, regional as well as national level position, so that at the time of negotiations situations prevailing in different areas/sectors and their impact can be taken into account very carefully. **Views** and opinion may be shared openly, so as to develop an informed response on this crucial sector for sustenance and development of India.

GENERAL AGREEMENT ON TRADE IN SERVICES*

Members,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

Wishing to establish 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 as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby *agree* as follows:

PART I
SCOPE AND DEFINITION

Article I
Scope and Definition

1. This Agreement applies to measures by Members affecting trade in services.

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

   (a) from the territory of one Member into the territory of any other Member;

   (b) in the territory of one Member to the service consumer of any other Member;

   (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;

   (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

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* Source: http://www.wto.org

3. For the purposes of this Agreement:

(a) "measures by Members" means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

(b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

(c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

PART II
GENERAL OBLIGATIONS AND DISCIPLINES

Article II
Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, 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.

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III
Transparency

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the

notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.

5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

Article III bis
Disclosure of Confidential Information

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article IV
Increasing Participation of Developing Countries

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks; and

(c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;

(b) registration, recognition and obtaining of professional qualifications; and

(c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Article V
Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

(a) has substantial sectoral coverage[1], and

(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

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[1] This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

Article V bis
Labour Markets Integration Agreements

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration[2] of the labour markets between or among the parties to such an agreement, provided that such an agreement:

(a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;

(b) is notified to the Council for Trade in Services.

Article VI
Domestic Regulation

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

[2] Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.

(b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations[3] applied by that Member.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

Article VII
Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Member shall:

(a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;

(b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;

[3] The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

(c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article VIII
Monopolies and Exclusive Service Suppliers

1. Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.

2. Where a Member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member's specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Council for Trade in Services may, at the request of a Member which has a reason to believe that a monopoly supplier of a service of any other Member is acting in a manner inconsistent with paragraph 1 or 2, request the Member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect, (*a*) authorizes or establishes a small number of service suppliers and (*b*) substantially prevents competition among those suppliers in its territory.

Article IX
Business Practices

1. Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

2. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.

Article X
Emergency Safeguard Measures

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.

2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement.

Article XI
Payments and Transfers

1. Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

Article XII
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia,* the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

(a) shall not discriminate among Members;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the General Council.

5. (a) Members applying the provisions of this Article shall consult promptly with the Committee on Balance-of-Payments Restrictions on restrictions adopted under this Article.

(b) The Ministerial Conference shall establish procedures[4] for periodic consultations with the objective of enabling such recommendations to be made to the Member concerned as it may deem appropriate.

(c) Such consultations shall assess the balance-of-payment situation of the Member concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia,* such factors as:

(i) the nature and extent of the balance-of-payments and the external financial difficulties;

(ii) the external economic and trading environment of the consulting Member;

(iii) alternative corrective measures which may be available.

(d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phaseout of restrictions in accordance with paragraph 2(e).

(e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member.

6. If a Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Ministerial Conference shall establish a review procedure and any other procedures necessary.

Article XIII
Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

Article XIV
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

(a) necessary to protect public morals or to maintain public order;[5]

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

[4] It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.
[5] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective[6] imposition or collection of direct taxes in respect of services or service suppliers of other Members;

(e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

Article XIV bis
Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

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[6] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:
(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
(iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.
Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article XV
Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.[7] The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

PART III
SPECIFIC COMMITMENTS

Article XVI
Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[8]

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[9]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

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[7] A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

[8] If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

[9] Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article XVII
National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, 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.[10]

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

Article XVIII
Additional Commitments

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

PART IV
PROGRESSIVE LIBERALIZATION

Article XIX
Negotiation of Specific Commitments

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations 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 process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement,

[10] Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

Article XX
Schedules of Specific Commitments

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate the time-frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

Article XXI
Modification of Schedules

1. (a) A Member (referred to in this Article as the "modifying Member") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

(b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.

2. (a) At the request of any Member the benefits of which under this Agreement may be affected (referred to in this Article as an "affected Member") by a proposed modification or withdrawal notified under subparagraph 1(b), the modifying Member shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.

(b) Compensatory adjustments shall be made on a most-favoured-nation basis.

3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the

matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.

(b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

(b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.

5. The Council for Trade in Services shall establish procedures for rectification or modification of Schedules. Any Member which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

PART V
INSTITUTIONAL PROVISIONS

Article XXII
Consultation

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.

2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member to bring this matter before the Council for Trade in Services.[11] The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

Article XXIII
Dispute Settlement and Enforcement

1. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.

2. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU.

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[11] With respect to agreements on the avoidance of double taxation which exist on the date of entry into force of the WTO Agreement, such a matter may be brought before the Council for Trade in Services only with the consent of both parties to such an agreement.

3. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.

Article XXIV
Council for Trade in Services

1. The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Members.

3. The Chairman of the Council shall be elected by the Members.

Article XXV
Technical Cooperation

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

Article XXVI
Relationship with Other International Organizations

The General Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

PART VI
FINAL PROVISIONS

Article XXVII
Denial of Benefits

A Member may deny the benefits of this Agreement:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

  (i) by a vessel registered under the laws of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement, and
  (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;

(c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply the WTO Agreement.

Article XXVIII
Definitions

For the purpose of this Agreement:

(a) "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(c) "measures by Members affecting trade in services" include measures in respect of

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;

(d) "commercial presence" means any type of business or professional establishment, including through

(i) the constitution, acquisition or maintenance of a juridical person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Member for the purpose of supplying a service;

(e) "sector" of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member's Schedule,

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(f) "service of another Member" means a service which is supplied,

(i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;

(g) "service supplier" means any person that supplies a service;[12]

(h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;

(i) "service consumer" means any person that receives or uses a service;

(j) "person" means either a natural person or a juridical person;

(k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:

(i) is a national of that other Member; or

(ii) has the right of permanent residence in that other Member, in the case of a Member which:

1. does not have nationals; or

2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in

[12] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;

(l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(m) "juridical person of another Member" means a juridical person which is either:

(i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

1. natural persons of that Member; or

2. juridical persons of that other Member identified under subparagraph (i);

(n) a juridical person is:

(i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;

(ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article XXIX
Annexes

The Annexes to this Agreement are an integral part of this Agreement.

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.

2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement.

Review

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement.

4. The Council for Trade in Services in a review shall:

(a) examine whether the conditions which created the need for the exemption still prevail; and

(b) determine the date of any further review.

Termination

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.

6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.

7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

Lists of Article II Exemptions

[The agreed lists of exemptions under paragraph 2 of Article II will be annexed here in the treaty copy of the WTO Agreement.]

ANNEX ON MOVEMENT OF NATURAL PERSONS SUPPLYING SERVICES UNDER THE AGREEMENT

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.

2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.[13]

ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.

2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:

(a) traffic rights, however granted; or

(b) services directly related to the exercise of traffic rights,

except as provided in paragraph 3 of this Annex.

3. The Agreement shall apply to measures affecting:

(a) aircraft repair and maintenance services;

(b) the selling and marketing of air transport services;

(c) computer reservation system (CRS) services.

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

6. Definitions:

(a) "Aircraft repair and maintenance services" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(b) "Selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(c) "Computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(d) "Traffic rights" mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of

[13] The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

ANNEX ON FINANCIAL SERVICES

1. *Scope and Definition*

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. *Domestic Regulation*

(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking 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. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. *Recognition*

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight,

implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

4. *Dispute Settlement*

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. *Definitions*

For the purposes of this Annex:

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(i) Direct insurance (including co-insurance):

(A) life
(B) non-life

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds from the public;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) Guarantees and commitments;

(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);
(B) foreign exchange;
(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
(E) transferable securities;
(F) other negotiable instruments and financial assets, including bullion.

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money broking;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) "Public entity" means:

(i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

SECOND ANNEX ON FINANCIAL SERVICES

1. Notwithstanding Article II of the Agreement and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the Agreement.

2. Notwithstanding Article XXI of the Agreement, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its Schedule.

3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.

ANNEX ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities only on:

(a) the implementation date to be determined under paragraph 4 of the Ministerial Decision on Negotiations on Maritime Transport Services; or,

(b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Maritime Transport Services provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's Schedule.

3. From the conclusion of the negotiations referred to in paragraph 1, and before the implementation date, a Member may improve, modify or withdraw all or part of its specific commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI.

ANNEX ON TELECOMMUNICATIONS

1. *Objectives*

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. *Scope*

(a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.[14]

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

(i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or

(ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. *Definitions*

For the purposes of this Annex:

(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

[14] This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

(b) "Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) "Intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Member's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Member. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. *Transparency*

In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).[15]

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

(i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
(ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and
(iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

[15] The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

(i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
(ii) to protect the technical integrity of public telecommunications transport networks or services; or
(iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

(i) restrictions on resale or shared use of such services;
(ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
(iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7(a);
(iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
(v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
(vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

6. *Technical Cooperation*

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

7. *Relation to International Organizations and Agreements*

(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union.

Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

(a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,

(b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's Schedule.

☞ **Initial Offers Made by and to India**

GATS Negotiations and Management Education

- **Initial offers made by and to India**

Management Education in India has made great strides in recent years. There has been significant growth in recent years in the number of institutions as well as enrolment of students in institutions in both public and private domain. The outflow of students from India to pursue management studies in other countries has also been growing. There is also a significant growth in the number of foreign universities/institutions, which had made their commercial presence in India through collaborations with private institutions of India. The private sector management educators in India claim that they are in a position of competitive advantage vis-à-vis providers from developed countries to go out to other countries in and provide management education to local students by their commercial presence. In view of all this one would have expected initial offers - both to India and by India - in the WTO negotiations in management education. But on going through the details of initial offers by different countries we do not find many offers. The details of initial offers made by other countries in the sector

higher education services (Code CPC-923, which includes management education services) are given in Table-1. **India did not make any initial offers in this sector.**

The limitations on market access and national treatment which have been expressed by Thailand for supply of higher education services through commercial presence (mode 3) are very significant. Thailand insists that commercial presence of a foreign supplier is permitted only if it is through a limited liability company, which is registered in Thailand where the majority participation is by Thailand nationals. The number of shareholders in such a foreign company must be less than half and the foreign equity participation must not exceed 49 per cent. The intention obviously is that activities of such a company will be more closely monitored under legislation pertaining to commercial activities. Similarly, the limitation on market access of foreign suppliers under mode 3 (through commercial presence) imposed by Poland is relevant for India. They specify that Public system of education and scholarships do not cover educational services offered from abroad.

Table-1: Initial Offers Made by Different Countries in the Sector Higher Education Services: CPC-923			
Country	**Mode**	**Limitations on Market Access**	**Limitations on National Treatment**
Liechtenstein	1	None	None
	2	None	None
	3	Foreigners may establish commercial presence only when organized as judicial persons according to Liectenstein law	Unbound except for measures relating to statutory systems of social security and public retirement plans in the country.
	4	Unbound	Unbound
Poland	1	Public system of education and scholarships do not cover educational services offered from abroad	None
	2	Same as in Mode 1	None
	3	None	None
	4	None	None
Norway	1	Unbound	
	2	None	
	3	Unbound	
	4	Unbound	
Thailand	1	Unbound	Unbound
	2	None	None
	3	None other than indicated in horizontal commitment: commercial presence only trough limited liability company which is registered in Thailand and the number of foreign shareholders as well as foreign equity is less than 49%	No limitation as long as foreign equity participation does not exceed 49%
	4	Unbound	
USA	1	None	None
	2	None	None
	3	None	None
	4	Unbound	Unbound

Chapter II

TRIPS AND WTO: AN INTERFACE

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS*

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

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* Source: http://www.wto.org

PART I
GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1
Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[16] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[17] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2
Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

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[16] When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[17] In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

Article 3
National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[18] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4
Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

[18] For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

Article 5
Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6
Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7
Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8
Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II
STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9
Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10
Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11
Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12
Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13
Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14
Protection of Performers, Producers of Phonograms
(Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15
Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16
Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any

existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17
Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18
Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19
Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20
Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21
Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22
Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23
Additional Protection for Geographical Indications
for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[19]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

[19] Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24
International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25
Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26
Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27
Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[20] Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

[20] For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28
Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[21] for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29
Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30
Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31
Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use[22] of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

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[21] This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.
[22] "Other use" refers to use other than that allowed under Article 30.

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32
Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33
Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[23]

Article 34
Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35
Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than

[23] It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36
Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:[24] importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

Article 37
Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38
Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

[24] The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[25] so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

[25] For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a

case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42
Fair and Equitable Procedures

Members shall make available to right holders[26] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43
Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

[26] For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 44
Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45
Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person’s intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46
Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47
Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48
Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49
Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant’s right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of

infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[27]

Article 51
Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[28] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[29] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52
Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

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[27] Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[28] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[29] For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Article 53
Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54
Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55
Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56
Indemnification of the Importer
and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57
Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58
Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59
Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60
De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES
Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV
ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V
DISPUTE PREVENTION AND SETTLEMENT

Article 63
Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64
Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI
TRANSITIONAL ARRANGEMENTS

Article 65
Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66
Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67
Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII
INSTITUTIONAL ARRANGEMENTS: FINAL PROVISIONS

Article 68
Council for Trade-Related Aspects of
Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69
International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70
Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71
Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72
Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73
Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

  (i) relating to fissionable materials or the materials from which they are derived;

  (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

  (iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Chapter III

IMPLICATIONS OF GATS ON EDUCATION

A Case Study of Management Education in India: Contemporary Status and Future Concerns

Dr. Furqan Qamar*

Introduction

Management education in India has come a long way ever since its inception in early fifties. As of now, the map of India is densely dotted by a variety of colleges, institutes, departments, faculties and centers offering courses in management and business education. There are around 780 AICTE approved institutions of different hues and colors offering as many as 1035 programs leading to the degree of MBA, Postgraduate Diploma and other variants of Postgraduate degree. The total intake capacity of these institutions is in excess of 65,000 annually. Much of this growth has been recorded during the last two decades of the 21st Century, as the number of institutions offering management education until 1980 was no more than 118 [AICTE, 2001]. Indications are also aplenty that, in addition to the AICTE approved institutions, there are a large number of other institutions, including the franchises of foreign universities, which offer opportunities of management education in the country [Bhatia, 2000].

Apparently most of the quantitative expansions in the management courses (hereinafter called Program) have come in the private domain. Many believe that this is particularly true in case of the institutions and programs that have been launched during the nineties, the period during which the AICTE was re-born as a statutory authority to regulate the promotion and standards of technical including management education. Failure of the established business schools and university teaching departments, partly due to resource constraints but largely due to their lack of development orientation and mindset, to accommodate the increased genuine demand for management education naturally accentuated the mismatch between the demand and supply. This, coupled with the educational liberalization as practiced by the AICTE in the post 1994 scenario, provided the justification for establishment of management institutes through private participation. This, where on one hand led to the establishment of a few best business schools and management
centers, it on the other hand also triggered unrestricted proliferation of institutions guided solely by the consideration of profiteering.

The public system of higher education, particularly the state-funded universities too are often blamed to have played a very major role in the mushroom growth of often ill equipped and occasionally, ill-intentioned private colleges and institutes by granting them affiliation. Does this mean that the number of state funded colleges, institutes and university teaching departments have not taken the initiatives to launch management program or have failed to survive and flourish due to the onslaught of private participation in management education? Popular perception may be in the affirmative but a glance at the management education scenario in the country may reveal that management education has continued to not only thrive in the public domain but has often demonstrated leadership role as far as the quality of management education is concerned. Nonetheless, data and systematic analysis on the role and extent of private and public sector in management education is available only sporadically.

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It is also argued that much of the recent expansion in the number of institutions and programs has been more led by the demand for management education, often artificially jacked up by the push strategy adopted by the existing private providers [Bhatia, 2000], rather than as a result of any well-thought out strategy and manpower needs of the nations. Naturally, many believe that the demand for 'management education' in the country is far more in excess of the demand for 'management graduates'. Although, the market is showing some signs of correction in this regard as the total number of candidates seeking admission to management courses in many states is now lower than the available intake capacity, leading to a substantial number of seats remaining unfilled in many colleges and institutes.

Efficacy of such correction as far as the maintenance and improvement in the quality of management education is concerned shall be proved only in the long run, the discipline of management education is likely to suffer for quite some times to come. While the best business schools, who can be counted on finger tips, may not be as yet afflicted by the malaise of over supply, for others, the symptoms are already all too apparent; the returns on investment in management education for students coming out of even the best business schools has not remained lucratively high; the industry has become skeptical about the quality of management graduates; unemployment and underemployment of management graduates is increasingly becoming a norm than an exception or aberration. Does this mean that any further proliferation of management programs will be essentially detrimental to the cause of management education itself? But do we have any reliable estimate and projection of manpower requirements of management professionals? AICTE had once estimated the requirements at around 25,000 personnel annually. But does this estimate still hold true? Further, is the intake capacity of existing institutions imparting management program really in excess of the manpower demand? More importantly, there have been concerns about the impact of mushroom growth in management programs on the quality of education.

Literature Review

Concerns for the quality in management education have been paramount in the minds of all those who have been genuinely concerned about the future of management education. Expression of such concerns in print media, academic & professional journals and other publication has been more visible and pronounced in case of management education than most other academic and professional disciplines. A bibliographical search on 'issues concerning management and business education in India' undertaken by the author returned more than 60 Articles, Research Papers, Notes and Comments published in nearly all prominent journals concerned with the profession of management and management education. Prominent among these have been the *Abhigyan (5), ASCI Journal of Management (1), Decision (1), Economic & Political Weekly (9), Indian Management (22), International Journal of Finance & Economic Studies (1), Management Accountant (2), Management Review (3), Paradigm (3), Productivity (1) and Vikalpa (11).*

In addition to the above, the journalistic articles and write-ups on different dimensions of management education have been abounding in most newspapers and magazines dealing with economics and business issues. In recent times, prominent national dailies have also been found publishing articles on aspects of business education. These are in addition to the reports and recommendations of committees on management education [GOI, 1981, 1992; AICTE, 2001], monographs and books [Chowdhury, 1999, Dayal, 1998; Dwivedi, 2000] and collected works & seminar proceedings [IGNOU, 1996; Phillip & Shankar, 1989; Rastogi & Chand, 1993].

Over the years, the nature and contents of the works on management education has undergone changes. While in the initial stages of the development of management education in the country, most publications were largely concerned with the need, rationale, justification, organization and administration of management education [Alfred, 1965; Dasgupta, 1970; Hyman, 1962; Latif 1967; Mathai, 1980; Paul, 1973; Raju 1970 and Vakil, 1963], the later works generally focused their attention to the contents, pedagogy, mode of delivery and methodology of business education [De mello, 1999; Dholakia, 1984; Dwivedi, 2000; Lodha, 1996; Murthy, 1975; Randeria, 1983; Ranganayakulu, 1995; Rao, 1997; Sahu, 1991; Seth, 1982, 1992; Singh 1994; Singh 1998]. This is, however, not to state that the issues concerning relevance, impact and organization of management education has been settled for good in contemporary times, as a few recent works too have been concerned with these issues [Ahmad, 1994;

Rao, 1997]. Studies on social cost and benefits of business education [Paul, 1970; Prasad, 1998] may also be included in this category of studies.

There have also been a series of introspection resulting into evaluative studies offering a constructive criticism and commenting on the state of affairs of management education in the country [Bandopadhyay, 1991; Bhatia, 2000; Charkraborty, 1997; Dayal, 1998; Panandiker, 1991; Paul, 2001; Ranganekar, 1983; Roy, 1970; Sheth, 1991; Verma, 1986]. Efforts have also been made towards mapping the management education aimed at drawing a blueprint for future growth and development. Such works include Chowdhry, 1976; Chowdhury, 1999; Hansen, 1980; Mote, 1985; Paul, 1977; Paul et al, 1992; Paul, 1992; Phillip, 1991; Phillip, 1992; and Seth, 1982]. Among this group of studies are also works on development of business education in different regions of the country [Saxena, 1996]. There have been at least two studies that have attempted to examine the status of management education in the university teaching departments [Balasubramanian, 1993; Dasgupta, 1970].

Scope, Objectives and Limitations

The available works on management education range from journalistic to perception-based and experiential. They largely reflect the concerns and opinions of academics and management professionals based on their experience and judgment. Coming from the people who matter in management education, they indeed offer valuable insight into the working and performance of the system. However, there have been a very few studies that can be termed as scientific and empirical. Often, the available works focus on a specific dimension or area of business education rather than seeking to analyze different developments in a holistic manner. There is thus an urgent need to undertake a comprehensive analysis of state of affairs of management education so as to have an objective assessment of contemporary scenario in this regard. The present paper is a modest effort in this direction and it aims at presenting an objective and fact based information on the state of affairs of business education so that the academics, management practitioners and policy makers could take their decision on the future directions of management education.

As the basic purpose of this paper is to present the facts about management education in most objective manner and as they emerge from the scientific analysis of available data, a conscious and deliberate attempt has been made to avoid subjective evaluation and judgmental comments. The interpretation of the facts and conclusions to be drawn has been left to the learned readers of this paper. Wherever a few observations may have appeared, they are more intended to build the arguments for further analysis rather than for passing a final judgment.

The present study is confined to the discussion on AICTE approved institutions as well as the university teaching departments offering management courses. The definition of management courses for the present work has been a postgraduate courses leading to the degree of MBA or a Postgraduate Diploma or a few other variants that are considered as equivalent to MBA. The definition, therefore, excludes a large number of business related graduate and postgraduate courses that are generally offered by the Departments of Commerce, Business Studies, Financial Studies, Economics, Applied Economics, International Business and Public Administration.

Data Needs and Data Source

The present study is based on the data collected from the secondary sources. To meet the objectives of the study, different sources were tapped to collect appropriate and relevant data and information. Data on the Status of AICTE Approved Management Programs: Data on such variables as (a) Type and Management of the Institutions; (b) Region and State of Location; (c) Affiliating University/Institution; (d) Program Title and nomenclature; (e) Program Type, Full time, Part time or Distance Mode; (f) Approved Intake Capacity; and (g) year of establishment of the Institutions offering approved programs were collated for 789 institutions offering as many as 1035 programs in Management from the Directory of the Approved Institutions, as available on the website of the AICTE (http://www.aicte.ernet.in);

The data collected from the above sources were electronically processed using Microsoft Excel. All of the tables and charts presented in this paper are based on the analysis of data collected from the above sources. Wherever, a table, chart or graph has been presented using data from other secondary sources, the same has been indicated and duly acknowledged.

Analysis, Interpretation & Findings

The data so collected has been grouped and regrouped in order to make meaningful analysis and has been analyzed using Microsoft Excel and discussions based on the analysis has been presented in the following paragraphs. The paper deals with the analysis of institutions approved by the All India Council for Technical Education (AICTE). This analysis covers all types of institutions, private, government, university teaching departments, university affiliated and non-affiliated institutions etc. Discussion in this part of the paper covers different aspects of the number and intake capacity of management programs approved by the AICTE.

Analysis of Data

The number of institutions offering management education has gone up from a mere 2 in 1950 to 118 in 1980 and finally more than 780 in 2001. Much of this growth has come during the last two decades of the 20th Century. The number of institutions offering management programs was no more than 118 until as late as 1980 [AICTE, 2001]. The rate of growth in the number of institutions has been most rapid during the period 1980 –1999. Since then, the rate of growth has been only moderate [Chart 1]. Some, however, believe that this does not present the complete picture, as there are also a large number of institutions offering management education but are not approved by the All India Council for Technical Education (AICTE). Bhatia (2000), for example, reported that in 2000, there were as many as 937 management institutes and that only a third of them were approved by the AICTE. Besides, there are also a sizable number of institutions, which offer management courses of foreign universities under various types of arrangements. Quite a few of such institutions are neither approved by the AICTE nor are included in any census on the number of educational institutions in the country.

Further, it has also been indicated that many institutions, particularly those run by the private providers, are multi-modal; it is almost customary for such institutions to offer management courses approved and/or affiliated to more than one agencies. If newspaper advertisements are any indications, there are many such institutions, which run an AICTE approved Postgraduate diploma program, an MBA of one or two Indian Universities and a few management courses of some foreign universities. Under such circumstances the possibilities of double or multiple counting cannot be ruled out. Further discussion in this paper, therefore, takes Management Courses (Programs) as the unit rather than the number of institutions; this has been done in order to eliminate the possibilities of multiple counting.

Number and Size Programs

As of now, there are 1035 management programs that are offered by the AICTE approved institutions. The Government Colleges and Institutes (GCIs) account for 5 percent of the total management programs approved by the AICTE whereas the University Teaching Departments (UTDs) account for another 17 percent. Thus, 78 percent of all management programs are being administered by the Private Colleges and Institutes (PCIs). Out of 1035 approved programs, a predominant majority (734) comprise of courses leading to MBA degree whereas the Postgraduate Diploma (PDP) and Other Postgraduate Programs (OPP) at offer are 177 and 124 respectively. As many as 76 percent of the MBA Programs are being run by the PCIs. In contrast, the UTDs and GCIs account for only 21 and 3 percent of the MBA programs. So has been the case with respect to Postgraduate Diploma Programs (PGPs), as 87 percent of such programs are being run by the PCIs, leaving no more than 12 and 1 percent of such programs for the GCIs and UTDs [Table 1]. In terms of intake capacity, which consequently determines the total enrolment, the PCIs have been playing an equally important role. Of the total intake capacity of over 65,000 students, the PCIs share 78 percent, whereas the UTDs and GCIs respectively share 78 and 5 percent of the burden. The intake capacity of the different types of the institutions are, thus, nearly directly proportional to their numbers and this is so perhaps because the AICTE sanctions the intake capacity while granting approval of the program itself [Table 1].

Mode of Delivery

There are three different variants of management programs that are generally approved by the AICTE. These are based on the mode of delivery and comprise of Full-time Program (FTP), which are of two years duration, the Part-time Program (PTP), which are of three years duration and Distance Education Program (DEP), which are open ended and can be completed by students in flexi-time framework. Out of the total 1035 programs, 85 percent are delivered through FTP mode while another 13 percent of the programs are being offered through FTP mode. Only about 2 percent of the approved programs offer education through DEP. Nonetheless, there were found substantial variation in the mode of delivery of different types of management programs. In case of MBA, for example, over 90 percent of them were found to be offered through FTP mode whereas in case of the OPGs and PGPs, only about 77 and 69 percent were found to be delivered through FTP mode. The DEPs were relatively more prominent (7%) in case of the PGPs than in case of the OPGs (none) and MBAs (1%). It was also found that while only 9 percent of the MBA programs are approved to be conducted through PTP mode, its share was as high as 23 and 24 percent with respect to the OPGs and PGPs[Table 2]. This is interesting as the PTPs are intended for the working executives who are interested in their professional and career development. These executives are likely to be more interested in pursuing their MBAs rather than diploma and postgraduate programs with other nomenclature. Is it that institutions find it easier to offer diplomas and other degrees through PTPs? In terms of intake capacity, at the aggregate level, the Distance Education Programs (DEPs) account for 14 percent of the enrolment while about 76 percent of the students are admitted in the FTP mode. The PTP, on the hand accounts for only about 10 percent of the intake capacity. In case of the MBAs, the FTPs account for 85 percent of the intake capacity while DEPs and PTPs are responsible for 8 and 7 percent respectively. Significantly, in case of the PGPs, the role of DEPs are much more important than the FTPs and PTPs. This may be largely so because the approved intake capacity for DEPs is significantly higher than for the FTPs and PTPs but the question as to why are the DEPs and PTPs more popular in case of non-MBA degrees continues to remain an enigma?

Do different types of institutions differ in terms of their preferences for different modes of management education? In terms of number of programs, the UTDs account for 23 percent of the DEPs and only 18 and 17 percent of the PTPs and FTPs. As against this, the PCIs account for 79 percent of the FTPs and 77 and 75 percent of the DEPs and PTPs. Importantly, the GCIs do not offer any program through DEPs and only 7 and 5 percent of the PTPs and FTPs. The situation is almost similar with respect to the intake capacity of different types of institutions under different modes of programs [Table 3].

Location of the Programs

A region wise analysis of approved management programs indicate a high concentration in Southern Region (30%) followed by Western Region (19%), Northern Region (14%) and North Western Region (13%) of the country. The South Western, Central and Eastern Regions, on the other hand, respectively account for 9, 8 and 7 percent of the total number of approved programs Spatial distribution of the approved programs by their types, however, indicates that as many as 38 percent of the MBA programs are located in the Southern Region, the Western Region accounts for more than 78 percent of the OPPs. As far as the PDPs are concerned, the Northern and North Western regions boast for more than 50 percent share. The case with respect to the intake capacity is almost similar [Table 4].

In terms of mode of delivery of management programs are concerned, the programs are not evenly distributed across all regions of the country. The Distance Education Programs (DEPs), for example, are mainly concentrated in the Northern (Percentage Share = 27%), North Western (23%) and Southern (23%) regions. As against this, the Part Time Programs (PEPs) have major concentration in Southern (23%) and Western (23%) regions of the country. The share of other regions in the PTPs ranges between 7 to 13 percent of the total number of PTPs. The largest number of Full Time Programs (FTPs), on the other hand, was found to be located in Southern (31%) region, followed by the Western (19%), Northern (14%) and North Western (13%) regions [Table 5].

The above analysis clearly indicates that the private managed institutions have been playing a very major role in the promotion of management education in the country. They account for more than 78 percent of the total number of institutions and intake capacity of the management education. However, a further analysis also indicates that the incidence and impact of private managed institutions is uniformly distributed across all regions of the country, as is evident from Table 5. It may be noted that in case of the Western and Southern regions, the private managed institutions respectively account for 91 and 86 percent of the total number of management institutes. This is clearly higher than the all India average of 78 percent. In contrast, in the Eastern and Central regions, the proportion of private managed institutes is no more than 58 and 61 percent respectively, which is clearly significantly lower than the national average. Naturally, the university teaching departments (UTDs) account for a larger share in the management education, as far as their numbers are concerned in the Central (Percentage Share, 33%), Eastern (23%), North-Western (23%) and Northern (21%) regions. In terms of intake capacity, the UTDs account for 39 percent share in the Central region, whereas they account for the lowest share (10%) in the Western regions [Table 6].

It may also be noted that even within each region, the incidence and impact of private participation in the management education is not uniform. In Central region, for example, where PCIs account for 61 percent of the management institutes, in Chattisgarh State, a constituent of the Central region, private institutes and colleges account for only 38 percent of the total number of institutes imparting management education. Similarly, in the Eastern region while the average share of the PCI is 58 percent, three of its constituent states namely Manipur, Assam and West Bengal respectively have none, 25 percent and 35 percent of the institutes in the private sector. So has been the case with respect to the North Western region where the Union Territory of Chandigarh and Himachal Pradesh have no private institutes imparting management education [Table 7].

The case with respect to the intake capacity in different types of management institutes across different regions and states has been no different. In the Eastern region, for example, where PCIs share 71 of the intake capacity of management education, PCIs in Assam, which is a constituent of this region shares only 33 percent; in contrast however, another constituent of this region namely Orissa boasts for 90 percent of the management institutes in the private sector [Table 8].

Intake Capacity of Management Programs

An analysis of the AICTE approved institutions offering management courses reveal that these institutions are of varied sizes; their intake capacity ranges from 10 to 1500 students per batch. The intake capacity of different programs appear to vary significantly by the type of program and institutions. In case of the GCIs, for example, as many as 43 percent of the programs had intake capacity of less than 30 students whereas only about 41 percent of their programs have intake capacity of 60 students. In case of the UTDs as well, 45 percent of their program have intake capacity of less than 60 students and

another 45 percent of their program have intake capacity of 60 students. In sharp contrast, as many as 61 percent programs run by the PCIs have intake capacity of 60 students and only about 29 percent of their programs are of less than 60 students intake [Table 8]. It may be noted that all of the DEPs have intake capacity of over 60 students. In contrast, only about 69 percent of the FTPs have intake capacity of 60 or more students whereas in case of the PTPs, only about 56 percent of the programs have intake capacity of 60 or more students [Table 9].

Discussion

The foregoing analysis has been intended to present an objective assessment of the number and distribution of AICTE approved institutions offering management education across the length and breadth of the country. On the face of it, it may appear that the management institutes densely dot the map of India. Do we really have a problem of plenty on our hands as far as the management education is concerned? Contrary to the popular perception, a deeper probe is indicative of a different story (Table 10). On an average and despite all the quantitative expansion that has taken place during the nineties, the country has only one AICTE approved management programs for every 9435 Sq. Km. Of course, the dispersion of management program is not uniform either across different regions or states of the country. In certain regions, like North Western, there is only one approved program per 19, 225 Sq Km while the situation is a bit more comfortable in the Southern and Western regions of the country. Except for the North Western region, which includes Delhi, the number of available seats in AICTE approved management programs is found to range between 8 and 49 per one thousand square kilometer. In case of the Central and Eastern Regions, there are only 8 to 9 seats per thousand square kilometers.

One may argue that it is not the geographical area but the population size which matters is manpower planning. Analyzed from this point view, the data shows that, on an average, the country has only 12 approved management programs per 10 Million of population. The highest density (21 and 22 per 10 Million Population) is found in Southern and Western regions while in most other regions, particularly the Eastern and Central regions have only 4 to 6 approved programs per 10 millions of population. In terms of intake capacity, the average for the country works out to be 756 per 10 million persons while regions like Eastern and Central respectively have intake capacity of 224 and 360 per 10 million population.

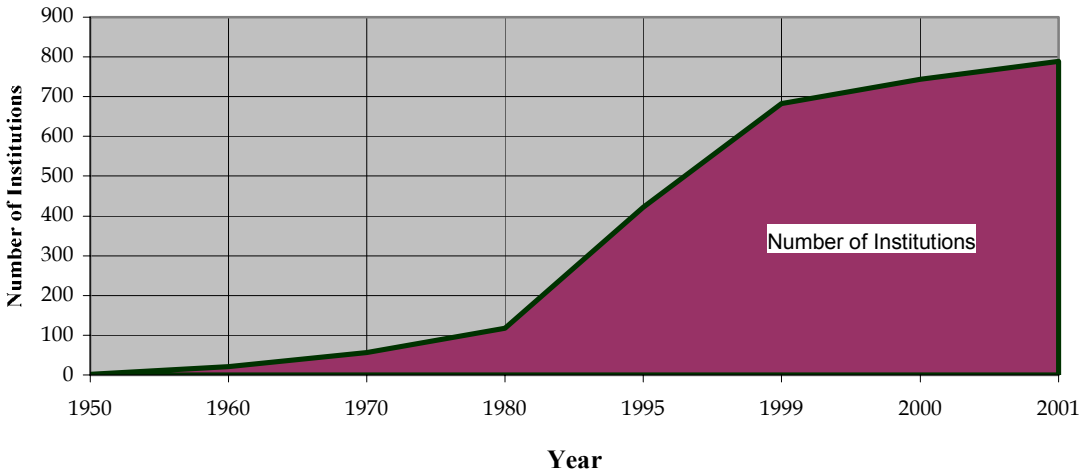
It has often been suggested that manpower planning for management and business education need be more guided by the consideration of employability and absorption of management graduates rather than on the considerations of equity in access. On the face of it, the country has a huge network of management programs whose annual intake capacity is well over 65,000. This means that the total enrolment in management education must be somewhere around 150,000 and going by the indications on the pass percentages and progression rate, the total number of management graduates coming out of the educational factories must be somewhere around 50, 000 per year. Where would these graduates be absorbed? Even more important could be the questions as to where would the enrolled students be sent for in-industry training? Are there enough number of companies in the organized sector? Some preliminary analysis in this regard, shows that on an average there are 737 registered limited companies per management programs and each new students admitted to a management program will have the opportunity to choose one from more than 12 companies for in-industry training (Table 10 & 11). In conclusion, we may say, that the management education has yet not reached its saturation point and there is still a scope for many more management programs.

The real concern should, therefore, about the quality of management programs. The norms and standards, as prescribed by the regulatory agency (AICTE, 1995), provide that each management program must have a minimum of seven faculty members. This means that the present number of management programs require more than 7000 faculty members. Does the country have as many qualified academic staff? Many public funded universities, which, barring a very few most reputed management schools in the country, to this date, offer best pay package, have been finding it difficult to fill up their faculty positions for want of reasonably qualified candidates. Under such a circumstance, it is more than a mere possibility that most management schools may be recruiting only a skeleton faculty staff. What would be the effect of such practices on the quality of management education then? More importantly, is the job market in any position to absorb such a large number of management graduates?

What will be the effect of unemployment or underemployment of qualified management graduates on the morale of the degree holders and reputation of the management education system in medium to long-term framework? These are some of the vital questions that need to be urgently addressed by the policy makers on management educators.

Chart 1

Number of Institutions Offering Management Education in India



Source: Data for the year 1950 - 2000 from AICTE, 2001; and for the year 2001 from AICTE, 2000

Table 1 : Number of AICTE Approved Programs and Their Intake Capacity By Type of Courses and Institutions

Type of Institutions:	Type of Programs			
	MBA	**OPG**	**PGP**	**All**
Number of Programs:				
Government Colleges/Institutes (GCIs)	25 (3%)	5 (4%)	21 (12%)	51 (5%)
Private Colleges/Institutes (PCIs)	557 (76%)	97 (78%)	154 (87%)	808 (78%)
University Teaching Department (UTDs)	152 (21%)	22 (18%)	2 (1%)	176 (17%)
Grand Total	734 (100%)	124 (100%)	177 (100%)	1035 (100%)
Total Intake Capacity:				
Government Colleges/Institutes (GCIs)	1290 (3%)	260 (4%)	1489 (9%)	3039 (5%)
Private Colleges/Institutes (PCIs)	31202 (74%)	5176 (76%)	14575 (90%)	50953 (78%)
University Teaching Department (UTDs)	9499 (23%)	1375 (20%)	160 (1%)	11034 (17%)
Total	41991 (100%)	6811 (100%)	16224 (100%)	65026 100%)
Average Intake Capacity Per Program:				
Government Colleges/Institutes (GCIs)	52	52	71	60
Private Colleges/Institutes (PCIs)	56	53	95	63
University Teaching Department (UTDs)	62	63	80	63
Average	57	55	92	63

Table 2 : Management programs by Mode of Delivery

Mode of Delivery	Number of Programs				Intake Capacity			
	MBA	**OPG**	**PGP**	**All**	**MBA**	**OPG**	**PGP**	**All**
DEP	9 (1%)	0 (0%)	13 (7%)	22 (2%)	3300 (8%)	0 (0%)	5550 (34%)	8850 (14%)
FTP	659 (90%)	96 (77%)	122 (69%)	877 (85%)	35591 (85%)	5251 (77%)	8514 (52%)	49356 (76%)
PTP	66 9%)	28 (23%)	42 (24%)	136 (13%)	3100 (7%)	1560 (23%)	2160 (13%)	6820 (10%)
Total	734 (100%)	124 (100%)	177 (100%)	1035 (100%)	41991 (100%)	6811 (100%)	16224 (100%)	65026 (100%)

Table 3 : Different Types of AICTE Approved Management Programs

Type of Institutions	Type of Programs			
	DEP	**FTP**	**PTP**	**Total**
Number of Programs:				
Government Colleges/Institutes (GCIs)	0 (0%)	41 (5%)	10 (7%)	51 (5%)
Private Colleges/Institutes (PCIs)	17 (77%)	689 (79%)	102 (75%)	808 (78%)
University Teaching Department (UTDs)	5 (23%)	147 (17%)	24 (18%)	176 (17%)

Type of Institutions	Type of Programs			
	DEP	FTP	PTP	Total
Intake Capacity:				
Government Colleges/Institutes (GCIs)	0 (0%)	2569 (5%)	470 (7%)	3039 (5%)
Private Colleges/Institutes (PCIs)	6550 (74%)	39128 (79%)	5275 (77%)	50953 (78%)
University Teaching Department (UTDs)	2300 (26%)	7659 (16%)	1075 (16%)	11034 (17%)
Grand Total	8850 (100%)	49356 (100%)	6820 (100%)	65026 (100%)
Average Intake Capacity Per Program:				
Government Colleges/Institutes (GCIs)		63	47	60
Private Colleges/Institutes (PCIs)	385	57	52	63
University Teaching Department (UTDs)	460	52	45	63
Average	402	56	50	63

Table 4 : Region Wise Distribution of Management Programs and Intake Capacity

	Type of Program				Percentage Distribution			
Regions	MBA	OPP	PDP	All Programs	MBA	OPP	PDP	All Programs
Number of Programs:								
Central	71	5	9	85	10%	4%	5%	8%
Eastern	44	3	27	74	6%	2%	15%	7%
North West	86	9	40	135	12%	7%	23%	13%
Northern	90	8	47	145	12%	6%	27%	14%
South West	79		13	92	11%	0%	7%	9%
Southern	280	2	25	307	38%	2%	14%	30%
Western	84	97	16	197	11%	78%	9%	19%
Grand Total	734	124	177	1035	100%	100%	100%	100%
Intake Capacity:								
Central	4250	240	640	5130	10%	4%	4%	8%
Eastern	2071	46	2360	4477	5%	1%	15%	7%
North West	5305	345	5175	10825	13%	5%	32%	17%
Northern	5760	480	3485	9725	14%	7%	21%	15%
South West	4080		980	5060	10%	0%	6%	8%
Southern	14985	60	1554	16599	36%	1%	10%	26%
Western	5540	5640	2030	13210	13%	83%	13%	20%
Grand Total	41991	6811	16224	65026	100%	100%	100%	100%

Table 5 : Region Wise Distribution of Different Types of Programs								
	Type of Programs				Percentage Distribution			
Region	DEP	FTP	PTP	All Program	DEP	FTP	PTP	All Program
Number of Programs:								
Central	2	69	14	85	9%	8%	10%	8%
Eastern	2	57	15	74	9%	6%	11%	7%
North West	5	112	18	135	23%	13%	13%	13%
Northern	6	121	18	145	27%	14%	13%	14%
South West		83	9	92	0%	9%	7%	9%
Southern	5	271	31	307	23%	31%	23%	30%
Western	2	164	31	197	9%	19%	23%	19%
Grand Total	22	877	136	1035	100%	100%	100%	100%
Intake Capacity:								
Central	600	3870	660	5130	7%	8%	10%	8%
Eastern	1000	2772	705	4477	11%	6%	10%	7%
North West	3100	6770	955	10825	35%	14%	14%	17%
Northern	900	7895	930	9725	10%	16%	14%	15%
South West		4650	410	5060	0%	9%	6%	8%
Southern	2000	13149	1450	16599	23%	27%	21%	26%
Western	1250	10250	1710	13210	14%	21%	25%	20%
Grand Total	8850	49356	6820	65026	100%	100%	100%	100%

Table 6 : Region wise Distribution of Programs offered by Different Types of Institutions								
	Type of Program				Percentage Distribution			
Region	GCI	PCI	UTD	All Programs	GCI	PCI	UTD	All Programs
Number of Programs:								
Central	5	52	28	85	10%	6%	16%	8%
Eastern	14	43	17	74	27%	5%	10%	7%
North West	12	92	31	135	24%	11%	18%	13%
Northern	8	106	31	145	16%	13%	18%	14%
South West	5	71	16	92	10%	9%	9%	9%
Southern	4	265	38	307	8%	33%	22%	30%
Western	3	179	15	197	6%	22%	9%	19%
Grand Total	51	808	176	1035	100%	100%	100%	100%
Intake Capacity:								
Central	310	2805	2015	5130	10%	6%	18%	8%
Eastern	660	3188	629	4477	22%	6%	6%	7%
North West	720	8715	1390	10825	24%	17%	13%	17%
Northern	595	7380	1750	9725	20%	14%	16%	15%
South West	390	3890	780	5060	13%	8%	7%	8%
Southern	154	13235	3210	16599	5%	26%	29%	26%
Western	210	11740	1260	13210	7%	23%	11%	20%
Grand Total	3039	50953	11034	65026	100%	100%	100%	100%

Table 7 : Number of AICTE Approved Institutions in Different Regions and States of the Country

Region/States	Number of Institutions				Percentage Distribution			
	GCI	PCI	UTD	All	GCI	PCI	UTD	All
1. Chattisgarh		3	5	8	0%	38%	63%	100%
2. Gujarat	1	24	10	35	3%	69%	29%	100%
3. MP	4	25	13	42	10%	60%	31%	100%
Central Region	**5**	**52**	**28**	**85**	**6%**	**61%**	**33%**	**100%**
4. Assam	2	2	4	8	25%	25%	50%	100%
5. Jharkhand		10	3	13	0%	77%	23%	100%
6. Manipur			1	1	0%	0%	100%	100%
7. Orissa		22	4	26	0%	85%	15%	100%
8. West Bengal	12	9	5	26	46%	35%	19%	100%
Eastern Total	**14**	**43**	**17**	**74**	**19%**	**58%**	**23%**	**100%**
9. Chandigarh			4	4	0%	0%	100%	100%
10. Delhi	3	40	4	47	6%	85%	9%	100%
11. Haryana	6	14	7	27	22%	52%	26%	100%
12. Himachal			1	1	0%	0%	100%	100%
13. J&K		3	2	5	0%	60%	40%	100%
14. Punjab	1	14	5	20	5%	70%	25%	100%
15. Rajasthan	2	21	8	31	6%	68%	26%	100%
North West Total	**12**	**92**	**31**	**135**	**9%**	**68%**	**23%**	**100%**
16. Bihar	2	8	2	12	17%	67%	17%	100%
17. UP	6	88	24	118	5%	75%	20%	100%
18. Uttaranchal		10	5	15	0%	67%	33%	100%
Northern Total	**8**	**106**	**31**	**145**	**6%**	**73%**	**21%**	**100%**
19. Karnataka	4	64	10	78	5%	82%	13%	100%
20. Kerala	1	7	6	14	7%	50%	43%	100%
South West Total	**5**	**71**	**16**	**92**	**5%**	**77%**	**17%**	**100%**
21. AP	2	127	22	151	1%	84%	15%	100%
22. Pondicherry		1	1	2	0%	50%	50%	100%
23. Tamil Nadu	2	137	15	154	1%	89%	10%	100%
Southern Total	**4**	**265**	**38**	**307**	**1%**	**86%**	**12%**	**100%**
24. Goa		2	1	3	0%	67%	33%	100%
25. Maharashtra	3	177	14	194	2%	91%	7%	100%
Western Total	**3**	**179**	**15**	**197**	**2%**	**91%**	**8%**	**100%**
All Regions	**51**	**808**	**176**	**1035**	**5%**	**78%**	**17%**	**100%**

Table 8 : Intake Capacity in AICTE Approved Institutions in Different Regions and States of the Country

Regions/ State	Intake Capacity				Percentage Distribution			
	GCI	PCI	UTD	All	GCI	PCI	UTD	All
1. Chattisgarh		220	300	520	0%	42%	58%	100%
2. Gujarat	180	1320	575	2075	9%	64%	28%	100%
3. MP	130	1265	1140	2535	5%	50%	45%	100%
Central Total	**310**	**2805**	**2015**	**5130**	**6%**	**55%**	**39%**	**100%**
4. Assam	90	120	150	360	25%	33%	42%	100%
5. Jharkhand		540	105	645	0%	84%	16%	100%
6. Manipur			30	30	0%	0%	100%	100%
7. Orissa		1168	124	1292	0%	90%	10%	100%
8. West Bengal	570	1360	220	2150	27%	63%	10%	100%
Eastern Total	**660**	**3188**	**629**	**4477**	**15%**	**71%**	**14%**	**100%**
9. Chandigarh			150	150	0%	0%	100%	100%
10. Delhi	160	5660	210	6030	3%	94%	3%	100%
11. Haryana	380	805	365	1550	25%	52%	24%	100%
12. Himachal			60	60	0%	0%	100%	100%
13. J&K		180	60	240	0%	75%	25%	100%
14. Punjab	60	840	270	1170	5%	72%	23%	100%
15. Rajasthan	120	1230	275	1625	7%	76%	17%	100%
North West Total	**720**	**8715**	**1390**	**10825**	**7%**	**81%**	**13%**	**100%**
16. Bihar	235	660	120	1015	23%	65%	12%	100%
17. UP	360	6120	1360	7840	5%	78%	17%	100%
18. Uttaranchal		600	270	870	0%	69%	31%	100%
Northern Total	**595**	**7380**	**1750**	**9725**	**6%**	**76%**	**18%**	**100%**
19. Karnataka	350	3530	570	4450	8%	79%	13%	100%
20. Kerala	40	360	210	610	7%	59%	34%	100%
South West Total	**390**	**3890**	**780**	**5060**	**8%**	**77%**	**15%**	**100%**
21. AP	64	5580	1300	6944	1%	80%	19%	100%
22. Pondicherry		60	60	120	0%	50%	50%	100%
23. Tamil Nadu	90	7595	1850	9535	1%	80%	19%	100%
Southern Total	**154**	**13235**	**3210**	**16599**	**1%**	**80%**	**19%**	**100%**
24. Goa		90	60	150	0%	60%	40%	100%
25. Maharashtra	210	11650	1200	13060	2%	89%	9%	100%
Western Total	**210**	**11740**	**1260**	**13210**	**2%**	**89%**	**10%**	**100%**
All Regions	**3039**	**50953**	**11034**	**65026**	**5%**	**78%**	**17%**	**100%**

Table 9: Number of Programs by Type and Intake Capacity								
	Intake Capacity (Students)				*Percentage Distribution*			
Descriptions	***Below 60***	***60***	***Above 60***	***Total***	***Below 60***	***60***	***Above 60***	***Total***
Type of Institutions								
GCI	22	21	8	51	43%	41%	16%	100%
PCI	237	494	77	808	29%	61%	10%	100%
UTD	79	79	18	176	45%	45%	10%	100%
Total:	338	594	103	1035	33%	57%	10%	100%
Category of Course:								
MBA	264	425	45	734	36%	58%	6%	100%
OPP	42	70	12	124	34%	56%	10%	100%
PDP	32	99	46	177	18%	56%	26%	100%
Total:	338	594	103	1035	33%	57%	10%	100%
Type of Program:								
DEP	0	0	22	22	0%	0%	100%	100%
FTP	278	523	76	877	32%	60%	9%	100%
PTP	60	71	5	136	44%	52%	4%	100%
Total:	338	594	103	1035	33%	57%	10%	100%

Table 10 : Penetration of Management Education across Regions of the Country								
	Regions							
Parameters	***Central***	***Eastern***	***Northern***	***Northwestern***	***Southern***	***Southwestern***	***Western***	**Average**
Catchments Area per Program (Sq Km)	9944	9532	4482	19225	1333	2617	1410	9435
Average Intake Capacity per 1000 Sq Km	8	9	20	689	49	19	41	195
Average Number of Program per 10 Millions Population	6	4	9	16	22	10	21	12
Average Intake Capacity per 10 Millions Population	360	224	540	1126	1228	518	1233	756
Average Number of Limited Companies per Program	662	887	444	989	355	555	685	737
Average Number of Limited Companies per Intake	11	13	6	16	6	12	12	12

Table 11 Penetration of Management Education Across Different States of the Country						
State	**No. of Programs per 1 Crore Population**	**Intake Capacity per 1 Crore Population**	**No. of Limited Companies Per Programs**	**No. of Limited Companies Per Intake Seat**	**Catchments Area per Program (Sq Km)**	**Intake Capacity per 1000 Sq KM**
AP	20	917	214	5	1821	25
Assam	3	135	476	11	9805	5
Bihar	1	122	697	8	7848	11
Chandigarh	44	1665	1351	36		
Chattisgarh	4	250			16880	4
Delhi	34	4375	2087	16	31.55	4066
Goa	22	1116	778	16	1234	41
Gujarat	7	410	1015	17	5601	11
Haryana	13	735	200	3	1637	35
Himachal	2	99	1808	30	55673	1
J&K	5	238	341	7	44447	1
Jharkhand	5	240			6124	8
Karnataka	15	844	303	5	2459	23
Kerala	4	192	807	19	2776	16
Maharashtra	20	1350	592	9	1586	42
Manipur	4	126	155	5	22327	1
MP	7	420	309	5	7353	8
Orissa	7	352	212	4	5989	8
Pondicherry	21	1232	549	9		
Punjab	8	482	656	11	2518	23
Rajasthan	5	288	479	9	11040	5
Tamil Nadu	25	1535	302	5	844.5	73
UP	7	472	191	3	2042	33
Uttaranchal	18	1026			3555	16
West Bengal	3	268	2704	33	3414	24

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Chapter IV

CROSS CUTTING ISSUES

MFN Exemptions Under the GATS: A Perspective

Gita Bajaj*

Introduction

According to Article II of GATS (and similarly Article I of GATT 1994), *each Member of the WTO is bound to 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*[30] *of any other country*. 'Treatment no less favourable' is interpreted as requiring no less favourable conditions of competition. However, it offers flexibility so that the provisions of this Agreement are not construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed. This article is referred to as the Most Favoured Nation (MFN) treatment.

The very existence of GATT & GATS with reference to its historical background is as a replacement of bi-lateral trading agreements with a multilateral one. This explains why MFN is referred to as the cornerstone of the GATT & GATS. The requirement that any change be automatically applied to all WTO Members is an important element of stability and predictability in the system, guaranteeing that all will benefit from trade liberalization measures and making it more difficult to reverse such measures.

The MFN treatment was thus introduced to support the following:

- Economic logic: enables each participating country to satisfy its import needs from the most efficient source of supply (maximizing scope for operation of the principle of comparative advantage). Non-discrimination rule also embodies an important foreign policy rationale.

It thus forms one of the basic principles adopted to enable free and fair trade in a multilateral trading system, which is why it is one of the very first articles of all the three WTO agreements, namely, GATT, GATS and TRIPS (Article 1 of GATT, Article 4 of TRIPS and Article 2 of GATS).

Scope of MFN Principles

The relative scope of MFN treatment is especially clear when seen in respect of scope of National Treatment. It may be recalled that NT is not a rule of general application in the GATS but is dependant on a specific sectoral commitment having been made and on any conditions and qualifications set out therein whereas MFN is for general application, albeit subject to once-off list of exceptions.

In respect of monopolies and exclusive service suppliers, the provisions of Article VII require that any such enterprise, in the supply of a monopoly service in a relevant market, not act in a manner inconsistent with a Member's MFN obligation.

MFN Exemptions (Derogations)

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During the Uruguay round of negotiations in 1995, it was felt that it might be initially difficult for member countries to honour obligations of this Article due to preferential agreements in services that they had already signed with trading partners, either bilaterally or in small groups. The members therefore gave themselves the right to continue giving more favourable treatment to particular countries in particular service activities by listing “MFN exemptions” alongside their first sets of commitments.

These exceptions include:

- general exceptions;
- security exceptions;
- Economic integration of agreements, subject to certain conditions (Article V);
- Air transport traffic rights and services and services directly related to their exercise;
- Measures for prudential reasons in the financial services sector;
- free-trade area agreement (Article XXIV);
- preferences in favour of and between developing countries (the enabling Clause); and
- Accord advantages to adjacent countries to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. It was also decided that these exemptions will be reviewed after five years (in 2000), and will normally last no more than 10 years. The MFN exemption lists are also part of the GATS agreement.

MFN Exemption Reviews

- Meetings on MFN exemption review were held in year 2000 as ad hoc sessions of the Council for Trade in Services. Extensive discussions took place only to show that a substantial amount of work and efforts are needed to streamline the wide spread derogation from the most fundamental principle of the WTO agreements.
- The next round of negotiations on the subject began at Geneva in June 2002. Japan, Korea and Mexico have submitted their proposals to deal with the MFN exemptions.
- Next review will start in June 2005

Objective

To analyse the MFN exemptions taken by various Member countries. To study the implications of MFN exemptions sought by India and for India. To suggest a viewpoint that India may take on the subject of withdrawal of MFN exemptions by all member countries.

Methodology

A study of the ‘General Agreement on Trade in Services’, a follow up of proceeds after 1995 round of negotiations, proposals submitted so far and research analysis contributed by OECD

countries was done. List of MFN exemptions of various members was then examined to analyse India's status in this regard. For this purpose, data tabulated in various studies has been taken and compared with India's list of MFN exemptions to make a set of observations. The understanding from these observations has been shared in the conclusion.

Considering the fact that the topic is currently under discussion, no text or general books have been published to date, that cover the subject in great detail. Therefore, all observations and conclusions are based on the data included in this paper from various sources.

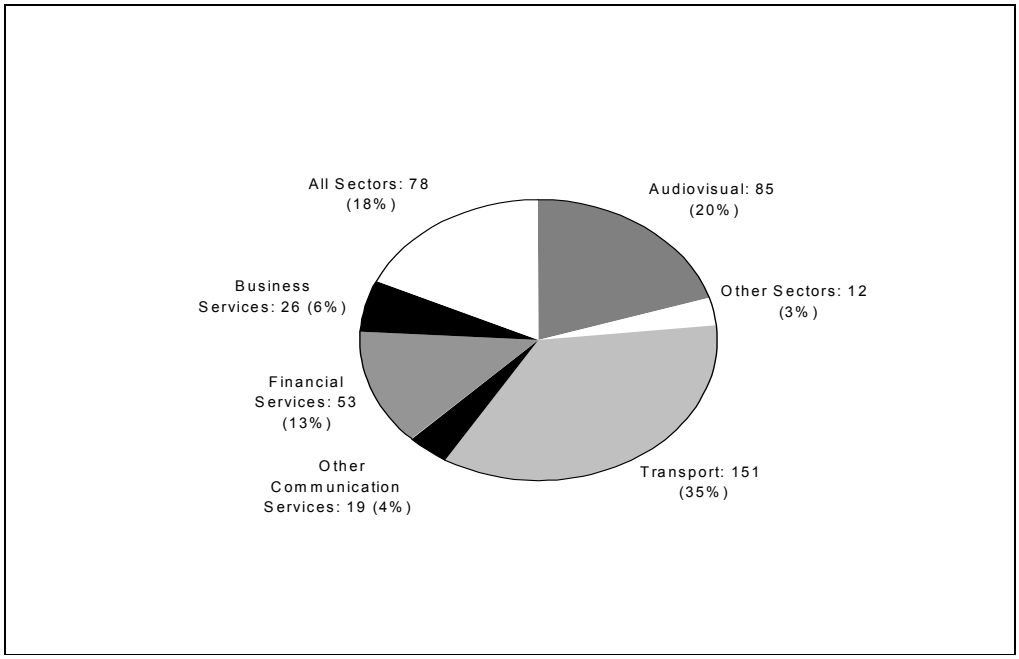
Analysis of MFN exemptions under GATS

Total Number of MFN Exemptions: 424 exemptions to Article II have been listed by 79 WTO Members (counting the EC as one Member). However, 49 Members have not listed any MFN exemption. This shows that a majority of the WTO members have sought the MFN exemptions in one or another sector. Most of the 79 members have listed 5 exemptions or less, while 10 countries have listed more than 10 measures. Among the 49 Members that did not list MFN exemptions, 48 are from non-OECD countries, Japan being the only OECD country not to have listed an MFN exemption. 26 of those 49 Members are from Africa, while 11 are from Asia, 11 from Latin America and the Caribbean, and 1 from Europe.

India status: India had listed 8 exemptions inconsistent with Article II. As a result of the negotiations that ended in 1999, the United States, India and Thailand decided to withdraw their broad MFN exemptions based on reciprocity. Therefore, now India has 6 MFN exemptions listed. Thus India has shown initiative in removing the distortions on their own account and can expect others to keep their commitments as well.

Distribution of MFN exemptions, by sector

The distribution of MFN exemption by sector may be depicted as follows:



Source: OECD Report.

The status of India in this regard is as follows:

Sectors	Total number of exemptions	Total number of exemptions listed by India
All sectors	78	0
Maritime transport	63	2
Air transport	22	0
Road transport	49	0
Internal waterways transport	10	0
Other transport services	7	0
Audiovisual	85	1
Other communication services	19	2
Financial services	53	0
Professional services	18	0
Other business services	8	0
Recreation, culture and sports	5	1
Construction services	2	0
Distribution services	3	0
Tourism services	1	0
Health-social services	1	0

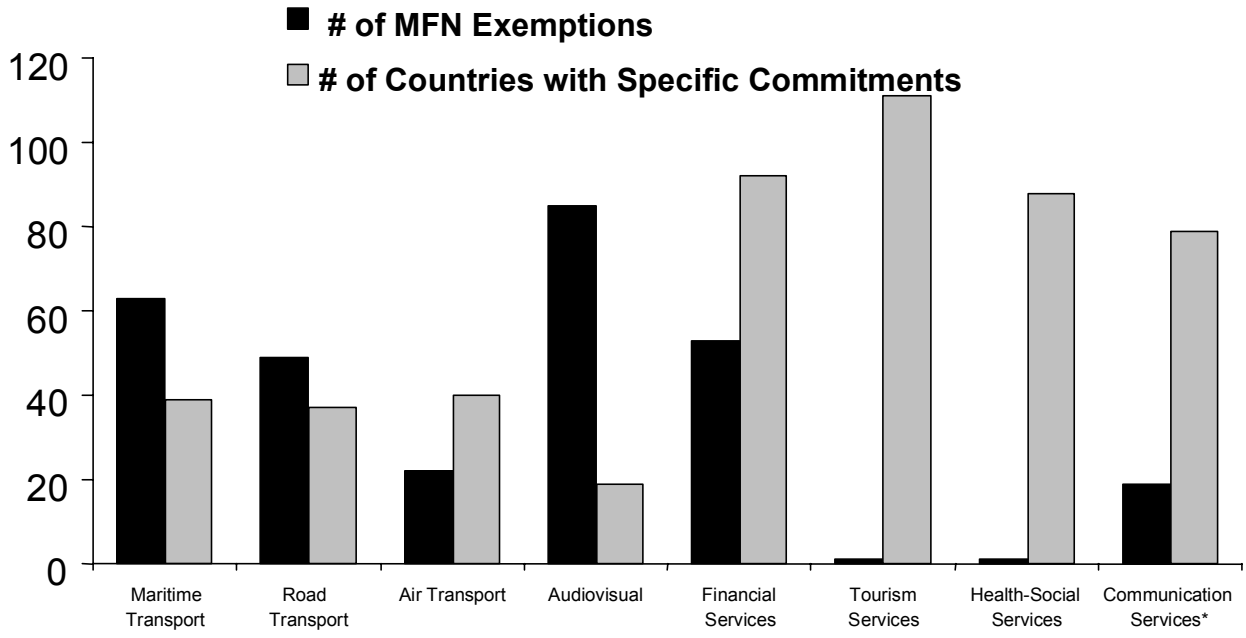
Thus, the number of exemptions listed by India are 2 each under shipping and telecommunication services and one each under recreational and audiovisual services. We observe that:

- While 18% of all exemptions are listed by various members for all sectors, India has not listed any such sweeping exemptions.
- Of the 78 exemptions applying to all sectors (18%), 8 are limited to the movement of natural persons, 1 to commercial presence, 2 to land use and 1 to real estate. Otherwise sector specific exemptions pertain to all four GATS modes of supply.
- While other countries have also listed exemptions in Business services (6%), Financial services (13%) and a small percentage in Construction services, distribution services, tourism services and health-social services, India has not listed any exemptions in these sectors.

India has not taken any sweeping exemptions to guard future developments and truly hopes to liberalize. She may therefore rightfully expect other Members to have taken exemptions in their true sense to guard their past commitments.

Besides, in free trade of services, trade of professional services through Mode IV should also be free and fair in the true sense of the word. MFN Exemptions that effectively keep countries with strengths in this area out of multilateral trading arrangements, must be removed.

Figure 3 : MFN Exemptions and Specific Comments by Sector



Source: OECD Report.

1. India has made commitments in financial services sector and has also withdrawn the MFN exemption that it had listed for this sector, earlier.
2. India has made commitments in telecommunication services and has listed the MFN exemptions in this sector.
3. India has listed two exemptions under shipping which is still under negotiation

Thus, in case of India the status is as follows:

Table 3: India's Commitments and MFN Exemptions

Sector	No. of Exemptions Listed	Commitment Status
Telecommunication services	2	Committed
Financial services	Withdrawn	Committed
Audio-visual services	2	Being negotiated
Shipping (Transport)	2	Being negotiated

As shown in Figure 3 and in Table 2, sectors where countries have made most specific commitments (tourism services, communication services apart from audiovisual services, health and social services and, to a lesser extent, financial services) are generally sectors where relatively few countries took MFN exemptions. India withdrew MFN exemptions in Financial Services sector at the time of making commitments but has not done so in case of telecommunication services. In case of the latter, India must also find ways of removing these exemptions provided other countries also agree to withdraw the exemptions sought by them. Since a large number of exemptions have been taken in sectors not committed, it is possible that benefits derived from these exemptions are an impeding factor for further liberalization of these sectors. This also indicates that Members do have the opportunity to remove these exemptions at the time of making commitments in those sectors, if they so desire.

Reach of MFN exemptions listed by India

Table 4: Countries listed by India for Exemptions

Country seeking exemptions	Countries to which favoured treatment is accorded
India	Bulgaria, Pakistan, United Arab Republic, Bhutan.

- A close examination of the exemptions listed by various countries, indicates that developed countries who had over a long period in the past developed trade ties amongst themselves have continued to maintain a favorable trade relation with their old pals.
- Developing and least developed countries do not have such well-developed trade links of great economic value to them and hence they have not sought any such exemptions to propel the cause.

As a result, the MFN exemptions tilt the trade balance in favour of the developed countries, which get relief from multilateral trading arrangements while those members who have to go a long way before they catch up are further put a disadvantage because of the MFN exemptions.

Categories reflected in the description of MFN exemptions in Member schedules as per TD/TC/WP(2001)25/Final the categories are:

Table 5: Categorisation of "Countries to Which the Measure Applies"

Main Categories	Number of exemptions
All countries	118
Countries parties to existing or future agreements and/or countries with whom cultural co-operation may be desirable	84
One country	30
Not specified	27
European countries	43
Groups of Central American countries	13
Groups of Scandinavian countries	10
Countries where CRS system vendor or operator is located	9
Neighbouring countries	5
Countries with traditional or historical links	5
Depends on reciprocity	5
Andean Group countries	4
WAEMU Member states	4
Other	67

Observations

Of the 424 total exemptions, 34% exemptions are either for all countries or not specified 118 have been taken for all countries. 27 exemptions do not specify the countries to which the inconsistent measure applies. This implies that 34% exemptions have loose ends to safeguard future commitments. If an exemption applies to all countries or to countries not known, the exemptions may well be removed. The safeguards can be introduced at the time of making sectoral commitments.

Of the balance 279 exemptions:

- In 43 cases, the inconsistent measure applies to European countries.
- 10 exemptions apply to Nordic- or Scandinavian countries.

- 13 exemptions apply to countries of Central America of which 5 cover all sectors.

This indicates that another 22.58 percent measures apply to these developed countries.

MFN Exemptions Sought by India

Category	Exemptions sought by India
All countries	2
Neighbouring countries	1
Countries party to existing or future agreements or with whom cultural co-operation may be desirable	3

MFN Exemptions that Apply to India

- Bangladesh and Pakistan have taken MFN exemptions in telecommunication services and the measure indicates that different accounting rates will be applied to different neighbouring countries covered by Telecommunication Agreements entered into by Bangladesh and Pakistan with Governments of neighbouring countries.EC has taken an exemption in audiovisual sector for India and other countries and the measures are based upon government to government framework arrangements and plurilateral agreements on co-production of audio-visual works, which confer National Treatment to audio-visual works covered by these agreements, in particular in relation to distribution and access to funding. The EC has also taken an exemption for all sectors for citizens of Commonwealth countries with a grandparent born in the UK waive the requirement of work permit in all services sectors.
- Bulgaria has taken exemption in maritime transport services (passenger and freight) and the measure relates to the supply of services by officers on New Zealand ships which is limited to citizens with requisite qualifications, from either New Zealand or the countries (India and other countries) as listed in the schedule.
- Singapore has taken in air transport services (computer reservation system) for India and other countries and the measure indicates that MA and NT are based on reciprocity in mutual concessions, but not necessarily in the same area as established under bilateral Air services Agreement.
- Singapore has also taken exemption in all sectors for the Commonwealth countries, which grant reciprocal relief, and the measure indicates that section 48 of the Income Tax Act provides for the granting for relief against Singapore Tax payable on income denied from a Commonwealth country.

MFN Exemptions that May Affect India

37 countries including *the US, EC, Canada, Australia, Brunei, Bulgaria, Brazil, Chile, Cyprus, Czech Republic, Columbia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, Iceland, Israel, Hungary, Indonesia, Jamaica, Kuwait, Malaysia, Mauritius, Mexico, New Zealand, Norway, the UAE, Philippines, Poland, Singapore, Sweden, Switzerland, Thailand, Turkey and Venezuela* have taken exemptions in “all sectors” which affect movement of natural persons covering all sectors including professional services such as accounting, auditing, construction, architectural, engineering, legal, medical and dental services. These countries have also taken exemptions in specific services sectors such as audiovisual services, financial services (relating to delivery of services via Mode 4) and tourism services wherein India has comparative advantage in export of these services.

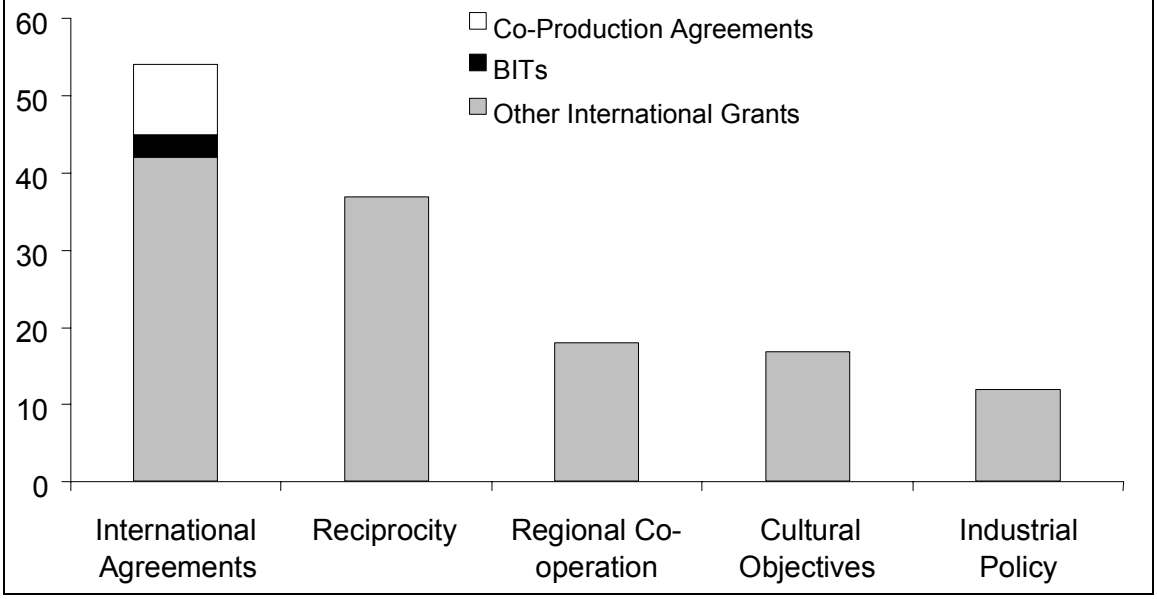
Since all these Member countries belong to high income group of countries and exemptions taken by them are violation of Article IV of the GATS which in order to ensure increasing participation of developing countries, desires that liberalization of market access should be in sectors and modes of supply of export interest to them.

Table 6: MFN Exemptions by Categories Conditions Creating the Need for MFN Exemptions

Categories	Number of Exemptions	% of Total Exemptions
Reciprocity	156	37%
International agreements	232	55%
Categories from description of measure		
Euro-origin criteria	32	7.5%
Movement of natural persons	40	9.4%
Tax measures	29	6.8%
Commercial presence	33	7.8%
Nordic co-operation	10	2.4%
Categories from description of conditions		
Cultural objectives/regional identity	70	17%
Regional co-operation and economic integration	77	18%
Industrial policy	49	12%
Environment and conservation	20	4.7%
Social objectives	14	3.3%
Traditional preferences	13	3.1%
Promotion of investment	12	2.8%
Lack of multilateral rules	10	2.4%
Labour/immigration objectives	9	2.1%
Development	8	1.9%
Foreign policy/Security considerations	5	1.2%

Source: OECD study

Figure 4 : MFN Exemptions by Main Categories



Source: OECD study

55% of all MFN exemptions are due to international agreements and 37% due to reciprocity. Thus, 92% of all MFN exemptions are because of these two reasons: reciprocity and international agreements. Since reciprocity is against the fundamental principles of a multilateral trading arrangement, 37% of the exemptions should be immediately removed. Korea's paper also suggests many ways of dealing with the other exemptions practically.

International Opinion

- Research by Korea on the relationship between economic statistics and MFN exemptions suggested that higher income countries had a higher incidence of MFN exemptions on the whole as well as on average.
- Korea has also suggested that a cue may be taken from GATT experience where relationship between MFN principle and international agreements has been dealt through granting waivers. Reciprocity however is not in consonance with WTO trade principles and therefore members must withdraw these exemptions taking a cue from India, USA and Thailand.
- Japan has also supported Korea's findings and proposed that developed countries with many exceptions should take the initiative to reduce their exemptions as much as possible.
- Hong Kong, China, Mexico and Costa Rico have also supported Korean findings and suggestions for removal of MFN exemptions.
- Switzerland however, is of the view that removal of MFN exemptions was a matter of negotiations. It has also stressed that many MFN exemptions are legitimate beyond specified time-periods. But it agreed with Korea that all MFN exemptions needed to be clearly scheduled and made easy to understand.

The Catch – Issues

Interestingly, the annexure to Article II Para 6 stipulates that a member "should" and not "shall" get rid of MFN exemptions in a period of 10 years.

Researches and Recommendations

- A review of MFN exemptions done by the Islamic Development Bank highlights this point and suggests to QUAD countries that they must use this legal aspect to continue MFN exemptions and later leverage these to extract concessions in other areas.
- An in-depth analysis has been carried out by the OECD countries which brings to focus many aspects of the exemptions sought by different countries, different regions in various sectors and modes of supply.
- India has not yet voiced her opinion. A closer look at the exemptions that India has listed as against the exemptions that other members have listed will enable India to assess India's economic gain or loss, as a result of these exemptions.
- Since a large number of these have been associated limiting movement of professionals, an opinion of this group becomes extremely important.

Looking Ahead

2003's WTO Ministerial Meeting will take place in Cancun, Mexico in September. At Cancun, one of the four new issues included in the agenda is competition policy. There is need to understand the relevance of the three fundamental principles to competition law and vice-versa. Thus removal/continuation of MFN exemptions becomes an important subject for immediate consideration.

Conclusions

A successful market access negotiation is possible in a balanced environment only. Owing to the developed trade relations and trade understanding of the developed countries, these exemptions tilt the balance in favour of the economically stronger nations. It is important to note that more than the number of exemptions; it is the economic impact of the MFN exemptions that should be measured to analyze the distortions caused, as a result of these exemptions.

Besides, citing reciprocity as a means to secure equal access or treatment goes against the general practice of multilateral trade negotiations. Seeking MFN exemptions because equal access or treatment was not secured cannot constitute 'exceptional circumstances'. Members may rather secure such access during the current concession negotiations. However, reason cited for 37% exemptions is reciprocity.

A large number of high-income countries have taken exemptions to liberalize movement of natural persons within their preferred group. Many developing countries have interests in liberalization of mode 4 and liberalization of this mode in smaller groups through MFN exemptions clause does not let this benefit percolate to the developing countries.

Removal of the MFN exemptions, it appears, shall be a step in the positive direction.

As suggested by Japan and Korea, developing country members must therefore seek the removal of MFN exemptions clause. Some permanent derogation to the application of MFN obligation are given in Annexure-III. Members may leverage these flexibilities in several layers of GATS that can accommodate the exemptions sought due to international agreements.

Article V: Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

(a) has substantial sectoral coverage[31], and

(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or

[31] This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

Article V bis*:* Labour Markets Integration Agreements

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration[32] of the labour markets between or among the parties to such an agreement, provided that such an agreement:

(a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;

(b) is notified to the Council for Trade in Services.

Article VII: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

[32] Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.

4. Each Member shall:

(a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
(b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;
(c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article IX: Business Practices

1. Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

2. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.

Article XIV: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

(a) necessary to protect public morals or to maintain public order;[33]
(b) necessary to protect human, animal or plant life or health;
(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
    (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
    (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
    (iii) safety;
(d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective[34] imposition or collection of direct taxes in respect of services or service suppliers of other Members;

[33] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

Article XIV bis: Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
(ii) relating to fissionable and fusionable materials or the materials from which they are derived;
(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

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[34] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:
(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
(iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.
Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

3.1 GATS and the MFN Exemptions:

Article II (Most Favoured Nation Treatment) states:

1. With respect to any measure covered by this Agreement, 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.

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.

2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement.

Review

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement.

4. The Council for Trade in Services in a review shall:
   (a) examine whether the conditions which created the need for the exemption still prevail; and
   (b) determine the date of any further review.

Termination

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.

6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.

7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

It is important to note here that the exemptions are actually a deviation from the most important principle of trade liberalization. It tilts the balance in favour of nations that have been exempted, for some reason, to abide by this principle. Interestingly, the annexure to Article II para 6 stipulates that a member “should” and not “shall” get rid of MFN exemptions in a period of 10 years. A review of MFN exemptions

done by the Islamic Development Bank highlights this point and suggests to QUAD countries that they must use this legal aspect to continue MFN exemptions and later leverage these to extract concessions in other areas.

Many countries have been studying the current MFN exemptions. An indepth analysis has been carried out by the OECD countries which brings to focus many aspects of the exemptions sought by different countries, different regions in various sectors and modes of supply. The next round of negotiations on the subject began at Geneva in June 2002. Japan, Korea and Mexico have submitted their proposals to deal with these MFN exemptions.

India has not yet voiced its opinion. A closer look at the exemptions that India has listed as against the exemptions that other members have listed will enable India to assess India's economic gain or loss, as a result of these exemptions. This paper attempts to do just that. The conclusions from this paper may be further substantiated by economic analysis of each exemption listed, which may be used as a basis to firming up an opinion for India.

Annexure III

Some permanent derogation to the application of the MFN obligation:

1. Benefits conferred pursuant to economic integration agreements (Article V)
2. Labour market integration agreements (Article V bis). Parties to such integration agreements can be exempted from the MFN obligation, provided the agreement in question meets the criteria set out in Article V and V bis, e.g., substantial sectoral coverage and the absence or elimination of substantially all discrimination.
3 Article VII on recognition also allows members to conclude certain recognition agreements on a non-MFN basis
4 Article XIII on government procurement provides for an exception to the MFN obligation.

The GATS Annex on negotiations on maritime transport services also has special implications for MFN coverage, and listing of MFN exemptions, since it provides for the suspension of Article II until the conclusion of the negotiations in this sector which, in accordance with Article XIX of the GATS, resumed in January 2000 [35]. However, the Annex also provides that Article II applies to maritime transport activities for which specific commitments have been made in a Member's schedule.

Korea has also suggested that a cue may be taken from GATT experience where relationship between MFN principle and international agreements has been dealt through granting waivers. Reciprocity however is not in consonance with WTO trade principles and therefore members must withdraw these exemptions taking a cue from India, USA and Thailand.

Besides, it is important to note that Members were granted 10 years to tackle domestic problems in abiding the Article II and they must asked to remove all MFN exemptions within the stipulated time. No effort to misuse the exemptions to get benefits in lieu of this removing these distortions must be acceded to by other Member countries.

[35] Maritime transport negotiations were originally scheduled to end in June 1996, but participants failed to agree on a package of commitments. The MFN principle should enter into force for the maritime transport services sector with the conclusion of the current round of services negotiations.

Chapter V

REGULATORY MEASURES

All India Council For Technical Education

Regulations for entry and Operation of Foreign Universities/ Institutions Imparting Technical Education In India

New Delhi, the 3rd April, 2003

No. F. 37-3/Legal (vi)/2003:- In exercise of the powers conferred under Clause (b), Clause (f), Clause (g) and Clause (n), (o), (p) of Section 10, read with Section 23 of the AICTE Act, 1987 (52 of 1987), the Council hereby makes these regulations with following broad objectives for regulating entry and operation of Foreign Universities / institutions imparting technical education in India.

Objectives

a) To facilitate collaboration and partnerships between Indian and foreign universities/ institutions in the field of technical education, research and training.

b) To systematize the operation of Foreign Universities/Institutions already providing training and other educational services including that of coaching of students, in India leading to award of *degree and diploma* in technical education, either on their own or in collaboration with an Indian educational institution or with a private educational service provider, under any mode of delivery system such as conventional/ formal, non-formal and distance mode.

c) To safeguard the interest of student's community in India and ensure uniform maintenance of Norms and Standards of AICTE;

d) To enforce accountability for all such educational activities by foreign universities / institutions in India;

e) To safeguard against entry of non-accredited universities / institutions in the country of origin to impart technical education in India; and

f) To safeguard the nation's interest and take punitive measures, wherever necessary, against the erring institutions, on case-to-case basis.

Short title and Commencement

1. These regulations may be called the AICTE Regulations for Entry and Operation of Foreign Universities in India *imparting technical education*, 2003.
2. These *regulations* shall come in force on the date of their publication in the official gazette.

Applicability

These regulations shall cover and apply to:

1. Foreign universities / institutions interested in imparting technical education in India leading to award of diplomas and degrees including post graduate and doctoral programmes.
2. Indian university / institution and/ or private educational service provider interested in imparting technical education leading to the award of degrees / diplomas of a foreign university through collaborative arrangements.
3. The existing collaborative agreements/ arrangements with Foreign Universities/Institutions offering technical education in India.

4. Any other educational activity carried out in India, in any manner, by the foreign universities/ institutions, as may be decided by the Council to bring such activities under these Regulations.

On commencement of these Regulations no foreign university/institutions shall establish/ operate its educational activity in India leading to award of diplomas/degrees including post graduate and doctoral without the expressed permission/approval of the Council.

Definitions

Unless the Context Otherwise Requires

a. AICTE means the All India Council for Technical Education established under section 3 of the AICTE Act (52 of 1987) by the parliament for co-ordinated development of technical education in the country.

b. NBA means the National Board of Accreditation, authorized body under AICTE Act to accredit programmes of technical education imparted by universities / institutions in India and recommend recognition/de-recognition of institution or the programme.

c. All other words and expressions used herein and not defined above but defined in the AICTE Act shall have the meaning as assigned to it in AICTE Act (52 of 1987).

Procedure for Registration

1. Any application to AICTE by a Foreign University / Institution seeking to operate in India either directly or through collaborative arrangement with an Indian University / Institution or a private educational service provider must be accompanied by a No-objection certificate issued by the concerned Embassy in India. The Missions of the concerned countries shall be required to certify genuineness of the educational institutions of their respective countries willing to offer study programmes in India.
2. The concerned Foreign University / Institution shall submit a Detailed Project Report (DPR) to AICTE alongwith application in a prescribed form, giving details regarding infrastructure facilities, facilities available for instruction, *faculty*, prescribed fee, courses, curricula, requisite funds for operation for a minimum period of three years and other terms and conditions of collaboration, if any, alongwith relevant details.
3. AICTE shall after receiving the application alongwith DPR, acknowledge the receipt of the application. The proposal shall then be processed internally and any deficiency shall be communicated and additional documents, if any required, shall be asked for.
4. Once the AICTE is convinced that the proposal is complete in all respects, a standing committee nominated by the Council shall consider the proposal and invite presentation, if warranted.
5. On the recommendations of the Standing Committee, the Chairman, AICTE shall nominate an Expert Committee to visit the institution and assess the compliance of minimum Norms and Standards in respect of infrastructural and instructional facilities to start programmes of technical education and training.
6. The Council shall consider the recommendations of the Standing Committee and the Expert Committee in regard to the quality of education, overall merit of the proposal, credibility of the programme provider of the foreign country vis-à-vis the institution intending to start the programmes in India and decide conclusively on the application regarding grant of approval or otherwise for registration.
7. AICTE shall issue a certificate of registration containing therein the intake fixed for each programme to the concerned educational institution / university declaring it's eligibility to perform the prescribed functions and the names of such universities / institutions shall automatically stand included in the list of registered / approved university / institution by the AICTE in their relevant list.
8. The registration so granted shall be valid for a specified period during which AICTE may review the progress made and periodically inform the concerned agencies about the results of such a

review. After expiry of the said period, the AICTE may extend the registration or withdraw the registration or impose such other conditions for extension, as it may consider appropriate.

9. *During the period of operation the institution shall be treated on par with other technical institutions in India and shall be governed by all the Rules, Regulations, Norms and Guidelines of AICTE issued from time to time.*

Conditions for Registration

1. *Proposal from the foreign universities/ institutions shall be considered under these Regulations provided that they themselves establish operation in India or through collaborative arrangements with either an Indian institution created through Society/ Trust Act or the relevant Act in India or with a private educational service provider registered as such in India. No franchisee system shall be allowed under these Regulations.*
2. Accreditation by the authorized agency in parent country with higher grades *where grading is available*, shall be the pre-requisite condition for any Foreign University / Institution to start its operation for imparting technical education in India.
3. An Indian technical Institution interested in collaborating in the field of technical education, research or training with a Foreign University / Institution must be an *affiliated institution of university in India or a deemed university having adequate infrastructure for imparting technical educational programmes. It shall be desirable for such Indian institution to have acquired accreditation of its programes by NBA of AICTE or shall be in a position to do so at the earliest possible. However, this clause of accreditation shall not be applicable for a De-novo institution or new project proposals.*
4. *The foreign university/ institution shall furnish an undertaking declaring therein* that the degrees/ diplomas awarded to the students in India shall be recognized in the parent country and shall be treated equivalent to the corresponding degrees/ diplomas awarded by the university/ institution at home.
5. The educational programmes to be conducted in India by foreign universities / institutions leading to award of degrees, diplomas, shall have the same nomenclature as it exists in their parent country. There shall not be any distinction in the academic curriculum, mode of delivery, pattern of examination etc. and such degrees and diplomas must be recognized in their parent country.
6. *All such foreign university / institution which is registered in India for imparting technical education leading to award of degrees and diplomas shall have recognition at par with equivalent Indian degrees, subject to the fulfillment of criteria laid down at Clause 7 below.*
7. The proposal from foreign university seeking equivalence of technical courses/ programmes at degree, diploma or post graduate level for mutual recognition of qualifications for the purpose of imparting such courses in India under collaborative arrangements or otherwise shall be considered by AICTE through its Standing Committee on Equivalence or such other mechanism as may be decided. In case such equivalence has already been established by AIU or any recognized Government body, the same may be accepted by AICTE for the purpose provided those are not in dispute.
8. *Indian Institutions affiliated to an Indian University and willing to offer programmes of foreign universities leading to award of degrees and/or diplomas must have prior concurrence of the concerned affiliating university.*
9. *It shall be the responsibility of the concerned Foreign university / institution to provide for and ensure that all facilities are available, the academic requirements are laid down and announced prior to starting of the programmes.*
10. Any course / programme which jeopardizes the national interest of the country shall not be allowed to be offered in India.
11. *The fee to be charged and the intake in each course to be offered by a foreign university / institution leading to a degree or diploma shall be as prescribed by the AICTE, giving due hearing to the concerned Foreign University/institution.*

12. Educational innovations including experimentation with different modes of delivery by a foreign university / institution shall only be allowed provided such a system is well established either in their parent country or in India.
13. The Foreign University / institution shall have to declare in advance the detailed guidelines for admissions, entry level qualifications, the examination pattern and grading and there shall not be major deviations with the prescribed procedures in their parent country., vis-à-vis in India.
14. *It shall be the responsibility of the concerned Foreign university / institution offering programmes in India to get their AICTE approved centers, accredited by NBA soon after two batches have passed out from such centers. The study centers/ institutions of collaborating private educational service providers which impart technical education leading to the award of a degree / diploma of a foreign university shall be considered as a center of the foreign university / institution, even though the management may be provided by the Indian educational service provider.*
15. The foreign university / institution shall be bound by the advice of AICTE with regard to admissions, entry qualification and the conduct of courses / programmes in technical education, as may be communicated to them from time to time.
16. For any dispute arising out of implementation of these regulations, arbitration authority shall be the Secretary, Department of Education in the Central Government of India and the legal jurisdiction shall be the Civil Courts of New Delhi only.
17. AICTE may prescribe any other condition for registration, if it is expedient to do so in the overall interest of the technical education system in the country.
18. The existing Indian institutions having academic collaboration with Foreign University for grant of degree/ diploma will be facilitated to seek AICTE's approval and obtain affiliation with Indian university system with an aim to integrate such institutions with the mainstream of technical education system in India.
19. The Foreign Universities / institutions already operating in India in various form shall have to seek fresh approval from AICTE within six months from the date of issuance of this notification or before commencement of ensuing academic session, whichever is earlier and shall be governed by the Regulations and Guidelines of AICTE.

Punitive Measures and Conditions for Withdrawal

1. If a foreign university / institution fails to comply with any of the conditions as contained in the above regulations and/or consistently refrains from taking corrective actions contrary to the advice of the AICTE, the AICTE may after giving reasonable opportunity to the concerned university/institution *through hearing or after making such inquiry as the Council may consider necessary, withdraw the registration granted to such university / institution to offer their degrees, diplomas in India and forbid such foreign university / institution to either open Centres or enter into any collaborative arrangement with any University / Institution in India or with a private educational service provider.*
2. The AICTE shall also inform the concerned agencies including Ministry of External Affairs, Ministry of Home Affairs, RBI *of such decisions and advise these agencies to take any* or all of the following measures:
    a. Refusal / withdrawal for grant of visa to employees/teachers of the said foreign university / institution.
    b. Stop repatriation of funds from India to home country.
    c. Forbid the advertisement of said university / institution in print or visual media.

Withdrawal

Once the registration of a Foreign University/Institution is withdrawn, the Council shall make attempts in co-ordination with concerned State Govt. to re-allocate the students enrolled into such programmes to other approved institutions of the Council. The foreign university/institution in such cases, shall have to return the entire fee collected from such students to the allottee institutions in which such students are accommodated. Such foreign institutions *shall not be allowed* to open any other centre/institution or enter into a collaborative arrangement in India.

Annual Reports

The Foreign university/institution shall submit an annual report giving details of the number of students admitted, programmes conducted, total fee collected, amount transferred to parent country, investment made, number of students awarded degree, diploma and any such information that AICTE may ask for.

Interpretation : If any question arises as to the interpretation of these regulations the same shall be decided by the AICTE.

The AICTE shall have power to issue any clarifications to remove any doubt, which may arise in regard to implementation of these regulations.

Sd/-
(Member Secretary)

UGC GUIDELINES FOR RECOGNITION OF PROGRAMMES OFFERED BY INDIAN UNIVERSITIES ABROAD

(overall – incorporating the comments from all the members)

1 GENERAL

1.1 Preamble:

The University Grants Commission (UGC), in its tenth five-year plan, has proposed a new activity for the internationalization of Indian higher education. To work out the details of this activity, the UGC had set up a Standing Committee for preparing a Report on the Promotion of Indian Higher Education Abroad (PIHEAD) and to further advise UGC on its implementation.

The UGC has been encouraging Indian Universities to participate in the PIHEAD activity, as part of its efforts for the internationalization of higher education. In addition to offering programmes to a large number of international students on Indian campuses, the UGC has also suggested the possibility of Indian Universities setting up campuses abroad for offering programmes leading to Indian degrees/diplomas to students studying at these campuses. Several Universities have already started work in this direction, signed Memoranda Of Understanding (MOU) with foreign Universities and Institutions for having joint programmes, including offering programmes abroad leading to Indian degrees/diplomas.

In the past, it was mandatory on the part of each Indian University to obtain the clearance of the UGC before signing such MOU. However, in a notification, dated 20th August 2004, the Ministry of Human Resources Development has indicated that there is no requirement any longer for the University to obtain such a clearance from the UGC.

But, the UGC has felt that it is necessary to ensure the maintenance of quality and standard of the programmes offered by Indian Universities abroad, for the degrees/diplomas awarded by them, to be recognized by the Indian system for higher education and/or for employment in the country. For this purpose, it would be desirable that the UGC lays down a set of Guidelines, to be followed by the Universities/institutions interested in such programmes.

This is particularly timely and important now, because of the rapid expansion and diversification of the higher education system in the country and the likely danger of dilution of quality and rigour of the programmes offered abroad, leading to the lowering of standards of the degrees/ diplomas awarded. Therefore, although Indian Universities have the autonomy as well as the necessary expert bodies and mechanisms to ensure quality education being offered abroad and they may be able to evolve their own Guidelines, the UGC has initiated steps for formulating a uniform set of Guidelines applicable for all Universities and Institutions and constituted an Expert Committee for this purpose.

The Expert Committee is of the opinion that while the Indian Universities and Institutions are free to have their own mechanisms for the approval of programmes offered abroad, it would be desirable for the UGC to play a promotional role for maintaining the quality of these programmes leading to the award of Indian degrees/diplomas. The Committee also feels that the UGC could consider the Guidelines framed by it, get them approved and publicize the same widely. This is expected to assist the Indian Universities make use of them in formulating their programmes for the award of degrees/diplomas.

In framing these Guidelines,, the Committee has taken note of the spirit of the notification of 20th August, 2004 issued by the Ministry of Human Resource Development. And the Guidelines are meant to be more of a promotional nature to encourage and help the Indian Universities and Institutions to spread the Indian higher education programmes abroad and enhance their

international image, prestige and visibility The Committee is hopeful that these Guidelines will receive the attention and respect of the UGC and the Ministry of Human Resource Development in the spirit with which they have been formulated.

1.2 Objectives:

The objectives of the Guidelines are to:

(a) maintain the quality and reputation of the Indian higher education system all over the world;
(b) promote collaboration and partnership between Indian and Foreign Universities/Institution in the field of higher education;
(c) systematize the methodology of offering higher education programmes and awarding degrees/diplomas abroad, by following international practices and trends;
(d) assist the developing countries in particular, by making available well educated and trained human resource through relevant on-site educational programmes conducted for them;
(e) enforce responsibility, discipline and accountability in all educational activities involved with degrees/diplomas offered abroad;
(f) ensure that only well developed and reputed Universities / Institutions are allowed to offer programmes for degree/diploma awards abroad; and,
(g) safeguard national interest and the interest of all the stake holders, through a process of overseeing and regular monitoring of the programmes offered abroad.

1.3 Definitions:

In these guidelines, unless the context otherwise requires,

(a) **"Campus Abroad"** means an off-shore campus of the University/ Institution located outside the country, operated and maintained by it as its constituent unit and having its own complement of facilities, faculty, staff and students;

(b) **"Franchising"** means an Indian University / Institution is outsourcing to another University/Institution or a private education provider, tasks like the running of academic programmes leading to the award of degrees/diplomas and/or providing advice, counseling, guidance to its students;

(c) **"Main Campus**" means the campus of the University/Institution at its Headquarters in India, wherein its constituent colleges, departments and major academic, research and related facilities as well as well as faculty, staff and students are located;

(d) **"On Self-Financing Basis"** means meeting the financial needs of the University/Institution from internal sources for the establishment, operation and/or maintenance;

(e) "**Partnership*"*** means a formal arrangement for collaboration or cooperation between an Indian University/institution with another University/Institution abroad;

(f) **"Study Centre"** means a centre established and maintained or recognized by the Indian University/Institution in India or abroad, for the purpose of advising, counseling, guiding or for rendering any other assistance required by the students used in the context of distance education;

(g) **"Twinning"** means an arrangement by an Indian University / Institution with a foreign University / Institution to offer academic programmes in India or abroad towards the award of degrees/diplomas, either individually or jointly, using the resources of both.

2. CONDITIONS TO BE SATISFIED

2.1 Types of Universities/Institution covered:

(1) The following types of Indian Universities/Institutions shall be eligible to offer University level programmes abroad, leading to the award of degrees/diplomas:

(a) Central Universities;
(b) State Universities;
(c) Private Universities (recognized under Section 2(f) of the UGC Act, 1956);
(d) Open Universities;
(e) Deemed to be Universities;
(f) Other institutions given recognition by the Central Government for the award of degrees/diplomas;
(g) Constituent/Autonomous/Affiliated Colleges of Universities; and
(h) Stand- alone institutions authorized by Statutory Authorities, for conducting professional programmes.

(2) Such a University/Institution as under (1) above, shall have the following for conducting programmes abroad leading to degrees/diplomas:

(a) Approval of its Executive Council/syndicate;
(b) A minimum standing and experience of five years;
(c) Obtained accreditation from a national body approved by UGC;
(d) Approval of the UGC in the cases covered in (c), (e) and (g) and in addition, of the Distance Education Council (DEC) for (d), under (1) above;
(e) Approval of the concerned Statutory Authority in the case of (h) under (1) above; and
(f) Approval of the Central/State Government, as the case may be, in all the other cases under (1) above.

2.2 Modes of operation:

The University/Institution may follow any of the following modes to offer its programmes abroad:

(a) **Campus abroad** - Establish off-shore campuses as defined under Section 1.3(a), for conventional or formal, i.e., face to face, delivery of course work and research guidance to meet its degree/diploma requirements,

- *Fully*, i.e., 100% of the credits for the programme being offered abroad; or,
- *Partially,* i.e., the credits for the programme in earlier semesters being offered abroad and students transferred to its main campus in India for the credits required in later semesters.

(b) **Twinning** - Enter into partnership with Universities/Institutions in foreign countries (as defined in Section 1.3(e) and (g)), to use their facilities, but having its own complement of faculty, staff and students for conventional or formal, i.e., face to face, delivery of course work and research guidance to meet the degree/diploma requirements,

- *Fully,* i.e., 100% of the credits for the programme being offered abroad, so as to qualify for the Indian degree/diploma award; or,
- *Partially (method 1),* i.e., the credits for the programme in earlier semesters being offered by it abroad and students transferred to its main campus in India for the credits required in later semesters, so as to qualify for the Indian degree/diploma award; or,

- *Partially(method 2),* i.e., as a twinning programme (as per definition under Section 1.3(g)), with the credits for earlier semesters being transferred to it by the foreign University/Institution and the credits required for later semesters offered by it abroad ***or at its main campus in India*** so as to qualify for the Indian degree/diploma award; or,
- *Partially(method 3),* i.e., as a twinning programme***(as per definition under Section 1.3(g))***, with the credits for earlier semesters being offered by it in India or abroad, followed by their transfer to the foreign University/Institution so as to qualify for their Degree/diploma award.

(c) **Foreign Partner** – Identify a foreign partner University/Institution (as defined under Section 1.3(e), having its own facilities, faculty and staff for conventional or formal, i.e., face to face, delivery of course work and research guidance to the students of the Indian university/Institution abroad to meet its degree/diploma requirements,

- *Fully*, i.e., 100% of the credits for the programme being offered abroad by the foreign partner; or,
- *Partially,* i.e., the credits for the programme in earlier semesters being offered abroad by the foreign partner and students transferred to the main campus in India for the credits required in later semesters, so as to qualify for the degree/diploma awards in India.

(d) **Study Centre** - Establish Study Centres abroad, as per the definition under Section 1.3(f) and provide counseling, guidance, advice and any other assistance to its students receiving courses offered in the distance education mode from its main campus in India, leading to the award of Indian degrees/ diplomas.

2.3 Procedure for approval:

(a) Each Indian University/Institution interested in offering programmes abroad leading to Indian degrees/diplomas shall submit to the UGC its application together with a Detailed Project Report on the proposal, in the prescribed format;

(b) The UGC shall acknowledge the receipt of the application together with the Detailed Project Report and if required, seek any additional documents from the applicant University/Institution;

(c) The application shall be considered by the Standing Advisory Committee of the UGC, which shall meet 3-4 times in a year. The Committee may invite the representatives of the applicant University/institution for a discussion/presentation on the proposal received;

(d) If the Standing Advisory Committee recommends, the UGC may nominate an Expert Committee to visit the main campus of the applicant University/ Institution and assess the compliance of norms and standards in respect of infrastructure and academic facilities to offer programmes for degree/diploma awards and submit a Report to it;

(e) The UGC shall also obtain information on the credentials of the foreign partner, franchisee if any, from the concerned Mission of the foreign country in India and/or from the Indian Mission in the concerned foreign country;

(f) The UGC shall consider the Reports/ Recommendations of the Standing Advisory Committee and the Expert Committee for arriving at its decision on granting of the approval. It is expected that time required for the approval process shall be limited to one year;

(g) The UGC shall issue an appropriate Certificate to the applicant University/

Institution receiving approval for offering programmes abroad, leading to the award of Indian degrees/diplomas;

(h) The certificate issued by the UGC shall be valid for a period of five years, before the end of which the UGC shall conduct a review of the programmes offered abroad for the award of Indian degrees/diplomas for approving the continuation/expansion of the programmes.

2.4 Other requirements to be met:

(a) The Indian Universities/Institutions shall fulfill the minimum criteria in terms of programmes, faculty, infrastructure facilities, financial viability, and others., as laid down from time to time by the UGC and by the concerned Statutory Authorities granting the conduct of programmes in professional subjects in India.

These same criteria shall be followed abroad for offering programmes leading to the award of Indian degrees/diplomas.

(b) The UGC Guidelines/Regulations in respect of Private Universities, Deemed to be Universities and Constituent/Autonomous/Affiliated Colleges issued from time to time, shall be strictly followed while taking steps to offer programmes abroad leading to the award of Indian degrees/diplomas.

(c) Each Indian University / Institution offering programmes abroad leading to Indian degrees/diplomas shall regularly submit annual report to the UGC in the prescribed format and any other related data/information, which the UGC may ask for, from time to time.

(d) If the UGC comes to a conclusion based on the data/information received from the Indian University/Institution offering programmes abroad leading to Indian degrees/diplomas and/or on the review conducted that the functioning of the concerned University/ Institution is not satisfactory, it may give a show cause notice to the concerned University/Institution why the operations abroad should not be closed down.

(e) If the concerned University/Institution fails to rectify the deficiencies, the UGC may take the following steps:

- Refuse permission for grant of visa or withdraw the visa granted to faculty, staff of the University / Institution;
- Prohibit concerned University / Institution to issue any publicity material like, press notes, advertisements, in print or electronic media.

(f) The UGC shall not be involved in any manner in legal, administrative or financial problems in the operations of the Indian University/Institution abroad.

3 GUIDELINES TO BE FOLLOWED

3.1 Indian Universities/Institutions:

(a) The academic/research programmes offered by Indian Universities/Institutions abroad and leading to the award of degrees/diplomas shall have the same standard of education and nomenclature as existing in India;

(b) Autonomous/Affiliated Colleges intending to offer programmes abroad for the award of Indian degrees/diplomas shall obtain prior concurrence of the concerned affiliating University;

(c) The Indian University / Institution shall declare in advance the detailed procedure for admissions, entry level qualifications, the examination pattern and grading and there shall not be any deviations with the prescribed procedures offered in India;

(d) There shall be no distinction in the curriculum, mode of delivery, pattern of examination, conditions for award of degree/diploma and related aspects between the campuses abroad, and those prevailing at the concerned University/Institution in India unless the requirements and conditions abroad, make it necessary to do so. In such cases, the UGC should be kept informed;

(e) Innovation in academic/research programmes including experimentation with different modes of delivery of courses or research guidance, restructuring of programmes or launching new ones, introducing examination reforms and other related activities, shall be allowed, abroad only if the same is well established at the Indian University/Institution;

(f) The Indian University/Institution shall furnish an undertaking that the degrees/diplomas awarded by it to the students abroad are recognized in the concerned foreign country and are treated equivalent to the corresponding degrees/diplomas awarded by Universities/Institutions in that country;

(g) In case the Indian University/Institution is establishing a twinning programme as per the definition in Section 1.3(g), it shall do so only if the foreign partner fulfils the minimum requirements detailed under Section 3.2;

(h) For the conduct of distance education programmes through Study Centres abroad, the Indian University/Institution shall also have a credible system in place, as outlined under Section 3.2;

(i) The Indian University/Institution shall not be permitted to offer any course/ programme abroad, which jeopardizes the national interest of either of the countries involved;

(j) The Indian University/Institution shall submit an Annual Report to the UGC before September 30th (for the previous academic year), in the UGC prescribed format;

(k) For any dispute arising out of the implementation of these Guidelines, arbitration authority shall be the Secretary, Ministry of Human Resource Development, Department of Education, Government of India, and the legal jurisdiction shall be the Civil Courts of New Delhi only;

(l) All the programmes offered abroad leading to the award of Indian degrees/diplomas shall follow strictly the provisions of:

- The UGC Act 1956, as amended from time to time; and
- The Government of India Rules and Regulations issued in this behalf, from time to time;

(m) The Indian Universities/ Institutions already offering programmes abroad leading to degrees/diplomas, shall seek approval of the UGC within six months from the date of issuance of this notification or before commencement of the next academic session, which ever is easier for continuing with the existing programmes.

3.2 Foreign Partner Universities/Institutions:

Each foreign University/Institution shall fulfill the following requirements for entering into partnership with Indian Universities/ Institutions for offering programmes in the concerned country, leading to the award of Indian degrees/diplomas:

(a) It shall have the approvals from its Governing Body and also from its National Government;

(b) It shall have a minimum standing and experience of five years;

(c) It shall have obtained accreditation from a Body/Agency recognized for this purpose in that country;

(d) It shall give an undertaking that the degrees/diplomas awarded in India for the programmes offered under its partnership are fully recognized in that country;

(e) It has its credentials certified by the Indian Mission in that country or by the Mission of that country in India; and,

(f) For the conduct of distance education programmes through its Study Centres it has the necessary facilities and the Indian Mission in that country is satisfied of this and its preparations for taking up this assignment.

4 ROLE, FUNCTIONS AND POWERS OF THE UGC

(a) The UGC shall publicize the Guidelines widely and prescribe formats for making application and preparing Detailed Project Report on the proposal. The UGC shall also prescribe a time frame for the submission of applications, processing the proposal received and the different steps to be taken in the approval process;

(b) The UGC shall constitute a Standing Advisory Committee to consider the applications received from intending Universities/Institutions and to recommend to the UGC the actions to be taken on them;

(c) The UGC may appoint Expert Committees for on-site visits for assessing and reporting on the programmes proposed to be offered abroad, to the main campuses of the intending Universities/Institutions in India, based on the recommendations of the Standing Advisory Committee;

(d) The UGC shall take into accounts the Reports/Recommendations of the Standing Advisory committee and the Expert committees for arriving at its decision on the grant of approval to an Indian University/Institution to offer programmes abroad leading to Indian degrees/diplomas;

(e) As soon as it is decided to approve a proposal based on the above steps, the UGC shall issue a Certificate indicating this to the concerned Indian University/Institution and also issue a press note indicating this; It shall also keep the Government of India, particularly the Ministries of Human Resource Development, Home Affairs and External Affairs as well as the Reserve Bank of India informed of this decision;

(f) The UGC shall also issue an annual press release about all the approved programmes being offered leading to the award of Indian degrees/diplomas in different countries, to keep the public informed of the same;

(g) The UGC Act, 1956 shall be suitably amended to provide the UGC with specific powers to regulate and recognize the programmes offered abroad by Indian Universities/ Institutions, leading to the award of Indian degrees/diplomas.

5 WITHDRAWAL

5.1 Conditions for withdrawal:

If an Indian University/Institution fails to comply with any conditions as contained in the above Guidelines and /or consistently refrains from taking corrective actions contrary to its advice/directions, the UGC, after giving reasonable opportunity to the University/Institution through hearing or after making necessary inquiry as it may deem fit, may withdraw the approval/certificate granted to such University/Institution to offer programmes abroad leading to Indian degrees/diplomas.

5.2 Consequences of withdrawal:

If the decision as above is taken, the UGC shall prohibit the concerned University /Institution to enter into any further partnerships or establish Campuses and/or Study Centres abroad. Degrees awarded in violation of these instructions shall be regarded as unspecified and render the University/Institution to be punishable under the relevant provisions of the UGC Act, 1956, including:

- the revocation of the grant of: approval for offering programmes abroad, leading to the award of Indian degrees/ diplomas;

- Informing the concerned Ministries of the Government of India and the concerned Indian Missions abroad;

5.3 Post Withdrawal

Once the approval is withdrawn, the UGC shall make attempts to reallocate the students undergoing courses of study in these programmes into such or equivalent programmes offered by another University/Institution on a case-to-case basis, wherever possible. In such cases, the University/Institution whose approval to offer programmes abroad has been withdrawn shall refund the entire fees collected from such students to the newly identified University/institutions or to the students concerned, as the case may be.

Necessary compensation shall also be given to the students by the erring University/Institution. Such defaulted Indian Universities / Institutions shall not be allowed to offer further programmes

abroad or enter into partnership arrangements with foreign Universities/Institutions or launch any other *academic activities* abroad.

INTERPRETATION

If any question arises as to the interpretation of these Guidelines, the same shall be decided by the UGC. The UGC shall have the powers to issue any clarifications to remove any doubts, which may arise in regard to the implementation of these Guidelines.

Source: www.ugc.ac.in