CHAPTER-IV

GATS: AN ANALYSIS OF ITS AGREEMENTS AND THEIR IMPLICATIONS ON INDIAN HIGHER EDUCATION

INTRODUCTION

STRUCTURE OF GATS ARTICLES

PART-I (SCOPE AND DEFINITION)

GENERAL OBLIGATIONS AND DISCIPLINES

SPECIFIC COMMITMENTS

PROGRESSIVE LIBERALIZATION

INSTITUTIONAL PROVISIONS

FINAL PROVISIONS

SUMMING UP
Chapter- IV

GATS: AN ANALYSIS OF ITS AGREEMENTS AND THEIR IMPLICATIONS ON INDIAN HIGHER EDUCATION

4.1 INTRODUCTION

The WTOs GATS is the first ever set of multilateral, legally enforceable rules covering trade in continuous liberalization through periodic negotiations. One of the significant features of GATS is that it is effectively irreversible. Once governments have made commitments, they are to all intents and purposes “locked in” and cannot go back from their commitments, or claim exemptions in that area, at a later date. However, governments may be able to modify their scheduled commitments after three years, but they have to compensate all WTO members with substitute commitments, therefore it should be dealt with very cautiously.

The WTO and GATS agreements are multi-disciplinary in nature; they are concerned to many disciplines viz. economics, law (judiciary), polity, geography, science etc. Hence, understanding of WTO and GATS are difficult; due to their complex nature. As GATS is a complex treaty; it does not lay down minimum standards as TRIPS do. Rather, it takes shape through the process of negotiation; means multilateral negotiations of member nations play a crucial role in enhancing trade in services. However, the studying of the GATS articles is prerequisite factor for understanding and making the commitment on higher education sector. In this chapter, WTO’s GATS articles are presented and implications of some of the key articles of the agreements on Indian higher education are analyzed.

4.2 STRUCTURE OF GATS ARTICLES

The chart 4.1 provides structural outlook of GATS articles; the GATS has total 29 articles, which are classified in to six parts. The part-II i.e. General Obligations and Disciplines are usually applicable to all member nations of the WTO.
Chart 4.1
ARTICLES OF GATS†

PART-I
Article-1. Scope & Definition

PART-II
General Obligations and Disciplines

PART-III
Specific Commitments

PART-IV
Progressive Liberalization

PART-V
Institutional Provisions

PART-VI
Final Provisions

† The textual information of each article of the GATS has been taken from the book: Gupta.K.R., World Trade Organization (Text), Atlantic Publishers and Distributors, New Delhi. 2000.
4.3 PART-I (SCOPE AND DEFINITION):

The first part of GATS articles covers only one article i.e. Scope and Definition; which explains about the meaning and scope of supply of services i.e. four modes of supply of services; further it highlights the measures which can be taken by the member nations. Below the article 1 i.e. Scope and Definition’s text is presented and later implication are drawn out.

4.3.1 Article 1- 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.

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.

Implications:

The GATS facilitates for trade by Indian Universities and higher educational institutes to supply their services for all members of WTO and vice-versa. Further the territory of members of WTO becomes a ‘free trade zone’ for supplying the educational services. In this connection, India can take necessary measures/actions to export and import of educational services. The Indian universities and higher education institutions can trade their educational services through four modes of supply viz. Cross border supply, Consumption abroad, Commercial presence and Presence of natural persons. But it is an arbitrary one; means there is no binding on India to commit higher education for all four modes; on the bases of its preferences India can choose the mode for trade in education services.
4.4 GENERAL OBLIGATIONS AND DISCIPLINES:

It is second part of GATS articles; it totally includes 14 articles of GATS and few of them (viz. MFN, Transparency etc.) generally applicable to all member nations; further few articles (viz. Domestic Regulations, Recognition, Subsidies etc) act as protective measures for member nations. Here article-wise a textual explanation is presented and later an attempt has been made to draw the implications of those articles to Indian higher education sector.

4.4.1 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 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.

Implications:

These general obligations apply automatically to all member nations regardless of the existence of commitments. If India tables its commitment on higher education sector to GATS; then it has to treat one’s trading partners equally
and this article insists India for granting Most Favoured Nation Treatment (MFN) to all the members of WTO, means if India allows foreign competition (Foreign Universities and Higher Education Institutions) in higher education sector, equal opportunities/treatments in this sector should be given to service providers from all WTO members. On the other hand, if India decides to exclude any particular member nation from providing a higher education service; then all WTO members are excluded.

Sometime the fake foreign universities may enter Indian higher education sector for exploiting the Indian market. Hence the regulatory bodies of different courses in higher education such as University Grant Commission (UGC), The National Council of Teachers' Education (NCTE), The All India Council for Technical Education (AICTE), The Medical Council of India (MCI), The Dental Council of India (DCI), The Central Council of Indian Medicine (CCIM), The Indian Council of Medical Research (ICMR), The Indian Nursing Council (INC), The Pharmacy Council of India (PCI), The Bar Council of India (BCI), The Indian Council of Agricultural Research (ICAR), etc. should issue their own regulatory mechanism for the entry and operation of foreign institutions in their respective areas.

4.4.2 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 (CTS) 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 of Trade in Services any measures, taken by any other Member, which it considers affects the operation of this Agreement.
Disclosure of Confidential Information (Article III BIS)

Nothing in the 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.

Implications:

Under this article, India should publish/make publicly available of its all Acts/laws /Policies/Programmes/Regulations/Rules/Decisions including relevant international agreements of the higher education sector. The Government of India is required to inform the WTO-CTS of the introduction or amendment of any measures, which affects India’s commitments in the area of higher education. India is required to establish one or more ‘Enquiry Points’ for providing any information pertaining to higher education. In this connection India should be very careful in guarding its sovereignty.

4.4.3 Increasing Participation of Developing Countries

1. The increasing participation of developing country Member 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 Member, 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;

(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.

Implications:

Basically India belongs to developing countries category, it is essential to tap optimum benefits from Article IV of GATS. India is required to strengthen the domestic services capacity, efficiency and competitiveness of its Universities and Higher Education Institutions through access to technology on a commercial basis. It is necessary for India to improve the access of its Universities and Higher Education Institutions to distribution channels and information networks. India is also required to liberalize its higher education market, where it has comparative advantages over others.
This article makes mandatory for developed member nations to establish "contact points"; it helps developing and least developed country members to get information. In this connection, India may collect as much information as possible from developed countries related to their education markets, concerning:

- commercial and technical aspects of the supply of services of their Universities and Higher Education Institutions.
- registration, recognition and obtaining of professional qualifications necessary for exporting Indian education services.
- the availability of services technology in their Universities and Higher Education Institutions.

4.4.4 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. 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.

(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 sub sectors.

(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 sub sectors 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 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.

Labour Market Integration Agreements (Article V BIS)

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration. 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 of the labour markets between or among the parties to 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.

Implications:

Under this Article India is required to eliminate existing discriminatory measures (tariffs, barriers, quantitative restrictions etc) as well as prohibit new discriminatory measures for trade in Indian higher education services. The Government of India has to inform WTO-CTS regarding any discriminatory measures and modified measures. This article widens the higher education market through free movement of higher education goods and services.

Taking advantages available under para 3 of Article-V, India can avail concessions. India also taking advantage of this Article may try to eliminate/prohibit discriminatory measures for trade in services in other member
countries of WTO. Finally, India may produce a document comprising all the discriminatory measures existing in the sector of Indian Higher Education as well as request WTO to produce a country-by-country report of discriminatory measures for trade in education services.

4.4.5 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;

(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 the 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 applied by that Member. 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.

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.

Implications:

Government of India is required to establish judicial or quasi-judicial mechanism for providing prompt, objective and impartial justice. Means, if India has made specific commitment on higher education; it shall ensure that all measures that affect trade in higher educational services are administered in a reasonable, objective and impartial manner. For issuing permission for the supply of service of foreign universities and higher education institutions a reasonable procedure and time frame has to be established; which should be adhered to promptly; the Government of India may follow: qualification requirements, procedures, technical standards and licensing requirement etc. do not constitute unnecessary barriers to trade in services. In one angle this article questions Government of India’s regulating power. As Kaushik Madhulika opined that “The article provides that it must be ensured that “qualification, requirements and procedures, technical standards and licensing are not more burdensome than necessary to ensure the quality of services”. The terms “more burdensome than necessary” and “quality of service” have not been defined anywhere in the GATS,
hence this is one of the Articles that are still ‘under development’. Moreover, there is no clearance about the agency which would determine whether a regulation is ‘burdensome’ or not, and like this the article, puts an inquiry on Government of India’s potential ability to regulate some of the above concerns once the GATS commitments are signed.”

Using Article-VI, India can regulate foreign universities and higher education institutions, which intends to operate in India effectively. These domestic regulations are necessary for promoting objectives of National Education Policies (to attain the aspects of accessibility, quality and equity) and for protecting the public higher education system. Further, domestic regulations control the activities of commercial education institutions and unscrupulous providers in India.

4.4.6 Recognition

1. For the purposes of the fulfillment, 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 county. 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 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

   (c) promptly inform the Council for Trade in Services when it adopts new recognition 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 common international standards for the practice of relevant services trades and professions.

Implications:

This article serves the interest of student communities regarding foreign universities recognition in Indian higher education market; here government of India can act autonomously for recognizing foreign education service suppliers. In this connection Bolashetty S Shripad quoted in his works; the Indian universities and higher education institutions are required to be raised to the level of common international standards and criteria for recognition. The Government of India is required to evolve standards or criteria for; recognizing the educational qualifications/experiences obtained in other countries and licensing or certification of service suppliers of other countries in India.²

The Government of India and other member countries have to inform the WTO-CTS existing recognition measure and state whether such measures are based on agreements or arrangements; and date of adoption of new recognition measures.

Already a substantial amount of work is being done on national and international recognition of qualifications. As Anandakrishnan quoted in his research paper “The UNESCO Global Forum on International Quality Assurance,

Accreditation and the Recognition of Qualification is currently focusing on (recognition of qualifications) this important issue.

4.4.7 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

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3 Anandakrishnan M., "Internationalization of Higher Education: Policy Concerns", paper presented in National Conference on "Internationalization of Higher Education: Issues and Concerns" held at National Institute of Educational Planning and Administration (NIEPA), New Delhi, 2004, pp. 01-41.
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.

Implications:

Under this Article the Government of India is required to restrict, control and harmonize its domestic monopoly service supplying university or higher education institution (public/private) which may obstruct the spirit of competitiveness and also it become contradictory in tune with Article-II of GATS i.e. MFN Treatment. This article affects government supported public higher education institutions; where government is enjoying monopoly power on higher education; consequently it increase the scope for private operators in higher education system. On this issue Nuna Sheel expressed her views that “Strict adherence to the principles of full service liberalization could make abandoning governmental monopolies of higher education an imperative, leading the way to substantial privatization and withdrawal of government support from public institutions of higher education.”

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If Government of India has committed its higher education sector for GATS agreement and later it has provided monopoly rights to particular higher education institution/university concerning the supply of education services, on such circumstances India should bring in notice (about monopoly establishment, authorization and operations) to the Council for Trade in Services within three months, means before its implementation.

4.4.8 Business Practices

1. Member 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.

Implications:

The Government of India is required to recognize and eliminate business practices of any higher education institutions those are not come under article VIII. Because it holds back the competition among institutions and there by it
restrict trade in educational services. In this connection, if any member countries asked information regarding such practices, than the Government of India and higher education institutions are answerable to the objections raised by member countries in this regard.

4.4.9 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.

Implications:

Under this article, the Government of India may evolve the non-discriminatory emergency safeguard measures through multilateral negotiations. It has been quoted by Bolashetty S Shripad in his work i.e. "Such measures may
be implemented within the year 2008, (WTO-GATS enter into force from 2005 in India)."5 Further the commitments of specific sector (e.g. higher education) made by India to WTO-GATS may be withdrawn or modified under the measures taken under X:1 subject to modification of schedules procedure.

4.4.10 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 Article 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.

Implications:

The Government of India and other statutory authorities cannot apply restrictions on international transfers and payments’ for transactions relating to educational services (specific commitments), but restrictions are applied on such transactions of educational services which comes under article XII.

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4.4.11 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 under paragraph 5 shall be the same as the GATT 1994 procedures for periodic consultations with the objective of enabling each 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.

(f) 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.

Implications:

After committing higher education to GATS, if India faces any external financial difficulties or Balance of Payment (BOP) crisis, than it can adopt restrictions on trade in educational services, including on payments or transfers for transactions related to such commitment prior to consultation with WTO-Committee on BOP Restrictions. The restrictions implemented shall be temporary in nature and not discriminate among members; shall not damage to the commercial, economic and financial interests of any other Member; and reliable with the article of agreement of the IMF. And the implemented restrictions and any changes shall be notified to General Council.

4.4.12 Government Procurement

1. Article 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.
Implications:

This article attempts to uphold the ‘sovereignty’ of the Government, the Government of India for its non-commercial use can procure any educational services by enacting laws or regulations. For these procurement by governmental agencies the articles viz. Most Favoured Treatment (MFN), Market Access and National Treatment will not apply, because these are used for governmental purposes and not used in the supply of services for commercial sale.

4.4.13 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; 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.

(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 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 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-resident 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 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, 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.

Security Exceptions (Article XIV BIS)

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. **Implications:**

Under this article, the Government of India can adopt some measures for protecting the interest of nation, public, environment and law etc; subsequently nobody (other members) can question these matters, means article XIV allow for exceptions to be made for measures which are meant to protect public order and morals, to protect individuals, and to check professional misconduct, among other concerns. Thus, regulations and policies which are meant to address public concerns (as discussed in the preceding sections) are exempt from market access and national treatment obligations, subject to the condition that they are used in a non-discriminatory manner and are not used as disguised restrictions on trade in services. Further, the objective (accessibility and equity) of National Education Policy (NEP) can be achieved and finally the Government of India has to inform WTO-CTS regarding all measures taken under this article.

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

**Implications:**

Government of India, all State Governments are required to prepare in detail an exhaustive information of all subsidies provided to schools/colleges/universities/educational institutions and exchange the same with other members of WTO. The subsidies may have distoritive effect on trade in educational services; hence negotiations will be conducted and there members (Government of India) exchange information concerning all subsidies relating to trade in educational services; and take measures to counter trade destructive effect of these subsidies. Further, the Government of India and State Governments would have either to extend the full range of subsidization to foreign affiliates, or cut off these subsidies for domestic institutions. It may lead to fundamental change and far reaching consequences in the system of higher education.

As providing subsidies to local bodies would be considered as barrier to foreign education providers; it alleviates and stops government support (subsidies) for domestic public education institutions. As Nuna Sheel expressed that “It is
hard to think of any nation that does not engage in substantial subsidization of local institutions of higher education".  

4.5 SPECIFIC COMMITMENTS:

This is third part of GATS articles; it includes three important articles of GATS and these articles facilitate the member nations for determining the size of market; where the commits have already made in particular (higher education) service sector.

4.5.1 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. 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.

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

(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;

(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.
Implications:

Under this article, the Government of India can fix and grant the degree of market access to foreign universities/higher education institutions and education service suppliers in Indian higher education sector. This article facilitates India to determine its limitations on market access for higher education sector, hence ‘Market Access’ is subject to one or six types of limitations defined by GATS agreement.

India can use the following types of limitations for determining the modes of supply of higher education services: number of foreign education service suppliers, values of transactions, total number of educational service operations, total number of people that may be employed in a education service sector, limits on participation of FDI and recognition of qualifications. Further, the Government of India may impose particular limitations such as, the foreign universities/higher education providers compulsorily use local partners; voluntary basis entering into and exiting from joint ventures with local or non-local partners will be restricted, putting ownership limitations on joint ventures with local partners etc. Ultimately, Market Access article play crucial role in determining the scope of specific (e.g. higher education) service market.

4.5.2 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 it accords to its own like
services and service suppliers. 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.

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 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.

Implications:

Basically this article applies to those countries, which have made specific commitment to particular sector. If India has made specific commitment on higher education under GATS, than the Government of India should (under compulsion) provide equal treatment for foreign higher education institutions as well as Indian higher education institutions. Differential and discriminatory treatment to foreign educational providers in comparison to domestic educational providers will be unfair and against to GATS. Hence, Government of India has to evaluate the things very cautiously regarding the pros and cons of the article ‘National Treatment’ for higher education sector under the GATS, because critics of GATS apprehended that national treatment article could put education under threat as a ‘public good’.
4.5.3 Additional Commitments

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

Implications:

The Government of India required maintaining a schedule containing ‘its commitments’ under GATS. The Government of India can negotiate the matters, which are affecting trade in educational services and those matters may fall outside the schedule of market access, national treatment, educational qualification, standards and licensing matters.

4.6 PROGRESSIVE LIBERALIZATION:

It is fourth part of GATS articles; it also includes three articles. With the help of these articles members can modify the sector, where they have already made commitment on it with subject to certain conditions and regulations of WTO and GATS.

4.6.1 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 Member 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, including those set out in paragraph 1 of Article VI. 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.
Implications:

This article facilitates India to achieve the progressive elimination of tariffs and other barriers in education sector. While there is no time limit on GATS, Government of India is required to participate in successive and periodical rounds of service negotiations with the aim of achieving progressively higher levels of trade rule liberalization. The Government of India may evaluate carefully the pros and cons of progressive and higher level of liberalization of its educational market as well as prepare strategies to safeguard India’s interests. In this connection, Government of India may employ Expert Team on Education Service Sector to assist and advise the government on entering into commitments under GATS.

4.6.2 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.

**Implications:**

Under this article, the Government of India is required to prepare a schedule specifying the Commitments undertaken by it under GATS.

In case of the schedule of Educational Commitments should contain:

a) terms, limitations and conditions on market access for foreign universities and higher education institutions.

b) conditions and qualifications on national treatment for foreign universities and higher education institutions.

c) undertaking related to additional educational commitments.

d) The date of entry into force of educational commitment.

The writing in this article provides a provision to conflicting measures with 'Market Access' and 'National Treatment'.

### 4.6.3 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.

**Implications:**

There is a provision under this article that, any member nation (Government of India) can modify or withdraw its educational commitment after three years from the date it entered into force and the withdrawn country has to explain the purpose to the Council for Trade in Services before three months of implementation date of modification/withdrawal. As Bolashetty S Shripad quoted that, "The modification/withdrawal process provides for a 'difficult exit route'. The exit from GATS is difficult than entry into GATS." Compensatory adjustments shall be made on a most-favoured-nation basis to affected members. If agreement is not reached among two parties than affected party may refer the matter to WTO-CTS.

**4.7 INSTITUTIONAL PROVISIONS:**

It is fifth part of GATS articles and covers five articles; explains about the facilities (provisions) available for member nations viz. any developing member nation can get technical assistance from 'contact points'; member can solve their

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disputes through dispute settlement body and even member can acquire information regarding higher education from United Nations agencies etc.

4.7.1 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 (DSB) 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. 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. The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.
Implications:

The Government of India can enter into or modify or withdraw any commitment in a manner that does not affect other members of WTO. If any measure/action/step taken by the Government of India affects the interest/benefit of other member, and then under Article-XXII a 'consultation mechanism' is evolved. The WTO-CTS negotiate the two parties and outcome of negotiation will be final and binding on the members. If India entry into GATS, consequently Indian Educational institutions are duty-bound to carrying of obligations and fulfillment of commitments.

4.7.2 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 XXII of the DSU.

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 XXII of the DSU shall apply.

Implications:

Under this article the Dispute Settlement Board resolves the disputes among member nations, the Government of India and other member of WTO are at liberty to enter into bilateral, multilateral or plurilateral ‘Dispute Settlement Understanding’ in case of failure to carry forward the obligations and fulfillment of commitments. If the Government of India incur losses due to the Withdrawal/Modification of commitment by another member regarding education services, DSB resolve the issue.

4.7.3 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.
Implications:

The Council for Trade in Services oversees the implementation of all the agreements relating to trade in services and it carry out the functions of implementation of 12 specified services; where educational services is one of them. If necessitate it establishes its subsidiary bodies for discharging the functions. The representatives from India participate in WTO-CTS and its subsidiary bodies. If Government of India would commits higher education to GATS, than it has to communicate with WTO-CTS regarding the developments and changes, matter of dissatisfaction, losses etc. of higher education sector.

4.7.4 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.

Implications:

India belongs to developing countries category; it can access any type of technical assistance to their educational institutions/universities from WTO Secretariat and Council for Trade in Services (WTO-CTS). The Government of Indian can access assistance and cooperation regarding higher educational services from ‘Contact Points’ which were established by developed member countries.

4.7.5 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.
Implications:

Government of India can access information regarding higher education from United Nations agencies like UNESCO and other intergovernmental organizations through the WTO-General Council; it can pave direction for Indian Universities and Higher Education Institutions by means of arrangements for consultation and cooperation with such agencies.

4.8 FINAL PROVISIONS:

It is last part of GATS articles text; includes definitions regarding technical terms viz. Measures, Supply of Services, Commercial presence, Natural Persons, Judicial Persons etc.

4.8.1 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 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.

**Implications:**

Government of India can deny the benefits of GATS to Educational Institutions of Non-members of WTO and Non-signatories of GATS.

### 4.8.2 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; 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.

(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:

1. is a national of that other Member; or

2. 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 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 percent of
   the equity interest in it is beneficially owned by persons of
   that Member;
(ii) “controlled” with 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;

(i) “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.

4.8.3 ANNEX ON ARTICLE II EXEMPTIONS (Annexes)

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 (CTS) shall review all exemptions
granted for a period of more than 5 years. The first such review shall take
place no more 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.

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. 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.

Implications:

The Annex to this Agreement is an integral part of GATS Agreement; it defines the scope of mode 4 to cover persons who are temporarily working in another member country. It is not applicable to persons who are seeking access to the employment market of another member on a permanent basis or for citizenship purposes. Two categories of service persons viz. independent and self-employed suppliers are covered, who get paid directly by their customers and natural persons who are employed by their service suppliers in the host or home member country in respect to the supply of a service. The annex states that countries can regulate entry and stay of natural persons provided they do not apply these measures in
such a manner as to nullify or impair the benefits granted to members under their specific commitments.

India benefit significantly where it has large pool of skilled and semi-skilled human resource e.g. teachers, professors, researchers, lab technicians etc. can move to oversea countries on temporary bases. But at the same time, these individuals will face some regulations while moving to oversea countries.

4.9 SUMMING UP:

The fore going analysis and implications of GATS articles revels that, articles viz. 'Domestic Regulation', 'Recognition', 'Market Access', 'Subsidies' will provide much scope to government of India for maintaining the objectives of National Policy of Education; indeed protects the interest of student community. The role of domestic regulation has been clearly recognized for ensuring equity, accessibility, consumer protection, standards etc. in provision of education services. Therefore, the government of India should frame/establish strong regulatory mechanism for controlling the entry/operation of fake and sub-standard universities/institutions and it serves the purpose of protecting the higher education system.