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Commercial and Economic Diplomacy

Globalisation has augmented the importance of commercial transactions and economic inter-dependence among countries. Moreover, the emergence of World Trade Organisation (WTO) and increasing regional trade agreements (RTAs) has opened the door for new opportunities and challenges as a result of which countries are increasingly involved in bilateral and multilateral negotiations. These negotiations, in turn, have led to the increased importance of knowledge and skills on commercial and economic diplomacy.

While the focus of commercial diplomacy is on to support the home countries' business and finance sectors in their pursuit of economic accomplishment such as flow of foreign direct investment (FDI), economic diplomacy is concerned with economic policy issues, e.g. work of delegations at standard setting organisations such as WTO, International Standards Organisation, etc. Economic diplomacy is a state activity to influence the process of standard setting of multilateral trade negotiations.

A commercial and economic diplomat is a professional skilled in advancing the interests of an organisation on international trade and investment, in developing agreements on international commercial issues and in resolving policy conflicts among nations over commercial and economic issues. The tools of commercial and economic diplomacy include: promotion of trade and investment; country promotion and its image building process; negotiations; operational document creation; public and private communication analysis and coalition building.

It has been widely accepted that the outcome of any negotiation is fundamentally based on the individual capacity of government officials and diplomats to negotiate. A negotiation could succeed substantially, if it creates a win-win situation for both the parties. However, in comparison to their counterparts from developed countries, representatives from developing countries often do not perform at the same level of efficiency. One of the vital reasons for this capacity gap is relative inadequacy of training in commercial and economic diplomacy.

Considering this gap and absence of training/education on issues of commercial and economic diplomacy in developing countries, CUTS Institute for Regulation and Competition (CIRC) has undertaken an off-the-campus training programme on the subject for Government Officials and Corporate Executives with support from the Department of Commerce, Ministry of Commerce & Industry, Government of India.

Under the current training programme, there would be three workshops each year for three consecutive years (2007-10). CIRC has so far successfully organised training programme for Mid-level Civil Servants and Executives in Jaipur, India during August 22-25, 2007. The next training programme for Junior Level Civil Servants and Executives is scheduled to be held on October 22-26, 2007 and Senior Level Civil Servants and Executives during January 09-12, 2008.

For further details on the project, please visit www.circ.in

In 2006, CIRC organised a pilot training seminar on 'Diplomacy in International Trade' which was attended by representatives from various ministries and departments of Government of India, who found it very useful and requested for a sequel.

What's Happening – An Overview

Building Strategic Skills

Poker should be seen as an educational tool that can build strategic thinking skills, a Harvard Law School's Professor Charles Nesson said announcing a plan to offer poker workshops to schools and universities worldwide.

"It teaches life skills, numeracy, risk assessment, resource management, and a lot about psychology", Nesson said.

He said that he is forming a "global poker strategic thinking society" that will offer poker workshops to schools and community centres, sponsor team poker matches between professional schools, and hold seminars and conferences that explore poker as a means to teach strategic thinking.

Nesson said the society will be started at Harvard, but that chapters could be set up at colleges such as Yale University and Brown University as well as the National University of Singapore. (FE, 21.08.07)



Best Standards

The Central Government is planning to set up seven more Indian Institute of Managements (IIMs) in the country that will cost the Government between Rs 200 and Rs 210 crore, if the land is provided free-of-cost by the respective State Government. The Government is, however, planning to rope in the private sector through public private partnership (PPP) model for this purpose.

"We are working out the cost of setting up IIMs in terms of cost and logistics. The Central Government is also looking at the PPP model to involve the private sector in some ways", Planning Commission member BL Mungekar said.

According to Dinesh Verma of IIM, Calcutta, it would take the Central Government to invest anything between Rs 25-30 crore over an area of 100 acres in a city like Bhubaneswar to build a new IIM. (FE, 31.08.07)

Skill Development Mission

Winds of change blowing across the continents are now influencing the nature of philanthropic activities taken up by *Marwari seths* (business community people) from the Shekhawati region in their home towns back in Rajasthan.

"There is a felt need for skill development. The literacy rates have now reached higher levels and employment generation is the immediate need", said G N Palriwala, head of the family, which runs the Palriwala India Foundation (PIF) and the Seth Madanlal Palriwala Foundation (SMPF).

The proposal is to train 50 percent of the students free. The rest would be charged not for the reasons of making profit but to make the centre financially

self-supporting, self-reliant and acquire excellence in their vocation to enhance their global employability. (TH, 27.07.07)

Educating Rural India

The Rajasthan State Government has opted for PPP model to provide higher education in even remote areas and to overcome the shortage of staff and infrastructure. In this context, the Government has partnered with private companies like Genpact, Infosys, Tally, NASSCOM with an additional budget of Rs one crore.

Realising that there is a need to customise the education system and curriculum to meet the requirements of the industrial and job market, the Government decided to associate private trainers better equipped with the technological know-how, training facilities, and who are aware of market requirements.

Pawan Kumar, Commissioner, Higher Education, said that education has been supply-oriented but it should be demand oriented. (HT, 25.06.07)

Under One Umbrella

The Government is contemplating the creation of a National Commission for Higher Education to bring all forms of higher education under one umbrella.

The Human Resource Development (HRD) Ministry has already moved a Cabinet note for the proposed set-up which would look into issues of access, equity, relevance and quality of higher education.

The proposed Commission may bring under its ambit various regulatory bodies like the Medical Council of India, Indian Council of Agricultural Research (ICAR), Dental Council and All India

Council for Technical Education (AICTE).

According to the proposal, even the University Grants Commission (UGC) would merge with the new entity.

The National Knowledge Commission (NKC) headed by Sam Pitroda had also suggested the setting up of an Independent Regulatory Authority for Higher Education.

(BS, 11.07.07)

Expertise in Real Estate

Universities and educational institutes in India are gearing up big time to meet the increasing demand for trained professionals in the real estate sector. The Indian realty sector is worth approximately US\$12bn and has been experiencing an annual growth rate of 30 percent.

Universities such as School of Planning and Architecture, Guru Gobind Singh Indraprastha University and Centre for Environmental Planning and Technology, (CEPT), Ahmedabad have courses in real estate that are revised regularly for the benefit of students.

With this change, the students will be more exposed to live projects, market trends and industry experts being a part of their visiting faculty.

The large real estate boom has fuelled the need for trained professionals in the industry.

(ET, 17.07.07)

Training Manpower

In order to meet the growing demand of skilled manpower in the retail sector, educational institutions are eyeing northern region for training manpower.

Experts in the industry feel there would be demand of 3-5 lakh trained people in the retail sector in the northern region alone by 2010.

In April 2007, Chandigarh-based Asian Education Society (AES) in association with one of the leading management body, Lingaya's Human and Technological Development Center (LHTDC), Faridabad, set up the region's first exclusive Training Institute in the city for frontline staff and store managers for the retail industry.

The Institute launched a three-month certification programme after which successful students will be placed in retail outfits for eight-months paid on-job training, where after the Institute shall provide them with a one-month refresher course for skills upgradation.

Recently, the Institute has been able to get 100 percent placement for the first batch of the retail certification programme (BS, 02.08.07)

Contracts, Law and Regulation

– Jaivir Singh*

After India initiated its trajectory of liberalisation, many changes have occurred in the regulatory structure. Among other things, a series of regulatory bodies have emerged with the mandate to regulate certain sectors of the economy such as the telecommunications, electricity, insurance and the financial sectors. In approaching these bodies merely as technocratic entities, one loses sight of the point that these bodies govern economic activities within wider structures of governance which include not only a legislative framework but also the law as well.

In understanding regulation more widely it needs to be recognised that the law plays a very important role. A certain tradition of legal scholarship which is being increasingly articulated all over the world looks upon the interaction between the regulated firm and the regulators as being quite indistinguishable from long-term contracting, dominated by predictable problems of unilateral or mutual adjustment over time in response to changing conditions. This class of contracts, referred to as *relational contracts*, are characterised as being 'incomplete' because they cover relations over a long period of time, leaving many gaps which are filled in later by courts in the event of a dispute. (To avoid confusion, the term *relational contract* should be conceptually distinguished from the notion of *implicit contracts*, the latter is a contract, typically discrete, agreed by non-verbal understanding rather than by explicit words and is upheld by norms of custom or reputation.)

Relational contracts and the issues concerning them have a particular resonance with reference to infrastructure projects which have now become very vital to the success of the Indian economy. Such projects typically require large levels of investment and have long gestation periods – the sheer bulk of resources invested and the protracted time span involved imply that there is a good chance that parties might renege on initial agreements, not necessarily because they *want to* do so but *have to*

in response to changes in exogenous conditions. While contractual terms that have been contracted may suffice in some instances to govern the incident, often courts have to fashion the missing terms when such event takes place because the initial contract did not (could not) cover every contingency. Since the efficacy of regulation depends on how these missing terms are fashioned it is important that courts balance concerns of flexibility and compensation when fashioning the missing terms. This is important because these doctrines in turn will influence the direction and tenor of both current and future investment.

In the Indian context, it needs to be acknowledged that in relation to infrastructure projects, the State has typically held a number of property rights which have been increasingly

transferred to the private sector. In this process of 'divestment' or 'PPPs' or whatever is the current appellation under which these interactions are realised, it needs to be realised that if the contracts construed and signed by the State are not perceived as being fair, it undermines the legitimacy of these acts. This is precisely the kind of issue that came before the Indian Supreme Court in relation to the Reliance Company's investment in developing key Indian airports. The Supreme Court (*Reliance Airports Developers (P) Ltd. v. Airports Authority of India (2006) 10 SCC 1*) was obliged to take a position on judicial review of such contracts - it is impossible here to look into the content of the court decision, but rather the point is that the court position on various dimensions (contractibility, nature of contracts, nature of review etc.) of these inherently long term contracts crucially determines key investment decisions in areas where investment is typically non-divisible and thin.

The problems faced by Dabhol Power plant associated with the ENRON is yet another prominent example illustrating the importance of law – as the deal started collapsing, the parties turned to the courts both domestic as well as foreign to provide the 'missing' terms. While again it is impossible to evaluate the efficacy of the courts in resolving the problem, the point here is that courts play a very important role in governing long term commercial relations. The importance of this may not be adequately realised in India particularly among those responsible for framing policies – indeed the term *relational contracts* is largely absent from any Indian bureaucratic understanding or even the Indian legal lexicon.

It is very important to build capacity in this regard by both being aware strategically over subsequent contractual terms when framing large infrastructural endeavours, as well as initiating

a research programme which will develop our understanding of the relations between regulation and contract in the Indian context. There is little or no literature in this regard and some of the basic analytic questions can only arise after preliminary research is performed. The importance of such research cannot be overemphasised because it is important for us to document what Indian courts have been doing in relation to long term contracts preferably with a comparative law perspective. Once this is documented, it is important to appraise the findings using some suitable normative criterion. Subsequently this research will give us the capacity to provide inputs as to how 'missing' terms in an incomplete contract are best filled balancing key social and economic concerns.



In understanding regulation more widely it needs to be recognised that the law plays a very important role. It is very important to build capacity by both being aware strategically over subsequent contractual terms when framing large infrastructural endeavours, as well as initiating a research programme which will develop our understanding of the relations between regulation and contract in the Indian context.

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Event Archive

Building Skills on Commercial and Economic Diplomacy (CDS.02)

CIRC organised a training programme on 'Building Skills on Commercial and Economic Diplomacy for Mid-Level Civil Servants and Executives' in Jaipur during August 22-25, 2007. The Department of Commerce, Ministry of Commerce and Industry, Government of India supported CIRC to conduct the training programme to address the need to fill the vacuum that exists in terms of absence of institutional base in developing countries.

It was attended by 23 participants comprising government officials from various ministries/departments of the Government of India, State Governments, Apparel Export Promotion Council of India and Export-Import Bank of India. Various resource persons having expertise and knowledge in the sphere of commercial and economic diplomacy designed and conducted the intensive and interactive programme.



Setting the Stage for Competition to Flourish

CUTS Centre for Competition, Investment and Economic Regulation (CUTS CCIER) in association with CIRC and with support from the Norwegian Agency for Development Cooperation (NORAD), Norway and the Department for International



Development (DFID), UK organised a series of three-day long National Training Workshops in seven African countries, namely, Mozambique, Botswana, Namibia, Mauritius, Ethiopia, Malawi and Uganda, over the period July-October 2007. These training workshops were organised under the auspices of the project, 'Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa' (7Up3 Project) in partnership with respective country partners.

The structure of the training workshops included – deliberations on theoretical aspect of competition; floor interactions to better understand/identify emergent problems in each country; and hands on exercises (case work) for developing conceptual clarity on the best way of dealing with anticompetitive cases within the jurisdiction of the countries.

For more details, please visit www.cuts-international.org/NTW/index.htm

Calendar of Events

- Panel Discussion on 'The Political Economy of Regulation in India – What do we need to do' in Mumbai, on October 16, 2007. A new CUTS study entitled, 'Competition and Regulation in India, 2007' would also be released by Dr C Rangarajan on the occasion.
- Training Programme on Building Skills on Commercial and Economic Diplomacy for Junior-level Civil Servants and Executives (CDS.03) in Jaipur, during October 22-26, 2007.
- Academic Lecture on 'Current State of the Doha Round of Negotiations' by Ahmed Ghoneim, Associate Professor, Faculty of Economics & Political Science, Cairo University in Jaipur, on October 26, 2007.
- Training Seminar on Strengthening Skills on Commercial & Economic Diplomacy for Senior-level Civil Servants and Executives (CDS.04) in Jaipur, during January 09-12, 2008.



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