CUTS COMMENTS ON THE DIPP DISCUSSION PAPER ON FOREIGN DIRECT INVESTMENT (FDI) IN MULTI-BRAND RETAIL TRADING

Sl. No.	Issues for Resolution	Comments by CUTS International
1.	Should FDI in multi-brand retail be permitted? If so, should a cap on investment be imposed? If so, what should this cap be?	There exists immense potential for multi-brand retail trading to add value to the Indian economy. No wonder many domestic investors in India are already engaged in opening up and running multi-brand retail chains around the country. Therefore, CUTS is of the view that this sector should be opened up to both domestic and foreign entities but with certain conditions. A clearly specified phased approach to full opening (i.e. 100% FDI) with an initial cap of 49% on FDI is recommended. Such a phased approach would facilitate initial collaboration of domestic players with foreign companies through joint ventures, thereby helping to enhance domestic competitiveness in preparation for the full opening to follow. At the same time, the phased approach will also ensure that there is no sudden and significant adverse impact on business by domestic players or domestic employment, and that domestic players are not protected unnecessarily. The mentioned increase in competitiveness will not only help domestic players to compete efficiently in the domestic market but also enable them (companies such as Reliance and Pantaloon) to establish businesses abroad through outgoing foreign direct investment. For instance, in the auto sector where exposure to stiff competition from foreign manufactures has motivated the domestic car industry (such as Tatas) to improve drastically to the extent that it has now become an exporter. Conditionalities, as incorporated in the mentioned phased approach, are important for facilitating a gradual transition that prevents any drastic harm to domestic interests, and helps them to acquire skills and become competitive on their own. However, these should be accompanied by incentives so that the scale of investment by both domestic and foreign players in this sector, characterised by rapid growth in demand, is maintained. This will in turn have a positive impact on India's economic growth and facilitate significant

		generation of employment opportunities. Moreover, these conditionalities should be kept to a minimum as too many of these would stifle economic activity. Wherever possible, desired impacts should be created through incentives rather than conditionalities.
2.	To develop the retail trade in food grains, other essential commodities and multi-brand retail in general, should FDI be leveraged for creating back-end infrastructure? To ensure that foreign investment makes a genuine contribution to the development of infrastructure and logistics, should it be stipulated that a percentage of the FDI coming in (say 50%) should be spent towards building up of backend infrastructure, logistics or agro-processing?	Given that India's retail supply chains are characterised by greater inadequacies in back-end investment than elsewhere, FDI should automatically flow into back-end operations to ensure desired efficiency levels. In other words, the current status of this sector would ensure that FDI would be concentrated in back end operations. On an aggregate, therefore, FDI in back end operations would exceed 50 percent. A rigid condition requiring each and every incoming chunk of investment to follow the mentioned 50 percent rule would rob potential entrepreneurs of the flexibility to respond to specific cases at hand and therefore might have a dampening effect on the growth of FDI in this sector. Thus, instead of the restrictive 50 percent rule there should be incentives and an enabling environment (SOPs, availability of good infrastructure etc) to ensure adequate inflow of foreign direct investment into back-end operations.
3.	It is necessary to encourage only genuine players in this sector and avoid a situation where retail outlets are run through working capital support from financial institutions. Should a minimum threshold limit for investment in back-end infrastructure logistics be fixed? If so, what should this financial threshold be?	It is desirable that each retail enterprise be characterised by a minimum level of back end infrastructure. However, such thresholds should be specified keeping in mind the scale and type of the enterprise being considered, as needs for back end infrastructure might vary.
4.	To develop our rural sector, should conditionalities be put on the FDI funded chains relating to employment? For example, should we stipulate that at least 50% of the jobs in the retail outlets should be reserved for the rural youth?	There is no need for imposing this condition as the urban informal sector is a reservoir of labour that has migrated from rural areas. Adequate information about availability of jobs coupled with the usual training would ensure that rural youth needing employment are provided a large number of jobs.
5.	Similarly, to develop our SME sector through local sourcing, should we stipulate that a minimum percentage of manufactured products be sourced from the SME sector in India?	A minimum cap or a percentage can be fixed for local sourcing of products manufactured by SMEs, as it will certainly help the domestic manufacturing industry. And this policy should be consistent with the “local content requirements” of the WTO Agreement on Trade Related Investment Measures.

		Further, the Government should also take necessary steps to make SMEs more efficient and be able to maintain the standards (quality, safety, HR, etc) and as a result, the demand to source from SMEs would automatically rise.
6.	How best can small retailers be integrated into the upgraded value chain? Can they be provided access to the logistics/supply chain set up by the FDI funded retailers? Should it be stipulated that a minimum percentage of the latter's sales should be made to retailers through special wholesale windows?	A requirement for a minimum percentage of FDI funded retail sales to be made to small retailers is not needed. Estimates show that organised retail accounts for only a small part of the retail market in India and this market would grow at a rapid pace in the future, thus allowing both organised and unorganised retailers to grow and prosper. As the retail market grows the distinctive characteristics of small retailers would ensure that market shares do not diminish in absolute terms and in fact grow at a health clip – easy credit to customers, home delivery, personalised treatment etc. With the passage of time, some small retailers with the required appetite and inclination can become franchisees of large retail chains. However, there is a need for the sector to evolve on its own, albeit at the same time benefiting from properly formulated incentives, rather than to control its transformation.
7.	As a part of a calibrated reform process, should foreign investment for such stores be initially allowed only in cities with population of more than 10 lakhs (2001 census)? As there may be difficulties faced with regard to availability of real-estate in such cities for setting up such ventures, should an area of 10 kms around the municipal/urban agglomeration limits of such cities be included within the definition of the city?	FDI funded retail trading stores should be allowed to be opened up in all areas without any stipulation regarding minimum population. The argument is based on the principle that the entrepreneur would know better, where to open the store. However, such obligations should be imposed on all retail chains and not only on FDI funded ones. Further, the definition of agglomeration limits to be included within the definition of the city should be more than 10 kms.
8.	Will any of the conditionalities mentioned above be inconsistent with our commitments under the agreement on TRIM at WTO? If not, to ensure national treatment, can such conditionalities be extended to all retail chains in India above a certain size? Will such extended conditionalities be consistent with Article 301 of the Constitution?	Consistency of conditionalities mentioned above with TRIMs and other WTO Agreements should be determined by appropriate national government agencies. Conditionalities should be carefully worked out by examining "special & differential treatment" provisions of various WTO agreements (particularly the TRIMs Agreement) so that "exceptions and exemptions" (particularly those related to the national treatment clause of the Marrakech Agreement establishing the WTO) are consistent with the WTO acquis.

		Such conditionalities will not violate Article 301 of the Indian Constitution (freedom of trade/commerce) as long as "public interest" is clearly defined.
9.	What additional steps should be taken to protect small retailers? Should an exclusive legal and regulatory framework be established to protect their interests? Is a Shopping Mall Regulation Act required? Does this require intervention at national level or should this be left to the States?	An exclusive legal and regulatory framework (Retail Development and Regulation Act) is needed for the retailing sector as a whole and should not be limited to protection of small retailers. The law to be enacted should address the sector in a holistic manner covering all forms of retailing - wholesale, organised and unorganised, cash & carry, and trading through franchise agreements. There should be an overarching law at the Centre and state governments should enact state-specific regulations by taking local conditions and factors into account. Further, there should be legislative oversight of regulatory accountability. Given that the Indian Competition Act, 2002 has been adopted, the Retail Development and Regulation Act should not cover anti-competitive practices, which would be best handled by the Competition Commission of India. Further, it would be important to articulate the role, responsibilities, operation, etc of the Retail Regulator, so as to avoid regulatory capture and turf issues.
10.	The present public distribution system provides a valuable safety net to vulnerable sections of society. To ensure the integrity of the PDS system is not weakened and buffer stock is maintained at the desired level, should Government reserve the right of first procurement for a part of the season or put in place a mechanism to collect a certain amount of levy from private traders in case the level of buffer stock falls below a certain level?	Support prices that are significantly higher than marker prices would ensure adequacy in government purchases and buffer stocks. Any forced procurement would have a dampening effect on production incentives and therefore should be avoided.
11.	How should compliance be ensured with the above stipulations? Should a centralized agency, to be nominated by the State Governments concerned, be empowered to grant permissions to every outlet to be opened? The onus of proving compliance with these conditions could rest	As mentioned, there is a need for adoption of a Central Law (Point 9). Further, it is suggested that the states should develop single-window clearance mechanisms, under the Retail Regulator, by which potential investors in the retail sector can obtain all necessary licenses and permits for developing a

	with the concerned retail chain. The chains could submit an annual statement to such State Government agency providing proof of compliance. Should this agency be empowered to monitor compliance of the present cash and carry outlets too?	retail chain. This will help to streamline the process and attract better investments.
12.	The penalty for non compliance could include cancellation of approvals as well as denial of future permissions for such activities. What additional penalties could be levied? Should civil penalties be imposed? Or criminal? Or both?	Penalties for non-compliance should inherently be civil in nature and not criminal.