



Essays in honour of Pradeep Mehta

Editors **Nitin Desai • Rajeev D. Mathur**

## Growth and Equity



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*Editors*

Nitin Desai

Rajeev D. Mathur



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# CONTENTS

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<i>About the Editors/Contributors</i> . . . . .	9
<i>Foreword</i>	
C. Rangarajan . . . . .	21
<i>Preface</i>	
Vijay Kelkar . . . . .	25
<i>Overview</i>	
Nitin Desai . . . . .	27

## I

### **Trade and Development**

1. Coherence and International Cooperation on Trade	
BERNARD HOEKMAN . . . . .	39
2. Who Killed Tariffs? Modern Trade	
BIPUL CHATTERJEE . . . . .	45
3. The 21 <sup>st</sup> Century's Global Ethical and Institutional Deficits: How to Transform Darkness into Light?	
JEAN-PIERRE LEHMANN . . . . .	51
4. WTO: Building a Global Trading System for the 21 <sup>st</sup> Century	
PASCAL LAMY . . . . .	57

5. LDCs and the International Trade:  
How Inclusive is the Engagement?  
RATNAKAR ADHIKARI . . . . . 65
6. Pradeep S. Mehta and the Crisis of Multilateralism  
RUBENS RICUPERO . . . . . 73
7. Transforming South Asia  
SHIVSHANKAR MENON . . . . . 81
8. Trade and Global Public Goods  
T.N. SRINIVASAN . . . . . 89

## II

### Competition and Economic Regulation

9. Competition Law: A Case Study  
and its Implications  
ALLAN FELS . . . . . 93
10. Building a Global Civil Society Infrastructure  
ALBERT FOER AND NIGEL BARRELLA . . . . . 101
11. Pradeep Mehta: The Indefatigable Fighter:  
Potash as Symbol of What Can Go Wrong  
and How to Go Right  
ELEANOR M. FOX . . . . . 105
12. Competition and Competition Policy  
in a Globalised World  
FREDERIC JENNY . . . . . 111
13. Regional Cooperation among Competition Agencies  
JOSEPH WILSON . . . . . 115

14. Law and Economics	
NITIN DESAI. . . . .	121
15. Practices of Consumer Protection in Perú: Selected Issues in Honour of Pradeep Mehta	
SANTIAGO ROCA . . . . .	125
16. The Future Regulatory Architecture in India	
S.L. RAO . . . . .	135
17. Regulatory Independence: The Indian Arrangement	
T.C.A. SRINIVASA-RAGHAVAN . . . . .	143
18. Regulation of Microfinance Institutions	
V.S. VYAS . . . . .	149

### III

#### Governance and Other Issues

19. The Case for Closer Cooperation between India and the OECD	
ANDERS AHNLIID . . . . .	155
20. Reshaping Institutions, Shaping the Future	
ARUN MAIRA . . . . .	161
21. Institutionalisation of Public Private Partnership (PPP) Process in the Government	
ARVIND MAYARAM . . . . .	165
22. Pradeep: A Big Fish in a Small Pond	
ASHA BHATNAGAR . . . . .	171



23.	The Indian Health Sector: Providing Choice, Competition, Efficiency and Finance	
	BIBEK DEBROY. . . . .	177
24.	Urbanisation Challenge in India	
	KAMAL NATH . . . . .	185
25.	Power Generation and Distribution	
	KISHORE P. RUNGTA. . . . .	191
26.	The Future of Globalisation in an Era of Financial Crisis: Essay in Honour of Pradeep Mehta	
	MARTIN WOLF. . . . .	195
27.	Building Indian Businesses: A Reflection	
	RAHUL BAJAJ . . . . .	201
28.	Stop Road Accidents Before They Stop Us	
	RAJEEV D. MATHUR . . . . .	207
29.	A Consumer Agenda in the 21 <sup>st</sup> Century	
	RHODA KARPATKIN . . . . .	213
30.	Balancing Effectiveness and Voice in Global Governance	
	ROHINTON P. MEDHORA . . . . .	219

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## Foreword

When Pradeep Mehta founded Consumer Unity & Trust Society (CUTS) 30 years ago, issues such as consumer protection and welfare, trade and development and competition and economic regulation were still in their infancy: consumer activism was discernible but it lacked an analytical approach. CUTS, through an emphasis on both scholarly work and advocacy measures, embarked on a mission to promote social justice and equality but not at the expense of economic growth and development. It is this vision of a dynamic egalitarian society which has driven Pradeep's work in several diverse economic policy domains such as international trade, investment, development, competition and consumer protection.

He has combined his scholarly achievements with lasting contribution as a policy maker. Under his leadership, CUTS influenced the content and implementation of the new competition law and policy in India. He was a member of the Government of India's Advisory Committee on National Competition Policy set up to draft a competition policy statement for India and also advised the Planning Commission as a member of a working group on National Competition Policy, which was captured as a recommendation in the 11<sup>th</sup> Plan policy document. A draft National Competition Policy is now in place and a Competition Act has been passed.

Pradeep's work in the area of competition and regulatory policies has been recognised both nationally and internationally. For that, he has also been an Adviser and a Visiting Scholar to the University of Manchester and Loyola University, Chicago, where wide spectrums of developed and developing country competition

regimes are studied and policy responses emerge. He has also been awarded the 4<sup>th</sup> M.R. Pai Award in recognition of his crusade on competition law and policy. But this is not the only subject of his specialisation. Trade and investment policies are among other subjects where he has a name. It is therefore, that several intergovernmental organisations such as OECD, WTO, World Bank, UN-ESCAP and UNCTAD have commissioned research on a variety of economic policy issues to him and he has spoken at their platforms on numerous occasions.

My close encounter with Pradeep began in 2005, when he approached me to take up the position of President of the Governing Council of CUTS Institute for Regulation & Competition (CIRC) that he had then conceptualised under the aegis of CUTS, I had no hesitation in accepting his invitation. CIRC was founded with the aim of filling the prevailing gaps and enhancing knowledge on the interstice of law and economic. It was during this period that I had the occasion to work with him closely.

I found that through his practical and scholarly work, Pradeep strove to highlight the importance of economic liberalisation coupled with safety nets such as protection of approach that maintains a correct but sensitive balance between consumer interests and the need for competition as an incentive for producer participation, job creation and economic growth.

No wonder that Pascal Lamy, Director-General of the World Trade Organization invited him to join the High Level Stakeholder Panel on the Future of Trade in 2012. As the only civil society representative in a 12 member group, and the only Indian, he had made India proud.

He brought to CIRC the experience of CUTS, of its bandwidth of engagement in several areas of public interest which transformed it as one of the most powerful think-tanks and mobilising agents in India and arguably, the world, on the issues of liberalisation coupled with safety nets. He has been decisive in supporting and championing the cause of both consumer interests and business groups whenever that was in the best interest of the Indian economy and society.

It is, therefore, a fitting tribute to Pradeep that his colleagues are bringing out a Festschrift on his 65<sup>th</sup> birthday this year. The contributions reflect and represent, “The life-work and vision of Pradeep seeking to enlighten and bring about positive change.”

To conclude, I wish Pradeep well in his pursuit to balance the interests of diverse stakeholders while working towards his vision of a just and dynamic society.

— C. Rangarajan  
*Chairman*

Economic Advisory Council to the Prime Minister





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## Preface

I was delighted to learn that senior colleagues of Pradeep at Consumer Unity & Trust Society (CUTS) conceived publication of a Festschrift in his honour on the occasion of his 65<sup>th</sup> birthday falling in April 2013. When approached by them to write a Preface for the same, I happily agreed having known Pradeep for over two decades.

It is to Pradeep's credit that he anticipated and visualised the role that non-government organisations (NGOs) would be called upon to play three decades back in 1983-84 when he, with some friends, founded CUTS. In those early years, there were few NGOs and fewer that worked on the critical areas of public policy that Pradeep chose. It was a choice in which he excelled in subsequent years as he nurtured CUTS to become one of the finest think-tanks in India.

The early part of the 1980s witnessed hectic economic activities globally and set the tone for large-scale reforms that were to follow in the next decade. In fact my first interaction with Pradeep was sometime in early 1990s, when I was serving as Director of the International Trade Division in UNCTAD. I was very pleased to have made his acquaintance, and to see his understanding and spirit in wanting to dive into deep waters of international trade and development issues, in the background of the ensuing World Trade Organization (WTO). By recognising these facts, Pradeep gave direction to CUTS' work in a holistic manner.

In doing so, the genesis of Pradeep's thought process can be found in the importance of communication in influencing the political economy of growth and development. The innovative idea of producing a monthly wall newspaper in Hindi called *Gram Gadar*

(Village Revolution) that informed the rural folk of Rajasthan with critical analysis of what the government was doing to improve their standards of living, is perhaps the only one of its kind that contributes substantially towards the need for an institutional voice.

This pioneering initiative of Pradeep proved to be a trigger of what was to follow in terms of the growth of CUTS. Starting from individual to an institutional approach to addressing consumer grievances and protection, CUTS began work on a range of allied issues—women’s empowerment at the grassroots; road safety; governance and accountability; competition and regulatory issues; better understanding of the emerging international trade regime and its implications for the developing countries, etc.

The work of CUTS under the direction of Pradeep is highly credible as it rests on three pillars, namely, social relevance, research and advocacy. To quote Pascal Lamy, distinguished Director-General of WTO, “...thanks to continuous high quality research and effective networking and advocacy, CUTS has grown into a highly respected and internationally recognised outfit. The WTO too has benefitted from CUTS’ knowledge of the trade challenges and limited capacity of developing countries.”

I am happy to see that eminent contributors to this Festschrift reflect in no small measure, the wide range of work that Pradeep has been pursuing. This is a rich collection of analytical essays penned by those who have been closely associated with Pradeep, worldwide.

The essays have been appropriately organised into three sections dealing with trade, competition and regulation, and governance and other issues. Pradeep and CUTS will certainly take these into account while detailing the agenda of work in years to follow.

I join the staff of CUTS, the contributors to this Festschrift and others in recognising Pradeep’s work and wish him sustained energy to carry on many more years of outstanding work.

— Vijay Kelkar  
*Chairman*  
India Development Foundation

NITIN DESAI

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## **Overview**

From the time the Consumer Unity & Trust Society (CUTS) was set up 30 years ago to now, Pradeep Mehta has worked tirelessly to realise the goal embedded in the mast head of the society, “Value for People”. He has responded to the changing nature of this challenge by moving beyond the classical agenda of consumer protection to a broader view of consumer rights and extended the work of CUTS to the policies required to promote competition at home and open trade regimes globally. This Festschrift is a recognition of this pioneering work by a group of eminent contributors, who themselves have made great contributions in these areas. The contributions are grouped in three sets dealing with trade, competition and regulation, and governance policies.

### **Trade**

The consumer is affected not just by the risk of misinformation or outright cheating, the usual fears in everyday concerns about consumer protection. The consumer can also be denied access to globally available goods at fair prices if trade policy, driven by sectional protectionist interests, puts up tariff and non-tariff barriers. However, the agenda for open trade is much more complex than the removal of trade restrictions and tariff reduction. This is reflected in the range of contributions to the Festschrift.

The context for the contributions is the present parlous state of the world economy. Jean-Pierre Lehmann’s anguished plea for a global ethic points out the so-called advanced economies turning sour in the autumn of 2008, the crisis in the Eurozone, the high joblessness in the US and Japan’s failure to recover from its lost

decade. Even in the emerging economies, he argues, the Brazilian economy remains in doldrums, India is mired in political and social quicksand and China seems to be tottering economically with social unrest. All the key global agenda engines are stalled: trade, climate, food security, poverty, IMF reform, etc.

Given this context, the trade agenda is inevitably complex. Pascal Lamy starts from the observation that the expansion of global value chains has led to a complementarity between exports and imports as well as that between goods, infrastructure and support services. He draws attention to emerging issues like relationship between trade and climate change, exchange rate policies, food security, energy policies, competition and investment are becoming more evident. While some of them have been on the WTO agenda, their implications for the multilateral trading system are taking new forms as more challenging and complex links emerge leading some observers to wonder whether the WTO should step up its engagement on the future structure of global governance.

The growing complexity of the trade agenda has focused attention on the need for policy coherence. Bernard Hoekman in his piece on the subject argues that trade reforms often need to be accompanied by complementary or 'flanking' policies, which, since such policies often require budgetary resources, raise questions on the ability of governments to finance associated costs of moving to a more open trade regime from a coherence perspective. Hoekman also stresses the connection between trade and development and pleads for greater coordination between development aid agencies and WTO.

Governments have committed themselves to the trade liberalisation agenda. But mercantilism is never too far away and the urge to give in to special interests and protect by subterfuge is never too far away. Bipul Chatterjee's contribution argues that, given the low levels of applied tariffs, it is no longer relevant to replace the trade-distorting effects of tariffs through other means, such as, manipulation of exchange rate regimes and camouflaging subsidies in such a way as to evade detection or be non-actionable in terms of relevant WTO rules. Such non-tariff measures (NTMs)

are perceived as being less about shielding producers from import competition and more about attainment of public policy objectives.

Regional trade agreements and preferential trading agreements (PTAs) are becoming more significant in determining trade flows. Pascal Lamy, the custodian of the global multilateral trading system, seems less concerned than one would expect. Shivshankar Menon deals with the more specific issue of South Asian trade cooperation. He recognises that official figures understate the real extent of trade. But the central point of his thesis, relying on a CUTS study, is that the gains from freer trade in the region could be quite substantial. Rubens Ricupero, acknowledging the role of Pradeep and CUTS for the support provided to the multilateral approach, gives a perspective from Brazil based on a research conducted by the Centre for the Study of Integration and Development (CINDES) in Rio de Janeiro by examining the main factors of Brazil's multilateral trade agenda.

Ratnakar Adhikari deals with the impact of the trading system on least developed countries (LDCs) and argues that the continuing marginalisation of LDCs can be ascribed to two factors: a high content fuels and minerals in the LDCs' exports and a high level of export market concentration of the LDCs. He proposes that they develop vertical integration and manufacture inputs they require in the production of exportables. Similarly, for a greater penetration of international market, it is also required that LDCs organise their production process adhering to global standards and establish testing and accreditation facilities.

T.N. Srinivasan's piece is a paean of praise for Pradeep Mehta and commends his willingness to listen to others and asserts that the multilateral trading system and its overwhelming majority of participants namely, the developing countries, need Pradeep and CUTS now more than ever, a sentiment with which one can heartily agree.

## **Competition and Regulation**

An open rule-based trading system that promotes competition across national boundaries will remain incomplete unless

competition is encouraged and protected within each country. CUTS under the leadership of Pradeep had seen very early the close linkages between the consumer interest, competition and independent regulation. Besides taking up the advocacy for a modern competition law and helping draft the Competition Act, CUTS understood how opening of the Indian economy also involved competition and the relevance of the WTO for the country.

S.L. Rao's contribution bemoans the multiplicity of regulators—many being retired bureaucrats—who remain subservient to the opinion of ministers and bureaucrats in service. Few of them are independent. While creation of other regulatory bodies is being considered, the experience with those already created is being ignored with no attempt to introduce accountability or to do away with bureaucratic capture. He sees the future shape of the electricity regulator as a model where regulators will no longer be trying to improve management, information, etc., but will be promoting trading and developing markets.

T.C.A. Srinivas Raghavan's piece tries to deconstruct the notion of independence and asks independence from whom? He argues that the core governing imperative in a developing country democracy is that people cannot be excluded from consuming something because they are unable to afford it except the obvious luxuries. The eventual responsibility for this falls upon the government and the Parliament and not those charged with delegated legislation. He distinguishes between institutions created by the Constitution and those created by the Parliament. While those created by the Constitution are fully independent, the same is not true of the latter. Institutions created by administrative fiat report to the government through the minister and tend to be the least independent. Resolving conflicts amongst and between these three will tax the country's ingenuity greatly. But he expresses confidence that India will work out a unique model that will become a template for other democracies.

V.S. Vyas focuses attention on microfinance institutions (MFIs). Till very recently, community based not-for-profit MFIs were dominant but have now become secondary with for-profit MFIs surging ahead. While this is not objectionable, serious complaints have led to a growing demand to bring them under the orbit of

some regulator. The complaints broadly fall in three categories: charging usurious rates of interest; indulging in malpractices and using coercive methods of recovery. All over the country, moneylenders were ubiquitous with similar problems of high interest rates and draconian recovery methods. The MFIs have to prove themselves superior on both these counts. His answer takes the form of a decentralised state-wise regulatory regime with a two-tier MFI ombudsman structure and a set of norms developed by Reserve Bank of India (RBI) or Securities and Exchange Board of India (SEBI).

Competition policy normally focuses attention on the domestic market. But with globalisation and the intermeshing of the domestic and international economy not just through trade but also through investment, competition law authorities have to consider the impact of what may be happening in another jurisdiction on competitive conditions in their home market.

Frederic Jenny argues that in spite of the elimination of competition (in addition to investment and transparency in government procurement) from the work programme of the WTO since 2004, the idea that there is a need to ensure that globalised world markets remain competitive and that a multilateral competition policy is a necessity has not gone away. Proliferation of bilateral and regional agreements with competition clauses also show that nations, including a number of developing countries, are increasingly becoming aware of the link between trade and competition. Further, the focus of competition law enforcement in developed countries shifting to enforcement against international cartels, led the policy makers to understand the costs such cartels can impose on the developing countries. He believes that the distrust of developing countries towards competition policy and law enforcement has thus abated and the exploration of the issue of trade and competition policy in the WTO, which was considered a hindrance to the completion of the Doha Development Round in 2003, may now become the best hope to save the Round.

Joseph Wilson's contribution on regional cooperation begins from the proposition that with globalisation, national markets are being transformed into global ones that have undermined the reach



of national competition agencies to effectively monitor and arrest transnational anticompetitive practices, which are flexible and take advantage of favourable conditions prevailing in the host countries. He gives several examples of transnational cooperation amongst competition authorities and proposes that competition agencies in a naturally contiguous region should develop a network to share experiences on a regular basis to address competition issues specific to that region.

Non-governmental organisations have played a most valuable role in the formulation and enforcement of competition and CUTS itself is a sterling example of this. Allan Fels highlights some characteristics of competition law in his contribution. The aim is to draw attention to the links between its core elements.

Albert Foer and Nigel Barrella, in their contribution focus attention on partnerships across national boundaries amongst these NGOs and propose an eventual goal of an international competition advocacy organisation which would be a virtual network of experts on the subject from around the world who can forge many partnerships with consumer-focused NGOs. They hold that when competition advocacy becomes a part of the civil society in every market-oriented country, optimal functioning of the competition authorities would be ensured.

Eleanor Fox's contribution highlights the significance of the international dimension in the case of potash, a nutrient essential for agriculture, which is supplied mainly by three countries that operate as a cartel, which now is being challenged in US courts under anti-trust legislation. She argues for regional cooperation to prosecute the cartelists. Santiago Roca's contribution on consumer protection in Peru draws attention to fact that the competition authority there has instituted in its verdicts the guardianship of the so-called 'reasonable consumer.' Many 'non-reasonable' consumers have been left out under the pretext of 'diligence', i.e., consumers should know and understand what they buy. This is unreasonable in a country with low literacy, long working hours, inability to read dense contracts, etc., and severely 'unprotects' consumers from producers, a point that is particularly relevant for India. Consumer

protection is about protecting the vulnerable consumer. For this, an improved institutional and administrative mechanism is needed.

Nitin Desai's contribution points out that competition regulation lies at the intersection of law and economics and hence, requires an understanding of legal principles by economic policy makers and of economic principles by judicial officers.

## **Governance and Other Issues**

Trade and competition policy are not the only policies that affect consumer welfare. A whole range of other policies are equally relevant and the discussion about good governance is an effort at looking at broader range of policies from that perspective. This orientation is the basis for Arun Maira's contribution on reshaping institutions. He argues that the real issue, which is the ineffectiveness of the country's programmes to improve education, health and social infrastructure. Institutions and organisations are the machines and pipes that convert money into results and must be redesigned for better outcomes for the citizens. According to him the solution is not only the government, or the market or the community—good institutions for managing shared resources require blended capabilities—but public-private-people partnerships.

Bibek Debroy's piece on health care picks up the theme of public participation. He argues that inefficient use of already low levels of public financing coupled with prohibitively expensive, substandard and often unregulated private health care give rise to unethical practices and suboptimal outcomes. The existing regulatory framework also does little to ensure value for money or in ensuring equity. The solution, according to him, lies in making the health care delivery more consultative and inclusive. This can be achieved through strengthening of urban local bodies, increasing users' participation through institutionalised audits of health care service delivery for better accountability and by educating and empowering civil society organisations for greater transparency.

The theme of public private partnerships (PPPs) is picked up in several other contributions. Arvind Mayaram's contribution starts from the premise that PPPs present the most viable option for

attracting private capital which has to provide 50 per cent of the trillion dollars of infrastructure investment required over the next five years. He recognises the constraints in terms of financing and management capacity, among other things, public resistance to PPPs seen as another form of privatisation and the fear of profit motive driving up cost of delivery of services.

Kamal Nath's contribution on urbanisation also counts on PPPs to address the needs of urban infrastructure. He commends the governments multi-pronged strategy which aims at providing support for development of physical infrastructure as well as promotion of reforms that would help strengthen municipal bodies and facilitate better services on self-sustaining basis. He supports environmentally sound and participatory approaches and commends compact, transit-oriented, walk-to-work land use including neighbourhood schools, streets and amenities that cater to everyone and the need to take the citizens into confidence in the matter of determination of levels of user charges.

A closely related issue is examined in Rajeev Mathur's piece on road accidents. He points out that one in every 10 road death across the globe is reported from India and every sixth road crash in the world happens here, despite it having only one per cent of the global vehicle population. Referring to an earlier study by Pradeep Mehta, he asks for a higher priority for road safety in infrastructure planning.

A key area of infrastructure, power generation and distribution is examined in Kishore Rungta's contribution. He points out that for growth in the gross domestic product (GDP), power is a prime necessity and if India is aiming at a GDP between 8-9 per cent per annum, then a serious reform in generation and distribution of power will be needed. Recognising the continuing dependence on coal-based thermal power, he sees coal availability and environmental clearances as the prime constraints. He also emphasises the hydro potential in the territory of India's Himalayan neighbours and calls for a greater effort at tapping this source.

Rahul Bajaj's reflection on building a business in India argues that India is in a state of transition and to succeed businesses need

to anticipate and create the future by recognising the signals that indicate the shape it will take. He points out that Indian companies are being transformed from being focused on the domestic market to having a large presence outside the country. He describes how his company, Bajaj Auto has met the challenge.

Three contributions focus on certain aspects of global governance. Rohinton Medhora focuses on the emergence of the G-20 and stresses that it must balance twin imperatives—to be broadly representative of the global community yet efficient in decision-making and implementation. The gap in representation of one-third of the world's population needs to be addressed and he puts forward several suggestions on how this could be done through constituency representation or the participation of regional institutions. Anders Ahnliid argues the case for closer cooperation between India and the OECD.

Martin Wolf's piece on the future of globalisation argues that the developed world is going to be a weak market for the indefinite future and advises businesses of the world to go south. He believes that the contained depression will turn into an actual one and that there is a substantial chance of severe protectionist pressure in the high-income countries which is likely to affect not just trade but also immigration and perhaps even willingness to export technology. He believes that the high-income countries will be unable to provide positive leadership to the world economy and looks to the large emerging economies to fill the gap.

Two contributions in this section bring us back to the origins of CUTS and Pradeep Mehta's role as a champion of consumer rights. The consumer interest often gets ignored in the formulation and practice of industrial and trade policy. Sectoral and corporate special interests tend to sway policy makers far more. Yet, the primary justification for promoting competition and open trade is the ultimate consumer interest. Rhoda Karparkin's contribution to the festschrift highlights the rights-based agenda that the consumer movement must serve and how it needs to build coalitions with other movements like the ones that focus on environmental protection. Asha Bhatnagar gives a vivid account of the journey that Pradeep and CUTS have made over the past 30 years.

The broad message that comes from the contributions in this volume is the importance of open global trading systems, competitive and contestable markets domestically, coordination of national and global action on this, effective partnerships and representative global governance. A thread that runs through the contributions is the importance of participatory citizenship and civil society activism. These are the areas in which Pradeep Mehta and CUTS have been most active over many decades and this Festschrift is truly an appropriate tribute to his commitment and dedication to the notion that every citizen is a consumer and every consumer is a citizen.

## **I. Trade and Development**



## **Coherence and International Cooperation on Trade**

International trade policy tends to be driven by two opposing forces: businesses seeking better access to export markets and industries and sectors that lobby for trade restrictions in order to reduce competition from imports. Economists invariably note that trade restrictions are costly to the societies that impose them because they generally result in higher prices for consumers. They also understand that in practice, the voice of consumer interests is often weak—as consumers tend to be widely dispersed and often the weight of any given good in total consumption will be small. One of the unique features of Pradeep Mehta’s leadership of CUTS is that he has been a consistent (and loud) voice calling for explicit consideration of the interests of consumers in the formulation of trade policy and the importance of competition on markets as a key instrument to force down prices of goods and services for consumers. Pradeep has also been a consistent advocate and supporter of the need to help build supply capacity in developing nations so as to increase the benefits of more open trade and market access liberalisation.

The importance of greater competition as a result of more open trade regimes complemented by an active competition policy, and the need for assistance to help farmers and entrepreneurs in developing countries exploit trade opportunities are examples of policy areas that involve a number of government agencies and international organisations (IOs), and that is the focus of civil

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1. The views expressed are personal and should not be attributed to the World Bank.



society organisations who may not be active on trade policy. They are examples of the importance of policy coherence. An active competition policy—long advocated by Pradeep—may do little if the country has high trade barriers—as of course Pradeep recognises. But an open trade regime will not necessarily generate the competitive benefits predicted by textbooks if other policies or incumbent firms restrict entry.

One of the 5 major functions of the World Trade Organization (WTO) is to cooperate with the International Monetary Fund (IMF) and World Bank Group to achieve greater coherence in global economic policymaking. This note briefly reviews some developments in this area. It is one that attracts relatively little attention but is important, precisely for the reasons just mentioned.

Much of the recent literature on policy coherence has focused on the extent to which the activities of governments and IOs promote economic development. This contrasts with earlier discussions on coherence of policies that centred on the consistency of the macroeconomic policies pursued by countries with their trade policy commitments. Countries cannot fully benefit from trade opportunities if they do not have supply capacity (access to finance, technology, skills, etc.). Moreover, within countries, trade expansion may result in a skewed distribution of gains and adjustment costs. Many of the constraints that impede supply responses to trade reforms are national in nature; investments by firms will depend on the policies and incentive framework created by governments.

Thus, trade reforms often will need to be accompanied by complementary or ‘flanking’ policies. The extent to which such policies are pursued or whether governments have put in place mechanisms to assist workers and households to adjust to a more open trade regime is not a matter that is the subject of WTO trade rules or negotiations. The same is true as regards the ability of governments to finance the costs that are associated with moving to a more open trade regime—e.g., moving from a reliance on import duties for revenues to domestic indirect and or direct taxes. In all these areas, it is IOs that have the mandate and the capacity to provide both financial support and policy advice.

Official development assistance—direct financial transfers—delivered through development cooperation agencies working with recipient governments may have trade expansion as an objective. Historically, however, there has been very little interaction between development agencies and the General Agreement of Tariffs and Trade (GATT)/WTO. This was by design: the trade regime focuses on reducing international spillovers created by national trade policies by supporting the exchange of reciprocal commitments; development agencies focused on supporting unilateral efforts by national governments to raise per capita incomes and improve human development outcomes. Following the launch of the Doha Round in 2001, many members concluded that this historical parallelism was not desirable. The result was an agreement to allocate more development assistance for trade—‘Aid for Trade’.

In part, this change reflected a view in parts of the development community that more attention needed to be given to ensuring that trade agreements ‘make sense’ from a development perspective. The result was greater engagement by development agencies in national trade policymaking in several traditional donor countries (e.g., Sweden, the UK) and an increased emphasis on building capacity in developing countries to define and defend trade positions and priorities. Conversely, trade officials became more cognisant of the need to mobilise resources to support implementation of negotiated trade policy-related disciplines, deal with the adjustment costs associated with trade reforms and assist firms in developing countries to benefit from market access opportunities.

From a coherence perspective, two types of concerns were particularly important. The first revolved around a perception by many developing countries that the Uruguay Round entailed numerous implementation obligations, some of which required financial and human resources. However, the primary instrument used in the WTO to address implementation problems was to grant transition periods to developing countries. Assistance to meet the costs of implementation was a matter for governments to request from national and international development agencies.

The need for greater coordination between such agencies and the WTO was the genesis of the Integrated Framework (IF)

for Trade Related Technical Assistance. Essentially an unfunded mandate established by trade ministers, the IF achieved little in its early years. Over time the IF was enhanced with a dedicated trust fund to finance trade diagnostic activities and technical assistance projects. While the Enhanced Integrated Framework (EIF) helps to cover the costs of identifying trade-related priorities in the least developed countries (LDCs), financing of projects and activities to address these priorities is left to existing mechanisms for the allocation of development assistance.

The EIF was complemented by the launch of the Aid for Trade (AfT) initiative, which aimed at addressing a number of priority areas for action, including determining trade priorities at the national and regional level; responding to this through assistance and financing; and effective monitoring and evaluation of both process and outcomes. The AfT initiative is not associated with specific financial commitments or a central entity or coordination mechanism that takes the lead on—or is the focal point for—delivering AfT. Instead, AfT is supplied through existing country-based allocation mechanisms by bilateral donors and international development agencies. The country-centric approach helps ensure that aid targets priorities identified by governments. However, the recipient country-cum-donor community-centric focus of the initiative also limits the potential impact of the enterprise in that more can be done to involve other actors in the delivery and assessment of aid for trade.

While not formally tied to the negotiations and not legally enforceable, the AfT initiative and the EIF signify recognition on the part of the membership that market access and rules were not enough. What the AfT initiative did was to engage development agencies (bilateral and multilateral) more in the trade integration agenda and raise the profile of trade issues in the process of determining priorities for investment and policy reform at the national level—an example of the WTO fulfilling its coherence mandate. The WTO plays an important role in monitoring the delivery of AfT, together with the Organisation for Economic Cooperation & Development (OECD), and organises a bi-annual

review meeting that brings together developing countries, donors and development agencies and IOs that provide AfT.

### **Concluding Remarks**

A precondition for greater coherence in international and national trade-related policymaking is that WTO rules support development, are *seen* to do so by stakeholders. The EIF and the AfT initiative more generally imply that WTO rules are now complemented by greater dedicated support for actions that can help to address trade capacity weaknesses. Clearly the substance of WTO disciplines—which is not the focus of this note—matters a lot from a development perspective. But the importance of complementary inputs (‘flanking measures’) illustrates why enhanced coherence of policies is a legitimate concern: the WTO has no financial resources to help poor members improve their trade capacity—this must come from private investment, governments and development organisations. Similarly, other policies can have impacts on trade outcomes—macroeconomic conditions being a prime example. The post-2000 trend of doing more to coordinate and orchestrate greater technical and financial support for trade projects and to raise the profile of trade priorities in national decision-making can be seen as enhancing coherence by focusing more attention in capitals and IOs on bolstering the capacity of countries to benefit from trade opportunities.



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## Who Killed Tariffs? Modern Trade<sup>1</sup>

The decade of 1990s witnessed a profound change in the international trading system. The conclusion of the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT) not only resulted in significant reduction in tariffs on cross-border exchanges of goods but also integrated trade in agriculture and that in services to a rules-based multilateral trading system. With the establishment of the World Trade Organization (WTO) in 1995, particularly with its dispute settlement system, developing countries started taking an increased interest in international trade as one of the major means to get more and more integrated with the rest of world.

A rules-based multilateral trading system is not just about protecting producers' interest from cross-border exchange of goods, services and technologies but also about enhancing consumer interest in terms of greater choice of goods and services at more affordable prices. Pradeep's visionary leadership captured this fact that consumer interests will be best served by understanding the realpolitik of the multilateral trading system. That is why CUTS has been working on trade and development issues since early 1990s and today it has established its credentials as one of leading voices from the south on this subject.

From the beginning Pradeep looked at this subject from his head as against looking at it through his heart. His first-hand experience as an entrepreneur in his early life (that too running a small industry) helped him practicing import-substitution policies

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1. This article appeared in the *Economic Times*, New Delhi, on July 23, 2011.

of India and associated problems therein. In other words, in his journey as a consumer activist and a trade policy honcho, he always looked at issues objectively and that is how CUTS has been practicing its credo of 'liberalisation yes but with safety nets' for over two decades.

Trade is about relative competitiveness of competing products produced by different firms. Take for example, an Indian clothing product that is facing 10 per cent tariff in an export market and a *Bangladeshi* producer of a similar product facing 0 per cent tariff in that market. These tariffs are over the base price the producers would charge for their products. Even in that case, the Indian product could be more competitive if its other factors of competitiveness—capital cost, labour cost and other costs including trade logistics—can offset this difference in tariff.

This is particularly relevant in today's world because countries have considerably reduced their import tariffs. Since the formation of the GATT, most developed countries have reduced their tariffs on most products to a single digit. Successive GATT-round negotiations helped that process. In fact, till the Tokyo Round that was launched in 1979, GATT negotiations were all about tariff cuts. With the advent of the Uruguay Round of GATT negotiations in 1986 and its conclusion in 1994, developing countries started following a similar path. For instance, India's average applied tariff on agricultural products is reduced to about 40 per cent and that on industrial goods to about 15 per cent. This is a huge fall as compared to tariffs imposed in 1990s and earlier.

Given the low levels of applied tariffs, it is no longer impossible to counter trade-distorting effects of tariffs through other means of generating greater competitiveness. Some countries do it by simply manipulating their exchange rates regime. There are many other means, including camouflaging subsidies in a manner that either cannot be detected easily or they are non-actionable as per relevant rules of the WTO.

In today's world, non-tariff measures (NTMs) are much more trade-distorting since they add to trade costs. Various efforts are being made to address the menace of NTMs, including converting

them to tariff-equivalence. Why do countries practice NTMs? Is it about favouring one producer—a domestic producer—over another—mostly a foreign competitor?

WTO Director-General, Pascal Lamy, argued in his Foreword to the 2012 *World Trade Report* of the WTO: "... a clear trend has emerged over the years in which NTMs are less about shielding producers from import competition and more about the attainment of a broad range of public policy objectives."

While there are efforts at bilateral, regional and multilateral level to harmonise and minimise NTMs by adhering to a rules-based system, the emerging nature of international trade has a built-in mechanism to address them including attaining public policy objectives.

The world has moved on from simple intra-industry trade to a complex web of regional and global value chains. Given that producers in a value chain collaborate with each other to reduce trade costs, there is a possibility that they nurture their governments to address NTMs.

A 2011 study by the WTO and the Tokyo-based Institute of Developing Economies (IDE), "Trade Patterns and Global Value Chains in East Asia: From Trade in Goods to Trade in Tasks", highlighted this point by stating: "The integrated factory floor, which had dominated manufacturing since the 19th century, has been replaced with a network of individual suppliers specialising in specific services or phases of production."

Prof Richard Baldwin of the Graduate Institute of International Studies in Geneva described this as the second great unbundling where production is sliced and diced into separate fragments that can be spread around the globe. Indeed, it is so: the Boeing 787 Dreamliner is assembled—not produced—in the US; its parts are sourced from at least six other countries.

Over the last two decades, not only that many East Asian producers got integrated into regional and global value chains but also, and more importantly, they are facing less tariffs and NTMS as reflected in growing intra-regional and inter-regional trade *vis-à-*



*vis* East Asia. Their average share of vertical specialisation increased considerably as shown in the WTO-IDE study.

In computers and electronic equipment, the share of import contents of the US increased considerably, domestic content decreased and, yet, there was an increase in their export value. That led this study to look at bilateral trade balance differently. In 2005, the value added—including China processing trade—figure of US-China trade balance was 53 per cent less than traditional statistics; in 2008, it was 42 per cent.

If this is so, then why so much negotiating capital is being invested in bilateral or preferential and multilateral trade negotiations? While bilateral or preferential trade agreements are more due to political—as against economic—reasons, multilateral trade regime under the aegis of the WTO has other virtues. A major virtue of the rules-based multilateral trade regime is its ability to reduce differences between bound and applied tariffs—called *water in tariff*—so that there is less uncertainty in the system. It will reduce further, once the Doha Round is concluded.

These virtues are best exploited by East Asian countries to raise their share in vertical specialisation. This is the lesson that South Asian countries should draw to raise their share in vertical specialisation—fortunately, regional value chains are getting more academic and political interests in South Asia.

In future, the multilateral trade regime should devise rules in a manner that further encourages vertical specialisation. Tariffs are related to prices of products and they matter less in this new scenario because products—in vertical specialisation—are so specific that there is hardly a scope for product differentiation and, therefore, price competition. What matters most is the quantity of production—economies of scale through technological advancement and otherwise—and reduction in trade logistics.

Many public policy objectives including that of attaining full employment and raising standards of living can be achieved through a more open, rules-based multilateral trade regime which should facilitate regional and global value chains. And that should be based on the principles of fair trade, capacity building of poor countries,

balanced rules and good governance. These principles should form the core of a Geneva Consensus for trade and development. Otherwise, the already discredited Washington Consensus may make a comeback which may not augur well for the global community, particularly the poor.<sup>2</sup>

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2. The last part of this article is adapted from a presentation delivered by Faizel Ismail, Ambassador and Permanent Representative of South Africa to the WTO to UNCTAD Trade and Development Board Panel Discussion in Geneva on September 18, 2012.



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## **The 21<sup>st</sup> Century's Global Ethical and Institutional Deficits**

### *How to Transform Darkness into Light?*

So far, half-way through the first quarter of the 21<sup>st</sup> century, things have certainly not turned out as one might have expected, let alone hoped, when the century opened up in a bout of some euphoric optimism. With the end of the cold war, the implosion of the Soviet empire, the radical economic liberalisation reforms undertaken by China and subsequently by virtually all countries of the erstwhile 'third world', the apparent wave of democratisation, and the establishment of the World Trade Organization (WTO), prospects had hardly ever seemed so good.

The euphoric enthusiasm has not stood the test of time. After the 'Lehman moment' in the autumn of 2008, when the so-called advanced economies went sour, the world economy could still look forward to the emerging economies' engines proceeding at full, or at least nearly full, throttle. Four years later, as the crisis in the Eurozone has significantly worsened, joblessness in the US remains stubbornly high and Japan fails to recover from its lost decades, on the 'BIC' front things are also getting gloomy: the Brazilian economy is in the doldrums, India is mired in political and economic quicksand, and China seems to be tottering economically while social unrest ferments.

The 'crisis' in which we live is not only economic, nor social—though there are ample concerns about rising global inequality and injustice—but fundamentally systemic. The 'scandals' in the corporate sector, especially finance, undermine the very foundations of the global market economy. Since virtually all homosapiens of

the planet are far better connected, hence informed, than has ever been the case, one is bewildered by the very idea, let alone the reality, of, say, J.P. Morgan-Chase 'losing' US\$5.8 bn, which comes out to ₹ 316.5 bn. How is it possible to 'lose' ₹ 316.5 bn when there are some 2.5 billion people who have no access to potable water and basic sanitation? Surely something is seriously wrong. The world economy appears to be managed not only incompetently but also unethically.

The systemic crisis appears in two forms: there is a human morality crisis and an institutional crisis, the former no doubt accounting in good part for the latter.

All the key global agenda engines are stalled: trade, climate, food security, poverty, IMF reform, the euro etc. Yet when the turn of the century came, there were so many expectations and so much that required attention. As former Brazilian President Luiz Inácio Lula da Silva lamented, "how will we explain to future generations that we had so much and we did so little." In fact, it's worse than that. By not addressing these agendas, by doing nothing, the future is greatly jeopardised.

The parents of persons of Pradeep Mehta's and my generation could rightly feel that they bequeathed to us a better world than they had inhabited. They had seen the great depression, the war and, in the case of Pradeep's parents, the fight for independence. The world our generation will leave to our children and grandchildren, unless some miracle occurs soon, will be worse, possibly far worse, than the world we inherited. The breakdown that has occurred in global governance will have lasting dramatic effects. A friend is writing a book he intends to entitle: "Why do we hate our children so much." It could be the overarching theme of our age.

On the human ethical front, there is a consensus among a growing number of philosophers and economists that 'capitalism' has lost its 'ism': in other words, the ethical principles, the ideology, that were deemed to be the underpinnings of capitalist society, as expressed notably in Adam Smith's *The Theory of Moral Sentiments* (1759), have evaporated while only the search for the accumulation of capital remains in a moral environment whereby the ends justify

the means and the value of human beings is measured in purely material terms, whatever might be the social consequences. The notion of Adam Smith whereby “no society can be flourishing and happy, of which the far greater part of the members are poor and miserable” has evaporated as Joseph Stiglitz argues in *The Price of Inequality: How Today's Divided Society Endangers Our Future* (2012). Once again, as Adam Smith warned: “if the fruits of a society's economic development cannot be shared by all, it is morally unsound and risky, as it is bound to jeopardise social stability.” At this juncture of the 21<sup>st</sup> century, the spectre of rising global social instability cannot be deemed purely illusory.

Consumerism would seem to account for much of the undermining of the higher ethical principles of capitalism. In an increasingly frequently cited work by John Maynard Keynes, *Economic Possibilities for Our Grandchildren* (1930), we are reminded that the whole purpose of capital accumulation was to generate welfare and thereby achieve the ‘good life’. The objective of the good life was to work less and enjoy life more—with ‘life’ composed of cultural, spiritual and sentimental things, including friendship and love, rather than purely material ones. This is the theme of a recent publication by Keynes’ biographer, Robert Skidelsky and his son Edward, *How Much is Enough? Money and the Good Life* (2012). The philosopher Michael Sandel also develops this theme with force in *What Money Can't Buy: The Moral Limits of Markets* (2011).

Modern economics must bear considerable amount of the blame. Whereas with Adam Smith economics was a minor branch of moral philosophy and the concept that economics and morality could not be divorced survived into the 20<sup>th</sup> century, notably with Keynes, with the more recent quick passage of time it became more a minor branch of mathematics and divorced, indeed avowedly so, from morality and from humanity.

The tools of the trade reflect the biases. Gross domestic product (GDP) in particular illustrates what might be deemed a thoughtless predisposition to measure purely material increments. Already as the Japanese economist Shigeto Tsuru argued 20 years ago in *Japan's Capitalism: Creative Defeat and Beyond* (1993), GNP (gross national production, as GDP was referred to at the time) in fact could be

transliterated as ‘gross national pollution’, consisting purely of material additions irrespective of their social and environmental consequences. He gave the example of the Japanese Inland Sea. For centuries this pristine setting of great natural ascetic beauty was honoured by generations of poets as a source of great inspiration. With the Japanese ‘economic miracle’ of the 1960s and 70s, the Inland Sea was transformed into a petrochemical industrial zone. Clearly this added to GDP. But how, asked Tsuru, could be measured the loss to future generations of Japanese who would never know the beauty that it was? Are not future generations of Japanese in reality much poorer for this loss? To get a better measurement, Tsuru proposed that in parallel to the addition of GDP, there should be what he termed a ‘social depletion index’ that would measure subtractions from society’s cultural, spiritual and environmental welfare: subtracting the bad from the good life.

Economic growth is driven by unleashing the animal spirits of entrepreneurs and the aspirations of consumers. When the animal spirits are repressed and aspirations not met, as was the case, for example, in Maoist China or in North Korea today, both society and economy suffer. As Deng Xiaoping is alleged to have proclaimed during his famous Southern tour in 1992, ‘to be rich is glorious’—an invocation that lit a fuse that witnessed double-digit growth and the lifting of hundreds of millions from poverty. In 1991 there were zero Chinese outbound tourists; in 2011 there were over 70 million. The economic reforms of China have clearly provided a good life to millions of Chinese. The question, therefore, cannot be whether there should be economic growth, to which the answer more often than no has to be an unambiguous yes. Growth has done social wonders for China, India and all those countries that have succeeded in rising from low to middle and higher incomes. Today, the continent of Africa needs East Asian sustained growth figures in order to rise from poverty and to produce a good (or better) life to the hundreds of millions expected to be born in the continent over the next couple of decades. The poor must become less poor, but the rich are probably rich enough.

That is the question posed in the words of Robert and Edward Skidelsky’s title: “how much is enough?” A critical question in

respect to growth is how can its fruits be better distributed? While Deng Xiaoping's "to get rich is glorious" proclamation was clearly successfully motivating, the reality is that it was very disproportionately achieved. China is today one of the world's most unequal societies, as measured by the Gini coefficient; furthermore, as revealed by a recent *Financial Times* analysis, "The family fortunes of Beijing's new few" (July 10, 2012) and by the revelations of the Bo Xilai affair, a tremendous amount of the wealth is concentrated in the hands of the top crust minority of the glorious established elites of the Chinese Communist Party.

As individuals pursue individual material wealth in a Darwinian social environment whereby the fittest struggle to survive, so this psychological syndrome translates into a national zero-sum policy of economic competition. Global capitalism has transmuted into global mercantilism. It is undoubtedly true that all the major challenges facing the world today are global in nature and *ipso facto* cannot be solved at national level. It is undoubtedly true that the planet—socially, environmentally, geopolitically and economically—can only be preserved (ideally enhanced) for future generations by global cooperation today. However, mercantilism and the untrammelled pursuit of material wealth as pursued today just as logically translate into a spirit of confrontation. One cannot have collaborative institutions when those expected to collaborate are in a confrontational mode. Global institutional reform is bound to fail so long as there is no global spiritual renaissance.

So is humanity doomed? The answer on the basis of current conditions and trends has to be 'yes'. The notion that man is somehow endowed with the fortitude necessary to escape the apocalypse, to retreat from the brink of the precipice just in time, is purely and worryingly wishful thinking; it is belied by humanity's history, especially by the man-made horrors and tragedies of the last century. This applies emphatically to climate change. As many have remarked the climate change issue fits well into the frog in the heating pot syndrome. We vaguely see and feel things getting hotter, but the "it will all be ok in the end" mindset prevails; so we do nothing or the absolute minimum. Jared Diamond has, for example, demonstrated in his *Collapse: How Societies Choose to Fail*



or *Succeed* (2005), communities do commit ecocide. If the idea that catastrophes of climate change will not occur could be replaced by the idea that they could well occur, already prospects would be looking better for humanity. This would induce policy makers to recognise the imperative of envisaging, as Tim Jackson argues in *Prosperity without Growth: Economics for a Finite Planet* (2011), the development of truly socially and economically sustainable global goals based on new and revised macroeconomics and international cooperation.

So what is needed to change to dissipate the gloom? As an erstwhile witness and veteran of the civil rights movement in the US so magnificently trumpeted in Martin Luther King's inspiring "I have a Dream" call to arms speech, the inspiration of which, in turn, came from the movement of civil disobedience spurred on by Gandhi, I am absolutely convinced that something comparable is needed today in order to raise awareness. All concerned citizens and especially youth and their parents should visibly demonstrate their alarm and the urgent imperative of change. This must be done in the spirit and tactics of Gandhi, without violence.

Furthermore, as Ian Johnson, Secretary-General of the Club of Rome, wrote in an article expressing his deep, even if expected, disappointment with the Rio+20 meeting, "Flying Down to Rio: Rethinking Global Public Policy", *The Globalist* (July 10, 2012), "new networks of concerned, interested and committed activists and intellectuals could make a difference...and combine to form powerful alliances for change."

This represents the life-work and vision of Pradeep Mehta. CUTS is one of the world's leading institutions and networks seeking to enlighten and bring about positive change. Thus, the unequivocal conclusion in order to transform the darkness of today's perspectives into light is to support Pradeep Mehta's initiatives and somehow to populate the planet with more Pradeep Mehtas.

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## **WTO: Building a Global Trading System for the 21<sup>st</sup> Century**

As Pradeep Mehta's friends and colleagues around the world celebrate his 65<sup>th</sup> anniversary, we are also celebrating that the multilateral trading system is 65 years old. Since the signing of the General Agreement on Tariffs and Trade (GATT) in 1947, its rules have significantly contributed to the coherence and stability of the international community by providing international economic agents with a framework for transparency and predictability.

The system underwent a significant revamp in 1995 with the establishment of the World Trade Organization (WTO), whose areas of work were expanded beyond tariffs to include topical issues, such as trade in services, the protection of trade-related intellectual property rights (TRIPs), a binding dispute settlement mechanism and the reform of trade in the most sensitive sectors of agriculture and textiles. In subsequent years, other issues were added to the WTO agenda, including telecommunications, information technology products, electronic commerce and financial services.

The institutional structure that was created in 1995 as a result of the Uruguay Round (UR) has served as a solid basis for global trade. Since the establishment of the WTO, international trade has seen a boost and its expansion rate for the period 1990-2008 has been six per cent on average. The rules and functions of the WTO have been of paramount importance in keeping markets open and resisting protectionism, especially in times of crisis. During the recent financial and economic crisis, the WTO responded by establishing a surveillance mechanism to track trade policy responses and restrictive measures put in place by governments.

We feared that weak recovery of the global economy and high unemployment rates would put pressure on governments to turn to inward-looking policies.

While a number of trade restrictive measures have been adopted, it is important to note that, overall, WTO Members have refrained from high intensity protectionism, reconfirming the organisation's role as an anchor for trade policies. But the trade-restrictive measures introduced by governments since the beginning of the crisis show that there are still gaps and loopholes that members can exploit to the detriment of their trading partners. The launch of the Doha Development Round in 2001 was an attempt at correcting these imbalances and locking in and expanding members' commitments. Over 10 years later, negotiations are stalled and the political, economic and social environment in which the WTO operates appears once again changed.

Over the past 20 years, the world has experienced a significant economic and geopolitical shift. Developing countries' participation in international trade has risen considerably faster than world trade. WTO figures for 2011 show that their share of trade rose to 47 per cent on the export side and 42 per cent on the import side, the highest levels ever recorded since 1948. This growing share of trade is led by emerging countries such as India, China, Brazil, Malaysia or Mexico, all of which have become drivers of economic growth and are now asserting their role in global governance. These countries have made the most of their trade opening opportunities and their vibrant economies make them increasingly attractive markets for trade and investment. They are also proving relatively resilient to external shocks.

While the current crisis continues to frustrate demand and growth in industrialised countries, emerging economies recovered faster than the rest of the developed world and became sources of both demand and supply for other developing countries. It is telling that in 2009, China overtook Germany as the world's leading merchandise exporter but more importantly, it recorded the fastest growing share of imports in 2011. The dynamism of emerging economies is shifting the axis of trade from North-South to South-South, and from West to East, with China taking up the role that

until recently had been of the US and the European Union as a major export destination.

Emerging economies' dynamism and the level of competitiveness they have achieved, require the definition of a new equilibrium in international trade relations. As the gap between developed and emerging economies narrows, it requires a new balance of rights and obligations, of contributions between countries at different levels of development. Developed countries are growing more reluctant to make concessions to emerging economies that are in direct competition with them. On the other hand, developing countries are reluctant to accept much higher levels of commitments while they still face development challenges. This dichotomy is proving a hard challenge for the trading system and is stalling progress in multilateral negotiations, much as it is stalling progress in climate change or on the quota and voice within the International Monetary Fund (IMF).

The world is also witnessing an emerging trend in international trade relations: the geographical expansion of global value chains. This phenomenon has emerged from a changing demand structure that leads firms to locate various stages of their production process in the most cost-efficient markets through outsourcing and offshoring. The integration of production and trade networks finds its highest expression in what has come to be known as 'Factory Asia', where parts and components are traded across borders several times before being assembled for final consumption. The high degree of complementarity that characterises Asian economies has favoured specialisation and has opened market opportunities even for countries with narrow export bases. The emergence of China as a production hub has worked as a catalyst for the further integration of trade and production networks even beyond the Asian region, thus strengthening the interconnection of the world economy. We have moved from 'trade in products' to 'trade in tasks'.

The expansion of global value chains is changing the way we think about trade. First of all, when products' components are produced and assembled in a number of different countries, the concept of 'country of origin' becomes somewhat misleading. Products are more simply 'Made in the World'. Second, with trade

in intermediate goods covering a significant share of international trade, a complementarity emerges between exports and imports. Each step of the value chain adds value to the final product, so that the competitiveness of a country's exports is increasingly dependent on the competitiveness of its imports. In this scenario, there is no room for the traditional exports-imports opposition and protectionist measures become highly ineffective or even damaging to a country's competitiveness.

Another important aspect of global value chains is the enhanced complementarity between goods and infrastructure and support services. The coherence of importing and exporting regulations is also one of the elements that supports the competitiveness of global value chains. In this area, multilateral cooperation is important and the multilateral trading system can play a crucial role by delivering on set of global rules on trade facilitation. Finally, to understand how global value chains work, we need to be able to analyse and measure their effects. Traditional statistics based on gross numbers on trade flows do not tell us the full story. Calculating trade flows on an added-value basis and grasping the real size and magnitude of domestic inputs, value addition and therefore employment is important to help explain the complexity of international transactions and stir trade policies—and trade politics—in the right direction.

Another challenge for the multilateral trading system in the 21<sup>st</sup> century is the rise of preferential trade arrangements (PTAs). The stalling of the Doha Development Round and the uncertainty it brings about has led countries to seek trade openings bilaterally or regionally. As of January 2012, over 500 regional trade agreements had been notified to the WTO, of which more than 300 are currently in force. The proliferation of PTAs demonstrates an appetite for trade opening and can be a blessing for the multilateral trading system as they can be the forerunners of further opening at the multilateral level. However, as their number increases, the risk also grows that members of different trade agreements would implement increasingly divergent regulatory systems. As the global economy becomes more integrated, regulatory divergence

poses further obstacles for businesses that seek more coherent and predictable rules that can only be achieved multilaterally.

Next to these structural changes in trade dynamics, new emerging issues—often dubbed as ‘21<sup>st</sup> century issues’—are changing the perception of international trade. As the reality of trade is decoupling from the mere consideration of exchanges in goods and services, its linkages to other areas of international co-operation are becoming more evident. Some of the issues that the WTO is being called to look upon include the relationship between trade and climate change, exchange rate policies, food security, energy policies, competition and investment.

Some of these issues have been on the WTO agenda for some time. For example, some aspects of the trade and environment debate are already addressed under the Doha Development Agenda: trade opening for environmentally-friendly technologies, the elimination of environmentally-harmful fisheries subsidies that are depleting the world’s fish stocks and greater coherence between WTO rules and Multilateral Environmental Agreements (MEAs). Other issues are starting to attract renewed attention. For example, the relationship between trade and exchange rates and the impact of trade-related measures—in particular, export restrictions and trade distorting agriculture subsidies—on food security are being raised by members in various formats.

Although some of these issues are not entirely new, their implications for the multilateral trading system are taking new forms as more challenging and complex links emerge. In this context, some observers are wondering whether the WTO should not step up its engagement in the debate about the future structure of global governance. Indeed, the organisation has achieved considerable progress since its establishment. The interest shown by acceding countries in joining the organisation speaks volumes about the value of its rules and agreements. With Russia becoming a WTO member, about 97 per cent of world trade will be under the aegis of the WTO, making it even more attractive to the present and prospective members. Even as the mere repository of trade rules, the WTO will continue to play a role in global governance,

but its relevance would be greatly diminished if it fails to keep up with this changing trade environment.

Undoubtedly, a successful conclusion of the Doha Development Round would be the best overhaul for the multilateral trading system. The issues contained in the negotiating agenda, including disciplines for trade-distorting agriculture subsidies, elimination of export subsidies, reduction of industrial tariff peaks, efficient customs procedures, further opening in services and deeper integration of least-developed countries in the trading system, are as relevant today as they were 10 years ago. These issues need to be resolved. However, currently the Doha Round is at an impasse. At the Eighth WTO Ministerial Conference in December 2011, WTO members recognised the need to strengthen the WTO and to look at innovative ways of solving the negotiating impasse without striding away from the original Doha mandate. Amongst the suggested approaches, there have been calls for a pragmatic, step-by-step approach that would deliver small but steady results, thus reinstating confidence in the multilateral trading system.

In the meantime, the WTO should reinforce its rule-enforcing and surveillance functions, where the WTO operates as a forum for the consideration of trade-related issues of interest to the members. This deliberative function is a less celebrated and underutilised aspect of the multilateral trading system, but one that can offer the opportunity for members to discuss and explore sensitive—at times controversial—issues in a non-confrontational way. This would foster understanding of the complexities of these issues while not shifting the attention away from Doha.

The WTO should also continue to press for building trade capacity in developing and least developed countries through ‘Aid for Trade’, which in reality should be renamed ‘Investment for Trade’. For many countries the trade opportunities that the WTO offers can only be transformed into realities if an investment is made through development assistance, to build trade capacity at home.

To help WTO members identify the present and future challenges that are having—or are likely to have—an impact on the

multilateral trading system, I have recently convened a Panel on Defining the Future of Trade composed of a group of trade experts from diverse backgrounds. The panel, which includes Pradeep Singh Mehta, can offer an outside perspective on what role is expected from the WTO in the 21<sup>st</sup> century. I am convinced that through Pradeep, CUTS will continue to be a leading voice for a stronger, rules-based global trading system, more attentive to the needs and aspirations of developing countries.

Inaction is not an option. For the WTO to remain relevant in the new century, it needs to keep advancing. The world of the 21<sup>st</sup> century needs a global trading system that is relevant, dynamic and comprehensive; a system that is responsive to the needs of its members and to the expectations of the world citizens that it serves; a system that contributes to development, poverty alleviation and growth through enhanced economic opportunities, a system for the 21<sup>st</sup> century that is able to lead the world out of the stalemate that it is in and reinject trust and confidence in international cooperation. Even in the 21<sup>st</sup> century, the WTO needs to be able to make a difference in the world economy for the benefit of all, especially for the poorest amongst us. “The difference between rich and poor is not wealth, but opportunity,” says Nobel Laureate Prof Muhammad Yunus. By equipping the WTO with a 21<sup>st</sup> century software, the organisation will continue to contribute to global prosperity by ensuring that the new opportunities created by a changing global context are available to all.





## **LDCs and the International Trade**

### *How Inclusive is the Engagement?*

#### **Introduction**

This contribution is being made to join the trade and development fraternity around the world to celebrate the 65<sup>th</sup> anniversary of my dear friend Pradeep S. Mehta, who views trade as an engine of growth and poverty reduction. One of the ways through which this objective can be achieved is by integrating the poorest countries, or say, the least-developed countries (LDCs) in the mainstream of international trade. For this to happen, there is need for safeguarding the interests of these countries. I recall when Pradeep and I, together with other friends from South Asia, were preparing the Constitution of South Asia Watch on Trade, Economics and Environment (SAWTEE),<sup>1</sup> he intentionally included “safeguarding economic, social and ecological interest of South Asian countries, with special consideration to land-locked and least developed countries” as one of the objectives of the organisation. This makes me feel that it would be a fitting tribute to a man, who incessantly worries about enhancing participation of LDCs in international trade, if I devote this contribution to discuss the dynamics of LDCs’ engagement in international trade.

LDCs as a group were first recognised in 1971, primarily on three criteria, namely: low gross national income (GNI) per capita; low human assets index; and high economic vulnerability

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1. Pradeep is a co-founder of SAWTEE and he currently chairs the Advisory Board of the organisation.

index.<sup>2</sup> Although there were 25 such countries at the time of their creation, this number currently stands at 48 because several new countries continued to get added to the list subsequently while only three countries (Botswana, Cape Verde and the Maldives) having graduated out of the list.

LDCs, housing 12 per cent of global humanity collectively accounts for less than 2 per cent of global gross domestic product (GDP),<sup>3</sup> less than 0.97 per cent of global merchandise exports, and 0.42 per cent of global services exports in 2009. These countries' shares in global imports of goods and services were 1.18 and 1.36 per cent respectively.<sup>4</sup> Studies conducted in the past have shown that LDCs are marginalised from the multilateral trading system, and there are reasons to suspect that nothing much has changed in the past two decades or so.

Against this backdrop, this short essay traces the history of the LDCs' participation in the international trade and discusses whether or not there has been any qualitative change in the level of their engagement with global trade in the recent past against the backdrop of several initiatives undertaken to arrest their marginalisation. Although this essay touches up on the issue of participation of LDCs in general, the major focus is on South Asian LDCs.

### **LDCs' Engagement with International Trade**

It is a well-known fact that a majority of LDCs undertook rapid unilateral trade liberalisation measures in the late 1980s and throughout the decade of the 1990s, mostly under the conditions of structural adjustment programmes (SAPs). These prescriptions were made to help the LDCs not only better integrate themselves into global trade but also to reap benefits of globalisation and liberalisation. The understanding was such efforts would contribute towards the economic growth and help LDCs trade their way out of poverty.

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2. See <http://www.unohrrls.org/en/ldc/related/59/> (accessed June 15, 2011).

3. Bhattacharya (2010).

4. See WTO (2011a: 9); Adhikari (2011).

As a result of these conditionalities, the degree of trade integration of the LDCs—whether measured by trade protection (such as existence of tariff and non-tariff barriers) or by trade openness (measured by trade-to-GDP ratio)—is higher than several bigger economies. Besides, the LDCs' commitment to trade liberalisation can also be seen from the way a large majority of them have 'mainstreamed' trade in their development strategies.<sup>5</sup>

It may be recalled that in 1995, when the liberalisation epoch was at its apogee, the LDCs' share in global merchandise export was 0.48 per cent, more than six times lower than the share of LDCs in the early 1950s (3%). Although LDCs' share in global trade has increased in the recent past peaking at 1.04 per cent in 2008 to fall to 0.97 per cent in 2009, this is mainly because of increase in exports of primary commodities. Import figures show a slightly erratic trend. In 1990, LDCs' imports were 0.75 per cent, decreasing to 0.65 per cent in 1995, and 0.62 per cent in 2000. It has been steadily increasing since 2005 to reach 1.18 per cent in 2009, but even now it is below 1980 level of 1.21 per cent.

Over the decade 2000-2009, the total exports of LDCs increased at an average annual rate of 14.6 per cent—nearly twice the global average export of 7.8 per cent. However, this is due to increased exports of primary commodities such as mineral fuels, mineral oils and products of their distillation which accounted for 66.6 per cent of LDCs' exports in 2008. These products together with the exports of textiles & clothing (T&C) constituted almost four-fifth of LDCs' exports in that year.

This is reflective of a precarious level of concentration of LDCs' exports, exacerbating their vulnerability as witnessed in the aftermath of the fall in oil and commodity prices in 2008-2009 following the global financial crisis. During the decade of 2001-2010, export concentration of LDCs witnessed an overall increase. It is also observed that during the given period, export concentration among the LDCs was evenly split with half of them experiencing an increased concentration and another half witnessing a decreased level of concentration.

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5. See, for example, OECD and WTO (2009).

The figures presented above, however, may not be sufficient to establish that the LDCs are being marginalised from the global trading system. In order to gauge the extent of their marginalisation, one can examine the evolution of international trade, particularly in the past two decades (1990–2009). Data show that although the share of developing countries (that include the LDCs) in global exports increased from 29 per cent to 47 per cent between 1990 and 2008, LDCs' share in global exports as a percentage of developing countries' share in global exports between 1990 and 2009 has largely remained unchanged, hovering around 2.8 per cent.<sup>6</sup> This is despite the fact that LDCs' exports did increase from US\$18 bn in 1990 to US\$125 bn in 2009.

The stagnant share coupled with a virtual absence of structural transformation and a lack of improvement in productive capacity, is evidence that the LDCs are being increasingly marginalised from global trade. This is because of LDCs' excessive dependence on a few primary export commodities and the volatility of global prices which depresses their export income and further pushes them into the margin of the global economy.<sup>7</sup>

LDCs in South Asia face a slightly different predicament because of three main reasons: they are not heavily dependent on primary products and have somehow managed to graduate to the status of manufactured exporters; they are not accorded preferential market access for the products of their export interest (mainly T&C) to the US market; and they are not amongst the 'donor darling' countries, which has implications for the quality of development assistance, including aid for trade.

### **Initiatives Taken So Far**

To arrest and reverse the trend of marginalisation of the LDCs, several measures have been introduced. One of the measures is to provide preferential market access to these LDCs. Now almost all LDCs enjoy preferential market access under the generalised

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6. See [http://www.wto.org/english/thewto\\_e/coher\\_e/mdg\\_e/development\\_e.htm](http://www.wto.org/english/thewto_e/coher_e/mdg_e/development_e.htm) (accessed May 9, 2011).

7. See, for example, UNCTAD (2010: 108).

system of preferences (GSP). They also benefit from the regional or bilateral trade agreements with their trading partners. Some of the widely used preferences include the EU's GSP to the LDCs; and the US' preferential market access to the African LDCs through the African Growth and Opportunity Act (AGOA). In addition, several developing countries, notably Brazil, China, India and Turkey, provide duty-free, quota-free market access to the LDCs.<sup>8</sup>

In South Asia at the bilateral and regional level, LDCs such as Bhutan and Nepal have signed bilateral free trade agreements (FTAs) with India, which provides zero tariff access to practically all the products exported from these LDCs. Similarly, Afghanistan, Bangladesh, Bhutan and Nepal enjoy preferential access in India, Pakistan and Sri Lanka by virtue of their membership of the Agreement on South Asian Free Trade Area (SAFTA). Unilateral pruning of sensitive list by India to 25 products and providing LDCs zero tariff market access has further bolstered the opportunities for the LDCs.<sup>9</sup>

Despite some significant developments, several issues remain in the form of non-tariff barriers. Besides, ease of market access also varies from one country and region to another, as indicated by the market access sub-index of the *Global Enabling Trade Report* (WEF, 2012). In South Asia also, trade enabling environment differs from country to country. The report is based on assessment of three indicators, namely foreign market access, tariff barriers faced, and margin of preference in destination market.

The results are different for different countries in South Asia. While in case of foreign market access, Nepal has the best foreign market access indicator followed by Bangladesh, Sri Lanka, Pakistan and India; in terms of tariff barriers faced, Bangladesh fares better than Nepal; and in terms of best margin preference, Nepal appears to be in a relatively better position. The reason for this is that the latter has a bilateral trade agreement with India, which allows the former to export all the products (except for alcohol, perfumes of

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8. See WTO (2011b: 54-59) for the detailed preferential market access measures.

9. By virtue of this, barring alcohol and tobacco all the products manufactured in LDCs in the region, can enter duty free into the Indian market. See, for example, Kelegama *et al.* (2012).

non-contracting party origin and tobacco) into the Indian market free of 'basic' customs duty.<sup>10</sup>

Besides, there are evidences to suggest that significant under-utilisation of preferences exists, both in case of the EU and the US. There is however, more to this. The existing preferences utilisation rates represent an extraordinary improvement in the utilisation rate, compared to the beginning of the century. For example, the preference utilisation rate for the Quad economies (Canada, the EU, Japan and the US) in 2001 for all the LDCs was 67.3 per cent. The present figure is due to high utilisation rates of US preferences to the LDCs (96%) resulting from expanded preferences offered to the LDCs, since 1997. Contrast this with other products of export interest to the LDCs, such as T&C and footwear, which collectively account for 99 per cent of the exports from the LDCs that are not eligible for US GSP.

Although the situation has improved after the inclusion of these products under the AGOA, which includes even T&C items under the US GSP for eligible sub-Saharan African countries, Asian LDCs, are excluded from utilising this facility. Overall situation seems to be not so impressive, as an attempt made in the case of Bangladesh shows the preference utilisation rates in the EU for 14 HS categories of products for the year 2006 varied from 0 per cent (carpet) to 100 per cent (fillet/salmon and shawls/scarves/muffler).<sup>11</sup>

The main problem of under-utilisation of preferences is non-tariff barriers in the form of Rules of Origin (ROO) and regulatory barriers.<sup>12</sup>

10. Although Nepalese exports faces a whole host of para-tariff and non-tariff barriers in the Indian market, what needs to be noted is that customs duties are not imposed provided Nepal fulfills certain rules of origin-criteria, hence, the emphasis on the word "basic" above. See, Adhikari and Sapkota (2012) for further details.

11. While some of them are at the lower end (27% for men's/boys' shirts/vests and 53% for men's/boys' trousers/underpants), others are at the higher end (99% for jersey/pullover/cardigan and 91% for women/girls' jerseys/west-coats). See Rahman (2007).

12. ROO mainly includes standards related to health, safety and environment, which, although mostly internationally recognised, are set at a very high level. Exporters from the LDCs find it difficult to comply with these standards. This is further exacerbated by a plethora of private standards and climate-related standards, which pose significant barriers to LDCs' exports.

## Conclusion

The marginalisation of LDCs continues despite the seemingly robust export growth they have been able to achieve over the past decade. This can be ascribed to two factors: a high content of exportable commodities (mainly fuels and minerals) in the LDCs' exports and a high level of export market concentration of the LDCs, especially in general and the fuels and mineral exporting LDCs. In addition, the preference utilisation rates of the LDCs in products of their export interest and in which they supposedly possess 'comparative advantage' are low. The emerging opportunities require LDCs to develop vertical integration and be able to manufacture inputs they require in the production of exportables. Similarly, for a greater penetration of international market, it is also required that LDCs organise their production process adhering to global standards and establish testing and accreditation facilities. Further, the LDCs need to adhere to the principle of 'good enough governance' and mobilise sustainable aid for trade. While work needs to be done mainly at the domestic level to achieve the former, international negotiations as well as effective domestic ownership are vital to achieve the latter.

It is hoped that under the visionary leadership of Pradeep, CUTS, which primarily focuses on good governance, trade and development and regulatory reform agenda, will be able to make a major dent on ensuring qualitative improvement in the LDCs participation in international trade in the future.

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## **Pradeep S. Mehta and the Crisis of Multilateralism**

Pradeep S. Mehta, the founder of CUTS, has become the best expression of a tendency that only took shape during and after the Uruguay Round: the growing integration of developing countries in the multilateral trading system. A few years after the end of the Round, I had the opportunity to write the article, "Integration of Developing Countries into the Multilateral Trading System."<sup>1</sup> I claimed in that article that we were witnessing the transfer to developing countries of the difficult task of defending the multilateral trading system.

The phrase may have sounded a bit exaggerated at the time. Nowadays, however, who would question CUTS' role in keeping alive the flame of multilateralism amidst an endless financial and economic crisis? Thanks to Pradeep, CUTS has provided supporters of the multilateral approach from North and South alike the only influential space where they can profitably meet to debate effective proposals to end the current stalemate in the negotiations of the Doha Round.

Therefore, I could see no better way to honour Pradeep's growing influence in the debate about the future of multilateralism than to present here a perspective from Brazil, a developing country which together with India has always taken a keen interest in that discussion.

The views that I will offer in this article were the result of a research conducted in Rio de Janeiro by Centro de Estudos de

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1. Ricupero (1998).

Integração e Desenvolvimento, Centre for the Study of Integration and Development (CINDES), in a way a sort of Brazilian CUTS, basically focused on world trade and Brazil's position in multilateral negotiations directed by Sandra Rios and Pedro da Motta Veiga. CINDES recently assembled a group of trade experts to discuss, what should be Brazil's interests and attitudes in the Doha Round. The exercise was conducted in an independent way and did not aim at reflecting the Brazilian Government's positions. The full text of the final Report (*Brazil, Trade Multilateralism and the WTO: A Medium Term Perspective*) can be accessed in CINDES' site ([www.cindesbrasil.org](http://www.cindesbrasil.org)).

Carried out in a period in which multilateralism—not only in trade—is going through a deep crisis, and the Doha Round has reached a prolonged impasse, the exercise aimed to identify the characteristics and the agenda of trade multilateralism matching the interests of Brazil, considering a medium term perspective (10 years).

Examining the main conditioning factors of Brazil's multilateral trade agenda, the analysis started from the productive transformation that Brazil is undergoing, with emphasis on the growing competitiveness of natural resource-intensive products in the agri-business area and the ongoing efforts aimed at industry's modernisation and overhauling.

The Report's proposal was based on the following likely scenarios of productive transformation: (i) the increase in weight of sectors intensive in natural resources in the industrial structure; (ii) industrial transformation towards a less diversified but more competitive structure; (iii) the consolidation of internationalised competitive segments in the services sector; and (iv) the growing internationalisation of Brazilian companies, through outward foreign direct investment (FDI).

Three main external factors and interests were examined in discussing the future Brazilian multilateral trade agenda:

- the accession to WTO of two large emerging economies (China and Russia), generating a significant shift in the balance of power within the multilateral trade system;

- the proliferation of preferential trade agreements, bringing about a relative erosion of market access conditions for Brazilian exports *vis-à-vis* the signatories of these accords; and
- the emergence of global challenges not directly associated to trade issues but intersecting with the trade area.

In all scenarios, multilateralism will continue to be the priority negotiating forum for Brazil. This will require a greater investment on the part of Brazil, expressed by the integration of global governance concerns into the country's strategy. The conclusion of the Doha Round was seen as an essential condition in order to overcome the current paralysis and bridge the gap between short and medium terms. Although the Report's scope was not to discuss proposals to conclude the Round, Brazil should be prepared to make concessions in non-agricultural goods and be willing to move in issues considered to be part of a 'minimal agenda', such as trade facilitation and 'duty free, quota free' for least developed countries.

The main characteristics of multilateralism that fits Brazil's interests are:

- the consolidation and improvement of existing rules; and
- the gradual incorporation of new issues into the agenda.

Considering that multilateral negotiations have shown little capacity to generate significant results in reduction of tariff barriers, the Report decided to put special emphasis on rules. New efforts of tariff liberalisation should keep the back seat in the multilateral agenda but they can be pursued in the regional and bilateral forums.

Three elements must be taken into account as priorities to define not only Brazil's thematic agenda in the WTO, in a medium term perspective, but also the main objectives of the country in the negotiation of selected issues:

- The economic and political importance that multilateralism has and will continue to have for Brazil's international strategy.
- The global transformations in progress, and in particular, the profound changes introduced by the emergence of Asia. It is therefore essential to negotiate, in the multilateral

sphere, rules that mitigate the risks of unfair competition and of economic conflicts and tensions. This requires that the Brazilian position in defence of ‘policy space’ for development policies be adapted to the new scenario.

- The prospect of Brazilian productive transformation, allowing less defensive positions, and facilitating Brazil’s acceptance of the inclusion in its multilateral trade agenda of some new issues related to global challenges.

The following issues are associated to the economic and political priority attributed to multilateralism:

- Rules for preferential agreements: (i) defining concrete mechanisms for monitoring and revising preferential agreements—based on the model of the WTO Trade Policy Review Mechanism—TPRM; (ii) creating disciplines for the establishment of preferential rules in issues and areas bearing the greatest potential of discrimination against third countries (ex: rules of origin, technical and sanitary standards and norms); (iii) defining criteria and parameters that limit the use, by major medium-income economies, of the Enabling Clause.
- Dispute settlement system: Brazil had a few outstanding successes in the area but faced serious difficulties in imposing retaliation with economic and trade ‘teeth’. The central issues are related to the enforcement of decisions. Pecuniary compensation and authorisation for cross-retaliation could contribute to the enhancement of the mechanism’s enforcement. A second-best solution would be the combination of pecuniary compensation with authorisation to retaliate given to third countries that also feel harmed by non-compliance.
- Plurilateral agreements in the WTO: Brazil has traditionally opposed the negotiation of plurilateral agreements in the WTO. Although the adoption of the unconditional most favoured nation (MFN) clause in plurilateral accords of the WTO is the best option for Brazil, plurilateral agreements with a conditional MFN clause may be necessary to allow

the negotiations to advance in traditional areas (subsidies and agriculture), as well as in new issues (climate and energy).

The following issues are associated to global transformations and their implications for competition among companies and national policies:

- Industrial subsidies: The review of the Agreement on Subsidies and Countervailing Measures (ASCM) should combine the following elements: (i) strengthening the disciplines applicable to export subsidies; (ii) the inclusion among prohibited subsidies of domestic public mechanisms that may have distorting effects on trade while pursuing objectives that prevent industrial restructuring and rationalisation, by covering company losses or forgiving companies' debts; (iii) the setting up of parameters and criteria allowing the identification of situations where state commercial banks and state-owned enterprises act as 'public entities'; and (iv) the reintroduction of a broadened concept of non-actionable subsidies, including the subsidies contemplated by Article 8.
- Agricultural subsidies: The eventual resumption of negotiations in agriculture should concentrate efforts on commitments to limit the domestic measures of support that distort trade. An enhanced classification of green box subsidies (non-distortive) will be necessary, as there is an evident 'leakage' of support measures to this box. Brazil's interest rests on a progressive convergence of the treatments accorded to industry and agriculture. The reduction in tariffs and the treatment of quotas continue to be very important for Brazilian agriculture, but this Report has opted to concentrate its efforts on the deepening of the rules.
- State-owned companies: The implicit subsidy derived from the role of the state as companies' shareholder has fostered demands for stricter regulations regarding their activities. It would be desirable to establish disciplines that promote transparency in the shareholding control of the companies

and that render explicit the subsidies that these companies receive from governments.

- Non-tariff measures (NTMs): Brazil's objective should be to increase the degree of transparency regarding the use of the introduction of public and private norms and standards, their motivation and possible impact on trade and investments flows. The trade policy review mechanism (TPRM) could be used to assess the adequacy of NTMs. A plurilateral agreement on the harmonisation or mutual recognition of rules, including a MFN clause benefiting all members, whether signatories or not, might be achievable if a multilateral agreement proves impossible.
- Private norms and standards: This issue introduces a new challenge to the traditional limits of the WTO agenda as it constitutes a 'grey zone' favourable to *de facto* discrimination against imported products. Private-driven requirements may have a significant impact on Brazil's exports. Though WTO regulates relations between Governments in a context in which private agents are increasingly setting norms and standards affecting trade and investment flows, the discussion should not be restricted to specific committees but incorporated into the WTO agenda as such.

Regarding the issues related to the productive transformation in Brazil and its implications, the Report highlighted the following:

- Investment: Brazilian government attitude towards inter-governmental initiatives related to foreign investment have been clearly defensive so far. This was a result of the objective of preserving national autonomy in industrial policies, and of Brazilian position as a traditional recipient of FDI. Additionally, until recently, the country had been a marginal emitter of this type of flow. However, Brazilian outward FDI flows have been growing significantly throughout the first decade of the 21<sup>st</sup> century, creating a more propitious atmosphere for reconsidering the traditional Brazilian stance regarding agreements on investments protection.

- Services: Brazil needs to assign priority to the need to increase productivity and competitiveness in the services sector and to reach international competitive levels in the sector.
- Climate and Trade: Brazil is increasingly becoming an exporter of products that are carbon-intensive and, therefore, a potential target for ‘climatic measures’ that distort trade. The negotiating agenda of the relationship between climate and trade in the WTO should incorporate: (i) rules for imposition of border adjustment measures (BCAs); (ii) rules and parameters for permitted subsidies to stimulate the transition towards a low carbon economy; and (iii) enforcement of the disciplines applicable to the formulation and implementation of technical norms motivated by climate concerns (in conformity with the proposal for NTMs and private norms and standards) in order to avoid that they become non-tariff barriers.

Since 2008, concern with the impact of exchange rates misalignments on competitive conditions prevailing in the international markets—and on the competition with imports in the Brazilian consumer market—has found expression in Brazil’s strategies in the WTO. There is a growing consensus about the impacts of managed exchange rates on competitive conditions in the international markets for goods and services. On the other hand, there is no agreement regarding the most suitable forum to deal with the matter. The absence of consensus in the international debate about the theme was reproduced in the Task Force that drafted this Report. This was the only issue where it was not possible to reach consensus among the Task Force members.

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## **Transforming South Asia<sup>1</sup>**

South Asia faces major policy challenges in reducing poverty, and is home to more than 20 per cent of the world's poor. All the countries of South Asia have recognised that mutually beneficial cooperation is a powerful instrument to help us achieve our economic goals, and that regional cooperation determination has been expressed in various ways.

Unfortunately, South Asia is one of the least integrated regions of the world. However, and on a positive side, we have now realised the importance of regional integration as one of the most important and practical confidence building measures that our leadership should pursue.

The importance of Track-2 work lies here and which my friend and classmate Pradeep and his advocacy group—CUTS—are pursuing since early 1990s in partnership with many like-minded civil society organisations from across the region. Track-1 diplomacy should complement Track-2 activities of non-state actors and consumer welfare should play a pivotal role. Pradeep realised it as early as 1995 when he came out with a study on cost of economic non-cooperation to consumers in South Asia.

I am aware that recently CUTS has taken up this issue with much more vigour, which has started bearing fruits. Consumer welfare is a key toward transforming South Asia and let me begin with the present situation, in terms of the economy and political and security issues, and of what the way forward might be.

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1. Adapted from a speech delivered at ICWA-AAS Asian Relations Conference, March 09, 2012.

## The Present Situation

We in South Asia tend to be modest (which is a good thing) and underestimate ourselves (which is not such a good thing) when we speak of South Asian integration and the present situation in the sub-region. We often speak of the South Asian paradox: that a region which has so many cultural and other affinities should be so lacking in integration and connectivity. My own view is the minority view. Many of you have heard me saying before that there is more to what is happening in South Asia than is described by the (now traditional) narrative of pessimism, of which we South Asians ourselves are the major retailers.

This narrative goes something like this: South Asia is one of the least integrated regions of the world, with itself and with the rest of the world. It is also one of the region's most beset with irreconcilable political and security issues and disputes. With 22 per cent of the world's population, it has only 6-7 per cent of the world's GDP. Intra-regional trade accounts for only about 6 per cent of its own total foreign trade. It is resource poor with only 8.3 per cent of global water resources, and so on and so forth.

All of which might be true but it misses the point that reality is far more complex, that empirical performance by South Asia, particularly in the last five years, has shown us how to deal with these limitations; and, that we have a moment in history, which we should seize if we wish to transform South Asia.

Let us first look at the South Asian economies. South Asia has emerged as one of the fastest growing sub-regions in the world with an average rate of growth of eight per cent sustained over the past five years. Intra-regional trade within South Asia has begun to grow and has doubled over the past five years. We are therefore at a point where it is increasingly evident to all the countries in South Asia that there are substantial costs to not moving forward by lowering tariffs, minimising sensitive lists, and tackling non-tariff barriers (NTBs). Each government has taken significant actions in the recent past. India has reduced the sensitive list under SAFTA in a dramatic fashion last year for LDCs. As a result, I am told that Bangladesh's exports to India will cross the US\$1 bn mark in a 12 month period

in July for the first time in history. The India-Sri Lanka FTA has already quadrupled trade between the two countries, and we are now working to improve it. Pakistan has decided to grant India Most Favoured Nation (MFN) treatment, gradually moving to a negative list system. I could cite bilateral and multilateral examples of positive steps taken recently by each of the countries in the region.

When we speak of South Asia as the least integrated region in terms of trade, we ignore the wide variation in our experiences. The fact is that intra-regional trade as a proportion of total trade varies widely for the countries in South Asia. For Nepal it is as high as 60.5 per cent, for Sri Lanka 18.9 per cent, for Pakistan 6.6 per cent and for India only 2.7 per cent. But this variation also tells us how great the potential is, and why intra-regional trade is growing faster than South Asia's trade with the rest of the world.

The other caveat that we should bear in mind is the fact that official figures certainly underestimate the real magnitude of trade that is taking place between South Asian countries, whether clandestinely or through third countries. Anecdotal evidence suggests that the real figure for India-Pakistan trade could be almost three times greater than the official trade figures of almost US\$3 bn. It is an open secret that most India-Bangladesh trade is not reflected in the official figures. South Asia has the dubious distinction of a relatively high level of informal trade flows unrecorded and unreflected in official trade statistics. This suggests that natural complementarities do exist between South Asian economies and have already been identified and acted upon.

Several years ago in 1999, RIS carried out a study of the costs of non-cooperation in SAARC. They found that in 1994 Sri Lanka and Pakistan imported many items at higher unit values than would have prevailed if they had imported them from within SAARC, paying on an average twice what they would have paid in South Asia, and losing US\$266 mn in the case of Sri Lanka and US\$511 mn in the case of Pakistan. (Incidentally, these were relatively high values at that time.) If anything, the costs of not doing business with each other have risen since then. Products are being exported by countries in the region to the rest of the world but not to other

countries in the region! But it is heartening that there is a much wider realisation of these costs within the region. It is probably time that we updated the study today.

Last year, CUTS, the group that Pradeep heads, did a study on cost of economic non-cooperation to consumers in South Asia. It looked at the benefits of trade in enhancing consumer welfare. The study thus offered a powerful argument for further trade liberalisation and integration in South Asia. It estimated that total gain to consumers would be US\$2 bn per year. And this will be a static gain. By effectively addressing non-tariff measures (NTMs) and other costs of doing trade, the dynamic gain would be at least five times this amount. I understand that CUTS is doing some deeper work on this subject and taking forward its results to the political level. This is a very timely initiative and hope that it will spur enhanced regional integration.

The other opportunity comes for the fact that as our economies have diversified and become sophisticated in the last decade, similarities in production structures across countries could also offer opportunities for intra-industry trade. Several sectors such as processed foods, rubber products, plastics, pharmaceuticals, textiles, apparel and light engineering goods are amenable to this kind of trade. If the governments are successful in removing non-tariff and other barriers, this sort of trade should flourish in the region.

As for the nay-sayers argument that South Asia is resource poor and doomed to poverty and even conflict over resources, we also have our strengths. We are population rich, and have a healthy demographic profile, which should last well into the 21<sup>st</sup> century, giving us the markets and the demand we need to keep growing. And despite these constraints we have maintained a healthy growth momentum in the recent past.

### **Politics and Security**

But all this economics ignores the real political and security issues that enable outsiders to call this one of the most dangerous places on earth, I sense you saying to yourselves. We may have got the economics right recently but can we get the politics right?

Perhaps, would be my answer. South Asia has more than its fair share of issues with insurgencies, radicalism, terrorism and extremism. But none of these issues has prevented this from being one of the fastest growing sub-regions in the world in the last decade, and outperforming other sub-regions. But it is an open question whether we in South Asia have the institutions and habits of working together to address the real issues of political instability and the security challenges that we face. This is not to question anyone's sincerity. The great advance that we have made in the last decade is in the common realisation throughout the region that we all need a peaceful environment to concentrate on what really matters, seeking to provide security and prosperity to our citizens. Those who argue otherwise are a small minority in all our countries. But there are serious questions about the capacity of state structures and their ability to deal with terrorism and extremism in some cases. And vestiges of zero-sum thinking on political and security issues remain influential in some circles.

Empirically speaking, there has been an improvement in the security situation in important parts of South Asia. The elimination of the LTTE's armed forces in Sri Lanka, Bangladesh's successful actions against terrorists and extremist elements in the last three years, and Nepal's steady progress in its double transition to multi-party democracy and mainstreaming the Maoists are some practical examples.

But overall one would have to conclude that our politics have lagged behind our economics.

### **The Way Forward**

There are two possible ways of dealing with this imbalance between our economics and our politics.

One would be to directly attack the laggard sector, politics and security issues, head on. But these issues that divide us have done so for a long time and there are reasons why they have done so.

Let me tell you a story about the other way.

When Chanakya/Kautilya first met Chandragupta Maurya in Taxila around 330 BCE, Chandragupta had just failed in his fifth or sixth attempt to overthrow the Nanda dynasty by a coup in their capital Pataliputra in Magadha/Bihar and fled to the North West. Kautilya then asked him, when you eat a hot dish of rice do you plunge your fingers into the centre or do you start at the cool fringes. Chandragupta changed his strategy to the indirect approach and the rest is history.

I think we should learn the same lesson and should build the economic and other links that we can, while attempting to resolve the political and security issues that divide us.

This does not mean that we ignore the political and security issues. In fact it means the opposite. It certainly means that we must not let political differences and fears stop the processes of South Asian integration. At the same time states in the sub-region must begin to meaningfully address and resolve the political issues and disputes that divide them. Speaking personally, I would go further. It may be time for those of you who are scholars and intellectuals, to start considering cooperative security frameworks and architectures for this sub-region, and what conditions would be necessary to make them successful. There are a host of issues such as terrorism, maritime security and cyber security which require cooperative solutions and which bear consideration by groups like yours.

In meantime, we should also move forward much more rapidly on the connectivity, including energy and grid connectivity, tourism, people to people, trade and economic links, that can make such a major contribution to improving our future.

I am confident that if we do so we will be able to transform South Asia. I am old enough to remember South Asia as it was. Some of us were called 'basket cases' and have proven those prophets false. Others told us that we should forever remain hewers of wood and drawers of water. They too have been proved wrong. Just in my lifetime, the sub-region has undergone a transformation of its economy, society and polity that is unparalleled in its own long history for its range, depth and speed. What has happened,

and what continues to happen, is nothing short of a revolution in the lives and aspirations of our peoples. Our societies and polities have shown the ability to work with unprecedented change. Given our record, I am sure that we can transform South Asia, working together.

I trust that Pradeep's group and their network of like-minded organisations in the region will consider these and other ideas for the transformation of South Asia.





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## **Trade and Global Public Goods**

It is my privilege and pleasure to greet Pradeep on his 65<sup>th</sup> birth day and recognise his signal contribution in founding CUTS and building it into perhaps the most influential non-governmental organisation in the world on matters relating to global trade, multilateral trading system and the WTO. The outstanding success of Pradeep as head of CUTS in organising internet debates, no less, on growth and poverty, editing and publishing the outcome of such debates with same title as the debate itself, is remarkable.

The debate was sparked by the forceful assertion by Pradeep's friend, Jagdish Bhagwati, of the importance of accelerating aggregate growth in poor countries for the achievement of their objective of rapid reduction in their poverty. The dust cover of the book from the debate, edited by Pradeep with his long term associate Bipul Chatterjee describes the debate participants generously as renowned experts and realistically as from across the world.

The diversity of the opinions expressed around a near unanimous concurrence with Bhagwati's assertion is indeed impressive. In particular it and its concomitant, an agreement on the need for an open, liberal and rules-based multilateral global trading system stand in sharp contrast to arguably the most conspicuous among many failures of the G-20 to make credible their commitments at their summits, in not acting on their commitment at more than one summit to conclude the Doha Round Multilateral Negotiations by the end of 2010. As of the end of October 2012, Doha is not concluded. Pradeep and CUTS continue to be in the forefront of the movement to push global leaders to conclude Doha.

Without any hesitation I would attribute CUTS' success in large part to Pradeep's understanding of the importance and absolute necessity of organising the theoretical and empirical research on the political economy of the emerging issues in the global trading environment and trade negotiations and getting them done before articulating and advocating specific recommendations of reform. I have no doubt that in this Pradeep's ability to persuade others to contribute to the research effort using any means at his disposal, including flattery if necessary, was crucial. I believe that his success in persuasion originated from his willingness to listen to others patiently if they did not agree with him, without diluting his principles. I have observed Pradeep in action at conferences and admired his willingness to listen even if doing so required him to suffer fools, if not gladly, at least willingly and patiently!

The multilateral trading system and its overwhelming majority of participants, namely, the developing countries need Pradeep and CUTS now more than ever. I wish Pradeep a long, healthy and active life.

## **II. Competition and Economic Regulation**



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## **Competition Law**

### *A Case Study and its Implications*

I want to acknowledge the outstanding contribution of Pradeep Mehta and CUTS to the cause of having well-functioning markets all round the world and especially in developing countries. No person has made a greater contribution than Pradeep to the promotion of competition law and its serious implementation in developing countries. While the contribution to India and South Asia and then Africa has been at the forefront, his influence has been universal.

His establishment and development of CUTS has been remarkable. It is a sizeable, world valued institution whose high quality output contributes globally to competition law and policy.

CUTS has a clear commitment to an economically sensible approach. The consumer movement has its heart in the right place but sometimes it presses for solutions involving too much intervention rather than for ones that make markets work better. CUTS has not made this mistake—and the same applies to its pro-trade approach—and this is despite its sensitivity to the special characteristics of developing countries.

In this short paper, I want to go back to basics by presenting a true case study. One of my purposes is to highlight some characteristics of competition law. Another is to draw attention to the links between its core elements.

Let me therefore begin with a true typical cartel story. For 20 years two major firms dominated the Australian freight express business, which transports parcels and packages from one city

to another. They had a secret agreement that assigned customers (called pets) exclusively to one or the other. They agreed not to poach 'pets' from one another. If customers tried to switch suppliers, the competitor would quote a high price and that would usually be the end of the matter. Occasionally however, a customer would switch supplier but then receive very bad service: urgent overnight deliveries from Melbourne to Sydney would arrive several thousand miles away in Darwin a few days later or get lost. In the jargon of the companies they were trying to 'burn' customers to induce them to switch back. If burning failed, the firm would try to compensate its competitor by getting rid of one of its existing customers of like size by sharply rising prices or by reducing service quality. Occasionally financial compensation to the business that lost the customer was paid instead. All this was done to avoid competition and raise prices.

The Australian Competition and Consumer Commission (ACCC) successfully broke up the arrangement and with much fanfare had the firms fined about AUS\$13 mn, a big amount in those days. Alas! there were no criminal sanctions then for cartels.

There were occasional attempts by new competitors to enter this profitable market. However, whenever this happened, at least one of the firms would quote prices well below that of the new entrant. They often quoted prices that were well below their costs: if the variable or marginal cost of overnight delivery between Melbourne and Sydney was AUS\$50, then they would quote at AUS\$30. This drove most competitors out of the market. Legal action to recover damages under the competition law was eventually taken by one of the surviving competitors.

After the cartel was broken up one of the players came to the Commission and claimed that there was only room for one firm in the market. Could they merge? If so they said, a great deal of duplication would be eliminated, cost savings would occur and the customer ultimately would benefit from lower prices. The combined firm would also have the scale to enter into overseas markets. However, from the ACCC's perspective, such a merger seemed anticompetitive, and would have been likely to cause higher prices. So the ACCC opposed the suggestion.

Yet, as serious competition broke out, the ACCC received some information from people within one of the firms which suggested that the advertised claims that packages were transported by air from one capital city to another, were incorrect. The ACCC tested this by sending some packages of its own which included altimeters. On collecting the packages, the altimeters showed that at no stage had the parcel been more than 300 metres above sea level indicating either that the planes tended to fly rather low or that there was misleading and deceptive conduct in breach of the consumer protection provisions of the Trade Practices Act. Action was taken via fines, publicity and court orders to stop the practice.

Let us draw some general conclusions.

Cartels—secret agreements between competitors not to compete, to raise prices, to restrict service—are a great temptation for business. The gains can be large. The global vitamins cartel ran for nearly a decade, raised prices by large amounts—75 per cent—and made billions around the world for the conspirators. Cartels are also hard to detect, increasing the incentive to operate them. However, they do great economic harm—to business customers and consumers—bring no offsetting economic or social benefits and are unethical. In most OECD countries it is unlawful for competitors to agree to share a market so that they do not compete against one another. It is also unlawful for them to agree on prices or to rig bids. Anticartel laws are a core component of competition law.

To cut prices in response to a new competitor is not generally unlawful. This is competition at work. However, to cut prices persistently below variable cost to eliminate a competitor is usually unlawful or ‘predatory’. Predatory behaviour breaches abuse of market power (or abuse of dominance) provisions of competition law. In Australia it is unlawful for a firm with a substantial degree of power in a market to take advantage of that power in order to eliminate competitors or deter them from competing where this harms competition. There is nothing wrong with being a monopoly under competition law—monopoly may be the result of a business being more efficient than its competitors. It is however, unlawful in most OECD countries to engage in acts of ‘monopolisation’ or



‘abuse of dominance’, that is to use market power illegitimately to prevent competition e.g.:

- by systematically pricing below variable cost to destroy small players or new entrants and thereby having competition as a whole in the market;
- by refusing to supply where the purpose or effect is to lessen competition;
- by engaging in a range of restrictive practices such as exclusive dealing (supplying a customer on condition that it does not purchase from a competitor) where this is anticompetitive;
- by engaging in resale price maintenance (requiring a retail purchaser not to sell below a specified minimum price) where this is anticompetitive.

Such anticompetitive behaviour by business harms competition, efficiency, business opportunity and innovation. Such behaviour (‘monopolisation’ in US jargon) has been unlawful in North America since the time of Rockefeller and is still so as Mr Gates has discovered and now firms like Google and Apple are discovering. It is however, a field in which difficult judgements are often required: when is pricing below cost, a sign of intense competition and when is it a sign of damaging anticompetitive behaviour? Up to a point, an abuse of dominance law has a powerful pro-competitive effect. Carried too far it can chill competition.

The merger proposal incident described above highlights the fact that some mergers can be anticompetitive and that this can often be their real motivation. When Australia introduced a competition law in 1965, it prohibited anticompetitive agreements but did nothing about mergers. This put an end to some price-fixing arrangements between competitors but they then nearly all merged, achieving the same effect as the former anticompetitive arrangements. This is one reason why merger provisions are needed in competition law—to prevent outlawed cartels from merging to become a monopoly.

Not all mergers are anticompetitive. Moreover, unlike most cartels, they can bring efficiency benefits. Indeed it is possible under

Australian law, if a merger is anticompetitive to have it ‘authorised’, if the applicants can demonstrate that the benefit to the public exceeds the harm. The job of the ACCC and its appeal body—the Australian Competition Tribunal—is to distinguish between those mergers between competitors that are of benefit to the public and those the claims for which are merely trumped up excuses for reducing competition in the Australian market. Over time, a well administered merger law has a major beneficial effect on the competitive structure of an economy.

Regarding the false claims about air transport, not only was this behaviour misleading and deceptive with respect to customers, it was also unfair for others in the industry, which were ethical. It was a form of unfair competition. It also did not enhance the industry’s reputation. It also meant that competition did not work well: competition only works well if consumers are informed properly or at least not wrongly informed about the nature of the products or services being offered on the market. Laws about misleading and deceptive conduct, and consumer protection more generally, are best regarded as a part of competition law, and in about half of the OECD countries, including Australia, they are administered and enforced by competition regulators.

I will now bring this together with a very brief overview of the basic elements of competition law.

Competition law applies to businesses (usually including publicly owned ones) and is designed to break up cartels, anticompetitive mergers, the abuse of market power (or dominance) and in many countries to misleading and deceptive conduct. It takes the form of statutory prohibitions either of:

- general nature e.g., all arrangements between businesses that substantially lessen competition are prohibited by law, and
- specific nature e.g., price fixing arrangements between competitors are automatically prohibited, irrespective of whether they affect competition. The reason for automatic prohibition is that the arrangements are assumed nearly always to be harmful to the economy and rarely or ever offset by any benefits to the economy. Accordingly, it is considered

best to ban them automatically rather than consider the economic effects of each arrangement individually before banning them. Resale price maintenance is treated similarly in most countries.

Competition law is administered and applied by an independent regulator, which has powers to investigate behaviour it believes may be unlawful.

In North America and Australia such regulators play a prosecutorial role: they collect evidence, seek to prove their case in court and obtain court orders. In Europe, the regulator itself may have power to make orders, including fines (although appeals may usually be made to a court).

Competition law can only work effectively if there are credible, adequate sanctions. Courts can impose injunctions, fines, gaol sentences, damages and other orders.

The penalties under the Trade Practices Act take the form of fines and sometimes damages can be added on. But are fines sufficient in all situations? Recently Australia decided to join a number of other countries in having the possibility of jail sentences for collusion on prices, market sharing and bid rigging because fines alone were insufficient deterrent.

An interesting feature of competition law in North America and Australia—and to a much lesser extent in many countries, and continents, such as Europe—is that it is also possible for individuals including individual businesses to take action themselves. They can sue for damages and injunctions (but not fines) in a court. This is a very important and powerful backup to competition law that usually works well and is likely to be adopted on a much more substantial scale in Europe before long.

In summary, some features of competition law that emerge from this case are:

- Most often the direct beneficiaries of enforcement action under the Trade Practices Act are businesses (especially small businesses) rather than consumers. On balance most businesses gain from competition law.

- In some areas, there is a fine line between competitive and anticompetitive behaviour. An example is when a monopolist reduces prices in response to entry by a new competitor.
- In other areas, there may be a trade off between competition and efficiency e.g., some mergers may allow the achievement of scale economies at the expense of competition.
- The treatment of monopoly has some special features. As noted, monopoly itself is not unlawful. Monopoly may, after all, result from a firm being more efficient than any other competitor or potential competitor and thereby eliminating them.
- In Australia there is no power to break up monopolies. In the US the law goes a step further. There is power to break up a monopoly where it has actually acted anticompetitively in breach of competition law. There is however, no power to break up a monopoly without there having been some unlawful anticompetitive behaviour.
- In competition law, there is normally no prohibition on the prices which a monopoly charges even if they are considered excessive.
- The law applies to all or nearly all forms of business. However, the millions of small businesses are generally unaffected by the law and/or are exempt when there is some possibility that a technicality might catch them. Of greater importance however, is the fact that there is pressure from nearly every sector to gain exemptions from the law on the grounds that their circumstances are special.
- In Australia we have an interesting way of dealing with claims for exemption. If someone believes that the law should not apply to them they may apply in public to the independent regulator who holds a public hearing before deciding whether they should have so called 'authorisation' to continue to engage in anticompetitive behaviour. This is an alarming sounding exception to the competition law but in practice the regulator has been extremely strict and does not grant many authorisations. It is also a better way of

dealing with exemption applications than leaving them to politicians

- Anticompetitive behaviour can occur on a global scale but there is no global competition law or regulator. When a global cartel is detected, however, it is usually possible to obtain fines and damages at national levels: this is a reason why a domestic competition law is desirable. If the US, for example, uncovers a global cartel, a local regulator can often piggyback on its actions to obtain fines and damages where local harm has occurred providing there is a local law.
- A considerable administrative and legal apparatus is needed to apply competition law. It can take years to build up.
- The law may not have much relevance to some important state-owned utilities in areas such as telecommunications, public transport, energy and water. Very often these are monopolies protected by statute from entry by competitors. Being a monopoly there is no competition to collude with, to take over or to take monopolisation action against. But having a protected monopoly can be economically harmful. To deal with it requires more than the application of competition law. It requires a full assessment of the structure of an industry and all possible policy approaches including divestiture.
- Competition law regulates anticompetitive behaviour by businesses. It does not apply to, nor override the many actions of governments that limit competition.

Finally, this case study highlights the fact that, if the underlying structure of an industry is not competitive, there may be many manifestations of market power—cartels, monopolisation, restrictive practices, anticompetitive mergers and misleading and deceptive conduct. In an uncompetitive industry, it is necessary to focus on all forms of anticompetitive conduct that may occur.

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## **Building a Global Civil Society Infrastructure**

Around the world today, the ideal of free and fair competition is on the move. Well over 100 jurisdictions now have antitrust laws and competition authorities to enforce those laws. And billions of consumers worldwide, now stand ready to benefit from the appropriate enforcement of competition policy through increased choices, expanding economic opportunities and lower prices of goods and services.

Unfortunately, much work remains to be done to realise this ideal. To have any effect at all, an antitrust law must actually be enforced. A well-trained and adequately funded competition authority must dutifully and properly carry out its mission, if the benefits of these structures are to be realised. Good government is required in this area as in all others, and good government is rare unless it is supported by a caring civil society. In short, we need more than merely laws and duly appointed authorities; we need active support from civil society if we are to realise the benefits of competition policy. This truism is not limited to nations that are committedly and truly democratic. In all market-oriented jurisdictions, there is a need for civil society support of strong laws, of intelligent and often controversial government initiatives, and of public funding. If the public doesn't care, the powerful forces that oppose the oversight of antitrust will have all the leverage and their weight, as if by Newtonian physics, will prevail.

This year, the American Antitrust Institute (AAI), a non-governmental organisation (NGO) based in the US, celebrates its 15<sup>th</sup> anniversary of advocating a robust competition policy. Our work has mainly been arguing for the benefits to society of

intelligent antitrust enforcement, and also educating the public and raising awareness of the relevant issues. We have learned a great deal from Pradeep Mehta and CUTS, true pioneers in the field of competition advocacy, having worked on behalf of consumers for over 30 years. Owing especially to Pradeep's vision and hard work, CUTS has made itself an indispensable part of the international civil society infrastructure particularly in South Asia, and a respected voice for people-based competition policy. We are proud that Pradeep Mehta serves on the AAI Advisory Board.

Going forward and drawing no small amount of inspiration from Pradeep's work, AAI will be expanding relations with consumer-minded NGOs around the world, offering the pro-bono expert support of its 130-person Advisory Board to NGOs that seek help in formulating pro-competition policies, strategies, and submissions to government agencies and courts. In the US, AAI's mission is to improve antitrust enforcement by serving as a pro-enforcement watchdog of American antitrust enforcement institutions, both public and private. As we establish partnerships in other countries and this international outreach project picks up steam, the eventual goal is to find funding, separate this project from AAI, and work jointly with a whole new yet-to-be international competition advocacy organisation.

Like the AAI, a new organisation will likely be a virtual network of experts on competition laws and policy, drawn from around the world. This broad, decentralised approach has served AAI very well, and can be expected to work even better on international problems, where breadth and diversity of knowledge is even more critical and expenses are such that internet communication will necessarily take precedence over in-person meetings. It is likely that many partnerships will be initiated primarily with consumer-focused NGOs as well as with academic institutions, lawyers' organisations and general public interest organisations.

In our vision, the new international organisation will also help consumer and competition advocacy NGOs to deal with the obstacles they will inevitably face—and the new organisation will also be dealing with these obstacles itself. Here, the experience of our network of experts from AAI and CUTS will be particularly

useful. At AAI, for example, we initially had little idea of how we would raise funds for our operations. We did not foresee that an unusual feature of certain American class actions—known as “Cy Pres Grants”—would provide us with a significant portion of funding. But more relevantly to other jurisdictions, we also found that private companies with an interest in a level playing field will sometimes make contributions.

As private enforcement of antitrust becomes more prevalent around the world, it will become more frequent to find reasonably well-funded companies fighting each other—and one side will likely be aligned with consumer interests. This insight can be turned into a potential source of funding for a competition advocacy organisation. On an international scale in light of ongoing globalisation, we can expect an even greater level of interest from companies facing the challenges of competing in foreign markets—perhaps in the face of protectionist government policies that give domestic companies unfair competitive advantages. The answer to the fundraising challenge is really to seek as many sources as possible while remaining independent both in reality and in public perception.

Another key challenge that new institutions would face is maintaining independence from government. Governments too often inhibit competition by giving unfair advantages to particular private players. Similarly, politically-driven governments may neglect to enforce the antitrust laws against favoured private entities, public entities, or formerly public entities now controlled by friends of officials. Competition authorities are particularly concerned, at the present time, with what is known simply as ‘the advocacy function.’ This refers to finding ways to influence other parts of the government to adopt pro-competition policies. This can be a lonely, controversial, and even dangerous role for a small and relatively new agency. It is an area in which civil society support is especially welcome and indeed necessary.

Whether applauding or condemning a government action, a competition advocacy NGO is likely to make friends and enemies. But as both AAI and CUTS know, today’s ally may be tomorrow’s



opponent, and vice versa. What should endure are the principles being advocated.

At AAI, in order to maintain our independence to criticise the American agencies that enforce competition policies, we do not have any members of our Board of Directors or our Advisory Board who are currently employed by the federal government and we do not seek or accept funding by antitrust agencies, we may need to criticise at some point in time. Indeed, if we were funded by an antitrust agency and came out in its support on specific cases, we would have diminished credibility. We recognise the possibility that organisations in other countries will sometimes need to strike a different balance.

A final, related challenge for new civil society organisations is building sufficient expertise to feel self-confident in taking public antitrust positions. Competition policy is a complicated field, even more so because it is such a new concept in many countries, and the law has much room for development. A significant portion of a nation's antitrust expertise is located either within the government enforcement agencies themselves or within the law firms that represent defendant (or potentially defendant) companies. Outside expertise therefore, can be very useful in assisting the growth of a pro-competition civil society infrastructure. To help address this challenge, our envisioned international organisation would ideally help connect a global network of experts.

Ultimately, we envision a day when competition advocacy will become a permanent part of the civil society in every market-oriented country. Only in this way can we insure that competition authorities can have the ongoing support needed for optimal functioning and at the same time will always be properly held accountable to the public for any failures to robustly advocate for consumers through competition policy. What is needed, as CUTS has amply demonstrated, is both a cheer leader for well-conceived and effective governmental intervention in the market, and a vigorous watchdog to assure that government does its job properly.

**Pradeep Mehta: The Indefatigable Fighter**

*Potash as Symbol of What Can Go Wrong  
and How to Go Right*

**Introduction**

Pradeep Mehta is a valiant fighter for competition, consumers and the poor. Pradeep is at the forefront of every battle to reset the skewed compass that favours rich countries and vested interests at the expense of peoples of the developing world.

The potash battles provide a good laboratory for observing forces that deflect competition on the merits, and for contemplating what can be done. To honour Pradeep and his ceaseless fight for competition on the merits, this essay looks briefly at the state of the world in antitrust and the aspirations for a fairer (and more efficient) world, and, through the window of potash, it observes strategies to preserve the status quo and blueprints for a breakthrough.

**Competition and the State of the World**

In matters of competition and the quest for a coherent regime that would lower world prices and increase economic opportunities, the motor of the world has stalled. To be sure, national competition laws look more and more alike, and cartels are well recognised as a scourge to be stamped out; but still, no law says: You must not do unto others what you would not do unto yourself. There is no international effort with traction to embed this principle. Rather, the gaps between the countries are moats; and the law of moat is: Go ahead; exploit your neighbours. Conspire to raise their prices.

Let them catch you if they can. If the targets are poor developing countries with no resources to tilt at giants, they will not be able to catch the foreign cartel. If they are a developed country, still they might be at the mercy of the price fixers if the price fixers pick a detour to market or their government simply says: Do it.

## Potash

The potash story is a tale of scenarios one and two (poor country victims and indirect victims), to which we turn. The Chinese vitamins and raw materials cartels are tales of scenario three.<sup>1</sup>

First, a word about potash. Potash is an important ingredient in fertilisers and an important nutrient in cereals. It is exported to 150 countries, most of which are developing countries. Canada, particularly in Saskatchewan, accounts for more than 30 per cent of world potash exports. The three big potash producers operate a potash export cartel in Saskatchewan—Canpotex—and have done so for 40 years. The cartel is strongly supported by the government of Saskatchewan. Most of the rest of the world supply comes from Russia and Belarus, whose potash firms collaborate with the Canadians.

The high cartel price of potash “has led to a decrease in the use of fertilisers in developing countries, contributing to the food crisis. It has been hugely expensive for developing countries; for example the Indian government is reported to have spent US\$3 bn last year to help its farmers cushion the high prices of potash fertilisers.”<sup>2</sup>

How can developing countries protect themselves from this scourge? The answer of the developed world is: “This is not our problem. Let the importing country sue.” But can Benin (with no competition law) sue? Can the Gambia, with a population of less than two million and scarce resources, sue?

1. Vitamin C Antitrust Litigation, No. 06 MD-1738 (E.D. N.Y. Sept. 1, 2011); Animal Science Products, Inc. v. China Minmetals Corp., 654 F.3d (3d Cir. 2011).

2. Frédéric Jenny, quoted in “Cartelisation: Professor’s Critique of Hostile Bid Triggers Discussions of Export Cartels”, 99 Bureau of National Affairs, Antitrust & Trade Reg. Rep. 339, Sept. 17, 2010.

Perhaps the developed countries are the best hope.<sup>3</sup> Will the developed countries with big purchases of potash sue the cartelists and punish them sufficiently so they will abandon the cartel and not do it again?

This was not a vain hope. The US market for the purchase of potash is large. US Americans consumed 6.2 million tonnes of potash in 2008, of which 5.3 million were imports. And most of the imports came directly or indirectly from the ‘monopolist’ countries—Canada, Russia and Belarus—and were sold by joint ventures of all of the big producers, who controlled 70 per cent of the world’s supply. Between mid-2003 and 2008, prices of potash rose by at least 600 per cent without there having been any significant change in costs or demand.

US American buyers did sue. Some were direct buyers from the alleged cartelists. Others were the victims of the following strategy, as alleged in the complaint: The cartel members negotiated prices in Brazil, India and China. They used the prices thus negotiated as benchmarks for sales into the US. “For example, in May 2004, the cartel arranged for prices to increase by US\$20 per tonne for some foreign customers; shortly thereafter, prices in the US went up by precisely the same amount.”<sup>4</sup>

The potash companies moved to dismiss this case on grounds that the complaints failed to meet the requirements of a now-famous statute—The Foreign Trade Antitrust Improvements Act (FTAIA) of 1982—which puts non-import foreign trade beyond the reach of the Sherman Act unless it has a “direct, substantial and reasonably foreseeable effect” on the US market. The district court denied the motion. The court of appeals reversed, holding that the injury to the US buyers was “indirect” and therefore beyond the reach of the Sherman Act. (But had not the cartelists purposely refrained from selling “directly” into the US to evade the Sherman Act by hiding behind the shield of the FTAIA?)

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3. See remarks of Pradeep Mehta expressing pessimism that the developed countries will take any steps to curb their export cartels. *Cartelisation*, *supra* note 2.

4. *Minn-Chem Inc. v. Agrium Inc.* (“Minn-Chem”), No. 10-1712 (7th Cir. June 27, 2012), slip op. p.5.

The plaintiffs, however, won a rehearing *en banc*; and, on the rehearing, the court of appeals reinstated the district court opinion. The appellate court had to interpret the FTAIA requirement that the US effect must be ‘direct.’ The court, by Judge Diane Wood, determined that, in its context (the statute also imposes safeguards of foreseeability and substantiality), ‘direct effect’ requires only a “reasonably proximate causal connection.” The effect simply must be not too remote from the cause.

The court was influenced by incentives. Canada and Russia had no incentive to rein in the cartel. They “would logically be pleased to reap economic rents from other countries; their losses from higher prices for the potash used in their own fertilisers are more than made up by the gains from the cartel price their exporters collect....” Distinguishing *Empagran*,<sup>5</sup> the US Supreme Court case dismissing foreign-plaintiff suits for over-priced vitamins where both the cartel and the consumers were in foreign markets, the court of appeals said about the potash situation:

It is the US authorities or private plaintiffs who have the incentive—and the right—to complain about overcharges paid as a result of the potash cartel, and whose interests will be sacrificed if the law is interpreted not to permit this kind of case.

The world market for potash is highly concentrated, and customers located in the US account for a high percentage of sales. This is not a House-that-Jack-Built situation in which action in a foreign country filters through many layers and finally causes a few ripples in the US. To the contrary, foreign sellers allegedly created a cartel, took steps outside the US to drive the price up of a product that is wanted in the US, and then (after succeeding in doing so) sold that product to US customers. The payment of overcharges by those customers was objectively foreseeable, and the amount of commerce is plainly substantial.<sup>6</sup>

The US potash litigation is not over. Simply, the complaint was not dismissed at an early stage. The companies might yet file a petition for certiorari seeking interpretation of ‘direct effect’ from

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5. *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004).

6. *Minn-Chem*, *supra* note 4, p.31.

the Supreme Court of the US. But the appellate court opinion is an important step forward. It is a step towards a world vision and away from inward-looking Balkanisation that is destined to keep the moats wide and the vested interests content. Moreover, even if the US Supreme Court and a district court at trial should uphold the US potash plaintiffs, this will not be the answer for developing countries. The US plaintiffs would then get damages based on their purchases, not on world purchases. The cost to the world potash cartelists is not likely to deter them from raising prices, starving people, and bankrupting farmers in Africa. The crime will still 'pay'.

### **A Positive Agenda**

A positive agenda becomes, more and more, just a fanciful hope. Nations have shrunk from the global visions of the 1990s, when coherence and community were tabled as shared objectives. In these times of economic hardship, nations retreat.

Nonetheless, we can and must have aspirations. Pradeep Mehta would settle for no less. At least we can imagine, aspirationally, one-world without cartels, especially without cartels that make the least well off worse off. We can, as Pradeep always does, shine sunlight on the costs of offshore cartels, especially those that target people on the edge of a decent life (and worse). And for those not motivated by altruism, the message might be driven home that the case is not only a moral one, it is an economic one. A successful battle against world cartels will improve of the economic welfare of the world.

Meanwhile, there are smaller bridges to be built across the moats. The home lands of the cartels should agree, in bilateral, plurilateral and multilateral agreements, to cooperate in discovery with the offshore victims.<sup>7</sup> And the victims' competition authorities might productively team up regionally to prosecute suit.

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7. See E. Fox, "Economic Development, Poverty and Antitrust: The Other Path", 13 SW. J.L. & Trade in Americas 211 (2007), Part VII: The Developed Country's Duty of Cooperation, at p.233.



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## **Competition and Competition Policy in a Globalised World**

At the end of the Uruguay Round, the European Commission (EC) urged that competition be included in the WTO negotiating agenda. A working group on Trade and Competition Policy was created in 1996 and was active from 1997 to 2004. In July 2004, the General Council of the WTO decided that the interaction between trade and competition policy (in addition to investment and transparency in government procurement) would no longer form part of the Work Programme set out in the Doha Ministerial Declaration and therefore, no work towards negotiations on any of these issues would take place within the WTO during the Doha Round.

The reasoning behind the European Commission proposal was that the effectiveness of trade liberalisation measures taken by WTO members can be defeated if private operators engage in practices that recreate barriers to trade or reduce competition in world markets.

From the beginning, Pradeep Mehta offered unconditional and enthusiastic support to the idea that trade and competition issues were linked and had to be looked at in conjunction with the context of the Doha Development Round. This was particularly courageous and foresighted on his part since the benefits of competition law and policy were not well understood in developing countries and were even considered with suspicion by those who thought that the EC Commission proposal was a Trojan horse designed to facilitate the penetration of developing country markets by big businesses based in developed countries.



In spite of the elimination of competition from the work programme of the WTO, the idea that there is a need to ensure that globalised markets remain competitive and that a multilateral competition policy is a necessity, has not gone away.

On the contrary, the proliferation of bilateral or regional agreements with competition clauses since the mid 2000s shows that trading nations have become increasingly aware of the link between trade and competition. As a result, a great number of developing countries that did not have a competition law in the early 2000s, have since adopted such a law and are now more familiar with the role of competition policy for economic development. Again, Consumer Unity & Trust Society (CUTS), under the leadership of Pradeep Mehta, played a crucial role in promoting the adoption of competition law in developing countries and in offering them technical assistance.

In addition, the fact that the focus of competition law enforcement in developed countries shifted to enforcement against international cartels helped focus the attention of policymakers on the importance of the costs which such cartels can impose on developing countries. This was not entirely new as a number of studies of individual international cartels (such as the study by Prof Newfarmer on the international heavy electrical equipment cartel in the early 1980s, or the study by Prof Stiglitz on the aluminium cartel in the early 1990s) had pointed to the potential cost for developing countries of transnational cartels based in developed countries. But the increased focus on such international cartels led to more work being done on the costs imposed by such cartels (for example by Prof Connor, Prof Suslow and Levenstein and myself).

The liberalisation and deregulation movements of the 1990s and 2000s, often suggested or imposed by international donors on developing countries through conditional subsidies or bail-outs, also increased the awareness of competition issues in developing countries. Consequently large segments of domestic industries in developing countries came under the control of foreign multinationals. Indeed, in a number of instances large foreign firms were the only ones that had sufficient capital to invest in the

purchase of privatised assets and to become dominant players. As a consequence of this movement, a number of developing countries became more dependent than they had previously been on decisions made by dominant multinationals outside their borders. The cement industry in Latin America or Africa provides vivid examples of this phenomenon.

Public officials in developing countries came to realise that they were losing operational sovereignty over parts of their domestic industry and that the regional or continental strategies pursued by dominant multinational firms operating within their borders were frequently designed to prevent or restrict competition. This increased their awareness of the necessity to develop domestic tools to fight transnational anticompetitive mergers and/or abuses of dominance. Development in the beer and soft beverages industry in both Africa and Latin America are typical examples of this.

Another issue, which has received increased scrutiny over the last few years—thanks to the wide swing in the prices of commodities—is that of transnational export cartels. There is less consensus at the international level about what is the proper treatment of such cartels since developing countries can, depending on their endowment in natural resources, be either on the winning side or on the losing side of such cartels. But what has become clear is that the existence of such cartels can conflict with the goals of trade liberalisation and that only a multilateral agreement on how they should be treated could bring relief from their deleterious effects.

Thus, the awareness of the potential damage of transnational anticompetitive practices or transactions for developing countries has risen and so has the awareness of the fact that while bilateral or even regional solutions may bring some relief, they are insufficient to deal with all the problems.

In particular, it has become obvious that voluntary bilateral or regional cooperation agreements on competition have not allowed small developing countries that have adopted a competition law to exercise their national sovereignty over transnational anticompetitive practices or transactions, which impose costs on

them. Indeed, developed countries are reticent to sign bilateral cooperation agreements with small developing countries because they fear that they will bear all the costs of the bilateral cooperation, whereas the developing countries party to such agreements will get most of the benefits since there are likely to be more complaints that firms located in developed countries have abused individually or collectively their market power or have entered into transactions that are detrimental to developing countries interests than vice versa.

As a result, the distrust of developing countries toward competition policy and law enforcement has largely abated since 2003, and they now more widely accept the necessity to find a multilateral solution to the issue of the competitive governance of world markets.

What is not yet clear is the context in which the exploration of possible options for a multilateral agreement on competition could be reopened. The WTO would be suitable because it is logical to consider trade and the competition issues together. However since 2003, the negotiation of the Doha Development Round has achieved no significant progress. One possible reason is that multilateral trade agreements no longer bring sufficient benefits to the negotiating countries to give them an incentive to offer the concessions, which would allow negotiations to be successful.

One of the ways to increase the benefits of trade agreements is precisely to ensure that their goals are not defeated by anticompetitive practices or transactions in globalised markets. Thus the exploration of the issue of trade and competition policy in the WTO, which was considered a hindrance to the completion of the Doha Development Round in 2003, may now have become the best hope to save the Round.

There is little doubt that Pradeep Mehta, who has recently been appointed by the Director-General of the WTO to a high-level panel set up to identify 21<sup>st</sup> century trade challenges, will keep this perspective in mind in thinking about the future of the multilateral system.

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## **Regional Cooperation among Competition Agencies**

My introduction with Consumer Unity & Trust Society (CUTS) and, therefore with Pradeep Mehta, the man behind the institution and my friend, happened one day in the summer of 2004, when I was strolling the aisles of the Library at the Lahore University of Management Sciences (LUMS) in Lahore, where I came across a copy of *ReguLetter*, a quarterly newsletter of CUTS. I browsed through *ReguLetter* and one thing that stayed with me was the underlying motto (philosophy) of CUTS, *i.e.*, “it is better to light a candle than to curse the darkness.”

Indeed, the philosophy of CUTS is not just a mere slogan, but a work in progress. Finding its origins in a small village level organisation initiated in 1983, producing a monthly wall newspaper in Hindi called *Gram Gadar* (village revolution) to an international organisation, is witness to such work in progress. *Gram Gadar* proved to be pivotal in providing a platform for the oppressed classes to obtain justice.

The word ‘darkness’ has long been a metaphor for ignorance or evil. Collusion or cartelisation has been declared as the ‘supreme evil of antitrust’. Whereas in the case of cross-border mergers, ‘ignorance’ is perpetrated through asymmetric information supplied by merger parties to various competition agencies to get positive review. Transborder darkness necessitates cooperation among competition agencies—where cooperation is the ‘light’, and competition agency is the ‘candle’. Thus, the philosophy of CUTS has within it the idea of cooperation among competition agencies.

In the following few paragraphs, let us examine the rationale for cooperation both in the case of cross-border cartels and mergers.

With the proliferation of regional trade agreements and globalisation in general, public barriers to trade are being dismantled and the national markets are being transformed into a global market. Activities that transcend national and regional boundaries are certainly beyond the ability of any single state to effectively regulate or police.

(A) state cannot exercise effective authority alone when the problems it is trying to solve or the actors it wishes to regulate are not centred within the state's borders. To the extent that these issues are state-based, such a location usually is only temporary and easily shifted. Thus, the decrease in state-centred regulatory power is a result that flows primarily from the nature of global problems, the global reach of the technologies involved, and the relative mobility and freedom of the transnational actors to which the law would apply.

This global and regional restructuring has thus undermined the reach of national competition agencies to effectively monitor and arrest transnational anticompetitive practices.

Advances in technology, free flow of capital and liberalisation of trade allow transnational corporations (TNCs) to make decisions concerning production, finance, investment among others, independent of direct state control. TNCs view the entire globe as a market. With a centralised mode of management, TNCs strive for flexibility and take 'advantage of favourable conditions—natural, financial, political and legal—prevailing in each host country'. Globalisation of business results in cross-border acquisitions and mergers as well as expansion of the scope of cartel activities from national to global level.

Various multilateral fora have issued recommendations and guidelines for the competition authorities to cooperate on anticompetitive practices that transcend national borders. For example, the Organisation for Economic Cooperation and Development (OECD) issued recommendations in 1995 and more recently issued best practices and revised recommendation in 2005,

urging member states to cooperate when enforcing laws prohibiting hard core cartels when they affect other countries' important interests. Similarly, the International Competition Network (ICN) in May 2007 issued a report titled, *Co-operation between Competition Agencies in Cartel Investigations*. The report gave the following reasons for promoting cooperation between competition agencies in cartel investigations:

- Possibility that an agency may not be aware of a cartel affecting its jurisdiction, while another agency has knowledge of it.
- For international cartels, coordination of investigation may be necessary in order to avoid the risk of destruction of evidence if one agency moves before other agencies, on whose territory evidence may be located.
- More general discussions and comparing of notes between investigators of the same cartel in different agencies may facilitate the smooth progression of the case and better rebutting of the arguments of the parties.
- Information on turnover relevant for the calculation of sanctions may be exchanged.
- Jurisdictions that can sanction individuals, extradition proceedings may also play a part in cooperation.

One prime example of cooperation in cross-border cartel case is "The Marine Hoses Case". The producers of Marine Hoses successfully operated an international cartel from 1986 to 2007. The companies used all sorts of covert methods for fixing price, market sharing, customer allocation, restriction of supply and bid rigging. One company simultaneously applied for leniency in Japan, the US and the EU, "triggering co-ordinated actions among the investigating authorities."

The US, UK, EU, Australian and Japanese competition authorities brought proceedings in the cartel case. The Australian Competition and Consumer Commission (ACCC) attributes the successful outcome of its proceedings to the assistance of both the [US] DOJ and [UK's] OFT, who provided documents that were

significantly important to Australia's case. The information required was obtained informally in the case of the US-based information from the DOJ but formally for the UK-based information from the OFT under the relevant sections of the UK Enterprise Act. The ACCC and OFT had also been in close cooperation informally before the formal request was made.

Had there been no coordination among competition agencies, Australia would not have been successful in pleading its case against the cartel. Coordination and cooperation can be effective both through formal and informal channels.

Similarly in the case of cross-border mergers, OECD and ICN have issued recommendation and best practices for coordination and cooperation. OECD issued Recommendations on Merger Review in 2005. Recommendations B, entitled "Coordination and Cooperation" require Member states: to cooperate and to coordinate their reviews of transnational mergers in appropriate cases. When applying their merger laws, they should aim at the resolution of domestic competitive concerns arising from the particular merger under review and should endeavour to avoid inconsistencies with remedies sought in other reviewing jurisdictions.

Likewise, ICN issued "Guiding Principles for Merger Notification and Review" in September 2002. Principle 6 on coordination require: "Jurisdictions reviewing the same transaction should engage in such coordination as would, without compromising enforcement of domestic laws, enhance the efficiency and effectiveness of the review process and reduce transaction costs." Later ICN Recommended Practices for Merger Notification Procedures also had a section on Interagency Coordination.

In a recent US\$11.85 bn cross-border acquisition of Pfizer Nutrition Business of Pfizer Inc. by Nestlé S.A., the Competition Commission of Pakistan (CCP) and the ACCC coordinated their merger review. It was revealed during the coordination that the parties have given different rationale to the two agencies for the transaction. In Pakistan, it was submitted that the reason the acquirer is giving such a high price is because it wants to keep the target's brand name and brand following; whereas in Australia, the

acquirer does not want to keep the target's brand and brand following. This asymmetric rationale is clear from the undertakings, which Nestlé gave to CCP and ACCC. To CCP, the undertaking of Nestlé is to the effect that "Pfizer (Wyeth) products will continue to be available for a period of three years from the date of the closing of the transaction in Pakistan." Whereas the undertaking given by Nestlé to ACCC includes an obligation to divest Pfizer Nutrition business through exclusive licence to a prospective purchaser to be approved by the ACCC. The cooperation between CCP and ACCC informed them of the asymmetric information supplied by the merging parties, and helped both agencies in designing the remedies.

The global scope of business and the limitation of domestic laws to arrest actions and decisions taken beyond the borders of a nation-state has made it imperative that the competition agencies cooperate with each other. Given the global reach of transnational business, competition agencies should endeavour to cooperate with all competition agencies around the globe. However, competition agencies in a specific region, formed either through naturally contiguous national borders or through a membership of a specific trade agreement, should develop a network of competition agencies of that region with a view to share experiences on a regular basis, through annual workshops, and to act as a forum to address competition issues specific to that region.

The sustaining efforts being made by Pradeep and CUTS through their advocacy to push for regional cooperation will certainly add weight to the efforts being made by competition agencies themselves. Globally, Pradeep is recognised as an adroit advocate of promoting competitive markets and is well regarded by national and international agencies.





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## Law and Economics

My friend Pradeep Mehta has been a pioneer in the field of consumer rights and protection, a sound and balanced voice on trade policy and matters relating to competition law and regulatory regimes. He is also an institution builder and has created a formidable one in CUTS and is in the process of repeating the exercise in the newly established CUTS Institute for Regulation & Competition (CIRC). His many contributions to the policy discourse have one common characteristic—they deal quite directly with the interface between law and economics. Hence, this contribution to commemorate his 65<sup>th</sup> birthday focuses on some conceptual issues relating to this link.

Economics is about transactions that involve the production and exchange of goods and services between individuals and enterprises. These necessarily have to rest on some notion of binding contracts and property rights. In some ways economic activity can be conceived of as an exchange of rights to the ownership and use of goods and services. Put in these terms the connection between economics and law stands out clearly, for rights have to be recognised in law, formal or customary, if they have to be exchanged.

Laws are made, administered and adjudicated by the instruments of State—the legislature, the executive and the judiciary. All the three branches therefore need enough economic understanding to ensure that their formulation, implementation and interpretation of the law are consistent with the needs of the economy. These needs change over time and hence, law also has to do the same.

The state is not just the maker of laws. With the doctrine of eminent domain, it is the ultimate repository of all property rights

that devolve on individuals only to the extent to which it has transferred them through land grants, recognition of occupancy rights or traditionally exercised property rights, mining leases and so on. In a constitutional republic, this power of the state has to be exercised within the framework of law and due process, while in a despotic system, it may rest on the discretionary powers of the sovereign.

In practice the actual exercise of State power in the economic sphere is a mix of rule based and discretionary authority. But even discretionary power has to be subject to some constraints of accountability and transparency in any open democratic society. The contrast between rule based and discretionary systems narrows if the latter are required to observe certain basic principles of justice like the right of representation for all claimants, ensuring that all of them have equal access to relevant information, a procedure for appeal and redress if a claimant is aggrieved and so on.

We recently had a spate of controversies arising from a concern that the exercise of State power in the allocation of natural resource rights for mineral extraction, use of the telecom spectrum and public lands was less than transparent, sometimes corrupt and violated basic principles of natural justice. The Supreme Court took up the matter and in its most recent judgement had recognised that how such allocations are made is a matter for the executive to decide; but the procedure followed must be transparent, must ensure fair competition amongst potential claimants and must maximise public revenue and serve the public interest. One can question some elements of this like the belief that maximising public revenue and serving the public interest will lead to the same decision. But in essence, it is a well-conceived restriction on how the State exercises its ownership function over natural resources.

Economic analysis can contribute to the elaboration of the criteria laid down by the court by subjecting different procedures like first-come-first-served, alternative modalities for auctioning resource blocks, implementing a pay-per-use system instead of allocating ownership rights and so on. Along with political scientists, economists can also play a role in teasing out a clear

measure of public interest to evaluate alternative outcomes of the allocation process. For instance, if the dominating policy concern is rapid development, a plausible definition of the public interest for a networked service, whose value to each user goes up when there are more users, could be the impact of alternate allocation procedures, on the speed with which usage will increase. But the same measure of rapidity of development may be inappropriate, if the public concern is congestion.

A dominant consideration in a capitalist market economy is the need to maintain competitive considerations in all markets. The natural tendency of a well-established profit maximising business is to do what it takes to prevent new entrants from eating into its market. The temptation to collude with other players for market sharing and price fixation is also quite obvious. At the same time, do not leave each other alone. There is a market for corporate control, which manifests itself in mergers and takeovers. But, the market for corporate control does not work for the consumer interest or some other public interest like technology development, but more for corporate growth. Hence, a key responsibility is the broader task of ensuring that all markets remain contestable and that collusion is prevented. This is the task of the apex competition regulation body, which in our case is the Competition Commission of India, whose 'first-among-equals' status has recently been confirmed by the government.

This broad area of regulatory regimes has become a proper subject for economic analysis as the policy system shifts from an opaque exercise of discretionary powers to say yes or no without giving reasons to independent, rule-based regulation. But more than that, the regulatory organisations will also need a measure of economic literacy in order to fulfil their responsibilities of protecting the public interest. This need for economic, in fact also commercial literacy is particularly acute when issues about tariffs, competition impacts or collusion in the market have to be investigated. It is absolutely vital when public-private partnerships (PPPs) for service delivery are being negotiated.

The link between law and economics is not just about ensuring that the exercise of economic authority and power is based on sound legal principles like non-discrimination, fair competition and transparency. It also matters the other way. The exercise of legal authority and judicial decisions in certain areas could benefit from a closer consideration of economic principles. One such area is the appellate jurisdiction of the higher courts on the decisions taken by regulatory agencies. It is essential that the economic logic that underlies the regulatory bodies decision is well understood by the higher courts that may then focus their scrutiny more on any violation of basic judicial principles. But for that the regulatory agency must spell out the economic logic clearly enough to convince the court.

All of this will require a class of analysts, administrators, lawyers, accountants and judges who are familiar with basic legal principles and with economic analysis. In many ways the work done by CUTS and CIRC is an effort in this direction. But what has been done so far is only a small beginning and much more work is needed in educating lawyers in economics and economists in law. Pradeep Mehta, who has done so much already in this area, may well wish to turn his skills in analysis, articulation and institution building to this end. This call for yet more hard work, and is my gift to him on his 65<sup>th</sup> birthday!

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## **Practices of Consumer Protection in Perú**

### *Selected Issues in Honour of Pradeep Mehta*

Pradeep Mehta, the founding father of the Consumer Unity & Trust Society, CUTS, is celebrating his 65<sup>th</sup> birth anniversary. An intellectual, activist and internationalist, Pradeep has contributed to the spread of competition and consumer protection rights in India and in the world. His tenacity and firmness to defend the weak and protect the poor and fight against market failures and asymmetries has gone offshore in his own land, making him well known in non-governmental, academic and intergovernmental international organisations. In this short essay, we honour him making a critical analysis of selected issues of consumer protection practices in Peru.

Consumer protection was born in Peru with the opening of markets as a way to ensure the idoneity of goods and services and correct imperfections brought about by information asymmetries between suppliers and consumers. Its main objective was to improve the functioning of the market.

#### **Reasonable and Diligent versus Good Faith Consumer**

From this perspective, the Peruvian Consumer Protection Commission, CPC, decided to institute in its verdicts the guardianship of the so-called 'reasonable consumer', that is the consumer that acts with 'ordinary diligence', which responsibly searches, informs, compares and selects goods and services in the markets.

But what has been the implications of this defining interpretation of whom to protect?

How many 'non-reasonable' consumers may have been refused to receive protection by consumer authorities? A borrower who has no knowledge of financial mathematics, will hardly understand that 4 per cent 3-month interest rate may be equivalent to a 17 per cent effective annual rate or to 50 per cent overall credit rate, if cost of valuation of collateral and other commissions are included. Nor would they understand that by paying 95 per cent of its debt with their credit card, interests will be charged next month to the 100 per cent of the debt and not to the 5 per cent of the balance. Or if somebody is paying the total of the principal of a loan arranged under a quota system, the payment pays off future quotas and not the capital balance with the respective discount of interest, as he had anticipated. Many of these cases have been discarded by the CPC in Peru under the name of 'diligence', that is, consumers should know and understand what they buy.

In countries with low reading and writing understanding, long working hours and other obligations that leaves no time to read extensive and dense contracts or check quality of goods and services, one can reach the conclusion that interpreting consumers as diligent actors is severely unprotecting them from providers. Consumers will be blamed of what they bought for not acting in a diligent way.

This applies to technical services in general, parcel pick up, medical services and infinity of other goods or services. It is extremely complex for the customer to prove evidence, even if the commercial transaction is quite simple. Technical services always put the consumer in a situation of vulnerability. When the consumer leaves the good for repair or when he goes back to collect the supposedly repaired good, he usually gets a note from the provider alluding a clause of exclusion of guarantee because of artefact's misuse. The same happens in the case of picking up intact packages from a terminal and on arriving home finding nothing inside. In both cases, protection is not provided to the consumer due to lack of evidence. The burden of proof is of course on the consumer but the system of protection does not assess if the supplier provides mechanisms to facilitate consumers with the proof that they need. It is worth pointing out that during an investigation only 2 out of

14 transportation companies gave the consumer the possibility to list the goods of their luggage. In other words, if a consumer has something of value that he wants to report, he cannot do so. But if the good is lost, who assumes the value of the lost good? The consumer has no proof.

This is not to protect irresponsible consumers at the expense of firms, nor to conceive consumer protection only as an information problem. There is a need to be more open and be able to incorporate other criteria in the analysis of consumer protection. One cannot close the tutelage to the consumer under the argument that he was well informed or must be diligent.

Consumer protection is about protecting the vulnerable consumer, one who does not read or fully understand but trusts the institutionalism and the good faith of the market. This is something consumer protection law and internal rules in Peru should institute.

### **Abusive Contracts**

While standard contracts are an important tool that enables mass commercial transactions, they incorporate contractual imbalances in favour of those who predispose or write adhesive or general contract clauses.<sup>1</sup> Freedom of contract and private autonomy cannot be exerted unilaterally by one party but need to be adjusted to consumer protection inspection processes to assess their contents.

The consumer protection system in Peru has not been indifferent to this new scenario and has theoretically enforced penalties and sanctions on some type of coercive business practices. There is, for example, the case of a bank that offered ‘points’ to their credit cards users; those points could be redeemed for products and services under a catalogue. The benefit was free and awarded automatically upon request from the customer. After two years, the bank indirectly informed that the administration of these points had a cost, assuming consumer silence as an acceptance of those

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1. Adhesion contracts and general contract clauses are very much demanded at the Consumer Protection Commission in Peru, due to its difficult comprehension because its technical nature and sector’s specific regulation, particularly in insurance, utilities and financial services.



costs. After 30 days, all credit cards users were charged 12 soles per month for this service. The Bank in their disclaimers to the Commission noted that credit card agreement clauses allowed the Bank to modify the conditions of the deal, and that it was sufficient to inform the consumer with a prior notice of 30 days to make changes. Fortunately, the CPC sanctioned this practice indicating that changes authorised in the contract had only to be referred to direct credit card conditions, i.e., amount of credit line, interest rates and maturity, among others.

Parking lots is another good case to mention. Despite charging for the service, they intended informing clients by posting notices inside the parking lot, as to be exempted of responsibility from total or partial theft of a vehicle. The CPC did not accept this type of abusive practice and sanctioned them.

There are however, other sectors and cases in which general contract clauses are not questioned or supervised. The law on consumer protection in financial services authorised the Bank Superintendent in 2005 to identify abusive clauses and issue general rules that prohibit their arbitrary use without prior review and approval by the authority. Up to the end of 2011 however, not a single clause has ever been questioned or supervised indicating lack of interest and leniency in its implementation.

### **Junk Goods, Technical Regulations and Standards**

Goods and services could be classified into three major categories: (1) those that threaten the security, integrity and health of individuals, (2) those that are useless or affect the commercial good faith or dignity of the consumer, without them being dangerous or harmful, and (3) the most important category where good and services differ in quality to suit the different needs and tastes of consumers.

In the first category, the state must quickly act to prevent damage to consumers. Truck-buses (buses with truck bodywork structures), which proved technically dangerous on the roads should be detained and not be allowed to transit. Adulterated and dangerous drugs should be confiscated; and toys and stationery

with lead and chromium should be withdrawn from the market. The same happens with houses that collapse, tires that explode, etc. Ministries are responsible for proposing obligatory standards and norms to safeguard the life and health of the consumers.

Junk goods or goods that affect the commercial good faith or dignity of the consumer usually break the institutional trust in the market but are very difficult to protect especially in countries whose consumer authorities favour the 'diligent' or 'reasonable' consumer approach. Consumer authorities that practice the 'vulnerable' approach are better armed to sanction this type of behaviour.

In the third category, the state generally leaves the market to operate alone but promotes a good handling of information and a voluntary system of conformity evaluation about the quality of goods and services in the market.<sup>2</sup> Consumers and producers are free to select goods and services, standards of which are classified under a voluntary system of certification and accreditation of quality.

During the period 1992-2001, most of the state authorities in Peru to a large extent abdicated from assuring standards on any of these three categories of practices based upon the dogmatic idea that free markets determine the quality of different goods and services produced. Under this point of view, producers and consumers were entirely free to choose what to produce or buy without the need of any regulation or standard. There was therefore nothing wrong for example with companies producing useless cardboard shoes or sporadic ill-fated outlets. If transportation services threaten passenger's life, they will notice it and in the long run they will not take that kind of services. Problems are solved themselves in the market. The preponderant view was that it is far better for consumers to have access to low quality and price goods, irrespective of its dangerousness, dignity, useless and health effects.

The practice has been different in the period 2002-2006. The consumer authority promoted product and service quality differentiation to facilitate free access to various socioeconomic strata, but at the same time strictly enforced consumer guardianship

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2. Hanak et al. (2000).

when it came to products violating the security, integrity or dignity of consumers. Authorities aggressively promoted the implementation of a private and voluntary system of conformity evaluation. This approach has remained after 2006 also, but is slightly enforced until today.

Serious problems however, remained about technical infrastructure. Peru is not only one of the Latin American countries with the lowest number of voluntary and obligatory norms and standards, but its technical and institutional infrastructure are outdated and obsolete. The certification and accreditation system is weak and tracability is difficult to prove. For example, when the CPC ordered the verification of lead in toys, various samples were collected and sent to the health authority laboratory. Findings suggested at first, high concentrations of lead, chromium and cadmium and an *ex-officio* procedure was exerted against the manufacturer. The case was sanctioned at the first instance but revoked on the appeal at the Tribunal, due to the lack of certainty about the instruments used at the laboratory. This example shows the lack of trustable minimum technical infrastructure to make the system work.

### **Intellectual Property and Consumer Protection**

There is no balance between intellectual property (IP) and consumer rights in Peru today. IP law punishes companies that infringe any patent, trademark, copyright and related rights. Lately however, not only producers but also consumers are being blamed as main violators of these rights.<sup>3</sup> This, to a large extent is inverting responsibility towards the consumer instead of the real infringer who is the company who violates IP rights. Consumers are being sent to prison for buying goods that—they even do not know—are violating IP rights. IP laws are handled too rigidly and do not solve the problems of the ‘alleged’ pirate behaviour. Acts of confusion and/or deception should fall on business and not on consumers.

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3. DL 1075, DL 1076, DL 822, DL 1092, and Law 29316, all of them extend IP rights to implement the FTA Peru-US.

## **Abusing Consumers through Anticompetitive Practices**

The 1992 competition law initially asserted the possibility of punishing exploitative practices: those related to abuse of dominance to exploit consumers; the new 2008 law has eliminated them from their prohibited conducts. An emblematic case refers to pension funds, which not only played with prices but also charged abusive commissions to manage those funds. Another example is the quintuplicating of inter-regional transportation fares on holidays under the tacit approval of the competition authorities and the fury of passengers who destroyed bus terminal windows and facilities.

## **Weights and Measures**

One of the most serious problems facing consumers is the veracity of weights and measures in the markets. There is no good system of inspection and verification of weights and measures. According to the Peruvian Consumer Association, ASPEC, 50 per cent of all grocer's scales weight between 12.5 and 300 grams less of what they ought to, accounting for more than 268 million soles of losses to consumers per year. The proposal to promote private certifications to verify weight and measures was not approved because market dogmatic believers think more regulation is not needed to correct malpractices.

## **Informality and Small Enterprises: The Difficulty of the Procedures**

In principle, it should be noted that informality is not defined by the size of the company or its legal form nor is synonymous of illegality. Informality is a socioeconomic phenomenon, not a legal one. In this respect consumer protection jurisdiction holds when a consumer complains about an informal enterprise and the Commission is obliged to act according to their abilities.

However in procedural terms, the situation is different; a provider without residence cannot be notified, therefore the authority cannot start the administrative procedure. Similarly if notification procedures are overcome, the Commission's final orders and sanctions are very difficult to be executed. Informal business moves from place to place without advising the authority, and if

located, they usually have no means to face the dictated sanction or corrective measure. Coactive units of course report the case to credit bureaus that prevent the infringer from re-entering the financial system but this at the end does not solve the consumer problem.

Most of these irregularities occur both, in small businesses engaged in services, carpentry, furniture, installation and sale of parquet flooring, as in larger businesses such as real estate, where agents work with elegant personal cards, next-generation cellular phones and luxurious offices that they moved every two months like their own corporate names.

Informality also makes preventive inspections difficult to perform. For example, an operation against adulterated vinegars in an open market was frustrated because the samples taken on a day did not belong to anyone the next day—the authority finding another business in the same place. Or, immobilisation orders to allow good's investigation are not observed allowing goods to be transferred to other places without authority's consent. As is apparent, when the good or service purchased is in the informal sector, the victim is usually the consumer who is not served on his claims, not because the Commission has no competence to act but because of procedural and observance deficiencies.

### **Institutional and Administrative Issues**

One of the major deficiencies of the consumer protection regime in Peru is its institutional design and territorial reach. There is not a single institution in charge of elaborating and coordinating a national consumer protection policy and plan for the country. INDECOPI and its two administrative bodies (the CPC and the Tribunal) are empowered only to resolve consumer conflicts and eventually take *ex officio* action against companies infringing major consumer protection laws. Independent agencies exist in each ministry to supervise producers to offer safe and efficient goods, but they are usually very weak and have no interrelation or coordination between themselves.

Territory wise, INDECOPI has 1 main office in Lima and 13 offices in a handful of provinces. Hundreds out of thousands of

consumers across the country do not have access to protection and advocacy services.

The CPC's operative and management systems lack speed, efficiency and simplicity for the solutions of the procedures. CPC cannot keep up with the demand to resolve cases within reasonable periods. There are no impact indicators or manuals of best practices to guide consumers, suppliers and the government itself. Quality of service is poor, data bases scarce and the reporting and monitoring information system obsolete.

The CPC does not entertain collective interest cases. Throughout its existence, only one 'class action' has been approved, but INDECOPI Board has postponed action indefinitely.

Institutional mechanisms have not been developed to allow the private sector to participate through 'public hearings' and 'inter-institutional spaces', and promote coherence and consistency on global consumer protection policy. CPC has not implemented programmes to promote social corporate responsibility and an active participation of the academic sector.

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## **The Future Regulatory Architecture in India**

Around 1985 or so, S. Guhan (eminent administrator and economist), Sriram Panchu (Supreme Court lawyer) and I (manager and economist), decided to start a Consumer (now Citizens) Action Group (CAG) in Madras, where we lived. I think we had an inaugural meeting and young Pradeep Mehta who had just started the Consumer Unity & Trust and Society (CUTS) at Jaipur, was also there. He came to show solidarity with a new consumer group and perhaps to see if there was anything he could offer. That was the first time I met him. It was brief but he made an impact on all of us, with his handsome persona, articulation and clarity.

Our paths crossed again only decades later when I was Director-General of the National Council of Applied Economic Research (NCAER) and he was the enfant terrible of the consumer movement. His intellect and activism had moved him from consumer protection to competition. By 1998 when I became the first chairman of the newly created Central Electricity Regulatory Commission (CERC), he was beginning to see the close linkages between all three: the consumer interest, competition and independent regulation.

### **Competition**

I think it was in the late 1980s that some of us got interested in the subject of competition. Shyam Khemani from the World Bank sent me his mimeographed booklets. There were similar reports from South Africa and Australia. I was inspired to write an article in the *Economic and Political Weekly* (probably the first on the subject in India).



At about the same time, CUTS took up the advocacy of getting a modern competition law. The earlier law: the Monopolies & Restrictive Trade Practices Act was more of a licensing law and in a smaller way a competition law. He succeeded with Yashwant Sinha, who was the Finance Minister under Atal Behari Vajpayee's Prime Ministry in 1991. Following that, the S.V.S. Raghavan Committee was established, which reported on the subject and recommended a new Competition Act for India. CUTS participated in the Raghavan Committee's deliberations, which were acknowledged by the committee. He then took the competition bill by the horns and organised a series of consultations, conferences and publications to push the idea forward and give it flesh.

Over the years, CUTS and the other organisations he was associated with, did yeoman's work in helping to draft the Competition Act and later in helping the Competition Commission of India to get on its way.

Pradeep was actively involved in every debate on competition policy, members of the commission, the appellate tribunal, staffing, relationship between sectoral regulators and the competition commission, and so forth.

## **Trade**

He was also at the same time getting involved in issues of international trade and free trade. He understood that the opening of the Indian economy and low import tariffs opened opportunities for unfair competition among foreign exporters to India. Issues of dumping, non-tariff barriers, etc., became a part of the study of competition.

The Dunkel draft proposals on opening markets to freer trade and the prospect of a World Trade Organization (WTO) as the apex body to settle international trade disputes, along with the protection of intellectual property rights (IPRs) now had great and immediate relevance for India. Pradeep jumped into this debate and made a strong impression on the negotiators, including advising the Government of India for long. His expertise and standing also

enabled him to serve as an adviser to two Director-Generals of the WTO.

### **Geographical Expansion**

He also began to see the potential for similar work to what CUTS was doing in India, in other developed countries and became perhaps the first Indian non-governmental organisation (NGO) to extend its work into Africa, Viet Nam and of course Geneva, the headquarters of the trade negotiations. CUTS was perhaps India's first multinational NGO!

### **Regulation and Governance**

It was Pradeep's interest in competition and regulation that caught my interest so many years after the founding of CUTS and CAG, when I had lost touch with both. I had written on both subjects, had practiced as a regulator (as the first CERC Chairman), and thought deeply about the subject. When CUTS set up the CUTS Institute of Regulation & Competition, Pradeep asked me to join its Board and its Managing Committee, which I happily did.

It was some time before he became active in my area of interest: regulation and governance and the need for more objective selection of regulators, their accountability, etc.

Today we have a multiplicity of regulators. Almost all are retired bureaucrats, with Chairmen being usually from the Indian Administrative Service (IAS). Many are subservient to the opinion of ministers and bureaucrats in service. Few are truly independent and they tend to function as departments of government, especially in the states.

The telecom regulator was emasculated when the Parliament disbanded the old body that had decision-making powers and created a new one that was only recommendatory. This gave immense discretionary powers over resources and pricing that was worth a great deal, to ministers and bureaucrats. The abuse of these powers led to huge losses for the nation.

The Petroleum and Natural Gas Regulatory Board has no tariff powers. It has powers to licence pipelines. However, even these were notified and given to the Board well after its creation. Meanwhile, the powers were used by the Ministry without consulting the Board. Appointments to the Board have been controversial and led, at times, to loss of harmonious working.

Now there is to be a Coal Regulator who will also ultimately be under the Ministry. Given that coal is nationalised and all powers over this valuable and critical natural resource are with Government, an independent regulator operating transparently is long overdue. But the appointment of the members must be objective and ensure that there are independent people in it.

The Airports Regulator was created recently. The functioning of this regulator has been unsatisfactory for passengers and the airlines. The entry of private sector into operating airports appears to have led to a tilt towards it.

There is also mention of creation of many other regulatory bodies. However, nothing seems to have been learnt from the experience of those already created. Even older regulators like the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) now face considerable pressure from Government to take decisions that the regulator does not like.

There is as yet no attempt to introduce accountability of regulators and some legislative oversight of their plans. There is also no doubt that this new mechanism of governance in India has been captured by the bureaucracy. Electricity and information are subjects that have central and state regulators. Others so far are central because the subjects are in the central list of the Constitution. These bodies have provided a new arena for post-retirement appointments of retiring bureaucrats. While some are able to transform themselves (for example, Comptroller and Auditor General, Chief Election Commissioner, some Governors of RBI), most carry their mindsets developed over more than 30 years in administrative service. They are subservient to Government *diktats*, populist in philosophy (in keeping with having lived and worked for most of their lives in a so-called socialist framework), procedural in

orientation, and with little interest in profit of the enterprise—an important measure of their efficiency.

Fortunately the Appellate Tribunal for Electricity, headed by a retired judge, seems to have some spirit and has taken steps to reform the power sector. This will no doubt happen with other sectors as well.

### **Future Architecture**

Most of the comments in this last section are derived from the experience with electricity, whose regulatory bodies have been in existence for long.

By 2025, the context should have changed. The key is the nature of reform and regulation that will develop and its objectives and methods. With more private investment and a diminution of Government domination in all sectors, more experience of state owned enterprises with independent regulation, support from the Appellate bodies and Courts, introduction of commercial approaches and professional management, entrepreneurial styles of working, better technologies in place, reform in targeting and paying for subsidies, more transmission and pipeline capacities, introduction of comprehensive educational and training programmes for Regulators and their staff, we can expect a significant change in the manner of regulatory functioning.

More transactions will be market-based and the regulator will be ensuring that the markets function transparently. Transmission and distribution capacity (in electricity, oil, gas, telecom and others) will be adequate, with even some redundancy. Renewable energy will be a higher proportion of the total. Open access to pipelines and transmission lines will make for freer movement of the regulated items. Market-based tariffs, determined in many cases on independent Exchanges, will be determined by demand and supply with the regulator having little role except in regulating markets. However, the regulator will continue to regulate long-term contracts and monitor the delivery of subsidies. Subsidies will remain and the regulator must play a more proactive role with Government in reimbursing utilities and ensuring that the subsidy reaches only those it is meant for and the quantities specified.

However, the service provider will not be required to manipulate prices so that cross-subsidies are possible. Cross-subsidies will disappear. The regulator will actively encourage the development of competition in all areas from production to the consumer. By 2025, governments would have become accustomed to independent regulation and the relationships would have become more mature. The presence of a large private sector will mitigate today's ill effects of close government-enterprise relationships.

## **2025**

By 2025, we can hope that capacity and particularly privately owned capacity will increase to meet demand and there may even be adequate redundancy in each sector to meet sudden peak demands. In electricity, merit order despatch will rule and load despatch will be an independent and neutral non-profit function. Transmission capacity will have expanded to enable a truly national grid and there will even be redundancy in transmission capacity. Thefts of electricity will be a memory and efficiencies and quality will have improved.

Regulators will no longer be trying to improve management, information and commercial cultures but will be promoting trading and developing markets. There might be a South Asian Grid in electricity, oil and gas.

In electricity, distributed power will be common, using gas in small package generators as well as biomass gasifiers and solar technologies serving closed or isolated communities both in urban and rural India. State ownership might be high but will function independently. As renewables grow in the total energy mix, their costs will fall and lead to their greater use, encouraged by regulators.

The Petroleum and Natural Gas Regulatory Board as well as independent regulators for coal, railways, and airlines, perhaps even retail trade, might have been created by 2025. This proliferation of new 'independent' regulatory bodies could add another layer of clutter to our governance structure without improving it. We must build safeguards to keep them effective.

Two actions are required:

- One is to reorganise ministries and departments so that there is more coordinated decision-making.
- The other is to combine responsibilities so that there are not many regulators dealing with related subjects. There must be mandatory consultations between regulatory agencies on specific issues that impinge on common jurisdictions. (The division between the overarching reach of the Competition Commission and sector regulators with narrower focus is a good example.) The Sri Lankan experience in providing for such regulatory consultation might be usefully studied and emulated.

### **Beyond India**

We can expect by 2025 that the electricity and gas grids in South Asia will be interconnected. This will raise further issues in regulatory coordination. It will be necessary to:

- Develop some common regulatory philosophies so that there can be coordination between regulators of different countries, essential to ensure Grid stability.
- Together explore potential sources of energy likely by 2025—coal bed methane, gas hydrates, etc.
- As trading and markets develop, coordination in tariffs might become possible and will lead to common governmental actions on energy security.
- The use of storage of gas for the region and its strategic release might be another issue for regulators.

### **The Role of CUTS**

Pradeep Mehta and his organisations will play an important role in all these debates and decisions. What explains an organisation based in distant Jaipur developing so much influence on policy? There is no doubting that it is a result of the personality of Pradeep Mehta.

It was his apparent deep sincerity and passion that makes him memorable and effective. His homework was prodigious. One can say that he blasted his way into the world of policy formulation.

Pradeep's role is that of the agent provocateur, not of the maker of policy. If he did not exist, he would have to be invented. He plays a difficult role and occupies a central role in the areas of his interest.

This tribute to Pradeep Mehta ends on an optimistic note, like his personality. We are a long way to change and to adjust our institutions, but we will get there.

## Regulatory Independence

### *The Indian Arrangement*

For most people, as they grow older, energy levels tend to flag, passion begins to wilt and quietly a degree of cynicism begins to creep into their attitudes. But Pradeep Mehta is one of the blessed few for whom it has been quite the other way around. In the 30 years that I have known him, from the time that he used to go about in *khadi kurtas* and carry a *jhola*, to now when he hangs about in suits smoking cigars, I have never ceased to marvel at how much intensity he has brought to his chosen vocation, namely, argue the case for the hapless consumer who is usually left holding the short end of the stick. He has had his detractors, of course, as any super achiever must. But even the worst of them has not failed to admire his dedication and commitment to the cause.

Now, as he rounds the bend where the road ahead gets dominated by grandchildren, whose pictures he unfailingly posts on Facebook, it seems fitting that CUTS, the organisation that he founded, nurtured against severe odds and built into a formidable storehouse of knowledge and tireless advocacy, should bring out a festschrift in his honour. Since my own association with CUTS has been in matters of regulation and competition, the editors asked me to write on regulatory independence, a term much bandied about but not quite fully understood by its champions who normally fail to answer the most obvious question: independence from whom?

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\* I am grateful to CUTS for permitting me to reproduce some sections of a longer paper that I had written for them some years ago.



“The government, of course,” is the slightly delayed response which sounds right if you assume that governments are all bad. But when you break it down to the components of government, politicians and bureaucrats—there is acute discomfort. The same thing happens if you ask “independence from the State or the government?” My unhappy experience has been that bluster replaces reasoned argument and judgement. And bluster gives way to expostulation when regulatory capture is mentioned. Not always but often enough. So it is best to start with a working definition, namely, “Institutional efficacy demands functional independence which implies an arm’s length relationship from interest groups.” The question, of course, is how to ensure this.

In some countries, such as Britain, structures have evolved out of a particular set of historical circumstances. For example, by the end of the 16<sup>th</sup> century, when the reign of Elizabeth I ended, a large number of persons not belonging to the privileged, aristocratic, landed classes had become prosperous and were demanding a say in political and economic power. For instance, where the latter was concerned, they had begun to protest over the King’s right to tax anything that he pleased. They wanted it subject to some scrutiny and, where necessary, abridgement. The first constitutional case involving the independence of the Judiciary was fought in 1618, in which the Chief Justice ruled that the King did not have such an absolute right. That judgement set the tone for what was to follow over the centuries.

The 17<sup>th</sup> century in Britain also saw the emergence of the struggle for independence of the Parliament. It claimed the sole right to pass legislation, which the King disputed. This is more clearly understood when we see that, by the 1630s, the Lower House of the British Parliament, the House of Commons, was dominated by the merchant class. They eventually rose up in arms against the King, Charles I. After a bloody civil war, the King was beheaded in 1649. This ensured the independence and supremacy of the Parliament for all times to come—including when, 38 years later, it even felt enabled to invite a foreign king, William of Orange, to come and rule Britain, because it did not agree with the religion of James II, who was a secret Catholic.

In the US, which had learnt its lessons from the events in its mother country, Britain, such independence was guaranteed in the Constitution. India has followed the US example. And whether Britain in the 17<sup>th</sup> century or the US in the 20<sup>th</sup>, the context in which the term independent is defined has remained virtually the same: not serving vested interests, regardless of whose interests they are—the government, the business, the politicians or all three acting in collusion.

The questions we need to ask in India arise from this overall context. First, it is necessary to ascertain if such pressure for regulatory independence exists in requisite measure; second, whether the political response can be positive; if not why not; and third, what should be done about it in terms of creating the context that will result in a positive political response.

At its core, the governing imperative in a developing country democracy is that people cannot be excluded from consuming something because they cannot afford it. This holds true for everything, except the obvious luxuries. This is called populism and, whether we approve of it or not, it is a fact that requires to be accommodated, while managing the several transitions. The Indian paradox is that, while the so-called luxuries require relatively small investment, the public goods, which now include electricity and transport, require massive investments.

This means that the eventual responsibility to arrange relative prices in a manner that is fair to all, consumers as well as producers, falls on the government and the Parliament, because both are accountable to the electorate in a manner that those charged with delegated legislation are not. And, as the interactions between central banks and governments the world over show, a great deal is predicated on the trust that exists between finance ministers and the governors of central banks.

One final factor needs mentioning here. This is the issue of the ‘hierarchy’ of institutions. It is important to distinguish, in this context, between institutions that are created by the Constitution of the country and those that are created by the Parliament. The former are higher in the hierarchy and expect their authority to be

respected by the latter. However, a fundamental problem can arise here, especially in democratic countries with large numbers of poor people: this is the conflict between equity and justice.

On the face of it, the distinction between the two appears thin, but is, in fact, critical to the manner in which outcomes are determined. The Judiciary, in particular, is concerned with justice, whereas the political establishment, including the Parliament and the Executive, to which some of the second-order institutions report, is concerned with equity. This can give rise to varying degrees of friction.

The cooperative and mutually deferential relationship between the first and the second-order institutions is a matter of concern. Each accuses the other of encroaching on its territory and matters get worse when the Executive or the government joins in. Therefore, each begins to scrutinise others more closely and this also creates difficulties, to the detriment of institutional independence.

We can distinguish between three types of institutions. Tier I institutions are those that are created by the Constitution, as opposed to the Parliament, which is itself a creature of the Constitution. Some of these constitutional institutions are on par with the Parliament, although the latter does not always accept this position, claiming instead, a slightly higher position. This can bring it into conflict with the other institutions, most notably the Executive and the Judiciary. Here we shall not deal with the former, as most of the other institutions also come into conflict with it. Indeed, it is usually the Executive *versus* the Rest, for the simple reason that the rest have been created to provide a check against the Executive.

Tier II institutions are those that have been created by the Parliament, rather than by the Constitution. This difference is crucial in determining the degree of independence they enjoy. Overall, institutions created by the Constitutions are fully independent and, if constraints exist, they are self-imposed. The same however, cannot be said of the institutions created by the Parliament, which suffer from a number of externally imposed constraints. Broadly, these relate to the appointments and removal

from office, on the one hand, and funding on the other. Both eventually have the same effect: an abridgement in the degree of the freedom the institution is allowed.

Tier III institutions are those created by administrative fiat and these report to the government through the minister. These tend to be the least independent.

In the years ahead, resolving the conflicts and differences of opinion that arise amongst and between these three will tax the country's ingenuity greatly. But I have no doubt that India will work out a unique model that will become a template for other democracies.



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## **Regulation of Microfinance Institutions**

Pradeep S. Mehta has established an enviable reputation as an institution builder, as a clear-headed thinker and a very effective communicator. A large number of people recognise these qualities in him, but above all they admire him as a warm hearted, dependable friend, and a sensitive human being. His abiding interest in ensuring fair competition and constructive regulation in different sectors of the economy has prompted me to write a note on the issue of Regulation of Microfinance Institutions (MFIs), an issue on which still there is no unanimity among the scholars and practitioners. The following note attempts to suggest a type of regulatory mechanism which will not curb initiatives, at the same time, will ensure fair business practices in this sector.

Despite a large number of banking outlets a section of population is not able to take advantages of the formal financial system. These are basically small and marginal cultivators, tenant farmers, landless labourers, rural artisans, petty traders and urban poor in the unorganised sector. The banks are reluctant to lend to them because of high transaction costs, perception of high risk and urban bias of the bank personnel. The excluded sections are also not very keen to deal with the banks because of lengthy and unfamiliar procedures, insistence on collaterals and uncooperative attitude of the banks. There is a niche in the credit market, which MFIs can and do occupy.

Till very recently community based, not-for-profit MFIs were dominating the scene. These have now become secondary players; for-profit MFIs are surging ahead. Not only is their number large and coverage extensive, they have also become attractive vehicles

for investors, both domestic and foreign. They show large profits, pay high dividends, and sumptuous rewards to their Directors and senior officials. By themselves none of these are objectionable. However, there are serious complaints about their functioning, which have led to a growing demand to bring them under the orbit of some regulator.

There are basically three types of complaints, which are voiced more frequently at different forums. These are: (a) charging usurious rates of interest, (b) indulging in malpractices, and (c) using coercive methods for recovery. Usually interest charged by MFIs is between 24 to 30 per cent, though instances of charging interest as high as 40 per cent are not infrequent.

The justifications offered by MFIs are mainly the following: they maintain that their cost of capital is high compared to the commercial banks as the latter can collect deposits at low rate of interest; that they have to incur high costs to provide services to the really excluded sections in remote areas and that they also provide services other than lending. The main argument of the MFIs in defence of high rate of interest is that access to credit is more important than the cost of credit to the poor who are denied such access by the banking sector.

To take the last argument first, there has never been any serious problem of access to credit to the poor. All over the country, moneylenders were not only ubiquitous but also prepared to lend for any purpose and at any time. The problem was their usurious rate of interest and draconian methods of recovery. MFIs have to prove themselves superior on both the counts.

As regards the cost, their capital cost is high in most of the cases. But if they can get capital at 12 to 13 per cent, and many MFIs who have access to foreign funds at much lower costs, they do not have justification to charge 30 per cent or more. It only means that either they are grossly inefficient or they are making huge profits at the cost of the poor whom they claim to serve. If additional services inflate their costs, these should be shown separately and the borrowers should have option to avail of those services from MFIs or from any other source or refuse to have those services.

The other common complaint is that MFIs are more interested in lending money than in the productivity of the loan. The employees of most of these institutions are paid by the advances they make and recoveries they enforce. As a result, the employees go on giving loans indiscriminately. The practice of 'greening' loans, that is, advancing higher loans to square off the earlier loans (only by book entries) is quite rampant. This lands the borrower in a vicious circle, and when the bubble bursts, which would in the end, proves fatal for the borrowers as well as the lending institutions. This indiscriminate lending creates problems of recovery, and the institutions resort to coercive practices.

There is a justification for the existence and functioning of MFIs, as they do reach out to some of the sections that cannot be, or are not, served by other formal banking institutions. We have to see that they do not degenerate into sophisticated version of moneylenders. If the access to funds is the only justification for MFIs, it is a weak justification. While recognising their place in the credit structure of the country, there is a need to ensure that they do not exploit or otherwise harm the poor who are defenseless.

To ensure that MFIs are not allowed to play havoc at the cost of poor borrowers, some regulation of their activities is necessary. They being, essentially financial institutions (FIs) the agency suggested to oversee their functioning is Reserve Bank of India (RBI), which has a rich, long and successful experience of regulating FIs. However, the sheer quantum of regulatory work already being carried out by RBI, e.g., regulating the functioning of commercial banks, cooperative central banks, urban cooperative banks and NBFCs, would make it difficult to saddle them with this extra work. MFIs are different than other FIs as they deal with a poorer and less sophisticated clientele.

NABARD (National Bank for Agriculture and Rural Development) is another agency, which can be considered for the regulatory role. It has extensive presence all over the country and deals with other poverty alleviating agencies, namely cooperatives. However, NABARD has a more important developmental role in promoting MFIs. They should concentrate on this function and should not be



asked to do the tight rope walking between their role of developer and that of a regulator.

The number of MFIs has become so large and their spread is so wide that a centralised regulator might not be efficient. Besides, these institutions are expected to cater to the needs of the poor, who are dispersed. The conditions differ from region to region. Therefore, a decentralised, state-wise system will be more appropriate. It is also necessary to have a regulatory regime that would not throttle the initiative of these institutions. What is needed is a set of norms, which will ensure fair play and prevent exploitation of the customers, most of whom are weak and deprived. Either the RBI or SEBI should take initiative in defining such norms. The norms should cover the maximum interest rates, periodicity of repayment, limit to the amount to be repaid, and the business practices to be followed. It is equally important that these norms should be followed in letter and spirit. The Banking Ombudsman has performed well and such an institution may be of help in dealing with MFIs.

It is proposed that a two-tier MFI Ombudsman scheme may be introduced in every state. At the first tier, at the district level, a senior designated officer of the Lead Bank of the district should act as an ombudsman. At the second tier there could be an ombudsman at the state level, which could also act as an appellate authority. For the state level ombudsman, it is proposed that two active stakeholders in this area, namely, State Government and NABARD should nominate one person each on the MFI Ombudsman; the third person may be represented by a creditable civil society functionary. This will not be a unique set up as the RTI Commissions in several states have two or three commissioners. It is proposed that the MFI Ombudsman may take up *suo motu* action as well.

In sum, the effort should be to define the business norms and provide arrangements, at the district and state levels, to ensure compliance.

### **III. Governance and Other Issues**



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## **The Case for Closer Cooperation between India and the OECD**

For an outsider, India sets a remarkable example in many respects. India's economy has performed well despite the global downturn and delivered high growth rates over the past decades. Important reforms have been undertaken. The livelihood has improved for millions of people in the world's largest democracy. In addition, India has transformed into a global economic leader, an influential G-20 member, a key partner and player in international affairs. Yet, millions of Indian citizens still lead lives in poverty. Hence, additional progress is needed.

The domestic challenges are considerable. India, like most other democracies, faces internal challenges of governance. Economic activity is slowing down. At the same time, global governance has weakened in the wake of the financial crisis and, dramatic and rapid shifts in economic power between countries. New and better methods for international collaboration are needed, especially since India requires a supportive international environment more than ever before.

In this setting, India's relation to the Organisation for Economic Co-operation and Development (OECD) becomes increasingly important. And a few reasons for India-OECD cooperation and discussed below.

First, amongst international organisations, none matches OECD's expertise in economic analysis of public policy in almost all areas of governance (except security, culture and sports). Through 'peer reviews' of national policies, that are built on solid statistics

and robust evidence-based analysis, the OECD helps countries to improve national performance, be it in consumer policy or competition (where CUTS, under Pradeep's leadership excels), labour markets, education, environment, taxation or other areas of OECD expertise. In this work, OECD has recently improved its analysis in terms of putting emphasis on distribution and equality.

Second, the OECD is unique in terms of being able to use its resources to perform cross-cutting horizontal projects which take 'the whole-of-government-view'. Its strategies on skills and green growth are two recent examples in this regard.

A third reason is that the OECD is still open for the multilateral making of soft to hard law at a point in time when many other organisations seem to be closed for business of this kind. In the acute phase after the breakout of the financial crisis in 2008, the G-20, with strong Indian participation, performed well as an informal crisis management body. But since then it has not helped to deliver much progress in either thorny climate talks or stalled trade negotiations.

In this context it is worth recalling that the OECD has quite an impressive record as standard setter, well beyond its membership. The 'OECD Acts' encompasses about 30 legally binding decisions and treaties as well as some 170 recommendations and declarations that constitute soft law. It is not always the politically most visible agreements that are struck, but they are nevertheless important in an increasingly integrated global economy.

A fourth cause for more cooperation relates to the "D" in OECD. The organisation recently adopted a new development strategy and it plays an important role in the new partnership for effective development cooperation in which India is a key partner.

Fifth, and finally, the OECD is now mobilising its resources in a project on New Approaches to Economic Challenges, the purpose of which is to assess what has recently gone wrong and resulted in the financial and economic crisis with a view to look forward in order to do what is possible to prevent anything similar from happening again.

These are all good reasons for India-OECD cooperation. Or, rather, reasons for even closer cooperation. India is already cooperating actively, closely and constructively with OECD in many areas. It is a much appreciated and privileged ‘key partner’, together with Brazil, China, Indonesia and South Africa.

Formalised cooperation between India and OECD began in 1995. A resolution by the OECD Ministerial Council in 2007 strengthened the relation by setting up a scheme for enhanced engagement, which been further developed into cooperation between the OECD and its key partners, most recently by the OECD Ministerial Council Meeting in May 2012.

India’s economy has been subject to review in OECD’s Economic and Development Review Committee 2007 and 2011. The latter concluded, *inter alia*, that broad reforms and investment had “...lifted potential growth to almost 9 per cent, the highest in Indian history, helped by improvements in infrastructure.” However, the review also noted the present economic challenges and that more needs to be done. It contained further recommendations on how to reduce poverty through inclusive growth. The need for additional efforts to restructure public expenditure, reduce the fiscal deficits and promote international integration, were highlighted.

India’s investment policy was examined by the OECD in 2009, and India’s health data were recently compared to OECD.

Within the OECD family, India participates fully in the Development Centre, the International Transport Forum and the OECD Network on Fiscal Relations. It has participated in the Programme for International Student Assessment (PISA). In addition, it accepts the data of the Chemicals Committee. India is a formal observer in seven OECD committees, and an *ad hoc* observer in several others. In addition, the Indian perspective is present through constructive participation by non-governmental organisations (NGOs), among which CUTS International stands out as a leader, and other independent experts and academics.

When it comes to standard setting and international norms, India is a highly valued member of the successful Global Forum on

Transparency and Exchange of Information for Tax Purposes, and heads its secretariat through Ms Monica Bhatia.

India has also adopted some of OECD's agricultural schemes, its tractor standard and chemicals data, declarations on the internet economy and on Small and Medium Sized Enterprises.

But more could be done. For instance, closer cooperation on anti-corruption would be welcome, and hopefully mutually beneficial. OECD is the home of the strongest legally binding instrument to combat bribery in international business through its Anti-Bribery Convention. Brazil and South Africa are signatories. What about India?

India obviously has to assess its interest and evaluate its own options domestically, but the interest from the OECD side should be made clear.

In the rapidly evolving global economy, the OECD has stepped up its efforts regarding development and poverty alleviation. In May, OECD ministers adopted a new development strategy, which has been elaborated in close contact with India and other key partners. It outlines a more comprehensive and inclusive approach to development and stresses the need for coherence between policy areas in order to foster global sustainable growth.

Through the strategy OECD seeks to deepen its contribution to the emerging new development architecture. It plays a key role in the global partnership for effective development cooperation that was set up in Busan in late 2011 by a broad range of countries, including India. New partners and new methods in development co-operation will be a central theme for the years to come, and therefore an important area for cooperation between India, OECD and OECD-member countries. India's membership of the OECD Development Centre is an important asset in this regard.

The project on New Approaches to Economic Challenges (NAEC) constitutes an important part of present OECD activities. It will analyse the root causes of the economic crisis, draw lessons from it and, if needed, adjust OECD recommendations to the results achieved. Hopefully India, and other key partners, will participate

actively in this work. A first progress report will be submitted to the 2013 ministerial meeting.

The OECD strives to become a ‘global and inclusive policy network’. It stands ready to welcome India in other areas as well. The OECD Ministerial meeting in May 2012 underlined that co-operation with key partners is of “strategic importance and mutual benefit.” It is of importance for the OECD to stay relevant, and it ought to be of equal interest to India and other Key Partners.

But is it?

The hesitation by non-OECD G-20 members to accept contributions from OECD to the key informal body has hopefully been overcome. While key partners did not participate on full ministerial level in the May meeting, cooperation is wide and increasing.

It could be argued that CUTS, through its cooperations with the OECD as an NGO and its frequent participation in OECD processes is showing the way.

At their most recent meeting OECD ministers tasked Angel Gurría, the Mexican Secretary-General of the organisation, to “... look at practical ways to facilitate and deepen the relationship....” This can be done through various means: framework agreements, participation in committees, better communication and dedicated contact points in key partner capitals.

India stands to gain a lot from stepping up cooperation of this sort, without letting possible overarching political consideration stand in the way.





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## **Reshaping Institutions, Shaping the Future**

Professors Jagdish Bhagwati and Amartya Sen are positioned on two sides of a Big Fight on the internet: Could India have improved human development indicators until it had increased economic growth following the 1991 reforms? Prof Bhagwati is firm that economic growth must come first to provide the money required for social side improvements. The other view is that since human development is an input for economic growth, it must have precedence. This is a chicken-and-egg debate and misses the real issue which is the ineffectiveness of the country's programmes to improve education, health, and social infrastructure. If 85 per cent of money spent for public benefit was wasted prior to the economic reforms, as Rajiv Gandhi said, and continues to be wasted even afterwards according to Rahul Gandhi, attention should be focused on the design and condition of the pipes. Not on whether there is enough water to fill the overhead tank, which is what some economists are debating.

Institutions and organisations are the machines and pipes that convert money into results. They must be redesigned to produce more bang for the buck and better outcomes for citizens. How to do this would be a more useful debate.

One school of thought proposes that the quality of public services will improve by handing them to the private sector which, with its focus on efficiency and profits, will cut out the waste. The same school of thought also believes that environmental damage is caused by a 'tragedy of the commons' when no one 'owns' the water, the forests, and the atmosphere. It believes that creation of private property rights (including tradable rights to pollute the

atmosphere) will induce human beings to behave more responsibly. The basic premise of this school is that 'the market' in which 'self-interested' persons can trade, will always produce good outcomes. It believes that institutions for progress must be founded on principles of private property rights and competition.

A few weeks ago, Indian and US business leaders discussed innovation. Someone asked a question: Why do Indians want to re-invent the wheel? Solutions have already been discovered elsewhere. India's problem is the implementation of solutions, he said. The answer was: there are two reasons why India must find new, innovative solutions. The first is that the 'wheel of progress' that has been invented elsewhere has put more pressure on the earth than it can bear. The goal of progress seems to be that all aspire to attain the life-style of American consumers. If all the people of the world were to live at the standards of middle class Americans, we would need five Earths to support everyone's needs. But, we have only one Earth. So, it is imperative we find a better and more sustainable way for economic growth.

The second reason is that as the 'wheel of progress' has moved, it has been leaving too many too far behind. This is a problem in China as it is in India, and lately it has been perceived as a problem even in the US. Economic growth is essential of course, so that there is enough for all. For hundreds of years, the way the 'wheel of progress' has moved in all nations, is first growth, and then, with a lag, more inclusion.

However, two new forces have increased the impatience with the usual pace of the trickle down in this traditional model of growth. One of these forces, gathering strength across the world in the last twenty years, is the consciousness of universal human rights expressed in the UN Millennium Development Goals. These are basic rights: the right to food, health, sanitation, and education. The other force, of even more recent origin, is the ubiquity of information through 24/7 media, cell phones, and the internet. People know what others have. They wonder why it should be their destiny to wait while others already enjoy the fruits of progress. These two forces, stirred up further by rapidly proliferating numbers of civil society organisations, have made people much less

patient than they used to be with the pace of the trickle down. Therefore for more rapid inclusion and sustainability, we need innovation in the ‘wheel of progress’.

Institutions are the wheels on which the cart of progress moves. The need to tune up government is evident. And the need to redesign market-and-property based institutions to meet challenges of inclusion and sustainability is evident too: in increasing public interest in new concepts of business accountability, social entrepreneurship, producer companies, etc. When Elinor Ostrom was awarded the Nobel Prize for economics in 2009, many wondered what the relevance of her work on community-based institutions was to economics. Its time has come. As she said during her recent visit to India, the solution is not only the government, nor only the market, and neither only the community. Good institutions for managing shared resources, efficiently as well as fairly, require blended capabilities—public-private-people partnerships.

Innovations are required in global institutions to improve collaboration and regulation. Innovations are also required in institutions to deliver on the ground. India is a huge experiment in human progress. A very large and very diverse country, it has chosen to be democratic before it is economically developed. It must go past the stale debate about capitalism *versus* socialism. Innovation in institutions is the most important agenda for India’s leaders to achieve its aspirations of more inclusive, more sustainable, as well as faster growth.



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## **Institutionalisation of Public Private Partnership (PPP) Process in the Government**

Pradeep Mehta is one of the best public policy advocates that I have met in my long career in the government. His policy-relevant advocacy has been consistent and well informed, and has impacted public policy in many areas. Starting his public policy career as a consumer activist in 1980s, over time he has become a public intellectual, and actively engaged in policy research and advocacy through CUTS, a non-government think-tank and action tank which he founded and lead since 1983. His focus has been on economic policy issues with a thrust on the demand side, because of his background in consumer protection issues.

His work has not been restricted to India but has crossed several boundaries. One of his projects on investment policies running across four continents in mid 1990s was a learning exercise for me, on which I had served as one of its advisers. His advocacy on trade liberalisation and competition reforms in the developing world as part of the industrial policy rubric is probably unmatched, of which I have been a close witness. Refreshingly, unlike many other NGO leaders, he would not take a negative stand on liberalisation but actively support the same with a parallel thrust on optimal regulation.

One critical issue of investment policy is to enable countries to attract huge sums of money from the private sector to build and sustain their infrastructure. Treasury funding is limited, while the infrastructural needs are expanding every day.

Globally, infrastructure spending is being seen as the major driver for economic growth and satisfaction of basic needs. National governments are taking steps to increase liquidity in the financial sector for increased lending that, it is expected, would increase infrastructure spending, and in turn infuse the economies with some confidence.

Even though Indian economy is likely to continue to grow with ups and downs, there is considerable diffidence in the financial institutions and despite several rounds of packages by the Reserve Bank of India (RBI) and the government, requisite liquidity is not being injected in the economy. Infrastructure projects are also facing the crunch.

It is estimated that ₹ 20,01,776 crore (at 2006-07 prices) or US\$488 bn would be required for investment in the infrastructure sectors during the next five years. The latest estimates are that we need around US\$1 tn. Although significant share of this investment is expected from the public sector, it is estimated that nearly 50 per cent of the investment must come from the private sector. Provided the process issues can be resolved by the different arms of the government, public-private partnerships (PPPs) present the most viable option for attracting private capital as well as optimum efficiencies.

### **What Prevents the Private Sector to Invest and the Financial Institutions (FIs) to Lend to PPP Projects?**

The Government of India has identified six constraints:

- Policy and regulatory gaps, specially relating to specific sector policies and regulations.
- Inadequate availability of long term finance both equity and debt.
- Inadequate capacity in public institutions and public officials to manage PPP processes.
- Inadequate capacity in the private sector—both in the form of developer/investor and technical manpower.

- Inadequate shelf of bankable infrastructure projects that can be bid out to the private sector. and
- Inadequate advocacy to create greater acceptance of PPPs by the public at large.

To address these constraints and create an enabling framework for PPPs, several initiatives have been under taken by the government related to the policy and regulatory environment. To address the financing needs of these projects, various steps have been taken like the setting up of India Infrastructure Finance Company and launching of a Scheme for Viability Gap Funding (VGF) of PPP projects.

Setting up of infrastructure funds is also being encouraged and multilateral agencies such as Asian Development Bank (ADB) and International Finance Corporation (IFC) have been permitted to raise Rupee bonds and carry out currency swaps to provide long term debt to PPP projects. Recently, India Infrastructure Finance Company Limited (IIFCL) has also been empowered to provide refinance to FIs for infrastructure lending.

To meet the capacity building requirements in the sector, necessary measures are being taken, with technical assistance from the World Bank and the ADB, to provide experts to the state governments and central ministries who are working as part of the teams of the PPP nodal officers. The Department of Economic Affairs (DEA) has also notified a panel of technically qualified transaction advisers to assist in PPP transaction management. In addition, manuals on PPPs to guide the users are being developed and training programmes for public officials undertaken. In addition, there is a need to build long term capacity building efforts, such as one being led by Pradeep through a new initiative, the CUTS Institute for Regulation & Competition. We need over a dozen of such institutions in our country to be able to meet the needs of enhancing knowledge and capacity.

While quality advisory services are fundamental to procuring affordable, value-for-money PPPs, the costs of PPP transactions, and particularly the costs of transaction advisers, are significant. Considering the risk of failure of the bid, in which case the entire



cost of project development is to be written off, the sponsoring authorities either depend on grossly inadequate internal resources to manage the transaction, including preparing of legal documents, or try to save on cost by hiring sub-standard consultants.

For providing financial support for quality project development activities 'India Infrastructure Project Development Fund' (IIPDF), with an initial contribution of ₹ 100 crore has been created in the DEA.

Whereas, all these initiatives have gone a long way in creating greater awareness about PPPs within the central ministries and the state governments, there is still a long way to go before PPPs get mainstreamed in the public spending process. The work being done by the DEA and by other agencies, such as the Planning Commission has only scratched the surface, considering that PPPs need to be internalised not only at the Central and the State level but also by Municipal Governments.

Public resistance to PPPs seen as another form of privatisation and the fear that the 'profit motive' would drive up the cost of delivery of services has also slowed down the mainstreaming of PPPs. There is, therefore, need to provide focused attention to some of the following activities.

### **Advocacy**

There is need for sustained policy advocacy for creating environment conducive for PPPs through policy research and advocacy. This would be necessary not only at the central government level but also at the state and the local level. This would include area of legal and regulatory reform and policy setting. This would also include developing new accounting practices to factor PPPs in public accounting.

It is also imperative that a sustained and intensive campaign be undertaken to create awareness about PPPs and its benefits for the stakeholders, including the consumers and the public at large. An effective communication strategy is needed for a greater acceptance of PPPs as part of public advocacy.

One of the methods for implementing communication strategy is to organise conferences and seminars where policies related to PPPs in specific sectors can be discussed and debated. As for wider communication with the public, content must be developed for dissemination with the help of media.

This is another area where Pradeep has been making continuing awareness generating efforts to speak to people at large about the pluses and minuses of PPPs.

### **Capacity Building**

There is need for managing the entire gamut of capacity building activities that include training needs assessment, content development, training of trainers, working with the state level and the central training institutions, and promoting autonomous organisations to develop capacities in this area. The expertise developed in Indian Institute of Managements (IIMs), Indian Institute of Technologies (IITs) and other institutions, such as the PPP Capacity Building Trust set up by the Infrastructure Development Finance Company (IDFC) should be leveraged. Given India's access to grant funding from multilateral organisations, expertise can also be accessed from different research institutes and universities.

### **Investment Promotion**

Attracting private developers to bid for PPP projects from within the country and abroad would be a major challenge, especially when the deal flow increases considerably. There is need to develop a focussed investment promotion strategy for PPP projects and for this the outreach of various apex industries associations, and bilateral and multilateral platforms should be leveraged for marketing projects in ports, roads, power, airports, urban infrastructure and other sectors.

### **Project Implementation Assistance**

Once the deal has been done and the private developer has been given the project, the process of getting statutory and other

approvals from different government agencies at the central and the state level is complex, time consuming and cumbersome. The DEA has prepared an excellent report on statutory clearances required for PPP projects, which can be reviewed periodically to see how better the process can be.

It is revealing how time consuming it still is to get the approvals from the government agencies even though most of the Model Concession Agreements (MCAs) put the onus to getting these clearances on the sponsoring authorities. There is a need for also considering institutional arrangement on lines of the Public-Private Partnership Appraisal Committee (PPPAC) that can help the private sector partners through different ministries and governments.

### **PPP Statistics Cell**

There is a need to collect and monitor data relating to PPP projects in a systematic and useful manner. Although the web enabled PPP database created by DEA captures data on more than 40 parameters, there is need for more comprehensive management of PPP data.

There is a massive task cut out for the Government of India, and more specifically for the Finance Ministry as PPPs entail contingent liabilities that need to be identified and capped. Risk management over the concession period is the essence of PPPs as an element of public finance. Without a more defined strategy and time bound implementation programme, it may be difficult to achieve the targets that the government has set out for itself. It is certain that to be able to achieve its objectives Government must work closely with the private sector and the civil society. Pradeep epitomises the best that we can hope for in the last but equally important segment.

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## **Pradeep: A Big Fish in a Small Pond**

When Pradeep Mehta approached me sometime in 1983 to join him and few other friends to launch a consumer organisation in Jaipur, I did not take more than a second to say yes. Later, we christened the organisation as CUTS—Consumer Unity & Trust Society with an equally meaningful logo: crossed swords on a shield to signify both defence and offence on consumer issues. Those were the days of shortages, black marketing and consumers were treated as doormats. As a consumer, one went to the market with some money and came back with some goods. If by any chance, the goods were damaged, one would grumble, curse the shop-keeper and if s/he had the brawn, pick up a fight.

We envisaged that we would help those consumers who were helpless, by taking up their cause, particularly in Rajasthan, where none such group existed. Thirty years down the road, CUTS under the leadership of Pradeep has done that and much more.

The conceptualisation of CUTS coincided with the Asian Games that was hosted in New Delhi. It was a landmark event—many a household bought colour TV sets to view the games in all its grandeur. Star Plus came to India. Indians had a choice apart from the Government run channel: Doordarshan! The stage was being set for a consumer apocalypse, which was to follow in the coming years that helped CUTS to focus its agenda as India announced its presence on the world scene in more ways than one.

Few would have imagined at that time that they could buy a Vespa scooter or a Honda motorcycle or a Hyundai car by walking into a showroom, much less export them. Indians winning titles of Miss Universe and Miss World also contributed towards infusion

of the Indian market with world names in cosmetics and clothing. Fast food was the next to hit the Indian market, with McDonald's, Pizza Hut and Coke to satisfy the middle class palate. Much against the debate of our culture being swamped by foreign style-goods, our own culture continued to flourish.

In the midst of all this, the internet and cell phone revolution crept in greatly reducing dependence on land line phones and the high-handed attitude of the state-owned post and telegraph staff. Technology and openness changed the scene drastically.

Pradeep, a Graduate in Commerce, with a degree in Law, foresaw the future scenario; the inevitability of cross continental trade being opened up in the 1990s due to the arrival of the World Trade Organization (WTO) and the attendant liberalisation set in motion in India. Import of consumer goods also dealt a blow to the grey market of imported goods. That shaped subsequent focus of CUTS to advocate for safeguards, checks and balances to protect consumers from hurt and exploitation.

All these changes, some of which were tectonic, meant that CUTS needed to work on policy and not just assist complaining consumers. Working on policy meant that only evidence based advocacy would be acceptable to policymakers. Hence, CUTS graduated from consumer protection to consumer welfare. The shift was a leap forward, as very few consumer groups had the capacity to work on policy relevant research at that stage.

Under Pradeep's leadership, CUTS, as one of the few consumer groups at that time, was instrumental in drafting and adoption of a unique consumer redressal system through the Consumer Protection Act (COPRA) in 1986. But getting the law was not sufficient, as it had to be implemented. That process also needed sustained advocacy and COPRA started showing results in early 1990s. Using COPRA, CUTS was able to challenge the use of carcinogenic food additives in citrus flavoured soft drinks, and that resulted in further changes in COPRA to allow consumers to challenge the sale of hazardous goods and services and seek their withdrawal from the market.

Another major and impactful use of COPRA was challenging long strikes in banks, which Pradeep fought relentlessly and even at the cost of physical threats. The National Commission's order established the situation of consumers being the third pillar in any bank dispute, which was not restricted to the two traditional sides of management and labour. Thus paradigms were changed and consumer sovereignty given a push in India.

The second major policy change was Pradeep's advocacy on competition reforms as that was to step up consumer welfare. He was instrumental in the drafting and adoption of Competition Act, 2002 in India and the forthcoming National Competition Policy. In fact, he was even tempted to apply for the chairmanship of the Competition Commission of India due to his passion and zeal. Alas, his case was not considered. Retired IAS officers latched on to the sinecure gravy trail and thus Pradeep's case was rejected, fortunately for CUTS.

In a testimonial for his application for Chairmanship of Competition Commission of India, Dr C. Rangarajan, Chairman, Prime Minister's Economic Advisory Council writes:

Over his long and illustrious career Pradeep S. Mehta, through his practical and scholarly work, has striven to highlight the importance of economic liberalisation coupled with safety nets such as protection of consumers and competition in the Indian context. He is responsible for pioneering an approach that maintains a correct and necessary balance between consumer interests and the need for competition as an incentive for producer participation, job creation and economic growth. Pradeep was the founder of Consumer Unity and Trust Society (CUTS) in 1984, which as a result of its bandwidth of engagement in several areas of public interest, has emerged as one of the most powerful think tanks and mobilising agent in India and arguably, the world, on the issues of liberalisation coupled with safety nets; he has been decisive in supporting and championing the cause of both consumer interests and business groups whenever that was in the best interests of the Indian economy and society.

CUTS was visualised as a catalyst, where standing together with global policy makers, it would play its part in a host of issues impacting national policy in relation to opportunity, gain, safety, misuse, protection, transparency; and above all an ethical interaction between countries for the global good. It has achieved an important place in the world of NGOs working on international trade and development issues. As recognition of this work Pradeep has been nominated as a Member of a High Level WTO Stakeholder Panel on the Future of Trade in 2012. Expectedly, Pradeep's engagement drew applause from the global consumer movement, and he has been able to push the issue of consumer sovereignty at the Panel also. This is the second appointment that Pradeep has got. Earlier he had also served as Adviser to the WTO Director General in 2002-2004. Besides this, he has also served on Government of India's advisory committee on international trade for a long time, other than being Honorary Adviser to the Union Commerce & Industries Minister.

Through his work, Pradeep has also been very successful in promoting South South Cooperation by empowering civil society organisations in the developing world of Asia and Africa. In fact, CUTS is perhaps the only Indian NGO which has centres in Lusaka, Zambia; Nairobi, Kenya; Hanoi, Vietnam and Geneva, Switzerland. Pradeep is also a recognised institution builder. Under his vision and leadership CUTS has been instrumental in establishing the South Asia Watch on Trade, Economics & Environment (SAWTEE) in 1994, which is now functioning as an independent organisation. Earlier, Pradeep was also instrumental in establishing the International Centre on Trade & Sustainable Development in Geneva in 1996. Other than these international organisations, Pradeep was also instrumental in establishing the Consumer Coordination Council in India in 1993, an apex body of about 30 leading consumer groups in the country.

As a CUTS board member, I not only looked at consumerism as a user, but to see how CUTS has evolved as a premier consumer group in the world. Journeying with Pradeep, I realised that trade, copyright, antidumping, competition, investment, labour laws,

child labour, women's rights are some of the few issues that stand out at the tip of the iceberg that we term as 'consumer movement'.

Pradeep is also a great communicator, which is why I was roped in his effort to establish CUTS. As a proof of this, Dr Vijay Kelkar, a noted econocrat of India writes:

His numerous articles in various leading dailies in India and abroad on the twin issues of consumer protection and competition policy have ensured that these issues have been recognised in our development discourse. In his articles I detect a leaning towards practical and pragmatic approaches and avoidance of vague and abstruse theorising – these very qualities endear him to the reader and make him one of the most powerful and widely read commentators in India.

I conclude with a quote from a dynamic civil servant of Rajasthan, Sunil Arora, who defines Pradeep as a "big fish in a small pond".





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## **The Indian Health Sector**

### *Providing Choice, Competition, Efficiency and Finance*

This is a volume in honour of Pradeep Mehta. Pradeep and his work have been about pushing competition, choice and efficiency, not just in India, but elsewhere too and with health education sector as one of its foci. Therefore, this paper focuses on choice, competition and efficiency in the health sector, an important one for India.

In September 2010, India's Ministry of Health and Family Welfare presented an annual report on the state of India's health, presumably the first of several such status reports. There is a self-congratulatory under-current in this report. Life expectancy has increased to 63.5 years. Infant and under-5 mortality rates have declined, with the infant mortality rate (IMR) at 53 per 1000 live births. Subject to data problems about maternal mortality ratio (MMR), that too has dropped to 254 per 100,000 live births. All these are 2009 figures. However, the Approach Paper to the Twelfth Five Year Plan (Planning Commission, 2011) mentions an IMR of 50 and a MMR of 212, both figures for 2009. A National Rural Health Mission (NRHM) has been launched in 2005, with a focus on 18 relatively backward States.

There are four problems with this self-congratulatory under-current. First, depending on the country with which one is making comparisons, India is still an under-performer in health. The IMR is 19 in China and the MMR is 45. The IMR is 17 in Sri Lanka and the MMR is 58.<sup>1</sup> Second, there is a 2009 country report on India's

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1. Planning Commission (2011).

progress towards the Millennium Development Goals (MDGs).<sup>2</sup> The MDG system has a hierarchy of goals, targets and indicators and several are on health. Stated simply, in terms of progress towards 2015, India performs far better on poverty reduction and education than it does on any of the health-related indicators. To take the IMR as an example, “The trend of decline since 1990, if continued, can only take India to an IMR level of about 46 by 2015, which is far short of the target. High rate of infancy deaths in India is largely attributed to very high share (66 per cent in 2007) of neo-natal deaths.”<sup>3</sup> Third, progress has to be benchmarked against what was expected or projected. The 11<sup>th</sup> Five Year Plan (2007-2012) had projected that by 2012, the MMR would be 100 and the IMR would be 28. On the assumption that these were then believed to be deliverable targets, there has been slippage. Fourth, all-India averages mask a lot of variation, not just in an urban/rural sense, but also in terms of divides between States. For instance, the IMR is 70 in Madhya Pradesh and the MMR is 480 in Assam.

Since the Bhore Committee of 1946, there have been 21 committees and commissions with a direct focus on health, not counting the ones that deal with pharmaceuticals or related areas.<sup>4</sup> The recommendations of these committees and commissions helped to shape India’s health care infrastructure, policy and legislation. However, what we wish to flag in this section is their recommendations on choice, competition and efficiency on the supply-side and an end to public sector monopolies, with suggestions on financing health care. This section is not meant to be comprehensive. Nor is it meant to cover all those 21 committees/commissions. In general, the highlighted recommendations have not been accepted and no one listened.

But it is important to flag that they have been floating around and each time, we try to reinvent the wheel. Rather

2. There have been two earlier reports too. But this 2009 is the latest. *Millennium Development Goals: India Country Report 2009; Mid-Term Statistical Appraisal*, Central Statistical Organisation, Ministry of Statistics and Programme Implementation, [http://mospi.nic.in/rept%20\\_%20pubn/ftest.asp?rept\\_id=ssd04\\_2009&type=NSSO](http://mospi.nic.in/rept%20_%20pubn/ftest.asp?rept_id=ssd04_2009&type=NSSO)

3. Ibid. Neo-natal means within the first month of birth.

4. In a collaborative exercise between the Ministry of Health and Family Welfare (MoHFW) and the World Health Organisation (WHO, India), the reports of most of these committees/commissions are available at <http://nrhm-mis.nic.in/ui/who/GOI-who-link.htm>

interestingly, as one moved through the 1960s, conceptual issues connected with financing, user fees, the use of subsidies and private sector involvement seemed to disappear from the radar. Public expenditure and public provisioning were treated as axiomatic and it was assumed that tighter monitoring would solve the efficiency problem. It is only in the post-1991 period that one is revisiting what was discussed in the 1940s and the 1950s.

The core of the delivery problem is in rural India, where primary health-care is provided through a network of 145,894 sub-centres (SCs), 23,391 primary health centres (PHCs)<sup>5</sup> and 4,510 community health centres (CHCs). There are population norms for such SCs, PHCs and CHCs. For instance, a population size of 5,000 must have a sub-centre, a population size of 30,000 must have a PHC and a population size of 120,000 must have a CHC.<sup>6</sup> A sub-centre has a lady auxiliary nurse mid-wife (ANM) and a male health worker (MHW). There is a lady health visitor (LHV) for six such SCs. The PHC is a referral unit for six SCs and has a medical officer (MO) and other staff. The CHCs are supposed to have four medical specialists (surgeon, physician, gynecologist, pediatrician), with an anesthetist and eye surgeon eventually made mandatory. In parallel with the NRHM, a National Urban Health Mission (NUHM) has now been proposed. The Ministry of Health's *Annual Report 2010-2011*, succinctly states the problem in urban India.

However, while there is somewhat a uniform public health infrastructure in the rural areas, it is largely non-existent in urban areas except in some large urban centres and metropolitan cities that too mostly focused on reproductive and child health services. Approximately three-quarters of urban healthcare is accounted for by private health facilities and therefore, result in substantial out of pocket (OOP) expenses. The health indicators for the urban poor are as bad as their rural counterparts and much worse than the urban average. Poor environmental condition in the slums along with high population density makes them vulnerable to various

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5. Figures from Ministry of Health and Family Welfare, *Annual Report 2010-11*.

6. These have been the norms since 2009. However, there are lower population thresholds for hilly and tribal areas.

communicable and vector-borne diseases...The poor health outcomes can partially be traced to the inadequate services, like water supply and sanitation and housing facilities.

The focus thus is on public sector delivery, both in rural and in urban India, despite the statement that three-quarters of urban health care is accounted for by the private sector. However, some empirical work by Das (2011) shows that even in rural India, access is primarily through the private sector.

Typically, households can access multiple providers, ranging from fully qualified public and private sector providers to those without any formal medical training in the private sector. In Delhi, India's capital, there are 70 doctors, most in the private sector, within a 15-minute walk of every household. In the private sector, about half are fully qualified and 10-15 per cent have no medical training, with a higher fraction of qualified providers in richer neighbourhoods.

According to a recent report, across rural India, the average household can access 3.2 private, 0.3 public, and 2.3 public paramedical staff within their village. In rural Madhya Pradesh—one of the poorest states in India—households can access 7.5 private providers, 0.6 public providers, and 3.04 public paramedical staff. Of those identified as doctors, 65 per cent had no formal medical training and, of every 100 visits to health care providers, eight were to the public sector and 70 to untrained private sector providers.

The report in question is an important one, because it demolishes the proposition that there is a market failure of health workers in rural India and that the public sector must fill the void.<sup>7</sup> Contrary to *a priori* expectations, those four key trends are the following. First, the availability of medical providers in rural India is quite high, nearly 6 available per rural India. Second, more than 50 per cent of medical providers are private providers. However, third, the majority of medical providers have no medical qualifications and 65 per cent have no formal medical training. Fourth, most households

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7. *Mapping Medical Providers in Rural India: Four Key Trends*, MAQARI (Medical Advice, Quality, and Availability in Rural India) Team; CPR Policy Brief, February 2011, [http://cprindia.org/sites/default/files/policy%20brief\\_1.pdf](http://cprindia.org/sites/default/files/policy%20brief_1.pdf)

visit private doctors and doctors with no medical qualifications.<sup>8</sup> Ninety-two per cent go to private providers and 79 per cent go to unqualified providers.

A private market thus exists. The problem is with its quality and lack of regulation. In contrast, the public sector provisioning may not have problems of regulation, but it continues to have problems of access and quality. It is because of this lack of service quality in public sector delivery, spliced with the non-availability of drugs that patients resort to the private sector. The usual response of the government to this problem is one of euphoria about the involvement of local bodies.

The effectiveness of a health care system is also affected by the ability of the community itself to participate in designing and implementing delivery of services. The opportunity to design and manage such delivery provides empowerment to the community as well as better access, accountability and transparency.

In essence, the health care delivery must be made more consultative and inclusive. This can be achieved through a three dimensional approach of (1) strengthening panchyati raj institutions (PRIs)/urban local bodies (ULBs) through improved devolution and capacity building for better designing and management, (2) increasing users' participation through institutionalised audits of health care service delivery for better accountability, and (3) bi-annual evaluation of this process by empowered agencies of civil society organisations for greater transparency. Methodologies based on community based monitoring, which have proved successful in some parts of the country, will need to be introduced in other parts (Planning Commission, 2011).

As this quote itself admits, the experience has been quite variable.

The attitude of public sector delivery also spills over into the skills issue. Consider the figures given in the afore-mentioned status report of 2010 (Ministry of Health and Family Affairs,

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8. The word "doctor" is being used in loose fashion. It does not imply the possession of a MBBS degree.

2010). The international norm is that there should be 25 skilled health workers (doctors, nurses, midwives) per 10,000 population.<sup>9</sup> In contrast, India has around 8 per 10,000. Of these, allopathic doctors constitute 31, nurses and midwives 30, pharmacists 11 and Ayurveda, Yoga, Unani, Siddha, Homeopathy (AYUSH) practitioners 9 per cent, respectively. These are figures from the 2001 Census and do not include community health workers, like Accredited Social Health Activists (ASHAs) recruited through NRHM. The Approach Paper to the Twelfth Plan has some additional numbers (Planning Commission, 2011). PHCs have a shortage of 10.27 per cent of the number of doctors required, CHCs have a shortage of 62.6 per cent of the number of specialists required, PHCs and CHCs have a shortage of 24.69 per cent of the number of nurses required. There is a shortage of 27.13 per cent of the number of pharmacists required and a shortage of 50.42 per cent of the number of laboratory technicians required.

These are shortages in rural health care delivery. One should not confuse an overall shortage with inequities in distribution and both problems exist. For instance, there may be too few nurses compared to the number of doctors. Health care workers are understandably concentrated in urban areas and most are employed in the private sector. Most medical and nursing colleges are in Andhra Pradesh, Maharashtra, Karnataka, Kerala and Tamil Nadu. There are few in Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh.

In ad hoc fashion, several states have also experimented with public-private partnership (PPP) models in delivering health care, outsourcing and levy of appropriate user charges. The Ministry of Health and Family Welfare (2007) has a database that collated these and other reform attempts. The challenge is to replicate and upscale them.

Since the reforms of 1991, some States have experimented with user charges—Assam, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tripura, Uttar Pradesh, Uttarakhand and West Bengal. Typically, such charges are imposed for diagnostic and curative services on patients above the poverty line, while those below

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9. This is the context of deliveries and immunisation and is not a general figure. However, since the point being made is about shortages, this does not matter.

the poverty line are exempted and continue to receive free and subsidised services. There is a fair degree of variation in the implementation of user charges across states, ranging from the specific services that attract user charges in different states (some apply them on primary services, others on secondary or tertiary), to the degree of cost recovery to the use of such recovered funds.

Further, some of the states like Odisha, apply different rates to different geographical regions, and in some states the authority determining these charges is decentralised (as in Madhya Pradesh and Kerala). In the course of formulating the 11<sup>th</sup> Five Year Plan (2007–2012), the Planning Commission (2007) constituted a Task Force on PPP to improve health care delivery. Instead of the classic obsession with increasing public expenditure and assuming that it must be equated with public provisioning, the task force's report indicates how choice and competition can be introduced.

The report begins by accepting the inevitable, instead of questioning it, namely, the importance of the private sector, both for profit and non-profit. This does not negate the point about lack of regulation, since the quality of health care provided by the private sector varies. In general, private health care services are also more expensive than public ones, more so for in-patient services. There have been instances of such successful reform attempts involving PPP, as when services are contracted out on a temporary basis to the private sector. The government can pay an outside agency to manage a specific function, or the government facilities can be leased to private entities. Subsidies meant for the poor can be routed through private entities. And experiments also include the levy of user fees and insurance schemes. While there can be no universal template, there are two propositions that are clearly myths—first, everything has to be delivered by the public sector; second, the poor are unwilling to pay.

The usual approach to addressing health problems is one of increasing public expenditure on health, the argument being that OOP expenditure on health care is too high.

Those who access 'free' government health services are expected to purchase medicines from private pharmacies; pay user fees for laboratory tests and of course the ubiquitous



informal fees. Those who use the private services of course have to pay considerable amounts. Significantly, those who are insured also do not get full protection. While their OOP payments are reduced, they still have to pay for ambulatory care and for excluded conditions (Ministry of Health and Family Welfare, 2010).

While this is true, this seems to be more of an insurance issue, rather than one of increasing public expenditure on health to the oft-cited figure of 3 per cent of GDP. That's the primary reason why OOP expenditure is still so high.

Can there be a satisfactory conclusion to such a paper? The lessons of competition, choice and efficiency, and transiting from licencing to regulation are obvious enough. Why have they not been implemented? In formulating public policy on health, there is still a great deal of distrust of the private sector, interpreted as the private corporate sector. For example, this is evident in attitudes towards the pharmaceutical sector which is seen as excessively profit-oriented; largely because of this, recommendations are not implemented, even when they cogently articulate directions for reform. Regulation is thus confused with control and this is reflected in over-legislation, which is rarely enforced. Since health is a State subject, many State governments have systemic problems in enforcing existing laws and regulations. To compound the problem, Government ministries and departments work in silos. Apart from regulation, competition policy instruments and consumer complaint mechanisms remain unsatisfactory; this is also the case with self-regulation.

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## **Urbanisation Challenge in India**

The 21<sup>st</sup> century is called the urban century because for the first time since dawn of civilisation, more people are residing in urban areas than in rural areas. This trend is also reflected in India which is witnessing unprecedented urbanisation. Even at a relatively low rate of 31 per cent urbanisation, India has the second largest urban population in the world.

Urbanisation and economic progress are concomitant processes as cities provide large economies of agglomeration. The urban sector contributes around 60 per cent of GDP which is likely to increase to more than 70 per cent by 2021. Over 70 per cent of new jobs in future shall be largely created in cities. The link between economic performance of cities and the national economy is increasingly getting stronger. If India has to achieve a high growth rate, it must turn to its cities. However, in a globalised world, the cities are increasingly getting interlinked and shall have to compete globally for employment generation and investments.

In order to ensure competitiveness of our cities and ensure basic services to our citizens, urgent steps are required to harness the opportunity that the scale of urbanisation presents and to avoid urban decay.

The Ministry of Urban Development (MoUD) is a key facilitator promoting efficient urbanisation, forging closer cooperation between union, states and cities and providing support for basic amenities, capacity building, policy formulation and bringing about convergence and synergies.

To tackle rapid urbanisation, Government of India (GoI) has adopted a multipronged strategy, which aims at providing support

for development of physical infrastructure as well as promotion of reforms that would help strengthen municipal bodies and facilitate development of capacity to provide better services on a self sustaining basis.

Any strategy to rejuvenate cities must take into account the four major challenges that urban India faces today:

- urban population will grow much faster than rural population and in the next few decades is likely to cross 600 million. By 2050, it is estimated that urban population will constitute nearly half of the total population in India;
- basic services i.e., water, housing, transport, sewerage, drainage and solid waste management require major improvement;
- financing requirements for improving city infrastructure as well as provide for orderly urban growth and expansion are enormous. As per report of the High Powered Expert Committee (HPEC) on Indian Urban Infrastructure & Services, the investment estimates for urban infrastructure for the 20-year period from 2012 to 2031 amount to ₹ 31 lakh crore at 2009-10 prices;
- urban local bodies charged with the task of governing cities lack the capacity to deliver. The lack of capacity is both in terms of the number of people available as well as the skill sets available.

Keeping in view the above, the strategy for rejuvenating the cities must focus on provision of basic urban infrastructural services, inter alia, provision of water supply, sewerage and solid waste management, storm water drainage, transport and e-Governance. The focus must to be on outcomes. Accordingly, service level benchmarks have been set by MoUD covering water supply, sewerage, solid waste management, storm water drainage, urban transport and e-Governance. In addition, environmental conservation must be integrated with all our efforts in order to achieve rejuvenation in the true sense.

Jawaharlal Nehru National Urban Renewal Mission (JNNURM) launched in December, 2005, is the Ministry's flagship programme aimed at integrated development of urban infrastructure and services. JNNURM the largest intervention by the Union Government in the urban sector, is reforms driven i.e., the states and cities are required to undertake certain reforms, mandatory as well as optional, as a pre-condition to accessing funds for the various projects. The reforms aim at improving financial health of the local bodies, sustainability of assets created, improvement of urban governance and service delivery.

JNNURM shall continue to be the main instrument for development of urban infrastructure. It is expected that funding under the Mission shall be adequately enhanced to generate momentum in states and cities for achieving strategic objectives.

Capacity constraint is one of the biggest challenges in improving urban service delivery and governance. Creation of municipal cadre in each state is a necessity so that every city has the capacity to handle basic functions like accounting, resource mobilisation, planning and delivery of basic services. Capacity for better regulation in urban service delivery also needs to be created and supported by the Union and the states. It is important that potential of resource mobilisation at the state and city levels are fully harnessed.

A number of revenue instruments are available to the local bodies and they and the state governments must take effective steps to harness them for funding the rejuvenation of cities.

Public-private partnerships (PPPs) will be an important element of overall strategy. Possibility of greater flexibility under the viability gap fund needs to be explored. In order to facilitate better preparation of projects to attract PPP, capacity building assistance shall be provided apart from leveraging support from India Infrastructure Project Development Fund (IIPDF), India Infrastructure Finance Limited (IIFL).

Given the fact that urbanisation is inevitable, the city, state and central government need to take effective steps to create and maintain infrastructure and undertake sectoral reforms and

restructuring to create an environment necessary for efficient and sustainable urban governance to ensure rejuvenation of cities.

### **Way Forward: A Road Map for Saving our Cities**

- *Smart Growth:* Planning should be based on smart growth principle that concentrates growth in select city centres to avoid haphazard urban sprawl and costly extension of urban infrastructure facilities to far-off areas. This advocates compact, transit-oriented, walk-to-work land use to the extent possible, including neighbourhood schools, streets and amenities that cater to everyone; mixed-use development with a range of housing choices; and focus on public transport.
- *Existing Cities-Strategic Densification:* Cities in India have precariously low Floor Space Index. Subject to development of supporting infrastructure, there is need for selective densification of city centres, creating agglomeration economies and generating resources for financing infrastructure.
- *Taking Citizens into Confidence:* It is also necessary to take the citizens into confidence in the matter of determination of levels of user charges. The cost of a project, be it for water supply or SWM etc., spread over the project period, coupled with the O&M charges and the benefits to the people should be logically juxtaposed with the user charges, to convince the people about the scale of the user charges.
- *Urban Renewal and Regeneration:* Policy should provide broad framework to facilitate the process of urban regeneration/renewal within the generic principle that the growth would pay for itself. This would require a flexible planning approach and seed capital support.
- *Scaling up PPP:* Some PPP projects have been taken up under phase I of JNNURM. The need is to create a basket of workable PPP models for the urban sector and mainstream the PPP concept.

- *Capacity Building:* I have already stressed upon the importance of the creation of a municipal service cadre in each state so that capacity building efforts are focused and well directed.

The government is committed to provide quality infrastructure and services in the urban centres, not only in the bigger cities, but also in the smaller towns and seeks the support of all the state governments and the urban local bodies (ULBs) to work in unison to achieving the goals.



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## **Power Generation and Distribution**

At the outset I must thank Consumer Unity & Trust Society (CUTS) for having given me an opportunity to write few words on the captioned subject for Pradeep's Festschrift. Since his organisation, CUTS, works actively in the area of electricity among other areas of economic policy issues, I thought that this topic will be ideal to be essayed.

Let me mention at the outset that I am not an expert and views expressed by me in this article are purely based on my conviction and understanding, which may be limited. My experience in the sector stems from the fact that I have been running a transmission tower manufacturing company in Jaipur since long.

For any growth in the GDP it is inherently understood that power is the most prime necessity and if India is aiming at a GDP 8-9 per cent per annum then a serious reform in generation and distribution of power will have to be achieved.

As per the estimated requirement, the capacity of generation has to be increased from the present 200 GW to 800 GW in the next 20 years. The projections done in the previous 5-Year Plans have all failed to materialise but the question is how long can we afford to keep failing at the cost of growth. (These statistics are based taking India's per capita consumption of electricity at 780 Kwh which is a quarter of the global average of 2782 Kwh.) This is bound to go up hence the actual requirement of power would be much higher.

For the 12<sup>th</sup> Plan, capacity of 37,800 MW alongwith transmission line addition of about 1,00,000 CKM is projected at a minimum level.



Amongst others, one of the major constraints that the country is facing at the moment is availability of coal. As per my perception, yes, making coal available is not an easy task. Some of the hurdles can be removed if forest land is made available and the environmental issues are looked at practically. I think we have gone overboard on these issues whereas a balance is required if coal is to be made available to the country.

While mentioning this I must state that the western world has already reached its saturation level of production hence they can afford to give sermons to us. A deep introspection in this regard is necessary else we will keep hankering for resources which eventually will have to be given a goodbye but after having lost many a precious years.

Another question that arises is whether or not we are exploiting our hydropotential to its maximum level. The answer in my opinion is "No". The whole of Northern India from Jammu & Kashmir and Himachal Pradesh has huge resources of water which can be exploited. Other parts of the country also have good flow of rivers whether it is the Ganga or the Yamuna. They will have to be exploited and sentiments as compared to progress are questions that will have to be answered.

I do remember that in 1980s, the late Chief Minister of Rajasthan, Shri Haridev Joshi, who belonged to Banswara in tribal areas of southern Rajasthan, was keen on starting the Mahi Project, but could not get it through for a number of years as the cost of production was working out high. If I remember correctly, the projected cost was something like 25 paisa per unit and the selling price, again if I remember correctly, was 20 paisa per unit. Joshi was eventually able to get the proposal through, and we are reaping its benefits now.

Nepal can alone offer over 80 GW of hydro power to India, if its rivers can be dammed. Pradeep and CUTS have been working for long on building closer economic relations with other countries in South Asia, and this is one area which he must pursue with equal vigour.

Though India is no longer a pariah in the international nuclear area, I do not see any signs in the power generation on the nuclear side which will have to be exploited.

I feel that non-conventional sectors such as solar, wind and biomass are small substitutes and can at best add one per cent to our total generation needs, at least in the short and medium term.

Good economics never makes good politics. We have crippled our distribution system because of populist measures such as free power or discounted prices thereby shifting the operational burden to the industry but still a major portion of it is absorbed as a loss by the distribution companies. If the trend is to be contained and reversed, then the central government and the respective state governments must insulate the distribution companies and bear the burden from the exchequer, which continues to remain on paper.

India records the highest line losses that are both because of pilferage and mismanagement. These two factors will have to be controlled willy-nilly at the earliest as power saved is power generated. But little is being done on automatisisation as per international standards.

A lot is desired to be done on these fronts and sooner we wake up the better it would be as the cost of all commodities are going up substantially. Pradeep and his team of energetic youngsters are working on several of these issues, and as one of his supporters, I will continue to work with him.



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## **The Future of Globalisation in an Era of Financial Crisis**

*Essay in Honour of Pradeep Mehta*

Pradeep Mehta has been a remarkable campaigner for rational trade and competition policies in India. Through the Consumer Unity & Trust Society (CUTS), which he founded, he has played a noteworthy part in what I thought almost impossible when I first visited India almost 40 years ago: to shift the consensus of informed Indian opinion towards welcoming competition and openness to trade. In doing so, he has served the immediate interests of Indian consumers and the longer-term interests of the Indian economy.

The decisive moment in India's trade and industrial policies came just over twenty years ago, in 1991, when a foreign exchange crisis provided the opportunity for fundamental reforms. These went well beyond lifting barriers to trade and lowering tariffs. They also brought about the end of the 'license raj', which governed every aspect of the economy, not least manufacturing. The subsequent performance of the Indian economy shows the clear benefits of these reforms.

The next 20 years are likely to be very different. This is partly because of the economic crisis that has fallen upon the advanced countries. But it is also because the crisis is accelerating a transition that would have happened, in any case: the end of the domination of the advanced countries not only over the world economy, but also over the making of global economic policy. The transition from discussions limited to the heads of government of the group of seven high-income countries to discussions with leaders of the

group of 20 leading economies, which includes all the important emerging economies, is a clear indicator of this upheaval.

In itself, this transformation is of course, welcome. The world cannot be—and should not be—run by countries that account for an eighth of the world's population. But such transitions create huge challenges for policymakers, particularly at times of economic difficulty, as the world learned in the 1930s.

In particular, the rising giants, China and India, will have to play a leading role in sustaining an open and dynamic world economy. As a market-oriented democracy with a relatively balanced, consumption-oriented economy, at least compared to China's, India has a very special role to play.

Let us look more closely at events inside the high-income countries and the implications for the rest of the world economy.

The obvious point is that, overall, the economies of the high-income countries have failed to recover fully from the crisis. Even in those major countries whose economies are a little above the pre-crisis peak, such as the US and Germany, the recovery has been remarkably weak. But a number of the large high-income economies are still languishing well below their pre-crisis peak output: Japan, Italy and the UK all fall into that category. These weak economies mean high unemployment, notably so in the US, and stagnant or falling real incomes for large parts of the population.

The crisis has also resulted in large fiscal deficits and a rapid rise in public sector debt in a number of important high-income countries. This is particularly true for the UK and the US, where the crisis hit particularly hard, and Japan, which entered the crisis with an already weak fiscal position. Other important countries, notably Italy, entered the crisis with large public sector debts even though their deficits remained under control.

Nothing better reveals the economic weakness of the high-income countries than the fact that at the time of writing, in the summer of 2012, the four most important central banks in the developed world had official intervention interest rates of  $\frac{3}{4}$  per cent or less, not to mention a host of unconventional policy

measures. Moreover, long-term interest rates on the bonds of safe governments were near to, or below, all-time lows. The state of these economies may be best described as a 'contained depression'. Nothing suggests that the most important developed countries will escape from this condition soon.

The crisis then has bequeathed severely weakened high-income countries: large private sector debts; heavy public sector debts; weak economies; and high unemployment. To a varying extent, these countries must also cope with ageing populations and stagnant or even declining work forces. Thus, the current difficulties have brought into the present what was set to be an indefinite period of fiscal strain and economic weakness.

In brief, the crisis has revealed, caused and worsened significant weaknesses in the economies of high-income countries. But no more important fragility stands revealed than that of the eurozone. The external imbalances and associated credit booms characteristic of the global crisis ran right through the eurozone, dividing creditor from debtor countries.

Since the crisis broke out in 2010, it became evident that the eurozone, as constructed, was unable to cope with the consequent economic, financial and fiscal stresses. What the members have had to do is attempt a rebuilding of a badly designed aeroplane while still in flight.

It is unclear what is going to happen inside the eurozone.

If all goes as well as can be imagined, the eurozone will experience a long period of weak growth punctured by periodic crises and accompanied by severe political stresses, while the necessary adjustments and longer-term reforms are slowly and painfully secured. This is likely to take the rest of the decade.

If all goes badly, the crises will be so severe that some countries will exit, voluntarily or involuntarily, in an atmosphere of intense resentment accompanied by waves of panic, and economic and social disorder. In this case, the European single market and perhaps even the European Union itself will be at risk. Terror over the consequences of such an outcome may well prove the main reason the euro will survive.

What are the implications of all this for the rest of the world? I suggest there are five.

First, the developed world is going to be a weak market for the indefinite future. For the businesses of the world, the advice has to be: “go south, young man.” Southern markets are going to be the most dynamic and quite soon, the biggest for most goods and services.

Second, the possibility remains that the contained depression will turn into an actual one, possibly triggered by a meltdown in the eurozone and collapse of substantial parts of the global financial system.

Third, there is a substantial chance of severe protectionist pressure in the high-income countries, as the long-term nature of their plight becomes more evident. Such protectionism is likely to affect not just trade, but also openness to immigration and perhaps even willingness to export technology. The barriers to protectionism are strong nowadays.

Fourth, the high-income countries will be unable to provide positive leadership to the world economy, in general, and the trading system, in particular, over the coming years. If such leadership is going to come from anywhere, it will be from emerging economies, particularly large emerging economies.

Fifth, the configuration of the world economy is going to have to change in important ways. Export-led development strategies must be substantially modified. In particular, the possibility of sustaining domestic demand by running huge current account surpluses will be substantially smaller than it was before the crisis.

For India one can envisage three possible strategic responses. The first would be to change nothing, either because changing policy is too difficult or is deemed not to be worthwhile. The second is to conclude that the world economy is too dangerous to be trusted and so to turn away from it, once more. The third is to be a true leader in sustaining and developing the open world economy.

The first option is perhaps the most likely course. It is surely the easiest. But it would be a mistake. Over time, a country of India's

enormous size must take substantial responsibility for the world in which it lives. The crisis has merely brought this time forward. Furthermore, sustaining the open world economy is in India's own interests as a rising power.

The second would be a huge mistake. It remains the case that for a catch-up country, such as India, with a need to access the world's best technologies and managerial practices, openness to the world economy is essential and so is an open world economy. Moreover, participation in an open world economy is also the best guarantor of a dynamic and competitive economy at home.

That leaves the third option, which is the most difficult and also the most rewarding option. Like it or not, the crisis is thrusting greatness on China and India, two rising giants that are increasingly responsible for developing and sustaining an open world economy.

This last option has important implications for policy. The most obvious is that India cannot assume that it can be a free-rider. It needs to take into account the global repercussions of domestic policies. One aspect of this is that India needs to sustain the opening of its own markets, which is also in its own interests. But it also needs to develop its own views on the future of the world trading, financial and monetary systems and then act upon them. A credible plan for completing the Doha Round would be a good place to start.

The world economy is becoming a much tougher place. It will take determination and intelligence to sustain and develop the dynamic and increasingly open world economy that existed before the crisis. India has an opportunity to emerge as a leader. That is in the world's interests. It is in India's, too.





**Building Indian Businesses***A Reflection*

It has been a pleasure knowing Pradeep for over 20 years. He has been a pioneer in India on reading the global tea leaves, much before others realised their importance and he and CUTS read them better than most others. Indian industry has been transformed by changes in the global arena and changes in our trade and economic policies. The freeing of the trade account, the easing of entry into new businesses and the 'freeing' of the Indian rupee have transformed our country since 1991. The world is always a challenge and those who make a difference, relish this challenge.

On completion of 30 years of CUTS, it is a time to look forward with anticipation and look back with satisfaction. This essay in this Festschrift for Pradeep is my own small contribution to the continuing discussion on how to take our country forward.

To run a company one needs a holistic business sense, which is a mix of a sense of what will sell at a profit, need for capital, technology, human relations and marketing. The critical part of any company is its leadership. As is said, the bottleneck is only at the top!

Marketing is a key aspect of a business, but effective only when the company has strengths in research and development, low cost manufacturing, financial strength, committed and competent personnel, etc.

Success today hinges on the ability to anticipate or create a future. And, who better to influence that than marketing people, who are closest to the market place.

This brings me to the theme of change.

Change is what drives the global economy. Companies have to continually reflect on what should or could change and realign themselves to, or still better, drive the change. In the 1990s the Indian 2-wheeler market was over 50 per cent scooters, 25 per cent motorcycles and 25 per cent mopeds. By 2001 it became 66 per cent motorcycles, 25 per cent scooters and 9 per cent mopeds. It took us some time but we reinvented ourselves. Some may say, and this includes me, a bit too much! But change we did and successfully.

Also, in 1990 exports were 5 per cent of our sales. Last year this was 35 per cent. And, we are in a slow moving auto industry! Those in consumer electronics or storage devices or music industry have seen much greater change.

Assessing what will change and what will not is a critical capability. I have been hearing of electric or even hydrogen vehicles coming for 20 years and they have still not gained market or business success. Maybe they will, in the next 10 years.

In dealing with change, I have found a few ideas useful:

- Anticipate, anticipate, anticipate. As Andrew Grove of Intel has said, only the paranoid will survive.
- Future usually comes slowly. It gives one enough inkling. However, we do not listen because we do not like what we hear and those in the game are too invested in the present to destroy it for a different future. Prof Christensen of Harvard calls it the inventors' dilemma. Our shift to motorcycles required a huge emphasis on and efforts in the development of our in-house R&D capabilities. This response was facilitated by a change of day-to-day management from me to my son, Rajiv.
- So, we should check our assumptions. Very often an assumption we make becomes invalid and leads to our failure. Assumptions of growth are the most common ones that go awry. Many companies assumed a rate of growth or market size or their market share that did not materialise but had invested with borrowed funds to prepare for that

growth. In recent times, one can add assumptions about movement of currencies. Thinking that the world would change in a non-linear way is a reasonable assumption.

- Economies and therefore businesses move in cycles. This is a safe assumption. Hence, building in the possibility of a downturn is a sensible thing to do. A couple of years of flat sales. A plunge in margins. Still, the company should remain on even keel. Financial analysts may disapprove of cash hoards but every successful company sits on one.

Bajaj Auto has not had debt on its balance sheet for over 30 years. It instead had a great deal of cash and cash equivalents. No leveraging of our equity! Same applies to BHIL and BFS, which were formed 5 years ago by demerging Bajaj Auto. These companies together till now have raised less than ₹ 1 crore from our shareholders. Their total market capitalisation today is around ₹ 70,000 crore! This is in addition to the excellent dividends we have given each year.

We are a nation in transition—from agriculture to industry, from rural to urban, from poverty to prosperity, from lack of choice to competition, from commodity to brand, from domestic to global markets. Our marketing strategies and structures have to grapple with our realities and these transitions. In my view the game is played around strategy, brand, product, price and distribution.

Strategy is the fundamental stance of a company. What business are we in? What will we do and what will we not do? There are many distractions for a successful company. Not getting distracted most of the time and getting ‘distracted’ at times when a giant new opportunity or threat looms on the horizon, is a key task in managing a company. In today’s open world even sustaining a single globally competitive business is a herculean task. Managing multi-business conglomerates that we have in our country, due to our earlier license permit *raj*, is even more difficult.

At Bajaj Auto we have always followed a policy of sticking to our knitting and remained focused on 2 and 3 wheelers, that is, the mobility business. In spite of excellent profitability and cash flow, we did not manufacture anything else in Bajaj Auto. Second, we

retained our independence by not giving equity to our technical collaborators. Third, we have had a volume orientation.

All these have been vindicated by time. We did see an opportunity in financial services, which we entered to finance Bajaj Auto's customers. However, we started new companies for entering the consumer financing and insurance businesses.

Brand represents who we are. Bajaj Auto was a value for money brand for 30 years. This may no longer be a desirable proposition for shouting from the roof tops for marketing reasons. Customers want up-market association and will pay a premium only for brands with them. So, for a decade, beginning with Pulsar, we have been repositioning ourselves in the consumers' mind.

In a situation wherein many producers of goods and services are short changing the consumer, brands, especially mother brands, are very important in our country. Tata, Mahindra, Godrej, Bajaj have resonance.

When we started our insurance companies, we and our partner, Allianz, a major global player, branded the companies Bajaj Allianz in General Insurance and Allianz Bajaj in the Life Insurance sector. Within a couple of years, however, they agreed with us and we decided on 'Bajaj Allianz' in both the companies, because Bajaj has a better connect with the customer. When GE tied up with State Bank of India (SBI) for credit cards it was SBI that mattered to the customer.

In a world of focus and Al Ries and Jack Trout, using a brand for multiple products, what they call line extension, is an anathema. However, I believe it is still relevant in many cases in our country. Of course, this has to be done with care and brand values nurtured across the extensions. Also, to differentiate one model from another sub brands are naturally very important. For example, 'Pulsar' or 'Discover' under the mother brand 'Bajaj'.

Within a strategy and brand, one develops products in consonance with them. Spotting the gap where a product is required and getting the balance between features and price to generate volumes and profit, is an art. Gifted marketing men get it

right. Steve Jobs was a master of this art. For a desirable product, consumers are willing to pay significant premiums. Bad quality has little market at any price.

It is also important to have a presence in both the premium and the mass market segments. Premium segments generate prestige and profits. And the mass market generates the volumes to keep the company, suppliers and dealers financially viable. Not all manage to straddle this task. The consumer electronics brands of the US and Europe have evaporated due to their abandoning the mass market. Separate brands for these two segments generally help. However, there are successful companies like Harley Davidson and BMW in motorcycles that only operate in the premium segment.

Distribution and after sales service are a much neglected part of marketing, dull and boring. Dealing with small town people, one finds not hip enough. But it is a real differentiator of performance. A wide and competent network, covering rural markets, committed and loyal to the principal, is a priceless asset and a sure shot ingredient for success. In the case of Unilever in India, for a long time it was their most powerful weapon, maybe more than products or advertising. And, it is also the human side of marketing. Building and retaining bonds with distributors is one of the things I had truly enjoyed when I was running Bajaj Auto.

In doing all this, often there are important trade-offs to be made. There are so many constraints and pulls in opposing directions, which one has to resolve in the real world. For example, the trade-off between market share and margins.

Indian companies are being transformed from being focussed on the domestic market to having a large presence outside the country. This is creating new challenges for them. Which markets should they target? Under what brand should they sell? This is the next frontier for Indian marketing professionals and I am confident they will rise to the occasion.

I have been and continue to be bullish on the Indian economy and Indian companies. What we are suffering from is poor governance. So, for the next 1–2 years, the economy would splutter, especially due to a bleak global environment and a weak monsoon.

But the inherent strength of our people and companies, a global urge for improving one's lot, especially in developing countries of Asia, Africa and Latin America, would in my view assert itself and lay the basis for sustained progress.

It has been our generation's privilege to lay the foundation of our industrial economy. Looking at the competence and energies of the next generation of entrepreneurs and business leaders, I believe the future is in good hands. To them I wish Godspeed and Godbless.

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## **Stop Road Accidents Before They Stop Us**

Recently in Jaipur, capital of the state of Rajasthan, India, a senior serving civil servant was killed early in the morning by a speeding car that jumped the road 'divider' where he was waiting on the centre median to cross the road. The event has since been hogging the limelight in the media—action on road safety, particularly pedestrian safety, has begun overnight—the engineering of the road and the car has been taken up for action and enforcement of driving rules is being ensured across the city. Let us pause for a moment and spare a thought for the 1260 odd similar fatal sacrifices made in the city over the last two-and-a half years at the altar of poor road safety governance and whose numbers merely and sadly adorn only the morbid statistics without any concomitant action. The entire issue assumes depressing proportions at all-India level.

One in every 10 road death across the globe is reported from India and every sixth road crash in the world happens here despite having only one per cent of the global vehicle population. Though India is a signatory to the UN's Decade of Action for Road Safety (2011-2020) programme to reduce road deaths by 50 per cent during this decade, India has not yet announced its plans to achieve the target. Road fatalities in India increased from 1.32 lakh in 2010 to 1.43 lakh in 2011—an unenviable annual increase of 8.33 per cent.

Road accidents are a human tragedy involving a high level of suffering and gigantic monetary costs in terms of untimely deaths, injuries and loss of potential income, etc. A Working Group set up by the Planning Commission in the year 2000 had estimated the cost of road accidents at ₹ 55,000 crore, which constituted three per cent of the GDP for the year. At present the estimated loss to the nation on this account is ₹ 75,000 crore.



An analysis carried out for the year 2010 shows that the main causes of road accidents are: drivers' fault (78%); pedestrian/passenger fault (2.7%); mechanical defect in vehicles (1.7%); bad roads (1.2%); and other factors (16.4%).

What prompted me to write on this issue for Pradeep's Festschrift is a field study conducted by him nearly two decades ago that brought into sharp focus the need for authentic data on road accidents, which alone could help prioritise action. His spot survey at a police station—Dudu, about 70 kilometers from Jaipur on NH 8—revealed under-reporting in number of accidents (23%); deaths (11%); injuries (33%) and damaged vehicles (20%). The subject of road safety is close to his heart and what follows is a brief of what he has been fighting for at various levels based on my years of association with him and CUTS.

### **National Road Safety Day**

National Road Safety Day to be adopted on May 11 to coincide with the launch of the Decade of Action for Road Safety (2011-2020) proclaimed by the United Nations General Assembly in March 2010 calls upon member states to implement the activities in a holistic manner. The National Road Safety Day can now (belatedly) start on May 11, 2013 and the interim period could be used for preparing for the same. The guiding principles for this Decade of Action are those espoused in the 'safe systems' approach.

### **Need for a Policy**

International best practices reveal that most countries have a stated policy to reduce road accidents, fatalities and injuries. India has not yet formulated such a policy, though a draft has been in circulation for many years. In fact, the Sundar Committee reviewed and suggested certain amendments in the draft for adoption by the Government of India, inter alia, making a commitment to reduce morbidity and mortality through road accidents. Another four years have elapsed since then but the draft policy, though adopted, remains to be implemented.

## **Recognition of the Fact that Funds are Needed**

The earlier it is accepted that to be able to make a dent in road safety, funds are required, the better. Existing resources and systems cannot cope with the growing menace. Non-implementation of some efforts to earmark funds defies logic. The suggestion of the Committee on Infrastructure headed by the Prime Minister had suggested long back that a Road Safety Fund should be created by levying a cess of one per cent on sale of diesel and petrol.

Even more glaring is the budgetary allocation for road safety *vis-à-vis*, say road transport or disease-related mortality. For instance, in the recent budget, the government has proposed about ₹ 27,000 crore for road transport infrastructure whereas in the previous year allocation for road safety was just ₹ 44.4 crore. There is a crying need to link the two and upscale amounts earmarked for road safety. Even a state like Tamil Nadu spends about ₹ 40 crore per annum on road safety issues.

## **Focal Point/Nodal Agency**

There are a large number of ministries, departments and organisations working (often in an uncoordinated way) on the issue of road safety. The need for a centralised agency, though recognised by the government, has not yet borne fruit and on the contrary, creation of new agencies is being considered, such as the National Automotive Board. In the absence of a nodal agency, the dire need for amendments to various Acts, for instance the Motor Vehicle Act, is being pursued in a piecemeal manner. Currently, the said Act's amendment mainly tackles the increase in fines despite the fact that an expert committee's report on overall amendment to the act is on record. This would necessitate repeated references to the Parliament.

A recent World Safety Conference organised by the World Health Organization (WHO) has also urged the Indian government to make one agency responsible for road safety issues.

Lack of such an agency also results in random and non-standardised application of rules. Tamil Nadu, for instance has adopted a State Road Safety Policy, created a State Road Safety

Council and has put in place a Road Accident Management System—all excellent measures. Yet there are paradoxes: wearing a helmet for two-wheeler riders is not visible in the state.

### **Improving Data Reporting System**

The data collection system needs reform and strengthening by capturing disaggregated data on the cause(s) of accidents. This should then be used in greater detail for each of the four Es of road safety. To be able to do so, a high level of investment in technology would be required.

### **Catch them Young**

For a country with scant regard for discipline, road safety must be brought in the curriculum of schools as a part of a package on life/value education rather than as an individual. Taking just one issue to the over-burdened child will not bear adequate fruits, and hence road safety should be part of an innovative package of life skills. Road safety issues must be taught to each age group in a structured way to dovetail with other skills such as environment, consumer and health issues and moral science. This would have a cascading effect considering the pressure children can exert on their parents specifically.

### **Targetting Drivers**

The campaign for a road safety decade of action should begin by looking at drivers as a priority target to focus upon through better licencing systems, and enforcement along with training and education. It has been reported that 78.5 per cent of accidents are caused due to drivers' fault, hence needs to be tackled on priority.

### **Ready Availability of Actionable Studies**

Over the years, many experts and committees have analysed all the issues surrounding road safety. The time now is for action. The need is for the government to analyse each of such studies, see what action (if any) has been taken and then draw up an action plan.

Further, a time has come when each one of us should awaken to the apparent breakdown in all spheres of road safety that is heading beyond redemption. Let us no more wait for a VIP's death or that of a close family member to act. What all of us can do for a start is to adhere to road discipline while pressurising the government to act in other areas.



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## **A Consumer Agenda in the 21<sup>st</sup> Century**

The earliest consumer agendas were developed many millennia ago. Wherever there were buyers and sellers, consumers needed rules for fair and honest practices by sellers. The earliest consumer agendas in recorded history undoubtedly were rooted in the importance of trade and markets.

Whether grounded in business or ethical considerations, early codes laid a foundation for consumer protection through the ages. Some examples: The Code of Hammurabi, about 1750 BC, regulated credit, rents, quality of goods and services and weights and measures. The Hittites regulated food safety and quality. The Old Testament called for good and just weights and measures, as did the Koran, which said that those who give short weight shall be punished. The British Magna Carta also stipulated standards for weights and measures. There are innumerable similar codes through the centuries and across many religions, cultures and legal systems.

While the concept of an ‘agenda’ may be contemporary, one can readily imagine buyers from the earliest eras pressing their list of marketplace demands—their agendas—on their rulers. Of course, over the millennia, market economies, and political and economic relationships within them, continually changed, and became far more complex. Still, those early demands for fair weights and measures, as well as related aspects of economic and social justice, are like threads weaving their way through innumerable historical eras.

Of course, the need today for principles and rules to achieve a fair marketplace and a just society goes well beyond weights and measures. We require an agenda that addresses a far broader concept

of consumer justice and consumer well-being. What should that look like? Congratulations to CUTS for providing an opportunity for a dialogue on this subject.

I would start by defining the consumer movement of today. We have in common with those early codes that we continue to need fair weights and measures, and we campaign for 21<sup>st</sup> century issues related to that. But the consumer movement today is a movement of people who need not only a fair marketplace, but a fair society. They need the principles and rules that can assure that they can achieve it.

That definition of the consumer movement helps us shape our 21<sup>st</sup> century agenda. It goes well beyond economic issues and regards the consumer as a person with not only economic, but with civic and political rights and concerns. It recognises the essential connections among the economic needs of the consumer and the social and political needs. It goes beyond the narrow view of the consumer as buyer to a far broader one: the consumer as citizen. It adds to our prior century's concept that consumers must have value for money, the concept that society must assure value for people.

Our agenda should be based on the following:

*Consumers are citizens:* Our constituency is not only the individual when buying or consuming a product or service. It is the citizen living in society, the participant in the community and in the nation. It is everyone whose life is affected by the marketplace, government, community, the environment, locally and globally. The consumer movement needs platforms in all those areas. Our agenda should embrace the consumer as citizen.

*Consumers should be assured of the right to live a decent life with dignity:* A consumer agenda should place at the forefront the most significant consumer issue: the fact that billions of consumers are unable to live a decent life with dignity and to satisfy their basic needs. This tragedy occurs widely, and especially within prosperous and growing economies marked by large and unconscionable disparities between rich and poor. It has become a major issue in the US, where the very wealthy receive and consume a hugely disproportionate share of wealth and resources. It is true in many

other economies around the world. The Consumers International Consumer Bill of Rights correctly places the right to basic needs and services at the forefront of its rights-based approach. Consumer organisations should advocate for specific measures to promote a decent life with dignity for all consumers; most significantly, the right to have basic needs met. Poverty is a consumer issue.

*Consumer interests must become powerful:* Consumer organisations cannot achieve their goals without a capacity to mobilise people and build organisations. Achieving power and exercising it is the pathway to promoting other consumer goals. In the marketplace and in the political process, we see how business power overwhelms the public interests, and in most instances, determines outcomes where consumer interests are at stake. This power can lead to injustices, to unfair marketplaces, to unfair economies, to untrammelled greed. Consumer organisations should do more than advocating. They should operate nationally, locally and globally to identify the levers of power and seek to affect them. They should organise consumers, and help them to organise themselves, so that organised consumers can exercise power in their daily lives. They should work to strengthen existing organisations and to create new ones where needed.

*We should continue our advocacy for a fair marketplace, and define and pursue the most significant measures needed to achieve it:* Consumer organisations in the last century, continuing to the present, have made formidable contributions to strengthening consumer protection and the quality of consumer life. Yet, that life changes so dramatically in a short period of time. Market innovations are complex and rapid. It is a challenge for consumers and their organisations to address and cope up with globalisation, complex innovative technologies, environmental issues and practices, and opaque financial and legal structures. The need to stay on top of all such developments is a challenge for consumer groups. Their agendas must serve consumers in these areas.

*Justice—Our political, economic, social and legal systems should promote the public interest:* The necessary underpinnings of a fair and equitable society require access to fair elections, political offices and institutions, participation in making the laws and rules, and



fair procedures for change and redress. They require a fair and independent judiciary, uncorrupt public officials, and the right to representation. These fundamental structures enable consumer organisations to advocate successfully for their consumer agendas. Without such structures, it is unlikely that consumers can achieve their rights. Consumer groups should be advocates for systems that assure justice.

*Consumers need a healthy environment:* A number of dedicated activist organisations advocate on environmental issues. Those issues are important consumer issues as well. We are consumers of the environment and also stewards of it. We have a major role to play in the public discourse and in taking action to protect and preserve it.

*The consumer movement should join with other movements and groups to achieve these broader goals:* The agenda described goes well beyond what some organisations in the consumer movement might see as their purview. Other organisations have broadened their agendas in certain respects over the years. With Pradeep Mehta's leadership, CUTS has done so. Building on that, the consumer movement should go further. It should expand its influence and the influence of civil society as a whole, by joining with other movements to help achieve a society that assures social and economic justice for all consumers, the right of all consumers to a decent life with dignity.

But the very expansiveness of the agenda calls for a new approaches in achieving it. Other public interest movements have agendas related to ours. These include, for example, labour unions, cooperatives, women's groups, children's rights organisations, community groups, education groups, and more. National and global organisations have some issues in common with consumer groups.

Citizens can be better served when these diverse groups find common ground for action. Consumer groups with common or interfacing agendas should find ways to work together on those issues, and to multiply their strengths. This can be based on geographical ties. Or an issue by issue alliance—on food security, health or climate change, for example. Or an organised network.

Consumer groups have done this over a very long time. We have a long history of starting and working in networks and with like-minded organisations. We should envision new alliances, new collaborations. We now have available to us 21<sup>st</sup> century communication technologies to bring us closer and make us more effective.

In its totality, we should envision our consumer agenda to be the creation of a very large tent that we help to erect. Within it, organisations join together effectively to advocate for a society where public interests are advanced and citizens enjoy the economic and social justice that is the primary goal of our movement.



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## **Balancing Effectiveness and Voice in Global Governance**

Born amidst turmoil, first as a forum for finance ministers and central bankers in the aftermath of the Asian financial meltdown in 1997, and now as a meeting of heads of government during the current global economic crisis, the G-20 must balance twin imperatives—to be broadly representative of the global community yet efficient in decision-making and implementation. This background is important because the G-20's current membership in effect reflects countries "that mattered" to resolve a financial crisis over a decade ago. A grouping more representative of a global governance system devoted to current circumstances will have to deal with the questions of perceived European over-representation and the exclusion of Egypt and Nigeria. However, that issue is resolved, small developing countries are not going to be part of the membership discussion. For them the goal must be to ensure that their concerns are addressed in whatever configuration of the G20 that emerges in coming years.

A number of proposals, all imperfect, have been advanced to deal with this gap in representation, for fully one-third of the world's population (albeit representing only 10% of the world's economic output and 25% of world trade) is currently unrepresented in a forum hailed as the shape of things to come.

One option is to have the G-20 comprise regional constituencies, or rotating members from regions. It is not clear that this would be acceptable in many parts of the world, or that if it were, it would necessarily result in a superior set of discussions and outcomes. Regional powers are seldom seen as dispassionate in advancing

regional issues. It is even less likely that the regional powers would agree to have the region represented by someone other than themselves. Would, for example, India or South Africa be willing to represent their neighbours? Would their neighbours agree to this arrangement? Would India and South Africa agree to rotating membership wherein one of their neighbours held the regional seat for a fixed period?

A variant on the above is to have regional institutions—say the United Nations Economic Commissions or their non-economic counterparts such as the Organisation of American States or the African Union—join the G-20. In addition to raising the number of members by five or six, it is not clear that many of the possible candidate institutions have the political heft to represent groups of countries in what are essentially political negotiations on complex subjects. Besides, since these institutions contain large and small members, it will be awkward and in some cases constitutionally impossible for them to represent only their small members otherwise not included in the G-20.

Another option is to have all G-20 decisions ratified by the UN General Assembly. This is appealing, as it recreates at the international level the bicameral legislative process found in many countries, one that reflects both ‘universality’ and ‘power’. Much would depend on how the G-20 might react if the rest of the world voted down one of its decisions, or more likely, achieved a majority vote through the usual arm twisting and blandishments but with a considerable use of time and resources.

Variable geometry holds more promise. Here a core group of about 13 countries would be joined by another 10 or so that would be selected depending on the issue at hand. So long as the remit of the G-20 remains, as it currently is, on purely economic matters, there is not likely to be much variety in membership. But if, for example, the G-20 were to tackle climate change or over-fishing or intellectual property, it is possible that in some instances at least mid-sized developing countries would find themselves around the table. Still, the resentment among countries excluded from the core should not be underestimated.

Alas! none of these proposals adequately addresses the question of ‘voice’ for smaller developing countries for exactly the reasons that the G-8 and the UN General Assembly, at two extremes, are also deemed to have failed in this regard. International relations are fundamentally driven by power and the imperative to deal with crisis. In these circumstances voice has to assert itself—because it must if the world is to be truly well governed—through subtler means.

A weakness in the current G-20 is that discussions are held without an adequate analytical basis on fiendishly complicated issues such as financial sector regulation and climate change. If a mechanism were found to present the range of views and options on any given issue, then this might go some way in bringing the concerns of small developing countries into G-20 deliberations. Ideally, this mechanism would not consist of a new, permanent international bureaucracy but rather use modern technology and creative organisation to bring together, for example, networks of think-tanks under a light Secretariat that marshals the analyses into something that the G-20 leaders and their officials might use. The final communiqué from the summit in Los Cabos in June 2012 is a step in the right direction—albeit tucked away in para 83 in a section called Other Paragraphs, is acknowledgement of the role that business, labour and research groups might play in strengthening the preparatory dimension of the G-20.<sup>1</sup>

This sentiment is not merely a hope, unsupported by experience. The dialogue on global governance is considerably richer on account of the active participation of NGOs and think-tanks that have skillfully used analysis and advocacy to make their case. CUTS, guided by the astute stewardship of Pradeep Mehta, is in the vanguard of the emergence of strong, credible non-official voices that have enriched and enlivened the global public policy discussion. There is a range of issues, from investment codes to competition policy to agriculture, where the global policy space has moved, more often than not in the right direction, on account of incisive interventions by Pradeep and his colleagues at CUTS.

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1. [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/131069.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131069.pdf)

Small developing countries should not have to rely on their traditional benefactors in the G-8 to bring forward their concerns that in any case are then sometimes framed unsatisfactorily, in terms of benevolence and foreign aid. The inclusion of large, articulate poor and recently poor countries in the G-20 fold goes some way in ensuring that hitherto marginalised voices in global discussions are more directly present around the table. (The delegations from India and China each represent at least as many poor persons as in all of Africa.) The G-20 process itself might create a dynamic in which smaller developing countries find a way to have their views heard, through some variant of the options listed above. A sound analytical basis for negotiations coupled with a model for giving voice that emerges willingly is going to be superior to one where representation is mechanical and mandated.

The G-20 has a limited window of time to demonstrate that it is representative and effective in ways that the G-8 and the UN are not. There is a pressing need for a forum where important issues may be discussed frankly and critically by those who have the means to address them. This means two things. First, the agenda of the G-20 leaders might be broadened to go beyond the minimalist economic set of topics that spawned the G-20 and risked becoming the standard. The addition of green growth and development in the last three years are a step in the right direction, but now require evidence of persistence in implementation. Second, non-member countries must believe that their interests are taken into account, for in the proverbial long run which surely is a driver in sound global governance, effectiveness and voice go hand-in-hand.



## *What they say...*

"Pradeep Mehta has built up what is arguably the most influential developing-country NGO in the world, all from modest beginnings he has retained his integrity and produced first rate research and informed activism. As a result, the trade community worldwide regards him now as an authentic developing-country voice that must be listened to by the rich countries. Not just for India, but for developing countries and indeed the world, he is what the Japanese call a "living treasure".

—**Jagdish Bhagwati** University Professor (Economics, Law and International Affairs) Columbia University, New York

"Pradeep has contributed significantly to competition law leading to establishment of the Competition Commission of India...we admire Pradeep for his entrepreneurship, ability to focus on critical issues, perseverance to bring rational thinking to wider group of citizens, passion and for keeping a cheerful smile despite all his multifarious activities." —**Kirit Parikh and Jyoti Parikh** Chairman/Executive Director Integrated Research and Action for Development (IRADe), New Delhi

"An intellectual, activist and internationalist, Pradeep has contributed to the spread of competition and consumer protection rights in India and in the world. His tenacity and firmness to defend the weak and protect the poor and fight against market failures and asymmetries has gone offshore in his own land, making him well known..." —**Santiago Roca** Professor of Economics and Finance, ESAN University, Lima

"CUTS, guided by the astute stewardship of Pradeep Mehta, is in the vanguard of the emergence of strong, credible non-official voices that have enriched the global public policy discussion...issues, from investment codes to competition policy to agriculture on account of incisive interventions by Pradeep." —**Rohinton P. Medhora** President, The Centre for International Governance Innovation, Waterloo

"The Dunkel draft proposals on opening markets to freer trade and the prospect of a WTO as the apex body to settle international trade disputes...Pradeep jumped into this debate and made a strong impression on the negotiators, including advising the Government of India for long. His expertise enabled him to serve as an adviser to two Director Generals of the WTO." —**S.L. Rao** Member, Board of Governors, Institute for Social and Economic Change, Bangalore



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