

**Event Report of
Training Programme on
Building Skills on Commercial and
Economic Diplomacy
(CDS.02)**

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Executive Summary

CUTS Institute for Regulation & Competition (CIRC) organised a training programme on “Building Skills on Commercial and Economic Diplomacy” (CDS.02) for Mid-Level Civil Servants and Executives from August 22-25, 2007 at Jaipur. The Department of Commerce, Ministry of Commerce and Industry, Government of India supported CIRC to conduct the training programme to address the need to fill the vacuum that exists in terms of absence of institutional base to offer training/educational programmes on commercial and economic diplomacy in developing countries.

It was well attended by 23 participants comprising government officials from various ministries/departments of the Government of India, State Governments, Apparel Export Promotion Council of India (AEPC) and Export-Import Bank of India (EXIM Bank) handling work related to international trade and negotiations on various bilateral and multilateral issues. Various resource persons having expertise and knowledge in the sphere of commercial and economic diplomacy designed and successfully conducted the intensive and interactive programme. Over four days the participants sharpened their skills in various aspects of commercial and economic diplomacy through lectures, real life examples, simulation exercises, group discussions, etc. The programme agenda is enclosed. (Annexure I)

Based on the feedback received from the participants and resource persons, the programme was successful in terms of quality of participation, resource persons, resource materials, administrative and logistical arrangements. Participants acknowledged that the learning experience was very fruitful. About 75 percent participants expressed their interest to attend similar training programmes in future.

“I wish I had undergone such training in the past and have learnt a lot from this event.”

S N Menon, Former Commerce Secretary, Government of India

“Such trainings are essential to expose government officials to contemporary issues in negotiations, inter-cultural management and economic diplomacy.”

Ambassador Kishan Rana, Senior Fellow, DiploFoundation

“We cannot wish globalisation away. Today it implies even greater international involvement, which in turn calls for the development of requisite skills among those involved in this engagement. Equally important, we need greater informed participation by all stakeholders in the national preparatory process. That is precisely why capacity building programmes like this have assumed great importance.”

B K Zutshi, Former Indian Ambassador to GATT

“This programme was very educative and informative in enhancing my understanding of international trade policy issues and it also enabled effective networking.”

Arijit Saraswati, Assistant General Manager, Export-Import Bank of India

Objectives

The objectives of the training programme were to:

- meet the imperative of having trained government officials at various levels who are involved in commercial and economic diplomacy;
- ensure coherence between India’s domestic policy on trade and investment related issues with international commitments; and
- enhance skills by developing/strengthening capacity for taking an effective part in trade and investment negotiations and implementation aspects of related international agreements.

Participants

Participants were mainly from various ministries/departments of the Government of India. This included Department of Commerce, Directorate General of Foreign Trade, Ministry of Small and Medium Enterprises, Ministry of Environment and Forests, Department of Post. There were participants from Government of Haryana (Department of Transport, PWD Water Supply and Sanitation, Haryana State Industrial Development Corporation-HSIDC), from AEPC and EXIM Bank of India. The list of participants is enclosed. (Annexure II)

Inaugural Session

Pradeep S Mehta, Director General, CIRC

Pradeep S Mehta inaugurated the training programme by giving an overview of CUTS International and mentioned that CUTS ventured into the field of international trade in the year 1991 when Uruguay Round was at its peak, with a realisation that there is hardly any non-governmental organisation (NGO) working on such important issues. CUTS has done intensive and extensive work in the field of international trade. Later, CUTS realised that, developing world lacks understanding and scientific knowledge, particularly in the area of negotiations. It is very important to get exposed to various tools, techniques and approaches of negotiations and how to achieve best results for the country during negotiations. Furthermore, Mehta emphasised that any negotiation could succeed on a considerable basis if it creates a win-win situation for both the parties. He further stressed the need of understanding cultural and intercultural differences before entering into any multilateral agreement, since language plays an important role in international business.

Mehta then informed the participants regarding the initiative taken by CIRC on conducting training programmes on commercial and economic diplomacy. He mentioned that after getting exposed to the vacuum that existed in the absence of institutional base in developing countries to offer training/education programmes, CIRC has made an attempt to fill the vacuum by organising series of training programmes for building the capacity of government officials.

B K Zutshi, Former Indian Ambassador to GATT

B K Zutshi stated that in this era of instant communication, diplomacy – whether commercial, economic or political – is far more challenging. In fact, commercial and economic diplomacy flows directly from political economy concerns of a nation state that holds immense significance in this age of globalisation. He emphasised that advancement of communication and information technology, have been the drivers behind the process of globalisation, resulting in what has been called the “death of distance” and “irrelevance of location”, enabling instant communication and wide dispersion of production of goods and services. This has increased the economic interdependence and has had a profound impact on trade relations globally. It has given rise to the need to have new rules in the new areas of international commerce. Moreover, the intensification of globalisation has led to institutionalisation of rules and regulations at international level, which in turn results in further deepening of globalisation in a mutually reinforcing circular motion. This provides the opportunity for countries to enter into large number of international agreements and hence the need for such capacity building training programmes have assumed greater importance in today’s age.

Zutshi mentioned that the countries entering into international agreements would have a direct impact on their respective domestic policies. In the case of India, he stated that there was a disconnect between India’s domestic policy such as the autonomous tariff liberalisation and our position at the multilateral level. According to him, Uruguay Round outcomes were positive for India. There were four major areas in the Uruguay Round negotiations namely:

1. Agriculture: India did not undertake any commitments on minimum imports, it bound its tariffs at levels where no import would be possible i.e. food grains at 100 percent, processed agriculture products at 150 percent and oil seeds at 300 percent. India’s applicable tariff rates

are much below these bound levels as we need to import for supply management and price control purposes.

2. Services: The services negotiations in the Uruguay Round were the most balanced with the progressive liberalisation clause and modest ambition
3. Intellectual property rights (IPRs): Patent for pharmaceutical and agro-chemicals propelled the need for indigenous research. It was emphasised that without Trade Related Aspects of Intellectual Property (TRIPs), India could not think of increasing its export basket.
4. Goods: Goods, especially the textiles sector, remained untapped despite India having a huge export potential.

Zutshi expressed that the World Trade Organisation (WTO) was a member-driven system with a rule based international trading system. The system poses few challenges, but it also provides considerable opportunities to promote our development and welfare. It is for us to devise policies and programmes which will help in meeting the challenges, and at the same time, permit exploitation of the available opportunities.

Kishan Rana, Senior Fellow, DiploFoundation

Kishan Rana mentioned that such trainings are essential to expose government officials to contemporary issues in negotiations, inter-cultural management and economic diplomacy. He stressed that for any negotiation there must be a win-win situation, i.e. gains for both the parties. This would help us in preserving our credibility in negotiation process. In this regard, he was critical of India's earlier diplomatic initiatives that transgressed the relationship with Mauritius and Nepal. While quoting the example of a loan agreement negotiated between EXIM Bank, India and Government of Mauritius, he mentioned that one ought to be credible while negotiating. On a particular day bank negotiated a loan agreement with Government of Mauritius and unfortunately on the subsequent day of the agreement the bank increased the rate of interest. This incident built an awful image of the EXIM bank and the country as a whole, since the bank tried to maximise all gains. Similarly, in case of the Kosi and Gandak projects in Nepal, India tried to maximise gains and failed to achieve balance in negotiation. If India would have negotiated the said projects with the idea of win-win situation and would not have tried to seek the best for itself, we would have captured almost 60 percent of the market share and it would have changed our entire energy policy by getting power at a lower price (same as the domestic price).

Rana mentioned that after this incidence (negotiations on Kosi and Gandak projects), lessons were learnt and the *Chukha I* project negotiated with Nepal was a balanced negotiation. He stressed that surrendering is not negotiation; rather it involves the careful protection of our core interest and appreciating the interest of the other party. He emphasised that there is a need to understand the mechanism of an agreement, which needs to be balanced, win-win situation and leave something on table for other negotiating party.

Expectations of the participants

At the close of the inaugural session, the participants were requested to express their expectations from the training programme. They responded that they looked forward to learn the skills and art of negotiation; how to cultivate interest of negotiation with our counterparts (because at times our partners might not perceive any interest in negotiation); how to draft a balanced agreement with a win-win situation for both the parties; how to remove barriers such as cultural and linguistic in order to continue with effective negotiation; how to improve stakeholders' participation in commercial and economic diplomacy; international cooperation and coalition building and coalition politics; how to give confidence to industry in taking active part in multilateral negotiations and how to deal with differences of opinion among various ministries on a particular issue.

Floor Discussions

Before the conclusion of the inaugural session, a round of floor discussion was held. In response to the query of stakeholder's participation during negotiations, Rana mentioned the example of joint commission between India and Germany. It became operational during early 1980s, with full

representations from industry. This joint commission was the first step to bring stakeholders participation while associating business, industry, NGOs, etc, on a common platform. Mehta intervened and emphasised that the working system and way of managing things are changing and it would be facilitated over a period of time. On the question of cultural differences during negotiation, Rana stated that the Japanese system of negotiations is based on “ringi system” wherein consensus is established well in advance of the negotiation and the visiting delegation is left with no flexibility for it to negotiate further. Therefore, when negotiating with the Japanese, it was important to do the homework properly on any new positions a country may have and not just throw in a creative idea, which would take the Japanese by surprise. On a question regarding the dynamics of negotiations and how and when to release our stand back position, Rana replied that during the 70th century an Italian scholar faced a similar problem and hence called this as “ripe moment”. According to his experience and expertise there are no methods or techniques to release a stand back position, though one can overcome this problem only by experience and intuition.

Session I

Opportunities & Challenges for India in an Emerging Globalising Economy – S N Menon, Former Commerce Secretary

S N Menon in this session took up the issue of opportunities and challenges by mentioning that it is extremely important for a commercial diplomat to understand the theoretical underpinning, which goes into the aspects of negotiation and the practical reality of a country. He quoted the speech of Dr Manmohan Singh, Prime Minister of India delivered on August 15, 2007 that “for half a century before independence, the Indian economy registered virtually no growth at all. In the first three decades after Independence, we grew at 3.5 percent per annum. In the second three decades, our annual growth rate went up to nearly 6 percent per annum. In the past few years, the growth rate has been close to 9 percent per annum. This has been made possible by a rising rate of investment, now at 35 percent of national income, and rising productivity of labour and capital. If we can sustain these rates and step up the productivity of land and labour, we should be able to attain double-digit rates of growth in the near future. India is on the move”.

Menon informed that the economic reforms in India began in 1980s during Indira Gandhi’s tenure, which led to a high rate of savings and a growth rate of 9 percent per annum ensuring a doubling of gross domestic product (GDP) in 8 years. He said that despite the growth projections of 10 percent of our GDP, agriculture growth continued to languish at 4 percent per annum. The share of services, agriculture and industry continued to be 54, 19 and 26-27 percent respectively of the total GDP and it is important to note that diversion of labour occurred from agriculture to industry. He referred to a study conducted by McKinsey, a consultancy firm in 2005, which projected that India’s consumer demand is booming and 70 percent of its population would be below the age of 36 years. In comparison, only 26 percent of the world population would be below 34 years. India’s economy was only 2 percent of the world’s GDP with the poverty levels decreasing to 36 percent in 2000 as compared to 46 percent in 1987. A recently published Organisation for Economic Cooperation and Development (OECD) study has indicated that India’s growth has contributed to reduction on poverty headcount rate from 46 percent of the population in 1987 to 36 percent in 2000. He further stated that the high growth rate over the last four years brings high savings and investment, reinforcing growth itself. India’s reforms have encompassed the real monetary, financial, fiscal and external factors. Structural changes have transformed the industrial sector from a command and control economy to a more liberal and competitive economy.

He emphasised the importance of the regulatory mechanisms even in a free market economy. On the issue of co-ordination and stakeholder consultations, he stated that the same is being conducted while preparing for bilateral and regional agreements but it is minimal in the case of multilateral agreements. He stressed the need for direct interaction with stakeholders, Inter Ministerial Groups (IMG), expert

groups and research organisations while understanding the strength of trading partners. Access to other countries research inputs was also a key factor, as the same provides with a better competitive advantage. On WTO, he mentioned that it would take time for the negotiations to unlock, but at the same time the bilateral and regional agreements would move forward. He also mentioned that it was more comfortable and beneficial to have an agreement with Europe or US, since it carries diverse country interest, rather than the one with the similar capability/environment as India. Moreover, the regional agreement with Association of Southeast Asian Nations (ASEAN) may not bear the same significance, since it is extremely difficult to bring in the level of interest among countries such as Vietnam, Malaysia and Indonesia. The other important aspects in bilateral and regional agreements, which increase their importance, are economic and commercial beside the views of the Ministry of External Affairs' and political content of agreements. There is a need to achieve balance between economic, commercial and political interests of the country. Further, he mentioned that there are other factors that encouraged the bilateral regional and multilateral trade agreements. Perceived level of transparency, simplification of duty schemes, exemptions and rebates and the introduction of exports promotion zones are some relevant factors.

Menon mentioned that India as a country is quite complex and diverse, since some parts of the country are like least developed countries (LDCs). This makes the task very difficult for a negotiator while negotiating. He emphasised the participants to gain knowledge of various regions/states of the country and overall economy thereby developing interdisciplinary skills before going for negotiations. While indicating the statistics of India's exports (US\$124.6bn in 2006-07) and imports (US\$190.5bn in 2006-07), he mentioned that India has a net trade in goods and services of US\$450bn in year 2006-07, which comprises 45 percent of our GDP. The Foreign Trade Policy was focussed on four basic pillars such as

- Greater trade liberalisation
- Unshackling of controls
- Simplification of procedures
- Bringing down transaction costs

On the issue of Special Economic Zones (SEZs), Menon suggested that we should be more focussed on creating infrastructure and enhancing manufacturing capacity. These are magnets to attract foreign direct investment (FDI) for infrastructure development. The projections for FDI are to the tune of US\$ 475bn for the period 2007-2012, which appeared unlikely under the present circumstances. In services, Menon mentioned that the software sector comprised 40 percent of the total services exports of US\$81.3bn in 2006-07. He stated that FDI for SEZs could be attracted from new sources like China and Taiwan, especially in the hardware sector. A recent study by Planning Commission of India has predicted that during the next 10 years, the export in hardware would exceed that of the petroleum sector. The criticality of employment-led manufacturing was emphasised for attracting surplus labour force from agriculture sector. There are manufacturing sectors that can attract employment such as automobiles, textiles and clothing, gems and jewellery, etc. This exercise was implemented by West Bengal Government at Singur, by employing labour force in manufacturing sector.

On the issue of high equity-low debt future, he mentioned that India has become a trillion dollar economy and will soon overcome Japan becoming third largest economy. However, India is still a developing country and faces the challenges of acute poverty, illiteracy and disease. There are apprehensions regarding the growth in rural employment and stagnation in agriculture over the last many years. There are serious implications for generation of employment in rural areas, since around 58 percent of the work force still engages in agriculture. It has also severe implications of food security prevailing in the country. On the role of Small and Medium Enterprises (SMEs) sector, he mentioned that the sector plays a vital role in India's economic development with direct employment of around 28 million people and as the sector contributes 35 percent of the direct exports and 45 percent of overall export. SMEs sector is now producing a wide range of very basic to sophisticated products. The prosperity of large firms is related with these SMEs and they are generating employment, investments and helping in developing an infrastructure in the region and nation as such. However, there is a need to establish common resources such as facilities for research and

development (R&D) and design for innovation. Moreover, there is also a need to venture into high technology intensive areas like biotechnology and education. According to his own experience he suggested that we should gain maximum advantage from our bilateral and regional agreements in sharing of technology and knowledge.

He mentioned that Japan and Korea are very strong in the SMEs sector and hence we should learn lessons and try to adopt their methodology in order to strengthen our SMEs sector. In conclusion, he emphasised that one should comprehensively update one's own knowledge by developing a database as a continuous process since the same would help in negotiating. As a key lesson, he stated that during negotiations, one should always have the correct/updated knowledge of the domestic economy (its current situation), never be scared of projecting an honest picture of the country and always believe in the theory of give and take i.e. negotiations should always be a win-win situation for both the parties.

Floor Discussions

Replying to specific questions of a participant regarding what would have happened to Indian economy, had the information technology (IT) and information technology-enabled services (ITES) (specially services) were not present? Menon replied that certainly IT and ITES augmented the growth of Indian economy. However, besides services, there are other sectors that are burgeoning such as biotechnology, pharmaceuticals, gems and jewellery, garments, especially manufacturing sector. Furthermore, remittances from Indians abroad and Indian professionals returning to the country seeking opportunities in domestic market is also facilitating growth of Indian economy. He further stressed the need of developing infrastructure in order to attract FDI in the country.

Another participant was of the view that India should not extend or provide incentives such as duty free quota free market access to countries like Bangladesh and other LDCs since they share commonality on many grounds as far as exportable goods in India is concerned. Moreover, many parts of India are still considered as LDCs, hence providing incentives could be seen as a problem in the development of Indian economy and perhaps the irony of negotiations. In response Menon said that India is providing incentives to Bangladesh because of various aspects such as political and migration problems. He then explained the economic engagement and mentioned the example of Indo-Sri Lanka FTA (ISLFTA), where a low value addition criteria for sensitive products such as pepper and *vanaspati*, had resulted in large-scale imports.

Replying to the specific question on the accuracy in the data collection from agencies like Director General of Commercial Intelligence and Statistics (DGCI&S), Menon mentioned that there are many players involved in the process of export and import system (including the custom house agents), hence this makes the job challenging. Another participant was of the view that there is a structural problem in the definition of SMEs. According to the definition of The Micro, Small and Medium Enterprise Bill 2006, a small enterprise are those with an investment of not more than Rs. 50 mn in plant and machinery and a medium enterprise with an investment of over Rs. 50 mn but less than Rs. 100 mn in plant and machinery. With this definition he felt that India would not wish to increase the competitiveness of the SME sector. In response to the above mentioned question Menon replied that the policy has changed rapidly over many years and it is hoped the same will certainly enhance the competitiveness within the sector.

Session II

Effective Commercial and Economic Diplomacy: An Analytical Framework – Raymond Saner, Director, Diplomacy Dialogue

Raymond Saner in his remarks admired the work of CUTS International in the field of economic and social development. He stated that Indian diplomats have an advantage of having a command over

English language, as well as their skills in coming up with solutions in terms of negotiations. He explained the basic phenomenon behind diplomacy in several countries and stated that there is no simple checklist. He further stated and explained the concepts of commercial and economic diplomacy. He referred the definition of diplomacy by Melissen “as the mechanism of representation, communication and negotiation through which states and other international actors (business government and NGOs) conduct their business”.

Saner differentiated between commercial and economic diplomats followed by the difference between corporate and business diplomats. In different countries, the ministries dealing with trade and investment issues are Ministry of Foreign Affairs, Ministry of Commerce and Industry, Ministry of Economic Affairs, etc and there is a need for proper coordination among these bodies. According to him, commercial diplomacy is more linked with the FDI, flow of investment and business actors who are part of this process (outward and inward), whereas economic diplomacy is a state activity to influence the process of standard setting of multilateral trade negotiations, which is basically handled by Ministry of External Affairs or Ministry of Foreign Affairs. He further elaborated on the time being utilised by commercial diplomats in attending various business support activities in different countries and India’s global competitiveness in terms of growth, business and management. On the issue of talent crunch, he stated that India needs competitive, technical and skilled manpower in order to keep the momentum going in this turbulent business environment. Many Indian companies are quite reluctant to invest in employee training and capacity building because of the perception that employees will leave sooner or later. Saner concluded by saying that an organisation should not think of these minor issues, since proper training would enhance the effectiveness and efficiency of an employee.

Floor Discussions

Saner targeted certain questions towards the participants such as

- Does India need commercial diplomacy?
- Whether enterprises have government support or not?
- What institutional support is required in order to provide effective, efficient advice and support to the enterprises?

The participants replied that we can promote our enterprises by providing them with upgraded technology, quality management system services, awareness programme among exporters on market access and packaging, protecting the interest of domestic industry while negotiating, organising trade forums where buyers and sellers could meet and promote business, etc. Participants were of the view that diplomats should be aware of the policies such as Harmonised System code wise policy of India including non-tariff barriers (NTBs), custom duties, logistics, SEZ policy, industrial policy, domestic regulation and country reports, etc. and look for the opportunities based on country’s strengths and weaknesses. Moreover, there must be coordination among various ministries.

Session III

Country Promotion and Image Building Process – Gautam Mahajan, President, Customer Value Foundation

Mahajan mentioned that earlier India used to be a difficult place to do business, because people did not want to change themselves and also due to the strict domestic rules and regulations. He stated that an organisation enters into a country where they get value for their investments. Value could be determined in terms of demand for their goods and services and also on the basis of how much the good and services would cost them in their own country or abroad. He further insisted on the need to know and identify the potential customers and why there is a need to build the image of a country. For a country, customers could be other countries, organisations, institutions, lending banks, etc. Moreover, he stressed on putting countries objective above each and every other issue.

He then elaborated the waterfall of need that describes the basic requirements that an organisation considers, before entering into a particular market. These basic requirements are the resources available in the particular country, friendliness towards accepting foreign companies, entry system, corruption, legal system, infrastructure etc. Other requirements could be the size of market, growth, profitability, workers productivity, managers, country risks, legal risks, risk of changing policies and other benefits such as R&D facility, exports, etc. An investor always thinks of a country that can give maximum amount of value in relation of its investments and where he could make profit out of their investment. He then cited the example of Wal-Mart stores and elaborated how Wal-Mart gained its market share by adding value and quality to the products. While discussing with participants he stressed that for the last two years India is becoming a brand for investors. The sudden change is due to shift of Indian industry from services to manufacturing, the outward investment, quality, price, etc.

Floor Discussions

During the discussions Rana emphasised the need to develop presentation and communication skills while selling our brand. Rana informed the participants that Indian missions abroad are making good efforts in promoting Indian industry. The examples are Mahindra & Mahindra in Mauritius, setting up of pharmaceutical industry in Kenya, Finolex in Germany, etc.

Session IV

Effective Negotiation in Commercial and Economic Diplomacy – Kishan Rana and B K Zutshi

Kishan Rana: While discussing effective negotiations Rana emphasised that these are never zero sum games, negotiations are in fact an integrative approach. A distributive agreement will leave behind traces and memories, which will then influence subsequent actions. He mentioned that in today's world diplomacy is an integrative approach, since there are no boundaries in economics, politics and public affairs, information and culture. Diplomacy is merged in each of them and is all about managing relations and linkages. Economic diplomacy moves from these broad stages of salesmanship, networking and regulation management.

Rana categorised negotiations into four stages:

- Pre-negotiations: Includes formulation of agenda, venue, dates, delegations, etc. We basically settle preliminaries such as media management, building confidence and track II and track III processes. Track II includes discussions with NGOs and track III negotiations with agencies independent of the Government.
- Preparations: Includes establishing internal consensus among various stakeholders and to focus strengths and weaknesses. He further explained the concepts of Best Alternative to a Negotiated Agreement (BATNA) and Zone of Possible Agreement (ZOPA). During this stage one should focus on building the team and political consensus in the country.
- Negotiations: Includes initial presentation, exploration, formula, details, packaging, building & implementation, creative part and the recognition of end game.
- Follow-up: Includes the assessment of negotiations, communication of the result, learnings from the result, etc.

Rana then described the Harvard method of negotiations i.e. separation of the people from the problem, e.g. consideration of the perception of others, finding out commonality of interest behind adverse positions, making a creative search for options and looking at criteria that may offer solutions. Tommy Koh's principle was also elaborated during the session i.e. each negotiation was different and had to be approached accordingly, building of a cohesive team (i.e. inter-ministerial team), mastering one's own brief and understanding the others brief, knowing when and how to use foreign advisors, using help from third parties, winning trust through emotional intelligence, understanding the other side's culture box and thinking on a win-win situation.

B K Zutshi: While discussing effective negotiations, Zutshi explained negotiation as “multi-part issue barter exchanges”. He emphasised the request-offer approach of trade negotiations where there was neither a fungible medium of exchange nor an *ex-ante* criteria for assessing balance. He said that this balance is actually a *post-facto* appraisal and discussed with examples how a country enters into an agreement due to political will. He emphasised that in the multilateral trade negotiation agenda setting is in itself a complicated and long drawn process. To set up a balanced agenda, one has to ensure on one hand those areas where the country has aggressive interests and on the other hand areas where the country has protective interests. He mentioned that good negotiation requires consistent positioning over all areas during the negotiation, i.e. one needs to look at the negotiating positions of agriculture, services, non-agricultural market access (NAMA), etc.

He then discussed the post negotiations phase, which includes learning process, perceived deadlines, etc. He cited the example of TRIPs agreement, where agenda setting was not done properly and was done without consultations. He categorised the types of coalitions into informal and *ad-hoc*, sessions/issue specific and formal multi-issue coalition. Zutshi was of the view that negotiations are not a day’s affair. They take substantial time, which includes the repeated interactions among the negotiators. A well-designed and successful negotiation build reputations and trust among the participating countries. He further elaborated that policy formulation and coordination at national level is very important for effective participation in negotiation process. In negotiations, he emphasised the need for looking at threat strategies in terms of cost benefit analysis. He underlined the role of chief negotiator during negotiations and role of regional groupings and coalitions. While discussing with coalitions during negotiations he emphasised overcoming of imbalances in the bargaining power. He said that internal reform and liberalisation process should be coordinated with multilateral engagement. Unfortunately the same is not happening in India. Once autonomous liberalisation is undertaken, the issue of binding could be achieved. He further elaborated manpower resource development as a critical factor for effective participation in multilateral engagement. He concluded by saying that multilateral trading system will survive and has to survive on political consensus and under the roof of political economy.

Discussion

While answering a query on cross retaliation, Zutshi mentioned that Canada along with EU and US came up in 1993 with the issue and it was resolved in the WTO Dispute Settlement Body. Answering another question on reciprocity especially with reference to less than full reciprocity (LTFR) in the NAMA negotiations, Zutshi stated that reciprocity is a concept that originated during the original GATS round, which means reduction of tariffs. It is the function of rate of duration in tariffs and trade volume. Reciprocity can be defined numerically in case of tariffs only and measured in terms of a 3-year average reference period.

Case Study

A case study on emergency safeguard measures (ESM) profiling four WTO Members was given to the participants to prepare their strategy for mock negotiations. Participants were divided into four groups representing four countries A, B, C and D. On the basis of background information given by resource person, they were asked to identify interests and concerns in an ESM provision in the GATS and were required to develop a negotiating strategy for each of the four countries by identifying core issues in negotiations. Participants were asked to presume that the given background information is in the interests of any of the countries to have such a provision, and then they were asked to determine what elements should it contain and what form should it take, and if not, what strategy should be adopted to avoid a positive outcome in the negotiations?

While describing the case, Zutshi explained the concepts of Mode 1 (cross-border supply), Mode 2 (consumption abroad), Mode 3 (commercial presence), and Mode 4 (presence of natural persons). He further described the articles pertaining to subsidies, government procurement and emergency safeguards measures under GATS. He explained ESM by giving an example of Thailand wherein they wanted an ESM on their commitments in the retail services sector. Thailand being a part of ASEAN got support of all the country members. Zutshi stated that it was not possible to draft ESM across

modes and one needed to look at indicators and criteria for imposition of ESM. The different types of emergency safeguard measures were categorised into: horizontal safeguard mechanism (across all sectors), the schedule safeguard mechanism (as per the schedule of commitment) and the consensus based safeguard mechanism (with the approval of the Committee for Trade in Services). He then summarised the above-mentioned case study elaborating on the core elements and possible forms of ESM. The core elements include situations justifying an emergency safeguard action, modal application of safeguard measures, concept of “like service”, definition of “domestic industry”, issue of “acquired rights”, indicators and criteria, applicable measures, compensation, special and differential treatment (S&DT), administrative provisions such as notification, consultation, transparency and surveillance mechanism.

Session V

Simulation Exercise on Trade and Investment Negotiation – Prof Dr Raymond Saner and S N Menon

Raymond Saner: He conducted a simulation exercise on trade and investment negotiations. Participants were divided into several groups representing Indonesia, Malaysia, Thailand, SSI units and multi-national corporations (MNCs). The simulation was hypothetical and based on the micro analyser industry and the multinational enterprises and local countries were hypothetical as well. The aim of the simulation exercise was to improve participants understanding on the strategies of multinational firms, local companies and host country governments. At the end of the first round (one hour), the team was asked to draft a memorandum of understanding (MoU) that covered some of the key aspects of the deal and prepare their own strategies while negotiating with one another.

Saner, while describing the simulation exercises on trade and investment negotiations, mentioned that one should look at the aspects of minimum reservation price, the aspiration price, transfer of technology, management control and financing options while negotiating. This exercise stimulated a negotiating situation involving MNCs, Southeast Asian Governments and their local companies of three newly industrialised countries (NICs) of Asia. The negotiators were concerned with the development of a high technology manufacturing industry in these countries and may involve foreign investment, joint ventures and technology transfer agreements. He further emphasised that government should look at the issue of industry structure, FDI allowed in the sector, number of companies they want to invest in and the incentives given to MNCs. He further outlined and stressed on the issues among MNCs and local companies, local companies and governments, between two governments, etc. He further suggested participants to look after competition and cooperation aspects while dealing with the given simulation exercise.

S N Menon: While explaining the exercise Menon stated that there are mainly three actors in the case study i.e. government, MNCs and SSI units. He further stated that the countries mentioned i.e. Thailand, Malaysia, Indonesia are FDI-friendly countries and are ready to accept investment in different sectors through different windows. The government should look at the issues such as technology and employment a venture could generate, the domestic perception of the benefits of investment and compatibility with the WTO etc. The MNCs should look after the issues of incentives from the government, size of domestic market, hassle free business environment, etc. The SSI units should estimate the level of operation in the market and then look for the possibility of joint venture. One of the participant raised a question regarding the basic parameters where states could distinguish while attracting FDI from other countries. In response Menon replied that there could be many parameters but the basics are infrastructure and how much resources a state has, such as raw materials, labour and how they are leveraging the same.

During the stipulated time period, participants (formed as groups) negotiated among each other. Saner guided the entire group to achieve a successful mock negotiation. He then appreciated and thanked all the participants for their effort in understanding the tools and techniques of negotiation.

Simulation exercise on India's policy prescription in Education services – Kishan Rana

Rana conducted a simulation exercise on education services wherein groups were asked to give their views on India's possible commitments on the various categories of education services such as, higher education, secondary education, primary education, adult education and others. While describing the exercise on formulating policy prescription for Indian educational services, he emphasised that we have both defensive and offensive interests in promoting educational services. Education can easily influence the other country's decisions and by and large affects society and economy. Indian education system has issues such as quality of educational institutions, stakeholders and wider issues such as social, political, ethical and cultural. India has the capacity to attract foreign students and also has the ability to establish universities and colleges abroad, for example, establishment of Delhi Public School (DPS) in Gulf countries and Manipal Medical colleges in Malaysia and Nepal. He emphasised the "concept of engineering" among the participants, which reflects that despite all the hurdles and problems people tend to like the country where they were educated.

The issues involved in the education sector are related to Indian students studying in India, Indian students going abroad and foreign students coming to Indian universities. While discussing the same, participants came up with suggestions such as building a proper regulatory framework, liberalising the sector facilitation of accreditation, providing scholarships, improving the quality of education, etc. While discussing the issue, Menon said that India might need to look for smaller window for investment and perhaps accept investments in higher education or technical education i.e. engineering, medical, etc. He further said that it is very important to attract foreign students to India, though India needs to provide them with the proper infrastructure in order to cater to the need of these students. Rana concluded by emphasising the need of proper integration between our research capacity institutions and industry, since the same would help institutions to grow on one hand and could help the industry on the other hand.

Session VI

Effective Communication in Commercial and Economic Diplomacy, and Writing Effective Resolution – Kishan Rana

Kishan Rana mentioned that the key feature of a resolution is having a single full stop accompanied by several semi colons, whether they could be of five lines or five pages. The two important elements of a resolution are preamble and operative. Preamble begins with verb in present continuous tense and the operational paragraph begins with the same. He further emphasised the importance of signalling and verbal communication. While quoting one of the citations of *Babarnama* he emphasised the significance of plain or simple language and clear words as a part of good writing skills. The documents (draft resolution) are divided into internal document and public document with certain characteristics like brevity, precision, credibility, truthfulness, completeness and language. One important point in the resolution is constructive ambiguity (i.e. for flexibility) and material breach. Deliberate vagueness in language is a device used in certain documents to bridge over differences of substance and the same is left to the concerned parties to interpret. He further elaborated the resolution 242 of the 1967 Arab-Israel conflict where constructive ambiguity was used: "Withdrawal from occupied territories." This statement suggested that Israel was under no obligation to withdraw from all occupied territories, while for the Arabs, the language meant that Israel was to withdraw from occupied territories.

He then described the Cipher telegram as a powerful tool for communication, but at the same time flagged that it is double-edged, since the same could hurt badly the originator of the message. He elaborated the elements of resolution texts that includes, time element, conditionality, action imperative and combining clause. He further described the art of public speaking and quoted Manu: “speak the truth but not the unpleasant; speak the pleasant but not the untruth.” He then described the attribute of a good speech (Lord Krishna to Arjun in *Bhagwad Gita*), which says, “what you say must not disturb the person, one must speak with accuracy, one should be truthful, one should please the person who hears, one should be benefited while listening”. He also stressed on the need of giving concrete examples, avoiding cliches or phrases that are stereotyped, avoiding abbreviations or acronyms, sticking to the time, voice modulation and making a habit of not using those words which might frame a question to the response. He concluded by saying that with the advancement in technology officials do communicate over phone messages (SMS’s) and take advice or consult with superiors, as and when required even in close door meetings.

Case Study

Rana then conducted an exercise of drafting resolution with participants. He stressed the need for simple writing, less use of passive voice and the use of deliberate ambiguity, if the situation demands. The participants carried out the exercise successfully based on specific directives given by Rana.

Session VII

Trade-offs in negotiations – B K Zutshi & S N Menon

B K Zutshi: On the issue of trade offs, Zutshi stated that the premise and hypothesis of any negotiation is to resolve conflicts and to cooperate in different ways to achieve the common objective. He further said that negotiations are part of living society and all successful negotiations between sovereign states lead to some abridgement of the sovereign right of freedom of action. This essentially means trade off between the nature and extent of the loss of freedom of action on the one hand and a possible gain resulting from a negotiated settlement on the other. Another way to assess the bargain or trade off is to look at the balance between cost benefit equations. He stated that the main reasons for multilateral negotiations between sovereign countries are the need to cooperate in order to manage services such as cross border commitments, air traffic control and maritime navigation, problem of having cross border implications like in case of environment and the cases where *status quo* is unacceptable. During the Uruguay Round negotiations, there was a linkage of the phase in periods for product patents with the complete abrogation of the Multi Fibre Agreement (MFA). In 2004, there was a move to extend the phase out period of the MFA, which was however not undertaken, since this was linked to the fact that the TRIPs agreement obligations would not be implemented and the textile tariffs would be taken back to the September 1986.

He then described the trade offs in bilateral negotiations and was of the view that there is no complication of interest and concerns of the many parties taken on board while negotiations, but otherwise bilateral negotiations can be quite complicated depending on the issue under negotiations. He further put forward the example of trade offs in the Indo-US civil nuclear deal and 123 agreement, wherein it was stated that the broad objective was to gain access to fissile material, its technology and know how and retain the freedom in development of nuclear weapons, its testing, reprocessing and stockpile. The cost parameters were the separation of the civilian and strategic nuclear programme and placement of the civilian programme under the International Atomic Energy Agency (IAEA). He further said that the benefits or gains from the agreement were the ending of the isolation and pariah status as a nuclear power for the country. While concluding his session he stated that before entering into a negotiation, one need to know his standing or status and the same could be done by indicators such as economic, legislative, political regime, trade interest, foreign relations and public opinion. In the Indo-US nuclear deal, India has failed to safeguard its strategic and security interests, lost the

ground of future testing. Hence, India will now attract sanctions, denial of access to nuclear fuels and technology, return of fuel and materials supplied under the agreement.

Case Study

Menon then conducted a case study on Agreement on Agriculture (AoA) negotiations. The case study described the positions of various G-4 members and the groups were asked to negotiate on the basis of their interests. He further elaborated the various concepts of agriculture negotiations in multilateral trading system. This agricultural agreement broadly consisted of three pillars namely the domestic support, market access and export competition. He then described the different elements within these three broad pillars and the offensive and defensive interests of the various members. During the stipulated time period, participants (formed as groups) negotiated among each other. Menon guided the entire group to achieve successful agreement.

Session VIII

Dispute Settlement in Trade and Investment Agreements – Suhail A. Nathani, Partner, Economic Laws Practice

Nathani explained the salient concepts of the new Dispute Settlement Understanding *vis-à-vis* the provisions in the earlier GATT. Some of the new features were the negative consensus for rejection of a report, automatic establishment of panel and appellate bodies, an integrated framework for dispute resolution and the report being binding only on the parties to the dispute. Reference was also given to the instances of an FTA such as the one between India and Sri Lanka, leading to large-scale imports into India of products such as copper. The disputes were broadly categorised into violation and non-violation with the latter defined as disputes related to those measures, which nullify or impair a direct or indirect benefit accruing to a Member despite no violation of any WTO provisions. Some of the cases falling under the latter were the photographic paper case of Japan and the banning of asbestos imports by France on which a dispute was brought by Canada.

In non-violation cases, the affected party must clearly define the benefit that is nullified and impaired, the specific measure and the causal relationship of the measure and the impairment/ nullification. The various stages of the dispute ranging from consultations to the retaliation measures were explained with the time periods ranging from 12 months (without appeal) to 15 months (with appeal). On remedies, it was explained that the compensation is not in monetary terms and is only for the country affected by the measure. However, if the compensation is not given, then the affected party has the right to suspension of concessions or what is known as retaliation. The issue of *amicus curiae* or non-governmental submissions had also not been settled and one of the panels had stated that *amicus curiae* briefs were acceptable provided they are submitted by one of the Members to the case.

The wines and spirits case was then discussed in on which the US had taken India the dispute settlement. It was pointed out that the additional customs duty and the special additional (SAD) customs duty imposed under Sections 3(1) and 3(5) of the Customs Tariff Act, 1975 were the measures under dispute. The additional customs duty had been withdrawn but the Americans were contesting the SAD especially with reference to whether it was really countervailing state levies such as sales tax or VAT, octroi, municipal taxes etc.

Nathani further described the EU GSP case and the Byrd Amendment. In the former case, India had contested the EU Generalised System of Preferences Scheme (GSP), which provided for concessions to Latin American countries and Pakistan as a measure to combat drug trafficking. EU had lost the case and came out with a new GSP formulation effective from 01.01.2006. However, Zutshi pointed out that even this had flaws since it mandated reciprocity in terms of the beneficiaries having to sign

onto good governance agreements. On the Byrd Amendment, the issue of the US disbursing the antidumping and countervailing duties to the affected parties was raised wherein the panel decided that the measure was tantamount to providing a subsidy. In the US shrimp dispute case, the US Trade Representative (USTR) was willing to withdraw the bond requirements but the US Customs was unwilling to budge from its position. The case of Antigua and Barbuda taking the US to dispute on its ban on Internet gambling was also highlighted to explain that even small nations could take economic superpowers to dispute.

Closing and Evaluation

In the closing session, it was reiterated that successful negotiations can only be achieved through consultation and cooperation where both parties could achieve a win-win situation. Saner elaborated on the concepts of conflict, which could take the form of confrontation or co-operation/negotiation. The various modes of negotiations such as bilateral, plurilateral, multilateral and multi institutional were described. Saner further described the two concepts of distributive bargaining and integrative bargaining in negotiations. The former looked at negotiations from the perspective of a zero sum game and therefore based itself on the concept of Zone of Possible Agreement (ZOPA) with a reservation price and an aspiration price. In case of the latter, the concept of an optimal solution through the pareto frontier and the ideal solution through the “Nash point” were described.

The participants were then asked to provide general views on the programme. Participants expressed that the training programme provided them with better understanding and exposure of various aspects related to commercial and economic diplomacy. They appreciated and acknowledged the rich experience and expertise of resource persons, quality of resource material and overall administration of the training programme. They evaluated the training programme as shown below:

- The programme was a success in terms of quality of participants, resource persons and resource materials, and administrative and logistical arrangements
- It was beneficial for the organisers in respect of how to customise the course module and methodology for conducting such training programmes in future.
- Resource Persons were eminent experts in their fields and had rich experience. They related theoretical aspects with their practical experiences and made the learning process easier for the participants.
- Resource persons and participants found the resource material very informative and useful in terms of imparting knowledge on various aspects of commercial and economic diplomacy.
- Sessions were structured in a manner that provided enough time for discussions. The group of participants was fairly homogenous and hence, there was active interaction with resource persons during each session.
- About 75 percent participants wanted to attend similar training programmes in future. Rest of them felt that they would not like to attend similar programme, as the field of commercial and economic diplomacy is not directly related to their work profile. However, a few of those would like to attend if topics pertaining to their area of work are incorporated – in other words, there is a need for offering customised training.

Beside the above-mentioned highlights participants recommended the following:

- The programme could have been for at least a week.
- It could also have covered specific aspects of the WTO Agreements on TRIPs, Technical Barriers to Trade (TBTs) and Sanitary and Phyto-sanitary (SPS) Measures.
- Case studies and simulation exercises could have been circulated before the training programme so that they could have gone through it in advance.
- One resource person from industry could have been included for conducting a session on negotiation, since s/he might give a different perspective of negotiation.
- Foreign participation could have been encouraged.

- There could be a dummy or hypothetical simulation exercise on multilateral/bilateral negotiations. It was suggested that some real life examples where India was involved in negotiations should be referred, as this would give a flavour of how real life negotiations take place. There could also be reference to cases related to RTAs and FTAs in addition to negotiations at the WTO.
- Most of the participants were of the view that one preliminary session on basics of the international trading system could have been introduced during the opening session.

Mehta then thanked all the participants and resource persons for their participation in the training programme. He also thanked the Department of Commerce for supporting CIRC in organising such training programmes. He mentioned that the feedback received from the participants would be helpful and beneficial for CIRC in organising future training programmes.

Programme Agenda

CUTS Institute for Regulation & Competition
Training Programme on Commercial and Economic Diplomacy
August 22-25, 2007, Royal Orchid, Jaipur

Day 1 (Tuesday): 21.08.2007	
1300-2000	Arrival/Registration of Participants
2000	Dinner
Day 2 (Wednesday): 22.08.2007	
0830-0930	Inaugural
0830-0840	<i>Pradeep S Mehta</i> Director General, CIRC
0840-0855	B K Zutshi Member, Governing Council, CIRC
0855-0910	<i>Kishan Rana</i> Former Ambassador of India and the Course Director, CIRC
0910-0930	<i>Expectations of the participants</i>
0930-1000	Tea/Coffee
1000-1130	<i>Session 1: Opportunities & Challenges of India in an Emerging Globalising Economy</i> What have been the achievements of the Indian economy in present era of globalisation and economic liberalisation; what are the challenges and their implications S N Menon
1130-1300	<i>Session 2: Effective Commercial and Economic diplomacy: An Analytical Framework</i> What is commercial diplomacy? (Narrow definition <i>vis-à-vis</i> broad definition); How different is it from economic diplomacy? elements of commercial and economic diplomacy; relationship between commercial diplomacy and political diplomacy; how commercial and economic diplomacy helps in fostering better political relationships? Raymond Saner
1300-1400	Lunch
1400-1530	<i>Group Discussion on Session 1 & 2</i> The Group Discussion (based on Case Studies along with 'Issues for Discussions') will be facilitated by Resource Persons.
1530-1600	<i>Presentation on Group Discussion</i>
1600-1730	<i>Session 3: Country Promotion and Image Building Process</i> Promotion of country's strengths in order to promote trade and investment, attract foreign investment and how to build the image of our country in an international market, etc. Gautam Mahajan

1900	Dinner
Day 3 (Thursday): 23.08.2007	
0900-1030	Session 4: Effective Negotiation in Commercial and Economic Diplomacy Effective negotiating techniques appropriate for the various types of negotiations; technique and skills of interest based negotiation; research and analysis on negotiation; how to build a consensus, lobby decision makers and formulate a comprehensive negotiation strategy, etc. Kishan Rana B K Zutshi
1030-1100	Tea/Coffee
1100-1230	Group Discussions on Session 3 & 4 The Group Discussion (based on Case Studies along with ‘Issues for Discussions’) to be facilitated by Resource Persons.
1230-1300	Presentation on Group Discussion
1300-1400	Lunch
1400-1530	Session 5: Simulation Exercise on Trade and Investment Negotiation The process and content of negotiation through simulation exercise to showcase how negotiations are progressed. Raymond Saner S N Menon
1530-1600	Tea/Coffee
1600-1730	Simulation exercise on India’s policy prescription in Education services The process and content of negotiation through simulation exercise to showcase India’s possible commitments on the various categories of education services. Kishan Rana
2000	Dinner
Day 4 (Friday): 24.08.2007	
0900-1030	Session 6: Effective Communication in Commercial and Economic Diplomacy, and Writing Effective Resolution Written and oral communication in commercial and economic diplomacy; developing contents with focus, organisation, accuracy, timeliness and enthusiasm; how to use a hook or grabber to capture the attention of the audience; how to set an agenda; how to integrate all parts of a presentation seamlessly, etc. Kishan Rana
1030-1100	Tea/Coffee
1100-1230	Group Discussion on Session 6 The Group Discussion (based on Case Studies along with ‘Issues for Discussions’) will be facilitated by Resource Persons.
1230-1300	Presentations on Group discussion
1300-1400	Lunch
1400-1530	Session 7: Trade-offs in Negotiation Trade-off usually refers to losing one quality or aspect of something in return for gaining another quality or aspect of the same and/or a related thing. In a successful negotiation, there should be a win-win situation for all the parties. The objective should be to reach an agreement rather than victory. This session will enlighten the participants the meaning, scope and analytical tools used in understanding trade-offs. B K Zutshi S N Menon
1530-1600	Tea/Coffee

1600-1730	<i>Session 7: Cont.</i>
2000	<i>Dinner at Chokhi Dhani</i>
Day 5 (Saturday): 25.08.2007	
0900-1030	<i>Session 8: Dispute Settlement in Trade and Investment Agreements</i> Dispute settlement mechanism in the WTO; the evolution of dispute settlement in the GATT/WTO context; various stages of dispute settlement; India's experience at the dispute settlement body of the WTO; rules and procedures of handling disputes in the WTO; dispute settlement mechanism under regional and bilateral free trade agreements; dispute settlement in agreements between market operators from different countries, which generally (but not solely) takes the form of international arbitration, etc. Suhail A Nathani
1030-1100	<i>Tea/Coffee</i>
1100-1230	<i>Group Discussion on Session 8</i> The Group Discussion (based on Case Studies along with 'Issues for Discussions') will be facilitated by Resource Persons.
1230-1300	<i>Presentation on Group Discussion</i>
1300-1400	<i>Lunch</i>
1400-1530	<i>Closing</i>
1400-1515	Evaluation of the Training Seminar B K Zutshi S N Menon Raymond Saner
1515-1530	Closing Remarks Pradeep S Mehta
1530	<i>Tea/Coffee & Departure</i>

Annexure II

List of Participants

S.No	Name	Designation	Ministry/Department
1.	Mr. A K Gautam	Director	Department of Commerce
2.	Ms. Anju Sharma	Director	Department of Commerce
3.	Mr. Anurag Saxena	Director	Department of Commerce
4.	Ms. Pushpa Thottan	Director	Department of Commerce
5.	Mr. Himanshu Gupta	Director	Department of Commerce
6.	Mr V D Alam	Director	Department of Commerce
7.	Mr. Prashant Goyal	Director	Department of Commerce
8.	Mr. M K Anand	Director	Department of Commerce
9.	Ms. Aruna Sethi	Director	Department of Commerce
10.	Ms. Suchismita Palai	Director	Department of Commerce
11.	Mr. A K Srivastava	Joint DGFT	Directorate General of Foreign Trade
12.	Mr. Bipin Menon	Joint Director	Directorate General of Foreign Trade
13.	Mr. S S Bida	Chief Engineer (IGWS)	PWD Water Supply & Sanitation Department, Government of Haryana
14.	Ms. Preeti Srivastava	Dy. EA	Ministry of Environment and Forest
15.	Ms. Kusum Mishra	Dy. EA	Ministry of Environment and Forest
16.	Mr. T P S Madaan	Asstt. General Manager	HSIDC, Government of Haryana
17.	Mr. M K Mahajan	Addl. State Transport Controller	Department of Transport, Government of Haryana
18.	Mr. Prannoy Sharma	ADG (IM)	Department of Posts
19.	Mr. N M L Bhatnagar	Deputy Secretary	Ministry of Food Processing Industries
20.	Mr. Panchanan Dash	Director	Ministry of Micro, Small & Medium Enterprises
21.	Mr. Arijit Saraswati	Asstt. General Manager	EXIM Bank
22.	Mr. Suneet Mathur	General Manager	EXIM Bank
23.	Ms. Sneha Lata Sharma	Asstt. Director	Apparel Export Promotion Council