

**Event Report of  
Training Programme on  
Strengthening Skills on Commercial and Economic Diplomacy  
(CDS.04)**

**January 09-11, 2008, Jaipur, India**



**CUTS Institute for Regulation & Competition**  
D-217, Bhaskar Marg, Bani Park, Jaipur 3020016, India  
Ph: +91-141-228 2821, Fax: +91-141-228 2733  
Web: [www.circ.in](http://www.circ.in), Email: [circ@cuts.org](mailto:circ@cuts.org)

## Table of Contents

1. Abbreviations and Acronyms -----	3
2. Executive Summary -----	6
3. Inaugural Session -----	7
4. Session I -----	10
5. Session II -----	15
6. Session III -----	19
7. Session IV -----	25
8. Session V -----	30
9. Session VI -----	38
10. Session VII -----	44
11. Session VIII -----	46
12. Closing and Evaluation -----	50
13. Annexure I -----	52
14. Annexure II -----	55

## Abbreviations and Acronyms

AMS	Aggregate Measurement of Support
APEC	Asia Pacific Economic Cooperation
APL	Above Poverty Line
ARAF	Asia Regional Forum
ASEAN	Association of Southeast Asian Nations
ASEM	Asia Europe Meeting
ATM	Automated Teller Machine
BIMSTEC	Bengal Initiative for Multi Sectoral Technical and Economic Cooperation
BPL	Below Poverty Line
CEPA	Comprehensive Economic Partnership Agreement
CII	Confederation of Indian Industry
CIRC	CUTS Institute for Regulation & Competition
COMESA	Common Market for Eastern & Southern Africa
CSOs	Civil Society Organisations
CUTS	Consumer Unity & Trust Society
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
EC	European Community
(EDB	Economic Development Board
EFTA	European Free Trade Area
EU	European Union
FCO	British Foreign and Commonwealth Office
FDI	Foreign Direct Investment
GCC	Gulf Cooperation Council
IPCC	Report of the Intergovernmental Panel on Climate Change
FTAs	Free Trade Agreements
GATT	General Agreement on Tariffs and Trade
IBEF	India Brand Equity Foundation
IBSA	India, Brazil, South Africa
ICT	Information and Communication Technology

IDSA	Institute for Defence Studies and Analysis
IAEA	International Atomic Energy Agency
ILO	International Labour Organisation
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
ISFTA	India-Sri Lanka Free Trade Agreement
IT	Information Technology
ITCD	Institute for Trade and Commercial Diplomacy
ITIs	Industrial Training Institutes
JNPT	Jawahar Lal Nehru Port Trust
LDCs	Least Developed Countries
MFA	Multi Fiber Agreement
MFN	Most Favoured Nation
MRL	Maximum Residue Level
MTS	Multilateral Trading System
NAFTA	North America Free Trade Area
NAMA	Non-Agricultural Market Access
NGOs	Non-Government Organisations
NSG	Nuclear Supplier Groups
PPPs	Public Private Partnership
PSUs	Public Sector Undertakings
RIAs	Regional Integration Agreements
ROO	Rules of Origin
RTAs	Regional Trade Agreements
SACU	Southern African Customs Union
SADC	South African Development Community
S&DT	Special and Differential Treatment
SAFTA	South Asian Free Trade Area
SEZS	Special Economic Zone
SIM	SACU, India, MERCOSUR
TRIPS	Trade Related Intellectual Property Rights

UNCTAD United Nations Conference on Trade and Development  
WIPO World Intellectual Property Organisation  
WTO World Trade Organisation

## **Executive Summary**

CUTS Institute for Regulation & Competition (CIRC)<sup>1</sup> organised a training programme on “Strengthening Skills on Commercial and Economic Diplomacy” (CDS.04) for senior-level civil servants and executives from January 09-11, 2008 at Jaipur. The training programme was a sequel to the previous two training programmes organised on: “Building Skills on Commercial and Economic Diplomacy” for mid-level civil servants and executives from August 22-25, 2007; and “Developing Skills on Commercial & Economic Diplomacy” for junior-level civil servants and executives from October 22-26, 2007.

The Department of Commerce, Ministry of Commerce and Industry, Government of India is supporting CIRC to undertake such capacity building training programmes to address the need for institutional base in offering training on commercial and economic diplomacy in India. The objectives of the training programmes were as follows:

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

This training programme brought experts together to explore and deliberate various aspects involved in commercial and economic diplomacy, namely: G K Pillai (Secretary, Department of Commerce, Government of India); B K Zutshi (Member, Governing Council of CIRC & Former Indian Ambassador to General Agreement on Tariffs and Trade (GATT); Kishan S Rana (Former Ambassador of India and Senior Fellow DiploFoundation); Geza Feketekuty (President, Institute for Trade and Commercial Diplomacy); and N C Pahariya (Associate Professor, University of Rajasthan). Pradeep S Mehta, Director General, CIRC was present at the inaugural session to set the platform for discussions to follow for the next three days.

The said training programme was well attended by 12 participants (see Annexure I) representing various ministries/departments of Government of India. They were senior level civil servants such as Additional Secretaries, Joint Secretaries, Economic Advisors etc., from various ministries namely External Affairs, Commerce and Industry, Environment & Forests, Labour & Employment and Micro, Small and Medium Enterprises. There was also representation from state governments such as Madhya Pradesh, Orissa and Jammu & Kashmir in the training programme. These participants have been involved in trade and investment negotiation issues on various bilateral, regional and multilateral levels in their respective ministries/departments and state governments.

---

<sup>1</sup> For details please visit [www.circ.in](http://www.circ.in)

Over the period of three days the participants sharpened their skills on several aspects of commercial and economic diplomacy through lectures, real life experiences of resource persons, simulation exercises, and group discussions (see Annexure II for the agenda of the training programme). Based on the feedback received from the participants and resource persons, it can be said that the programme was successful in terms of quality of participation, resource persons, resource materials and administrative and logistical arrangements. Participants acknowledged that the learning they gained from the training programme proved to be extremely enriching and valuable.

This report summarises the presentations, principal issues identified and points discussed during the course of three-day training programme.

### **Inaugural Session**

#### **Pradeep S Mehta, Secretary General, CUTS International, Jaipur**

**Pradeep S Mehta** welcomed all the participants of the training programme and emphasised on the need for customised training in the field of commercial and economic diplomacy. He outlined the background of Consumer Unity & Trust Society (CUTS) and how it was founded about 25 years ago and that the year 2008 is the silver jubilee year of the organisation. He went on to tell the story behind the inception of CIRC, which is aimed towards addressing the need for capacity building in the area of commercial diplomacy, competition policy & law and economic regulation. Mehta revealed that the concept of such training for government officials was actually envisaged by G K Pillai, Secretary, Department of Commerce, Government of India. He cited that following factors responsible for initiation of these training programmes:

- Do the officials possess the required intelligence to handle international negotiations effectively though the country has the knowledge and required skill in dealing with such negotiations?
- Is there a structured or scientific way to accomplish these negotiations?
- Does India have similar kind of programmes though courses on commercial and economic diplomacy are being run around the world?

He explained that negotiations are successful when there is a win-win kind of situation. It is not a zero-sum game and each negotiation takes its own time to mature while the outcome is either for or against a negotiating party. Thus, the whole process requires lot of scientific knowledge and skill in order to carry forward such negotiations effectively.

**Mehta** pointed out that a pilot training seminar on “Diplomacy in International Trade” was organised by CIRC in 2006, which had representations from various ministries and departments of the Government of India, who overwhelmingly found it useful and looked forward to more training programmes of this nature. Consequently, the Department of Commerce kindly agreed to support a three-year project to build capacity of the government officials of various levels. He spoke out the future plan of CIRC, which includes: offering online courses and doctoral degree programmes through collaboration

with institutes/universities of repute namely Institute for Trade and Commercial Diplomacy (ITCD) and DiploFoundation.

**Mehta** stated that India needs huge infrastructure investment in order to maintain the 9-10 percent growth rate and public sector cannot fund such infrastructure requirement alone. As the private sector will certainly need enhanced private participation, one way to attract private investment is through implementation of Public Private Partnership (PPPs) projects, he explained. He said that a large number of PPP projects are already operational on an annual basis, though the kind of negotiations, which go around in terms of contracts are also undergoing evolution of understanding. The Planning Commission of India has designed some models on concession agreements, such as roads, highways, ports etc, though, a lot needs to be done, he added. **Mehta** stressed that it will be a big challenge for CIRC to deal with such contracts, as this will be a unique and new area for the institute to focus on.

**Kishan S Rana, Former Ambassador of India and Senior Fellow DiploFoundation**

In his opening remarks, **Kishan S Rana** pointed out that the civil servants and government officials have felt a lack of such interaction, trainings and/or skill development programmes since long, which are essential to expose them to contemporary issues in negotiations, inter-cultural management and economic diplomacy. He explained the effectiveness of e-learning programme and how this mechanism works for an individual.

**Rana** pointed out that developing government approach on the external marketing of India is the real issue with the Indian economic diplomacy since India is now more a unique country in the world, where several methodological and organisational issues, structural questions crop up, which sometimes block optimisation of economic diplomacy. He went on to say that very often lack of sufficient harmonisation between Ministry of External Affairs and the other economic ministries is found to be one major problem. Such a training programme indeed helps in bridging the gap and taking a step forward in integrating better understanding of commercial and economic diplomacy issues (i.e. the advancement of India's external interests in the economic domain in terms of trade, investments (both ways), technology, economic assistance (two ways) and the other activities which are related to India's external interest).

**Rana** emphasised on the integrated diplomacy approach, which means that there is no dividing line between economic, political and cultural work and each one acts into and influences the other. He concluded by suggesting that in future training programmes CUTS should invite a few serving Indian Ambassadors in order to bring a diverse perspective to the issues involved in commercial and economic diplomacy.

**B K Zutshi, Former Indian Ambassador to GATT**

**B K Zutshi**, in his opening remarks, pointed out that diplomacy in today's world of instant communication has many more challenges than what it was a few years back. This is because of the profound influence of development in communication and the way business is conducted. He said that India is now in an era of globalisation, although it is



not a new concept except that the intensity that India experiences due to this process (such as exchange of goods and services, people, ideas, information, etc.) has increased to an extent and has augmented two essential phenomena, namely: (i) death of distance; and (ii) irrelevance of location

Elaborating the two phenomena, **Zutshi** said that their impact is not very positive on the process of globalisation and that many of the influential economists are also questioning the way globalisation has taken place. One reason cited by the economists for such intense globalisation is the mobility of capital, he added. The capital movement has become as fast as thought, which in turn has impacted significantly on employment generation. Thus, the nature of commercial and economic diplomacy will be more and more difficult in the years to come, he concluded.

### **G K Pillai, Secretary, Department of Commerce, Government of India**

**G K Pillai** endorsed that such training programmes are very important for government officials dealing in trade negotiations and they require such knowledge and skills because all of them are directly or indirectly involved in the process of such negotiations. He presented the following examples to showcase the importance of required knowledge and skill for an individual and/or government official involved in the assignment of commercial and economic diplomacy:

1. **Definition of whisky in the World Trade Organisation (WTO):** In the WTO parlance, the definition of whisky goes like thus: “a product, which is made from grains”, whereas in India, whisky is made out of molasses. Therefore, one cannot sell Indian whisky in Europe as whisky, though it can be sold as rum. This can be precarious for the officials involved in the negotiation process, who do not pay attention or are not aware of this difference in definition. Hence, the government officials cannot negate the importance of requisite knowledge and skill in commercial and economic diplomacy.
2. **Maximum Residue Level (MRL) in Tea:** The standards are fixed for MRL and unfortunately when authorities were setting these standards, they standardised MRL in the dry form though tea is not consumed as in dry form and is boiled before consuming. Hence, one is concerned about the impact of MRL after boiling and not before. This ignorance while setting the standards has led to the fact that the MRL of Indian tea is higher than what is allowed and consequently the whole industry is affected.
3. **Dhabol Power Project:** The failure of the project reflects non-professionalism and negligence on the part of negotiator. It has cost the country immensely and the loss runs into thousands of crores. This clearly shows the ignorance of the negotiating officials and the required attention towards the implications of putting a word here or word there.
4. **WTO Uruguay Round Negotiations:** He mentioned that while negotiating the issue of subsidy level, developing countries’ negotiators were of the opinion that it should be reduced by 20 percent. As a result, after the 20 percent reduction in subsidy level by the US, they were happy to ignore the footnote in the document. The footnote stated that the base level of 1986-88 will be put under consideration. Hence, in 1995 US was giving subsidies of US\$10bn whereas in 1986-88 they

were giving about US\$54bn. So it came to an increased level of US\$54bn only because the concerned negotiators were ignorant to look at the footnote.

With these examples **Pillai** stated that it is very important to pay attention towards each issue whether it is major or minor in negotiations. He cautioned that the negotiators cannot afford to be casual or unskilful since the interests of various stakeholders are staked in his decision. He explained that commercial and economic diplomacy is not only confined to Department of Commerce and Ministry of External Affairs but also extends to other ministries such as Agriculture, Animal Husbandry, Environment, etc., that are also involved at some level or the other. He concluded by suggesting that Department of Personnel should take the initiative of conducting such courses across the board for all departments/ministries and at each levels.

### **Expectations of the Participants**

At the close of the inaugural session, participants were requested to express their expectations from the training programme. Their responses are summarised below:

- skills and art of negotiations;
- preparation and the required homework before entering into negotiations;
- how to maximise gains in negotiations, from a position of weakness;
- how to arrive at a win-win situation during negotiations;
- how to resolve policy conflict in commercial and economic diplomacy;
- how to strike a balance between environment, ecology and economics during negotiations;
- impact of liberalisation on Micro, Small and Medium Enterprises;
- how to handle the non-papers during negotiations; and
- how to deal with non-trade barriers especially in case of Singapore issues, etc.

## **Session I**

### **Domestic Political Economy Challenges for India – G K Pillai**

While discussing the economy and political economy of India, **Pillai** informed that in April 2007, India became US\$1tn economy for the first time (i.e. the world's 12<sup>th</sup> largest economy). Economic growth of India has maintained about 8-9 percent over the last few years and the country is in a position whereby it has attracted the attention of the world mainly because: Indian companies have been making big acquisitions abroad; Information Technology (IT) sector, especially services export is now serving as the back office of the world; and India is becoming a large consumer market, since economic growth has been lead by domestic consumption not by the export and import.

**Pillai** went on to say that India is a land of tremendous contrasts and most countries in the world are unable to appreciate or unwilling to appreciate this variance. However, India has more people below the poverty line (BPL) than all the least developed countries (LDCs) of the world put together. Hence, in one sense under WTO negotiations India should also be treated as a LDC and should not make any commitments, he added.

India is on the growth path because of certain buoyancy in the economy as a result of structural changes happening since early 1990s in terms of entrepreneur spirits, although, entrepreneur skills existed from the very beginning yet it was low profile in both political diplomacy and commercial & economic diplomacy, he continued.

**Pillai** pointed out that the number of really poor (i.e. absolute number under BPL) in India has actually gone up although the percentage of poor has come down and there is a huge disparity between the two India – the growing India and the poor India – which has led to the growing social unrest. India can be referred as ‘an island of stability ‘(i.e. politically, commercially and diplomatically) as compared to its neighbours, namely, Pakistan, Bhutan, Myanmar, Bangladesh, etc. This consistency works both ways, i.e. strengths as well as weakness and India’s growth has made the neighbours realise that economic strength is more important than military strength, he added.

**Pillai** said that problem for the political leaders in India is how to have inclusive growth, which is a difficult task though this is not a new concept, as it has been here since long time. The big challenge that lies ahead is the growing inequality in the country despite all the efforts in terms of inclusive growth. In other words, growth among poor in the country is much lower than the growth in higher strata of the society and this inequality has increased significantly over the last decade, he argued. When compared with other neighbouring countries, it is evident that India has an independent judiciary, an election commission, and this became possible only due to the visionary leadership under Jawahar Lal Nehru. As a great democrat, Nehru devised an excellent system for communication between central and state governments, which was reduced after 1960s and now there is an increasing dominance of centre over states, he pointed out.

**Pillai maintained that** centre can make a policy whether at micro or macro level but the real implementation of these policies takes place only at the state level; at the central level, reforms are quite extensive and may have an influence of globalisation while at the state level the issues are far more local (i.e. it is personality driven economic development). He further pointed out the fact that India itself became the victim of its high growth. Until the growth rate was 3-4 percent (Hindu growth rate) all the problems/defects/shortfalls in the system were either concealed or controlled efficiently. However, as soon as India achieved a sustained growth rate of 8-9 percent consistently for years, all the deficiencies in the system were evident, he reasoned.

During the last few years, the nature of business has changed drastically but it has remained the same with bureaucrats, academicians, economists, etc. He stated that following are the three critical aspects for the future growth of India:

**1. Skill development:** In India, there is a shortage of skills in almost all areas whether it is Information and Communication Technology (ICT), textile, environment, mining, etc. This is because of the shortage of manpower in that particular field. For example, during 1970s-1980s preference for civil engineering was the least among students, hence today, India has an acute shortage of civil engineers. Similarly, the textile sector also witnessed the same disinterest. The government and business community has realised this shortage

of skilled manpower in the country; however, the firm efforts and investment put forward by the business community helped in building the capacity of future manpower. For example, Infosys started a school in Mysore while the government has also come out with skill missions to fill this scarcity through Industrial Training Institutes (ITIS), PPPs projects, etc. In the next few decades 'education for employment' will be one of the largest and fastest growing industry. Similarly, the government has requested all the developers of the Special Economic Zones (SEZs) to set up training institutes within the SEZs. Labour market has become flexible enough for alternate employment opportunity. According to Micro, Small and Medium Enterprises and Labour Ministry India has 7 percent organised and 93 percent unorganised work forces. This is an opportune moment for the government to go ahead with labour reforms, since there will be least disturbance because of enough employment. Today, if any industry collapses and people lose their jobs then they could be absorbed in another job across various sectors.

**2. Infrastructure:** Infrastructure such as roads, railway, ports, airports, etc. is the second critical aspect *vis-à-vis* the future of Indian economic growth. If we look at this sector (i.e. government ports) then the growth rate of bigger ports is much lower than the minor ports, which are under the control of state governments. These minor ports owned by state governments were far more proactive and operate professionally in comparison to the central government owned big ports like Jawahar Lal Nehru Port Trust (JNPT). And if the minor ports sustain the same growth rate, then they will overtake major ports in the coming two years.

**3. Re-invent governmental system:** There is a need for government to re-invent itself, as the 5<sup>th</sup> Administrative Reform Commission report contains all nuances of globalisation and different ways of PPPs; however, none of the existing Indian laws and regulation is in a position to accommodate such new emerging issues in the country. The same system, which was there in the 1960s, continued in the 1970s, 1980s, 1990s and is still continuing. There is a need to reorganise the whole system, as today the kind of requirement in each department/ministry is different from the other department/ministry. Today, departments/ministries need inputs such as legal, economic, academic, professional etc. Although the departments have these inputs on *ad hoc* basis through recruiting interns, outsourcing from research organisations is needed. However, there is no systematic way within the departments/ministries.

Though the legislation on SEZs was passed in June 2005, the rules were made after long and varied consultation for over 8 months with various stakeholders, and the Act finally came into existence on February 10, 2006. So far, the total investment made in SEZs is over Rs. 520 billion (US\$13bn) and by the end of 2008 there will be further investment of approximately Rs. 1000 billion (US\$25bn). He apprised that SEZs have generated approximately 92,000 jobs and there is an estimation of generation of around 100,000 more jobs by the end of September 2008. Government had only drafted the rules of SEZ while all other initiatives came from the state governments and the developers. For these SEZs, nearly half of the land has come from private sectors (i.e. around 404 formal land approvals) and is already in the possession of developers.

The total extent of land is about one lakh hectares, which is less than 0.09 percent of the total cultivated land and therefore the same will not affect agriculture and food security in the country. Some of the area in Gujarat (i.e. total 100 percent barren area) is also under SEZs, where business groups have shown interest in investing money and creating jobs at local level. The ministry estimates that for every job created inside the SEZ will eventually create two jobs outside and the same goes to other sectors such as textile, leather, hardware, electronic etc. He further informed about the World Bank study titled “*Doing Business 2008*”, which lays down that India is the top reformer when it comes to trading across borders.

### **Floor Discussions**

With reference to the above-mentioned discussion, participants expressed their views, which are as follows:

- A participant opined that India cannot take up skill development unless it streamlines and standardises the education sector on a more practical level. He pointed out the absence of linkage between the academic curriculum and the real time application the subject. He also referred to the lack of uniformity in the syllabi of various schools/universities.
- Another participant was of the view that India is currently facing huge challenge of skill development, which is going to increase if it is not addressed timely. This problem is not confined to central government only, but also extends to the state governments. He cited an example from the state of Orissa in this respect, where, the state government made it mandatory for all the smaller industries as well as private sector such as the TATAs, POSCO etc., to open their own specialised institutes to tackle the shortage of skill. He raised concern over the power sector, particularly Public Sector Undertakings (PSUs) in Orissa, which sector is facing huge migration of employees because of lower salary in PSUs in comparison to private sectors. This is because of better salaries being paid by the PSUs in comparison to the government.
- One participant admitted the gap between education and the required skill for employment, though there is a need to rationalise it within the departments. The existence of Labour and Employment Department instead of education and employment highlights the stark contrast. Moreover, technical training is a subject of the industries department, although it should have been ideally linked with education department in order to have skilled and trained professionals. He asked for the adoption of a model or set of best practices at the central as well the state level.
- A participant stated that growth in India has been taking place without additional employment generation. The shortage of skilled manpower shows that job pattern has shifted and the institutions are not able to cope up with this. There is a diversion between aspiration wage and competitive wage. An individual desires a higher wage but the industry cannot afford to provide him because the industry may lose competitiveness. Therefore mapping of skills is necessary to fill this gap, which measures the deficiency between education level and skill level, including the kind of training is required to bridge this gap. However, sometimes the ill effects of education trickle down to create social tensions in the society.

- An important point on the inclusiveness of growth was deliberated during the discussion. The participant suggested that the following aspects should also be taken into consideration while discussing the inclusive growth. They are:
  - a) connectivity between rural and urban areas;
  - b) knowledge infrastructure and e-governance; and
  - c) transparency in the system.
- **Siddhartha Mitra, Director, Research, CUTS International** commented that there is a regional imbalance in the economic growth and the push is being given to the development programme related to above poverty line (APL) and most of the employment programmes for BPL have a very high wage component and very low training or physical capital component. It means that people under BPL will temporarily rise above the poverty line and then again go below without any skills, he argued. Therefore the regional imbalance needs to go away with the overall economic development, he added.
- **Bipul Chatterjee, Deputy Executive Director, CUTS International** emphasised that there is a need for reinventing the Indian political system and the politicians, as they are still living in the Stone Age. They need to update themselves and gradually be replaced by the newer and young generation. While reinventing the government, one should also look for establishing a better communication between various department/ministries, he argued.
- One of the participant informed that the Ministry of Labour and Employment has proposed a few steps to improve the functioning of ITI's in India. They have also proposed to amend Section 66 of the Factory Act, which actually prohibits the women employees to work during nights and also proposes to introduce e-governance in the labour laws. It will allow the small entrepreneurs, having 40 workers, to maintain their records in computer and submit their return through e-mail.
- Another participant was of the opinion that it is very important to have quality growth rather than the notional growth and the same should be accompanied by sustainable development.

Geza Feketekuty was of the view that the policies outlined by state government play an extremely vital role for investors. He opined that the government should act as a facilitator not as a controller and that the implementation may be carried out by the private sector. There must be a division of responsibility among public and private sectors in order to achieve sustainable growth. This leads to few important aspects such as how to provide incentive to the private sector and how to improve the communication channel, he argued. At this point, **B K Zutshi** intervened and said that India should improve the delivery mechanism in order to achieve sustainable growth. The central government drafts policies, which is not implemented in the way envisaged by the central government/policymakers. At this juncture, **Pradeep S Mehta** pointed that there are states such as Gujarat and Tamil Nadu where the governance system is working efficiently because of the attitude of officials.

**G K Pillai**, while concluding his session, pointed out that technology is changing drastically but the government approach has not yet changed. It is worth pondering why

states of Tamil Nadu, Maharashtra, Andhra Pradesh and Karnataka are economically more developed., he asked The reason behind this is 70 percent of the ITI, 70 percent of the engineering colleges and around 70 percent of the medical colleges are located in these four states, he answered. In technical trade one has to remain updated and if it does not happen then there are chances of getting it obsolete and outdated, he concluded.

## **Session II**

### **International Diplomatic Environment – Kishan S Rana**

**Kishan S Rana**, while elaborating the concepts of International Diplomatic Environment, mentioned that today we live in the world of ‘globalised diplomacy’. It is being called ‘globalised’ because it is not the classic inter-state privilege dialogue that used to take place in the past where foreign ministers talked to each other and leaders rarely travelled. However, whenever they travelled, they had a very special sense of mission. He cited examples of UK and Japan, which permit only three state visits per year. Moreover, in a country like Switzerland, the President travels with a total of five people while the President of Brazil travels with a huge delegation, which comprises of businessmen. There is a changed paradigm on how countries market themselves. For instance, Canada did extremely well in terms of putting across the “Team Canada” approach. Diplomacy is not confined to only foreign affairs ministry but officials of all ministers are exposed to the increased diplomacy across various issues, he argued.

**Rana** further elaborated that some countries whether large, medium sized or small, manage their external relationships much better than others, as the key lies in clarity of objectives and mobilisation of all available resources. In diplomacy, effectiveness depends not on more money or people, but on concrete actions and optimising the talent that resides within diplomatic services, he reasoned. Diplomacy also depends on working out effective arrangements for a ‘whole of government approach’ in managing external relationships. Explaining why globalised diplomacy, Rana said that economic diplomacy emerged as a major component of external relations in some ways even overshadowing political diplomacy. Currently, export promotion and Foreign Direct Investment (FDI) mobilisation have become activities on priority for most of the countries and the increase in cultural, educational scientific and technological diplomacy has also gained importance, he argued. None of these segments have declined in importance but in the past 15 years political diplomacy has regained salience and at the same time has become more open and complex than before. The techniques of relationship building and conflict resolution have also become more sophisticated and require measured responses, he added.

**Rana** opined that the Foreign Ministry is no longer the gatekeeper of foreign relations and the Vienna Convention of 1961 that lays down the Foreign Ministry as the channel of communication has fallen wayside. Now the Foreign Ministry needs to reinvent themselves as coordinators/facilitators and must act as a provider of linkage between various ministries, with information and knowledge, which is of their use and not known, he argued. He said that Foreign Ministry, over the years, has assumed several functions ranging from gatekeeper to coordinator and coordinator to boundary spanner or

networker. However, the Foreign Ministry cannot keep track of each and every subject, for example, issues like civil aviation needs to go through the Ministry of Civil Aviation. A Foreign Ministry needs to work in harmony with other agencies in relation to subject expertise, and many non-state actors are the permanent dialogue partners of Foreign Ministry, e.g. media, culture academia, non-governmental organisations (NGOs), science & technology, business and other activists, he continued.

**Rana** pointed out that the functional focus of professional diplomats has shifted from high diplomacy (involving issues of peace and security or negotiation of sweeping inter-state accords) to low diplomacy (economic promotion, image building, culture, public diplomacy, media activities, specific areas of trade, science and technology, etc). He emphasised that the Foreign Ministry official must recognise the domestic political outcome in their actions. Today's diplomat has to deal with both the negotiations, i.e. domestic interface and international negotiations abroad though former is more difficult to handle than the latter, he argued.

**Rana** stated the greater impact of ICT on the ways of conducting diplomacy, though the core task of relationship management remains unaltered. One direct consequence is that the relationship between the Foreign Ministry and the embassies abroad has become much closer, and the bilateral relations between embassies have gained importance, he elaborated. He informed that ICT now permits drafts and proposals to go direct from the desk officers to the top officials, with copies sent to the intermediate hierarchy, which adds to the responsibility of young officials, and hence demands higher standards. The Internet provides innovative means of extending outreach to a wide stream of public, from domestic to abroad, while the Foreign Ministry website, supplemented by the websites of embassies provides a starting point. The 'intranets' based on the web, also called 'virtual private networks' permit confidential exchange within a country's diplomatic and public services, he reasoned. He pointed out that Canada has been a leader in the application of net-based communications for export promotion and domestic public outreach. He cited the example of Denmark, which has a very modern way of working and the Foreign Ministry entails the work of foreign trade, investment mobilisation (inward and outward) and economic aid.

On multilateral diplomacy, **Rana** said that it has grown dramatically in the past three decades, while multilateral diplomacy and bilateral diplomacy are the two legs of the international diplomatic system. He said that economic diplomacy involves four stages, namely: salesmanship; networking; image promotion; and regulation management. While salesmanship took place in India as a result of the oil shock and got an impetus in early 1970s, networking phase emerged during 1980s and involved partnerships with business chambers (Confederation of Indian Industry, Federation of Indian Chamber of Commerce and Industry, Federation of Indian Export Organisation, Associated Chamber of Commerce and Industry etc.), companies, think tanks, and the other non-state actors, both abroad and at home, **Rana** elaborated. Image promotion emerged during 1990s and includes a mainstream activity that involves PPP. This is the time when India established India Brand Equity Foundation (IBEF) with Confederation of Indian Industry (CII) on PPP basis. However, regulation management is a new activity, which involves planning



and negotiation of FTAs, bilateral and regional agreements, and management of the WTO provisions, including anti-dumping actions, and supporting the home country's multilateral economic actions, he added.

**Rana** informed that the following four broad ways in which various countries handle the economic diplomacy are:

1. **Unified:** One method is to combine the Foreign Ministry with the ministry handling foreign trade, and often, foreign investment mobilisation as well. This system is followed in the Caribbean (Barbados, Dominica, Grenada, Santa Lucia), Scandinavia (Denmark, Finland, Norway, Sweden), the South Pacific (Fiji, Marshal Islands, Samoa, Solomon Islands, Vanuatu), and some other countries (Australia, Canada, Mauritius, New Zealand and South Korea, Swaziland).
2. **Joined-up:** UK offers a different, practical model, with its 'joined-up' arrangement between the Foreign Office and the Board of Trade, which together supervises Trade and Investment of Britain, which is run from the FCO by officials from both the ministries.
3. **Outsourcing:** Singapore handles all the promotional work for exports and investments through special agencies that work under its Trade Ministry, but in close harmonisation with the Ministry of Foreign Affairs, which also leaves the regulatory work to the Trade Ministry, which includes negotiation of FTAs.
4. **Competition:** In a majority of countries the Ministry of Foreign Affairs and the economic ministries are in turf battles, of varying degrees of sharpness. A direct consequence is that usually, the country's diplomatic network is not used to optimal advantage for the purpose of advancement of the country's economic objectives. A singular exception is Brazil, where it is the Ministry of Foreign Affairs that handles the regulatory work, as well as WTO negotiations, with the Trade Ministry playing a subsidiary role.

**Rana** concluded by saying that the economic diplomacy involves handling three principal issues, namely: economic vs. political; domestic vs. External; and state vs. non-state. A good economic diplomacy revolves around handling these three issues and a well drafted foreign policy. An effective diplomacy, therefore, advances the external interest of a country, he added.

### **Floor Discussions**

One of the participants stated that there should be synergy among various institutions in order to utilise their strength, which will actually contribute to the effectiveness of economic diplomacy. He quoted a study by Central Investigation Agency (i.e. US agency) 'Mathlin Global Future' which deals with the nature of globalisation and the necessary institutional responses thereof. He informed that the report also elaborates the nature of challenges, which are constantly changing, without any prior intimation. It is really tough to handle these challenges unless countries have the synergy among its institutions. Citing a book titled "Indian Foreign Services: History & Challenges" by J N Dixit, the participant said that the book underlines the need of effective inter-ministerial consultation. Furthermore, procedures, delegation of power/authority, access to

information and networking play an important role in commercial and economic diplomacy, he argued.

Elaborating the necessity and importance of coordination before and during negotiations, one participant, said that India needs to have a system in place to process the entire method both from political and administrative angle, with people having the required expertise need to go for negotiation. Constitution of the negotiating delegation should not be restricted to one ministry but should expand to those ministries also, whose interests are affected due to these negotiations. However, the concerned ministry (may be Ministry of External Affairs) could play the coordinating role, he reasoned. The discussion then focus on the kind of role a ministry should play. This was highlighted in the context that two ministries may have different opinions over a subject matter; however, the concerned ministry is the appropriate body to take a decision. For example, in case of education, environment and other sectors, it can be observed that the Department of Commerce being the coordinating agency may have different opinion from trade perspective than the concerned ministry, he argued.

One of the participants expressed his concern on the issue of non-consistency in the work pattern of the ministries. He cited an example of Ministry of Labour and Employment where the focus areas change frequently with international standards, which creates a chaotic situation. Therefore a need for a think tank arises, which can track on the international standards set up by WTO and International Labour Organisation (ILO), he opined.

One of the participants was of the view that unifying all the aspects in one ministry is not feasible and workable and said that though unification may facilitate better communication both within the ministry and between the two ministries, a many a times the two different wings of the same ministry are not able to build consensus among themselves. The process of communication within the ministry/department and with other stakeholders also needs to be fast and effective. Hence, the concerned ministry/department should summarise their views and observations promptly and send the same to the coordinating agency or ministry/department.

**B K Zutshi** emphasised the need for internal policy coherence, which is a major issue within all government departments. He said that since India is a big country and its ministries and departments are equally big, therefore, sometimes the internal policy coherence becomes difficult though the same has changed drastically over years. He quoted the example of Trade Related Intellectual Property Rights (TRIPS) agreement where India could not have enough consultation with various stakeholders.

One of the participants pointed out that the key issue of central agencies vs. state agencies should also be included while understanding the concept of economic diplomacy. He quoted the example of POSCO in which there was lack of communication and coordination among central and state governments. He further stated that such examples illustrate that the policies and procedures within central and state governments take precedence over the results and outcomes.

**Rana** while replying to the queries mentioned that government officials should work on establishing policy coherence since it is quite natural to have differences of opinion among the various department/ministries. Functional ministry by their very nature will take position that goes beyond their scope of function. Hence, this is the task of governance to harmonise these viewpoints and to reach to a nuanced integrated view of where the interests lie. He emphasised the need for multi-layered system of harmonisation of dialogues, reconciliation and exchange of views. One of the biggest weaknesses during negotiations is the lack of methodical preparation, for example, India first negotiates abroad and then does the same within country with stakeholders, he argued. While in the Japanese system of negotiations known as “ringi system” a 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 is 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, he reasoned.

On the specific questions of think tanks, **Rana** replied that India needs not just a single but many think tanks to take strategic decisions. He quoted the example of Institute for Defence Studies and Analysis (IDSA), which has been set up by the Ministry of Defence, to have an intellectual dialogue among subject experts. He further insisted on the need of having a homegrown domestic NGO in comparison to the international NGO, as the same will bring in the domestic perspective of the relevant issue.

### **Session III**

#### **A Practical Approach to Negotiations – Kishan S Rana & Geza Feketekuty**

**Kishan S. Rana**, while explaining a practical approach to negotiations, emphasised that the negotiations are never zero sum game, but an integrative approach. A distributive agreement will leave behind traces and memories, which will then influence subsequent actions. He mentioned the philosophy of François de Callières, who observed in his 1716 classic ‘The Art of Negotiating with Sovereign Princes’ that good negotiations produce lasting agreements when both sides are winners whereas Francis Bacon observed that verbal negotiations are more effective than written ones, he pointed out. An Italian diplomat ‘Guicciardini’ during the 17<sup>th</sup> century faced a problem and termed it as “ripe moment” for negotiation, which elaborates that in every negotiation there is a ripe moment when things can be packaged together, **Rana** pointed out. During negotiations, ripe moment is the point at which one can make his final offer to the negotiating country. The converse also applies when a compromise that might have been acceptable at one stage, becomes irrelevant if a threshold is crossed, when the dispute moves to a more divisive stage, he added.

**Rana** cited an observation by an Asian Ambassador who felt that Indians need visible gains from negotiations to show their own success, adding that Indian negotiator like piles of papers and bears a MoU culture. However, Stephen Cohen, a long-time scholar

offers a harsher assessment. In one of the chapters titled, 'India Which Says No' that Indians are intent on establishing the moral and political equality of their side and are especially touchy over status; they negotiate for information, have a good institutional memory better than the Americans and reflect a defensive arrogance and acute sensitivity to real and perceived slights. He quoted another scholar of the cultural dimension of negotiation, Raymond Cohen, who observed that "Time and again Indian officials have taken umbrage over real or imagined insults to their national dignity. A perceived imputation on their intellectual ability, or a sign of arrogance or superiority, would produce an explosion".

**Rana** underlined the quotes provided by another scholar regarding the characteristics of Indian negotiator, which says that insecurity and contestation within the bureaucracy produces a strong urge by each negotiation team to claim success, which distorts its actions. Partly, the above description relates to the pre-1991 defensive period of Indian diplomacy. A more self-confident India does not say 'no' in knee-jerk fashion and foreign partners have noted the same though other behavioural traits are still unchanged, he said. The positive assets of Indian negotiators are persistence and shrewdness, and a mastery over language that guarantees inclusion in drafting groups and 'green rooms' in the multilateral fora. Earlier, at the WTO and other economic negotiations they were perceived as inflexible, but that came from unrealistic negotiation briefs provided to the teams. Moreover, at the WTO talks in Doha in 2003 and in Cancun in 2004, Indian performance was sharp and productive, he added.

With reference to the above observations by various scholars, **Rana** mentioned the following difficulties/obstacles of Indian negotiators:

- Mostly the negotiation briefs are not always prepared in detail although the process has improved over the years.
- Indian officials seldom use the full matrix of preparation activities (i.e. pre-negotiation, preparation, negotiation and follow up). Moreover, many of the listed methods are unknown to the negotiating officials.
- Indian officials often overlook the importance of listening to the opening phase of negotiation, when set or pre-cooked statements are read out. It is not necessary that the other side will seldom directly reveal its strategy in the opening phase though the opening statement may contain hints or indirect indicators of what is to follow.
- The typical Indian problem is that India starts the work of crafting an internal consensus after the negotiations ends, producing huge problems in implementation.
- The need for flexibility, and even deniability, during the phase when compromise is being worked out is also the reason that delicate negotiations cannot take place in public view. Confidentiality is essential during the 'hard' bargaining phase. This is especially difficult in our country because of the competitive environment within our print and electronic media and a tendency for information to leak if it is shared widely within the official system.

- Indian teamwork is poor to the point where some delegation members might occasionally violate discipline in informal communication with the other side, especially in complex bilateral situations.
- Mastery over the English language is an important Indian asset, but it sometimes transgresses into arrogance and an attitude of showing off.
- Inadequate intercultural understanding is another difficulty for Indians during negotiations. For instance, the Association of Southeast Asian Nations (ASEAN) way' of negotiation is to respect the comfort zone of others, to fine tune one's own stand in a way that respects the sensitivity of the other side. Indian negotiators are not known for respecting such notions. Some Asians remark that because of their soft-spoken skills, Indians are misled that Asians do not hold strong views. It is paradoxical that such problems arise, because of domestic multi-cultural environment. Indians have a huge advantage in being able to accommodate diversity. It comes down to the issue of better inter-cultural management training.

**Rana** then described the attribute of a good speech, citing Lord Krishna's speech to Arjun in *Bhagwad Gita*, who 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 further described the art of public speaking and quoted Manu who says, "Speak the truth but not the unpleasant; speak the pleasant but not the untruth."

**Rana** pointed out the case of the Kosi and Gandak projects with Nepal where India tried to maximise gains and failed to achieve a balance in negotiation. As a consequence, Nepal that possesses a potential power generation capacity of 80,000 MW has not added even one KW of power in its cooperation with India, despite endless rounds of negotiations, he argued. After this incidence, India learnt a lesson and it actualised the first 370 MW hydropower Chukha Project Agreement with Bhutan in 1974, which was a fair and balanced sharing of costs and benefits. As a result the two countries have now built three hydro projects that generate nearly 2000 MW of power and more projects are in the pipeline, he added.

**Rana** described Rober Putnam's two-level theory of negotiations, which was put forward in early 1990s, and which provides the concept of modern negotiation in two following levels:

- Level I: Negotiation with foreign partners
- Level II: Negotiation with domestic stakeholders namely parliament, political parties, media, think tanks, etc.

**Rana** said that Putnam's theory also describes the notion of 'win-sets', which means the zone within which one is willing to accept the agreement. The range of options is acceptable to the negotiating partner, whether it is the foreign counterpart in a bilateral process or the domestic people that have an interest in that issue. It is usually not easy to identify the exact contours of the win-sets but the effort to understand these win-sets is worthwhile because it helps to identify the range of possibilities that are going to be

acceptable to the foreign partner and to the domestic stakeholders. He stated that a country such as Japan, which carries out extensive harmonisation of the domestic consensus prior to foreign negotiations gains in three ways. First, it knows well the domestic win-sets and builds these into the official stance. Second, the relative inflexibility this produces (because any new compromise must be cleared with the home Level II) gives it a strong negotiating position. Third, implementation of an accord is easy because of the consensus already established with the stakeholders, he added.

The concept of Robert Putnam suggests that the task of negotiation involves efforts to change the win-sets at both the levels and to match one's own win-sets. This is a dynamic and complex process. One ought to consider the following element that governs the process:

- the narrower the win-set, the stronger will be the bargaining power;
- understanding and monitoring other side win-sets;
- negotiators work under 'bounded rationality', i.e. imperfect knowledge of the win-sets of the other side;
- it is worthwhile to convey false or misleading information to the foreign partner on one's own win-set. This is called the 'negotiators' dilemma' and it features in any difficult, prolonged negotiations; and
- where one encounters a heterogeneous structure on the other side, it makes it difficult to estimate win-sets, but it also makes it possible to try coalition building with like-minded elements.

**Geza Feketekuty**, while discussing a practical approach to negotiation, recounted some of his past experiences as a negotiator for US, emphasising on the three core ideas of negotiation: stakeholders; interest based negotiations; and comprehensive analytical framework. He stressed on the need for reaching out to stakeholders as part of the pre negotiation process, as they are the group within and outside the government, who may be affected by the outcome of negotiation. At the outset of developing a negotiating strategy, a good negotiator should identify all of the stakeholders and chart their interests, positions and options. By understanding which parties (people and organisations) have an interest and potential influence on the negotiating process, a negotiator can generate a list of the interests that have to be accommodated in the course of either the internal or external negotiating process in order to achieve a successful outcome, he argued.

**Feketekuty** said that the power of negotiation lies in working with different stakeholders, which have similar interest and views. The negotiator represents a heterogeneous and complex interest of their respective society and one has to understand this dilemma of negotiator and needs to build personal trust and good relation with other country negotiator in order to obtain a successful outcome, he added.

**Feketekuty** explained the concept of interest-based negotiation and stated that no one wants to lose or sacrifice his/her interest in a negotiation process. In interest-based negotiation, the focus shifts towards creative negotiation solutions that turn as many "concessions" as possible into gain for the country making concession. This does not

mean that there are no winners and losers within individual countries, but rather there is a premium in being able to sell each concession as a double gain, he reasoned.

The art and science of interest-based negotiations has evolved from recognition of the fundamental human desire to be successful by understanding the interests of all parties in a negotiation (often diverse interests). A negotiator can better formulate ‘positive sum’ approaches that allow all parties to advance and protect some, if not all, of their interests. Such positive sum gain approaches to negotiations have been coined as “win-win” negotiations. He then described the competitive negotiation where the focus is on bargaining over the difference between negotiating positions, with each side seeking an outcome closer to its position, which is viewed as gain for the home team and loss for foreign team, he argued.

**Feketekuty** said that competitive negotiations become personalised with the foreign negotiating position treated as the morally inferior, misguided view of the foreign negotiator. In such kind of negotiations, hiding information about one’s real interests and problems is seen as a source of strength while leakage of information to the other side is seen as a source of weakness. He described the importance of preparing a comprehensive analytical framework before the negotiations. In order to be prepared for a successful negotiation, **Feketekuty** outlined the following steps:

- analyse the issues involved in negotiation;
- dialogue with domestic and foreign stakeholders;
- framing these issue;
- establish a negotiating objectives;
- establish a negotiating strategy; and
- chart the key stakeholders on both sides with their interests, priorities and concerns.

**Feketekuty** stated that an important aspect of the analysis of stakeholders is to identify them who may serve as coalition partners, and who have similar or shared interests whose participation in the process may add support and influence in the negotiation process. Sharing his personal experience of France, Germany, Britain and India with the participants, he pointed out the need for analysing the core issues such as, commercial, policy, legal, political and institutional before the negotiation. One needs to correctly frame the issues so as to achieve domestic and international support, added. While framing these negotiating issues, one should consider the following:

- The trade problem;
- The government measures or actions that create the trade problem;
- The legitimate objective of government served by the measures/actions at issues;
- The interest of coalition partners; and
- Constraints on feasible outcomes.

While describing various negotiation strategies **Feketekuty** informed that countries adopt the following strategies (or combination of two strategies) during negotiation:

- **Mercantilist Strategy:** This strategy aims at maximising exports, minimising imports
- **Regulatory Reform Strategy:** It aims at regulatory reform objectives and growth through increased competition. For example: China
- **Political Strategy:** It deflects pressure on politically sensitive policies and takes advantage of foreign pressure on politically difficult but desirable policy reforms. For example: Japan
- **Principle-Based Strategy:** It promotes adherence or acceptance of crucial principle and avoids setting new precedents. For example: India

While mentioning skills to employ at the negotiating table and good negotiating habits, **Feketekuty** explained that good negotiating habits can help to facilitate good communication among the negotiators and creates a positive atmosphere conducive to progress in the negotiation. It further facilitates the identification of win-win solutions to the negotiations. He also discussed some of the good negotiating habits such as active listening, asking questions (information is power), sharing information, use of silence, taking breaks from the negotiating table (such as going to the balcony), organising brainstorming sessions, use of objective criteria, practicing role reversal, introducing a written text document, building negotiating momentum, listening to and recording all proposed options, creating multiple solutions to satisfy interests, building a reputation and creating a win-win mentality. For the consideration of participants in order to build momentum during a negotiation, **Feketekuty** said that one must:

- build success by establishing areas of common ground, even on procedural issues;
- pick the easier issues first and continue to build common ground;
- record areas of agreement in writing as you make progress; and
- review progress by going over areas of agreement and outstanding issues.

In sum, he stated that the negotiating success depends upon economic power of coalition, commonly shared ideas of legitimacy, utility of agreement to business, sound and comprehensive analysis, identifying reasons why other party can gain from negotiating proposal, creativity in identifying win-win solutions and achievement of mutually beneficial outcomes.

### **Floor Discussions**

One of the participants remarked that with advancement of ICT, coordination in negotiation process has become effective and efficient. Indian officials face the problem of negotiating briefs wherein often he has not been told about the maximum as well as minimum position. The other problem is the lack of preparation over the background information. **Rana**, at this point, clarified that the development in communication technologies has resulted in what has been called the ‘death of distance’ on the one hand and ‘irrelevance of location’, on the other. He called the need for involving embassies and resident missions in the process of negotiation.

Another participant asked: how can one bring the up-front kind of mobilisation opinion in another country (like engagement of lobbying firm) and also mobilising the opinion up-



front in the home country? Where does India fit into Putnam's two level theory? To this, **Rana** replied that Putnam's theory is a device to reach out to a level II (domestic stakeholders) in the other country and elaborated new lobbying system with the example of Canadian Ambassador to the US Allan Gotlieb, author of the very famous book "I will be with you in a minute, Mr. Ambassador", and who used this technique to reach out to congress (US parliament), public opinion, lobbying firm, etc. **Rana** quoted another example of Germany where British Ambassador lobbied the state ministers of BadenWurtemberg and Bavaria over the union of Federal Europe. The British Ambassador did this lobbying because he was aware that these two states of Germany did not like the concept of union of Federal Europe, i.e. EU. For effective lobbying, countries are spending millions over this industry, especially Japan, he concluded.

## Session IV

### Multilateral Trading System – B K Zutshi

While discussing the multilateral trading system (MTS), B K Zutshi informed that WTO was set up in the 8<sup>th</sup> round of multilateral trade negotiations (1986-94), wherein Doha Round is the 9<sup>th</sup> round of negotiation. He said that GATT is not an institutional arrangement and had comprehensive coverage of not only trade but also investment and employment. The Uruguay Round led to the creation of WTO. Earlier, the GATT had mainly dealt with trade in goods and now the WTO and its agreements cover trade in services and intellectual property rights (IPRs). **Zutshi** pointed out the following reasons for the genesis behind the WTO:

- increasing importance of services in national economies and in international trade;
- shifts in comparative advantage;
- fragmentation of multilateral trading system;
- explosive growth in information technology;
- increasing tradability of services; and
- increasing importance of intellectual property goods in trade due to technological developments.

Discussing the fragmented nature of MTS, **Zutshi** explained that no two sets of countries had the same rights and obligations. While differentiating between WTO and GATT **Zutshi** pointed out that GATT was not an institutional mechanism rather a provisional application of a chapter of Havana Treaty. Marrakesh Agreement established the WTO as an institution, which was the third leg of the international economic order conceived in Bretton Woods. WTO has much larger coverage by inclusion of services, intellectual property rights, common dispute settlement and enforcement mechanism, forum for continuous negotiation and Trade Policy Review Mechanism (TPRM). While elaborating TPRM, he said that this forum has given the platform to periodically review the trade policy of individual countries in a non-negotiating atmosphere.

**Zutshi** elaborated the existing structure of WTO, which includes: ministerial conference (which meets after every two years); General Council; Dispute Settlement Body (DSB); and trade policy review body. Under the General Council, there are councils for trade in

goods, services, IPRs and a committee for trade and development, balance of payments, budgets and trade and environment. He mentioned that members might participate in all councils, committees, except appellate body, dispute settlement panels, textile monitoring body and plurilateral committees. He outlined that the following element constitutes the paradigm of WTO/GATT;

- Set of rules for the conduct of international trade relations among members and applicable across the board to all of them, with some exceptions, strictly defined;
- Negotiated schedules of market access commitments of individual members exchanged on reciprocal basis; and
- A mechanism for dispute settlement and enforcement.

**Zutshi** was of the view that WTO is a *sui-generis* organisation, which means member driven and member administered. It is democratic in character where value of a member's vote is the same irrespective of its trade share. It has a clearly defined remit or competence, which is confined to trade relations among its members and a credible dispute resolution system, the only one of its kind in any inter governmental organisation.

The decision-making is based on consensus although voting is possible and provided to all the members and it also combines the triple function of governance, namely: executive, legislative and judicial, **Zutshi** informed. Next, he elaborated the role and function of WTO Secretariat in detail and said that a Director General along with four Deputy Director Generals and Divisional Heads, who are mostly professionals, head the Secretariat. The Secretariat plays an important supporting role in the functioning of the system, such as it prepares background papers at the request of members for decision-making purposes, keeps record of meetings and prepare the annual reports and research based studies. The Director General has a facilitating role and specific authority for offering mediation and conciliation in dispute settlement and in appointment of members of dispute settlement panels in case of disagreement between parties. The WTO's basic principles and rules include:

- non-discrimination (two aspects namely most favoured nation and national treatment);
- prohibition on quantitative restriction on imports and exports with some exception;
- reciprocity (political economy of multilateral trading system with some special and differential treatment for developing countries);
- market access; and
- transparency.

**Zutshi** said that the WTO has certain trade measures that include fair competition (safeguards) and unfair competition (anti-dumping, subsidies and countervailing measures). He then elaborated the actual working of system and how a member country could participate effectively. While discussing the criticism of the actual working system of WTO, he was of the view that small and/or LDC delegates were not participating effectively (even some of them were absent) in meetings that involve important discussions and/or decisions. It was no different for the small group meetings (generally

referred as Green Room). He suggested the following points to enhance the working of WTO:

- a better manpower resource allocation (of LDCs and developing countries) and capacity building of delegations could be done of such members;
- ensure that the daily load of meetings is kept within reasonable limits;
- widen the horizon of transparency; and
- make the negotiating processes, efficient and inclusive; etc.

While discussing the role and participation of civil society and NGOs in WTO, **Zutshi** referred to Article V (2) of the Marrakesh Agreement that envisages appropriate arrangements being made for consultation and cooperation with the NGOs concerned with matters related to those of the WTO. He mentioned that there are issues related to the participation of NGOs during bilateral, regional and multilateral agreements that include availability of WTO document, access to dispute settlement process, right to file amicus brief and participation as observer. He was of the view that policy coherence and coordination is a concern in the multilateral trading system and it needs to be addressed through cooperative arrangements with other inter governmental organisations such as United Nations Conference on Trade and Development (UNCTAD), WHO, International Monetary Fund (IMF), World Bank, World Intellectual Property Organisation (WIPO), etc.

**Zutshi** mentioned that developing countries toil in reforming the legal framework of the MTS in pursuit of the following twin objectives:

- adequate freedom for themselves in employing commercial policy instruments to foster their industrial and economic development; and
- increase in access to world market for manufactured goods to be exported under the GATT, and, for both goods and services to be exported under the WTO.

**Zutshi** stated that in Marrakesh agreement, that established the WTO, the agreement had provisions concerning developing country members. Those provisions were recognition of general interest, fewer obligation or differing rules, longer time frame for implementation and technical assistance, he added.

While mentioning integration models, **Zutshi** explained that models include: FTAs/PTA such as ASEAN/South African Development Community (SADC)/North America Free Trade Area (NAFTA), Customs Union such as Southern African Customs Union (SACU); common market such as Common Market for Eastern & Southern Africa (COMESA); and economic union/monetary union such as EU. While elaborating Regional Integration Agreements (RIAs), he mentioned that these are exceptions to the principles of most favoured nation MFN clause, permissible under special and differential treatment (S&DT) available in trade of goods and services. Regional Trade Agreements (RTAs) have brought subsets of like-minded countries, and are able to move further, more quickly in liberalising trade flows and enhance greater market power than in the larger setting of MTAs, he argued. It is still an open question between academicians and researchers that whether FTAs/PTAs are trade creating or trade diverting, he added.

### **Floor Discussions**

**Kishan S Rana** initiated a discussion whether FTAs/PTAs are trade creating or trade diverting and referred to India-Sri Lanka FTA that has created lots of jobs and investment in Sri Lanka. **Zutshi** was of the view that after few years international community will have to resolve the problem of PTAs/RTAs since such agreements are creating problem for multilateral fora. He emphasised that if two countries can agree on solving the problem related to labour, environment, trade & investment, etc., bilaterally and regionally then why should they not think of solving the same multilaterally?

**Geza Feketekuty** opined that today the multilateral system provides a dynamic framework for member countries though the danger arises due to the halt or slowdown in the ongoing negotiations of Doha Round. He asked to keep the focus on multilateral and bilateral agreements both and advocated for a bilateral agreement between EU and US because this will bring stability in the multilateral system. Moreover, EU will certainly get support from various stakeholders in US such as labour unions, environmentalists, NGOs, etc. He stated that one should try to rationalise the system by bringing these agreements into the WTO or basically allow a plurilateral agreement to emerge since tariffs are no longer an issue in multilateral fora and the only issues are standards and regulation.

One of the participants informed that India has initiated the process of merging itself in bilateral agreement. Participants quoted the example of (India, Brazil, South Africa (IBSA) FTA, which is going to be merged into MERCOSUR and SACU and hence been termed as SACU, India, MERCOSUR (SIM) FTA.

Another participant lamented that India is not taking any bilateral negotiation on labour and environment issues. Moreover, Ministry of Labour and Industry treats labour issues completely different than trade issue and any multilateral discussion or forum has to be discussed in ILO and not in WTO. He said that there are eight core labour standards out of which India has accepted only four. Also, there are only four standards left pertaining to child labour, right to strike, etc. India has not been able to ratify them primarily because internationally the age for child labour is below 18 years, while in India it is 14. This gap is creating a problem, although India has legal provision to eliminate child labour. In reply, **Zutshi** said that India has adopted reform measures in these areas, but the enforcement system is very poor. By giving WTO or any other institution to handle and to decide whether a country has implemented their own legislation in the area of child labour or not, it is going to burden the organisation so much that there are chances of its breaking down. As specialisation increases, there is a need for more institutions rather than putting everything under the WTO.

**Geza Feketekuty** was of the view that there is a need for having clear understanding among international organisations over various issues. **Zutshi** said that international community should be capable enough to find ways to settle the disputes other than through trade sanction because trade sanction cannot be the only way to enforce. While discussing on environmental issues he stated that WTO should not be treated as a

standard organisation for every issue. He gave the example of TRIPS agreement where standard became the part of WTO.

One participant opined that countries are praising and entering into FTAs/PTAs although there is no clear proof that whether they are trade diverting or trade creating. He further pointed out that developed countries while signing FTAs/PTAs include the aspects of environment standards, labour standards, competition policy, etc. In this context, he raised the following questions:

- Whether multilateral trade agreements are creating fair trade?
- Are the developing countries (especially African countries) really getting benefited with multilateral trade agreement?
- Why is that environment standards are not being considered in India-EU FTA and India-Japan FTA?
- What about the renewed interest of WTO on energy and climate changes?

Another participant raised a question related to the impact of WTO on ILO: in what manner is the ILO process get affected by the activities of the WTO? To this, **Zutshi** replied that what the MTS does is to constrain the power play of trading nations and it is not possible to eradicate the power play in absolute terms; however, such power play can always be subject to limitation. That is why agriculture is not included and on the other hand labour issues were included because countries see ultimately a balance that it is in their interest to do so. For instance, in bilateral or regional agreements, the countries are not forced to enter into these agreements, however, it is their voluntary action, he added.

**Zutshi** explained that if someone is entering into any agreement multilaterally then there are no ex-ante standards to judge the outcome and the balance may not be in the multilateral framework but might be outside. A cost benefit analysis may prove helpful in this regards. He said that one has to decide the better off, even with limited gains, within the WTO framework or outside the organisation. While discussing the credibility of dispute settlement in WTO, he gave an example of Antigua and Barbados who took US to DSB over an Internet gambling case and the US was forced to change the commitment and pay compensation to Antigua and Barbados.

One of the participants opined that India is a champion of multilateralism but from last few years it is concentrating more on bilateral agreement. One of the reasons for this shift in interest may be due to slow progress in the Doha Round. If one looks at the future trend of the world trade then the centre of gravity would be in three places, namely: US, EU and East Asia. Unfortunately, India is not a part of any of these three and is moving strategically over bilateral agreements with West Asia and in future may hold agreements with Japan, South Korea, China, etc. But still there is no discourse on public domain regarding an FTA/PTA between India and US. He raised the question: what will be the public mood in US, if in future India signs an FTA/PTA with US?

In reply to this question, **Kishan S Rana** agreed with the participant and said that India is not a member of any agreement which includes US, EU and West Asia. India is having a hesitant dialogue with Organisation for Economic Development and Cooperation

(OECD) to be a member. Although two of the so called developing countries, namely, Mexico and South Korea have just joined this group and Singapore is another competent country that qualifies their membership though Singapore may not join OECD due to some regional credential impact.

In response to an intervention by some participant that India is not a part of the East Asia Group, **Rana** stated that he differs from the participant's view and stated that India was very reluctant towards regional integration till early 1990s, for example, joining Asia Pacific Economic Cooperation (APEC) and SAARC, though India has become a part of Asia Regional Forum (ARAF) and Asia Europe Meeting (ASEM) and also on soft security issues. ASEM is a meeting between leaders of Asia and Europe

Similarly, in ASEAN region there are two competing entities: ASEAN + 3 (China, South Korea, and Japan); and ASEAN + 3 + 3 (East Asia Summit). Now a new idea is being floated as ASEAN + 4, but it is not feasible because one cannot afford to leave Australia and New Zealand out from this group.

Regionalism is a very wide perspective and a country should not enter into a regional agreement not only because of trade and investment but also keeping in mind the political gains and a sense of security. The security may broadly include social, demographical, climate, energy, environment, etc. **Rana** cited example of China, which is a member of 40 different formal and informal integrations, while in case of India it is really difficult to find the number of integrations it has entered into. However, plugging into regional organisation has several advantages though the philosophers of multilateralism differ widely on this issue, he added.

**Geza Feketekuty** said that economic relation between India and US has grown since last decade whereby issues are getting sorted out and both the countries are on the path of cooperation with a very pragmatic approach. Before entering into any such agreement both countries should try to evolve a model in which such agreement can become fruitful for having a framework agreement with some substance, which bypasses political traps. Moreover, there is also a need of having bilateral dialogue between India and US over domestic adjustment pressure and consequences of globalisation, he argued. There will be conflicting views on how to deal with the issue of anti-globalisation. India will oppose the inclusion of some issues, which are anti-globalisation in nature and the same will be the case with the US due to social and NGO pressure. People feel that US is a rich country and hence free from any social issue but it is not true. The US also has social pressure emanating from NGOs because of democracy, he reasoned. Hence, these issues can be resolved in a very pragmatic and on case-to-case basis, project-by-project negotiation. Both countries can build the relationship with the help of proper dialogue during India-US Business Council and can move towards better understanding, he added.

## **Session V**

**Practical issues on Trade and Investment Negotiations – Kishan S. Rana, Geza Feketekuty and B. K. Zutshi**

Elaborating practical issues in trade and investment negotiations, **B K Zutshi** informed that the typology of key aspects of trade negotiation looks like multi-issue barter system. While defining barter, he explained that it implies exchange between what one wants (requests) and what one is ready to give in return (offers). Like in any type of market situation, every trader (negotiator) will attempt to get as much as possible in exchange for as little as necessary. In trade negotiating terms, this involves exploring the bottom line(s) of the negotiating partner(s), he argued. It also implies to how one could achieve win-win situation in a negotiation. Mutual bargaining is aimed at achieving a “balanced package” (which is the principle of reciprocity). Barter also implies the absence of a fungible medium of exchange or a price mechanism for determining the balance in exchanges.

**Zutshi** said why developing countries are not able to get the best returns in a negotiation because there is no ex-ante criterion for assessing the “balance” and hence one can only assess the post-facto appraisal. In such a situation, agenda setting becomes crucial wherein issues of interest to all concerned have to find a place in the agenda to improve upon the *status quo* and the same tends to be a long drawn out process. He gave the example of Uruguay Round, which took five years from 1982 to 1986 to conclude the agenda and so as in the Doha Round, which is stuck nearly from last five years, i.e. from 1996 to 2001. Hence, good negotiations require consistent positions coordinated over all negotiating areas for the duration of the negotiations.

**Zutshi** opined that the typology of negotiation can also be described as multi-stage games wherein a member or a group of members act as a catalyst initiating the pre-negotiating phase, leading to the establishment of agenda and negotiations thereon, followed in turn by post-negotiation and implementation phase. The negotiating period in turn is divided into several distinct stages. They are as follows:

- a learning process and a fact-finding exercise on various issues on the agenda;
- identification of options/signalling of preferences;
- substantive negotiations on a set of feasible solution involving conditional acceptance; and
- final stage of deal making near the perceived dead line for the conclusion of the negotiations.

**Zutshi** pointed out that negotiation can also be treated as a multi-party game wherein trade negotiations are games with many players, giving rise to great complexity because of diversity of their interests and concerns compounded by asymmetries in the bargaining power among them. He emphasised that the multi-party nature of trade negotiations create great responsibility on the negotiator because it is a channel of communication between a country’s capital and Geneva. It gives rise to coalitions to overcome the imbalance in the bargaining power and also because of common interest and concerns. He mentioned that there are various types of coalitions, namely, informal and *ad hoc*, session or issue-specific and formal multi-issue coalitions, he argued.

**Zutshi** argued that multilateral trade negotiations were carried over substantial period of time, which resulted into repeated interaction among negotiators and that in turn builds reputations of negotiators and created trust, and facilitated deal making till the end. He

emphasised that a certain degree of connivance among negotiators is necessary for successful conclusion of negotiations, stating that participating governments were not monolithic that spend more time negotiating internally than with their negotiating partners to resolve differences within the governments and with diverse interest groups such as consumers, producers and lately NGOs and Civil Society Activists. The extent of this internal process both in the pre-negotiation stage and in the period in which multilateral trade negotiations vary from country to country and from issue to issue. In the EU, the internal negotiations are quite complex and prolonged, sometimes even more difficult for them than the multilateral negotiations, he informed. Coordination in policy formulation at the national level is critical for effective participation in the multilateral negotiating process.

**Zutshi** stated that the negotiating process is strongly dependent on the true importance of an issue for the major players, which in turn depends on whether the *status quo* on an issue is bad enough or the resources invested in the multilateral trade negotiations are inadequate. Citing the example of TRIPS agreement, he said that countries are widely copying US or EU technology and hence they were losing billions of dollars. He hoped that the Doha Round is not going to fail since countries have invested so much of their resources for its successful conclusion, hence there is less probability that it will result in failure.

**Zutshi** said that in difficult situations negotiators may seek symbolic and not substantive deals, leaving the constructive ambiguities. Constructive ambiguities though avoid deadlocks but result in interpretation, and decision making is through dispute settlement process. He quoted the example of symbolic deals, i.e. Part IV of the GATT on trade and development in the Kennedy Round and enabling clause permitting tariff preferences in favour of developing countries in the Tokyo Round. Symbolic Agreements may become a significant element in the balance. Symbolic Agreements may be required for political reasons in conditions where substantive deals are not possible. He emphasised that equity is more important than efficiency and is embedded in the reciprocity principle to liberalisation, which is essential to sustain the multilateral system for political economy reasons. Although economic theory suggests efficiency and thereby welfare gains from liberalisation in the long run, the short-term adjustment costs and the distributional aspects of welfare gains cannot be overlooked in the political economy context, he concluded.

**Kishan S Rana** shared a case study the participants, which was based on India-Sri Lanka Free Trade Agreement (ISFTA), and which was signed in 1998 and came into operation in 2000. This was India's first FTA, marking a change in the country's earlier doctrinaire position that it placed exclusive reliance in the multilateral trade liberalisation process represented by WTO. **Rana** provided all the relevant details of ISFTA. In the end, participants were expected to resolve the following three questions:

1. How should tea and textiles be treated in the new Comprehensive Economic Partnership Agreement (CEPA) under negotiation?
2. What lessons do ISFTA offer for other agreements under discussion, such as the FTA with Bangladesh?



### 3. What is our wider learning from ISFTA?

Participants in groups discussed the various aspects of case study, while **Rana** facilitated the session to achieve a successful outcome on the above-mentioned questions. Then he appreciated and thanked all the participants for their effort in understanding the practical issues involved in the process of negotiation.

**Geza Feketekuty** conducted a simulation exercise on bilateral negotiation between two hypothetical countries, namely: Novartis and Sunderland, on bilateral FTA. The simulation exercise focused on the last phase of the negotiations during which a number of the most sensitive and difficult issues have to be resolved. Participants were then divided into two groups for one on one negotiation.

Each participant was given some common facts and a set of confidential instructions. In this case, Novartis was a large developed economy, and Sunderland was an advanced developing economy about one tenth the size of Novartis. The study showed an extensive economic relationship between the two countries, as a result of a large immigrant population from Sunderland in Novartis, extensive investments by Novartis companies in Sunderland, and heavy dependence of the Sunderland economy on exports to Novartis. Sunderland was also an important tourist destination for Novartis citizens, which was a major source of income in Sunderland. Novartis was among the largest trading countries in the world and it represents around 40 percent for Sunderland exports and imports. Sunderland represents less than 1 percent for Novartis trade.

After the conclusion of the negotiations, one has to review the outcome of each of the negotiations and how an optimum result could be achieved through a careful analysis of the interests, constraints and priorities of each of the two countries. **Feketekuty** explained the issues involved in the case study, including:

- Desire of Novartis to gain access for its banks & telecommunication firms in Sunderland, which are highly competitive
- Request by Sunderland for an increase in number of temporary work visa and business visa
- Labour standards
- Agriculture issues
- Textiles
- Issues related to democracy and human right (terrorism)

Negotiations started with a round of discussion (10-15 minutes) followed by analysis by **Feketekuty**. Groups (as Novartis and Sunderland) under the guidance of **Feketekuty** developed their country strategies and negotiated till they get the best deal for themselves.

## Analysis of the case study

### *Group 1*

- **Labour standards:** Sunderland negotiating authority asserted that their laws are in compliance with international standards and ILO. Novartis negotiating authority expressed concern of their stakeholders to which Sunderland authority has kindly agreed to allow a team for inspection.
- **Temporary visa:** Novartis negotiating authority agreed to review the existing rules in a particular manner that the same may not hurt the specific sectors in Sunderland such as health, food processing, etc.
- **Financial Sector:** Sunderland negotiating authority agreed to open the banking sector for Novartis though entry would primarily be registered through joint ventures and tie-ups.
- **Agriculture:** Novartis negotiating authority promised to look into (for) the policy framework within the standards agreed in the WTO.

### *Group 2*

- **Temporary work permit:** Novartis negotiating authority agreed to review and accommodate more requests from Sunderland, subject to economic and social welfare without relaxing on the issue of security concern.
- **Agriculture:** Novartis negotiating authority agreed to provide special TRQ to Sunderland but both countries could not reach to an agreement on agriculture issue.
- **Banking sector:** The negotiating authority of both countries agreed to further strengthen the relationship between two banks. They have agreed to form a sub group, which will study and strengthen cooperation in banking sectors of both the countries.
- **Labour standards:** Sunderland negotiating authority reminded that the country is in compliance with international standards. Both the negotiating authorities of Sunderland and Novartis were not able to build a consensus and hence decided to follow the declaration/convention of ILO.

### *Group 3*

The negotiating authority of both the countries appreciated each other for their respective economic success.

- **Tourism sector:** Novartis negotiating authority agreed to increase the temporary work visas because of tourism services. They mentioned that there would be delay in issuance of temporary work permit because of detailed check on background for security concern. On the other hand Sunderland negotiating authority offered the services of checking and routing out terrorism.
- **Textile:** Novartis negotiating authorities agreed that they would require fibre from Sunderland and hence the same will be imported from Sunderland.
- **Banking services:** Sunderland negotiating authority mentioned the concern of Ministry of Finance and requested the Novartis negotiating authority to discuss the matter during the visit of President of Novartis. He mentioned that Sunderland

- requires automated teller machine (ATM) machines and technical expertise (IT services) and it could be attained on collaborating with Novartis banks.
- **Labour Standards:** Sunderland negotiating authority mentioned that the issue is non-negotiable and integral because they are following the international standards and any further sanction by Novartis will not be acceptable.

#### **Group 4**

Group 4 analyse the case while crafting a trade-off between opening of banking sector in Sunderland and opening of textile sector in Novartis.

- **Banking services:** Novartis with technological advantage in banking sector can help banks of Sunderland in achieving international standards. Sunderland negotiating authority agreed to allow the banks from Novartis but in a phased manner, i.e. 25 percent of FDI or collaboration with local banks. This will help the banks of Sunderland to increase their competitiveness and also in training their employee/professionals.
- **Tourism sector:** It is an area of mutual interest between Novartis and Sunderland. Sunderland negotiating authority allowed tourists from Novartis and requested to help Sunderland in providing with high-end management and infrastructure facilities.
- **Temporary visa:** The negotiating authorities of both countries have agreed that there is a need of free movement of natural persons though the problem of terrorism needs to be resolved. Hence, as a precaution Novartis will allow movement of natural persons gradually. They will also retain the right of proper scrutiny of people because of security concerns and hence Sunderland should not treat it as non-tariff barriers.
- **Labour Standards:** Sunderland negotiating authority has kindly agreed to follow the international standards.

#### **Group 5**

The negotiating authorities of both the countries have agreed that Sunderland will follow all the international standards.

- **Temporary visa:** Novartis negotiating authority has agreed to liberalise the movement of well-trained and qualified persons subject to immigration law. Novartis has liberalised the process though it will not compromise on security issues.
- **Agriculture:** Novartis negotiating authority has agreed to lessen the restriction but will enforce the TRQ.
- **Banking services:** Sunderland negotiating authority agreed to allow banking services, though, in a limited manner (with minority stake) and in compliance with all regulatory and policy issues.

#### **Group 6**

Group 6 first highlighted all the important and high priority issues.

- **Tourism sector:** Sunderland negotiating authority agreed to allow tourist from Novartis and in return requested investment in infrastructure sector. Novartis

- negotiating authority requested Sunderland to promote tourism in their country through road shows and also invited to participate in International Tourism Fair.
- **Hospitality sector:** Novartis also agreed to finance the training of personnel from Sunderland. On the other hand Sunderland negotiating authority offered Novartis to open hotels and hospitality services in their country.
  - **Work visas:** Novartis negotiating authority mentioned that they will not compromise on security concerns and hence will not let terrorists to come in the country. While replying Sunderland negotiating authority prudently put forward the thought that Novartis should first find out the cause of terrorism and then apply restrictions on the work visas. This argument softens the way of Novartis authority and hence agreed to look at the possibility of facilitating work visas. On terrorism issue Sunderland negotiating authority agreed to support Novartis in checking and routing out terrorism. Sunderland is competent enough in checking terrorism through their efficient and effective agencies. Thus they agreed to have a periodic exchange of information on terrorism. Moreover, Sunderland negotiating authority urged Novartis to follow the same principal for illegal immigrant.
  - **Labour standard:** Both countries found a linkage between labour standards and exports of goods. Novartis wanted export of goods but they were sceptic about the public reaction over labour standards. Novartis requested that if there will be any issue in enforcement then Sunderland has to resolve the problem within their country.
  - **Agriculture:** Novartis negotiating authority formulated a structure, which was duly acceptable to Sunderland.

While analysing the case, **Geza Feketekuty** suggested the following:

- 1 Novartis wanted access to banking services in Sunderland. Novartis had strength in IT and hence an edge over various aspects of banking services in Sunderland such as ATM machines, traveller's cheque, financial services and credit cards. Novartis can settle for access to IT and related aspects in Sunderland. On the other hand, Sunderland might have pressure from stakeholder, namely: local banks as they are not competitive enough and hence like to avoid competition. Sunderland hence can offer Novartis to establish ATM machines, tourism financial services and also help in training the people. The access may be limited and only restricted to alternative financial services and not in the traditional financial services in order to avoid competition. Finance Ministry of Sunderland may have the problem of regulating foreign banks though it could be resolved by intervention of Tourism Ministry that wants the access of alternative financial services under their purview because the simplification of financial process and accessibility of ATM machines will help the tourists in Sunderland.
- 2 On agriculture, **Feketekuty** mentioned that the requesting country is Sunderland and one of the prominent stakeholders is cotton industry, which is exporting heavily and interested to have market access in Novartis. Novartis concerns were sceptic about their domestic agriculture and textile community. In agriculture they may be worried about competition from cheaper cotton and certainly want to avoid competition in short fiber cotton. Hence, they can offer quota within the

- FTA without necessarily disrupting multilateral framework agreement. Novartis can eliminate the restriction on long fiber cotton and may allow its import in the country because the domestic textile industry also requires long fiber cotton.
- 3 On visa issue, **Feketekuty** stated that the requesting country Sunderland wants to send people to Novartis. They particularly want to send young people to get trained in hospitality and banking sector. Hence, they want short-term and temporary visa. Novartis is concerned about its domestic labour union since they too were lobbying for employment in IT industry and hospitality sector. Another stakeholder in Novartis is the hospitality industry, which needs skilled manpower, and the same can be available from Sunderland.
  - 4 On terrorism, **Feketekuty** mentioned that security is a concern for Novartis though the intelligence agency of Sunderland is very effective and hence both countries can exceed cooperation among each other.
  - 5 On labour standards, **Feketekuty** pointed out that Sunderland could offer a paragraph in their schedule of commitment, wherein they can mention their labour standards. Sunderland feels that it's our own sovereignty hence we don't want any legal statement. One can provide verbal commitment and/or sideliners that Sunderland will follow all the labour standards and thereby the rule and conventions of ILO.

In the end, **Feketekuty** thanked all the participants for their efforts and making the simulation exercise successful and interesting.

### **Floor Discussion**

One of the participants asked: who sets the agenda during a multilateral negotiation? While replying to this specific question, **Zutshi** explained that a country or group of countries initiate the negotiation process. For example, during the services negotiations US initiated the process and India responded to it, whereas during the preparatory process for Marrakesh Agreement the issue of 'work programme agenda of WTO' was one of the important element of agenda. He emphasised that there has to be a balance in the agenda and one should always set the agenda pragmatically.

**Zutshi** opined that from the very beginning India has a defensive stance and hence it did not want to take any obligation during Uruguay Round except in the case of product patent for pharmaceuticals. In agriculture, India did not take any commitment on minimum imports and Aggregate Measurement of Support (AMS) because India's AMS is below the minimum level. In export subsidies, India got dispensation for continuing with two subsidies namely internal transportation and market exemption. Regarding tariffs, India bound above the operating level since the applicable levels were lower than the bound level. India bound the oil seeds at 300 percent, primary food grains at 100 percent and semi-processed at 150 percent. While mentioning the Multi Fibre Agreement (MFA) he regretted that India was not able to take advantage due to lack of awareness. He emphasise that negotiation process itself is a great learning exercise and one should try to maximise his/her knowledge base while taking part in negotiation process.

One of the participants asked: how can one maximise gains in negotiation when one is in the position of weakness? In reply to this question, **Zutshi** said that one possible way to maximise profit is to form a coalition.

## **Session VI**

### **Trade offs in Negotiations – B K Zutshi and Geza Feketekuty**

**B K Zutshi** informed that the premise and hypothesis of any negotiation is to resolve actual and potential conflicts between interacting entities at any and all levels since negotiation is a part of living in any society, for example, it begins early in the family when parents and children or husband and wife start negotiating issues. A negotiation also involves an act of sale and purchase of a good or a service, while negotiations between sovereign countries whether bilateral, plurilateral or multilateral is essentially the same process, though more complex, but with the same objective of conflict resolution in view, he argued.

While describing the concept of sovereignty, **Zutshi** said that it evolved from the divine concept of people's right and its practical manifestation is the freedom of policy and action to duly constituted organs of governance, subject to domestic laws and regulations. Interaction between sovereign states inevitably gives rise to conflicts, which can be resolved either by consultations and negotiations or by resort to force. All successful negotiations between sovereign states lead to some abridgement of the sovereign right of freedom of action, he reasoned, which essentially means trade off between the nature and extent of the loss of freedom of action from one hand and a possible gain resulting from a negotiated settlement on the other. He emphasised that another way to assess the bargain or trade off in a negotiation is to look at the deal on a cost benefit equation. He listed the main reasons for multilateral negotiations between sovereign countries as to:

- enable cross-border exchanges in goods, services and people. Examples: facilitating goods trade, cross-border communications, air traffic control, maritime navigation etc
- address the problem of having cross border implications like in case of environment, global warming, pollution; and
- maintain *status quo*, which is unacceptable or some countries are seeking improvement in the *status quo*, as in market access. A good example of the former is the incorporation of IPRs in the MTS under the Uruguay Round of negotiations

**Zutshi** stated that the set of issues mentioned above are least contentious as services cannot be provided without cooperation and understanding on a host of technical parameters. The trade off is between giving up individual country technical parameters and receiving the concerned services. It is a good bargain whichever way it may be assessed, whether as a cost benefit equation or otherwise and the outcome is particularly satisfactory if all parties have had a say in developing the technical parameters, he explained. He described the set of issues in cross-border environmental spillovers, which is more contentious as there are conflicts of interests between short-term economic costs and long term benefits of a pollution-free environment. Also, polluters and recipients of pollution may be different or pollution contribution may vary. Hence, the issue of trade

offs is a bit complicated and will need an assessment of the short-term costs and their mitigation to identify its nature and extent. However, the costs of remedial measures (by way of obligations) have to be proportional to the extent of pollution contribution. Therefore, looking at this in terms of a cost benefit equation is a good way to identify trade offs.

**Zutshi** said that the set of issues in the TRIPS agreement is the most complex and proved the most contentious in the Uruguay Round negotiations and continues to be so in some respect in the ongoing Doha Round negotiations. For instance, for India there was limited scope for trade offs within the TRIPS agreement itself largely because of India being importer of technologies and innovations rather than an exporter in this area. India therefore had to look for a trade off outside this agreement, he reasoned, and settled for the complete abrogation of the MFA agreement in the shortest possible period, but when the 10-year phase out period was proposed for the MFA, India linked it to the phase in period for product patents on pharmaceuticals and agrochemicals. There are scores of examples of trade offs between and within various agreements in the Uruguay Round.

**Zutshi** quoted the outcome of the recently concluded Bali Conference on climate change and global warming which may help in gaining some insight into trade offs in multilateral negotiations where the objective is to act for common good in circumstances of variable contribution to the creation of the problem by individual participating countries and variable impact of the costs of mitigation. This was an agenda setting conference for negotiating a successor agreement to the Kyoto Protocol for phased reduction of green house gases emissions with a view to reversing global warming and climate change trends. **Zutshi** then provided the background of Bali Conference, which took place at the backdrop of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) and the UN Human Development Report 2007-08 on climate change. IPCC forecast is for green house gases to peak by 2015, need a reduction of 25-40 percent by rich countries by 2020 in order to prevent the possibility of a 4°C rise in global temperatures. Both reports bring out the frightful consequences of inaction, particularly for some categories of countries (Island nations), which have had nothing to do with the creation of the current conditions.

It may be recalled that the Kyoto Protocol binds signatories to reducing emission of green house gases by at least 5 percent below 1990 levels over the period 2008-12. The US has not accepted the Kyoto Protocol and Australia did so only during the Bali Conference. He pointed out that judging from outcome perspective, the track record of the present schemes of reduction under the Kyoto Protocol has been poor. The outcome of the Bali conference briefly states the following consensus:

- explicit recognition of the “urgency” to address global warming and climate change;
- explicit recognition that “deep cuts in global emissions will be required”;
- to negotiate a new protocol within two years on the basis of “*quantified*” emission cuts (without binding targets) for high-income economies;
- serious consideration by lower-income economies to accept “*measurable, reportable and verifiable*” mitigation action;

- to curb deforestation so as to reduce emissions from that source;
- help and facilitate transfer of mitigation technology to developing countries;
- help poor countries to meet the immediate challenge of adapting to climate change; and
- establishment of an adaptation fund for this purpose

**Zutshi** was of the view that the actual negotiations for the protocol with commitments and obligations have to be concluded within two years, and, going by past experience and present indications, it will be a very difficult and a tough negotiating process. He described that the approach for such negotiations should be as follows:

1. The essence of the issue is apportioning responsibility for mitigation of the problem among the participants.
2. In any collaborative effort to address this issue, mitigation obligation ought to bear some proportion to the contribution in the creation of the problem in the first instance. Proportionality in fact is a well-recognised principle in addressing environmental issues.

He then illustrated (see Table) that CO<sub>2</sub> emission contribution of a select group of developed and developing countries.

Country	Per capita CO <sub>2</sub> emission (Annual/Tonnes)	Total Emission 2004 (Thousand Metric Tonnes)
US	20.0	20.6
Australia	19.0	-
UK	9.0	19.8
China	4.0	3.8
India	1.1	1.2
Russia	-	10.6

From the data presented in the Table, it is quite evident that the developed, industrialised countries are almost wholly responsible for the creation of the problem considering that the half-life of CO<sub>2</sub> is 150 years. At present, developing countries' contribution is marginal. The inherent tension and hence the trade off in this is between short/medium term costs and long term sustainability of the earth's eco system, he argued.

**Zutshi** said that at the macro level, the trade off is obvious, accept the short/medium term costs for long-term sustainability of our planet. It is not a bad bargain. Indeed, it is the only sensible bargain from the intergenerational equity point of view. For developed countries, it means sacrificing current levels of consumption to some extent and for developing countries it is to sacrifice growth and aspirations (to eliminate poverty) until economically viable clean energy technologies become available, he added.

**Zutshi** questioned: is it a good bargain or a fair trade off for groups of countries whose contribution to the creation of the problem is so vastly different? The answer to the



question is certainly “No” because the developed country’s position (particularly the US and Australia until recently with the EU position somewhat nuanced) has been to doubt the science of climate change projections. Even when acknowledged, to seek to put the mitigation burden equally on developing countries by asking them to accept quantitative restrictions on further increase in green house gases emissions. They have particularly targeted large and growing economies like those of India and China. India hosts 17 percent of the world population but emits only few percent of global green house gases. A fair bargain in this case would be to seek restrictions on a global normative per capita emission basis.

In light of the above, **Zutshi** continued, the Bali framework agreement has preserved the position of both sides in as much as quantitative targets for developed countries are not expressly included, though reduction will be in “quantitative” terms and for developing countries the mitigation action does not include quantitative reductions. The other elements of balance are regarding transfer of clean technologies, assistance to developing countries to meet the challenges of climate change, he added.

It is a balanced trade off in terms of the framework agenda. However, it must be emphasised that this is only the first step. It will be a long drawn out process and it is difficult to guess the final outcome.

On bilateral negotiations, **Zutshi** stated that there is no complication of interest and concerns among many parties having to be on board, but it can be quite complicated depending on the issue under negotiations. In this context, he quoted the controversial Indo-US civil nuclear cooperation deal, which is a continuing threat to the survival of the present UPA Government. He suggested to browse through the negotiating objectives in this deal and then analyse it in terms of how much has been achieved so far, as the full negotiating process for operationalisation of the agreement is contingent on the outcome of negotiations with the International Atomic Energy Agency (IAEA) and the Nuclear Supplier Groups (NSG). Thereafter, assess the price India has paid or will pay for realising the negotiating objectives. India’s main objective in these negotiations has been to:

- gain access to fissile material, technology and know how (including dual use technology) for civil nuclear energy production but at the same time retain complete freedom in the matter of development of its strategic nuclear weapon programme without outside interference;
- continue to have the freedom to test nuclear devices in future even though India has declared a voluntary moratorium on further testing; and
- gain access to fissile material and spare parts for the civil nuclear plants built with imported fuel and materials following the entry into force of the agreement for the lifetime of any such nuclear plants in case of any future testing guaranty to the effect that India will have.

**Zutshi** mentioned that India has agreed to separate its strategic and civil nuclear programmes and to place the latter under surveillance by the international community through IAEA. The agreement will end India’s isolation and pariah status as a nuclear

power and will allow India access to fissile material and dual use equipment and technology for overall development but specifically help us in realising the objective of energy security, he argued. The essential trade off here is between access to nuclear technology, know how, equipment and fissile material for building civil nuclear plants for development and energy security purposes, in return to place (for placing) our civil nuclear programme under international scrutiny and surveillance. At the end of the discussion, **Zutshi** raised the following questions, which are worth pondering, for the consideration of participants:

1. Is it a fair bargain and how does one assess the balance of advantage in the deal?
2. Are the critics right in suggesting that India has failed to safeguard its strategic and security interests and that in case of future testing, India will attract sanctions, denial of access to nuclear fuels and technology and forced to return fuel and materials supplied under the agreement?
3. Are the safeguards in this regard in the 123 agreement credible and legally binding on the US in view of the provisions of the Hyde Act, the enabling legislation for the 123 agreement?
4. Is it possible for India to ensure its energy security in the absence of access to civil nuclear materials and technology?
5. Is there an expectation that India be treated as a full-fledged nuclear power at par with the five declared nuclear power countries? Is that expectation realistic?
6. Is it a fair trade off? What does it look like in terms of a cost benefit equation, given that:
  - a) India's strategic programme is outside the purview of the agreement and India is free to develop this programme in the light of its own perception of its security needs
  - b) The agreement is silent on India's sovereign right to undertake further tests in future.
  - c) India has secured a commitment on building reserves of fissionable material for the lifetime of the nuclear power plants in order to avoid possible disruption of supplies in the event of India testing in future and NSG imposing ban on further supplies.

**Zutshi** further mentioned that critics have created an impression that the US administration is the permit issuing authority for testing nuclear test. He asked who has appointed US or any other country to decide on such issues, emphasising that although US has a legislation, which says that if a country undertakes nuclear test some consequences will follow. India needs to decide whether it is ready to face all consequences and in future India would be a much stronger economic power, hence, US will not impose any sanction/restriction, he reasoned. This will further lead to a question: what are the larger foreign policy-related geo-political and strategic implications of the agreement?

### **Floor Discussions**

One of the participants expressed his concern about the myth in relation to the nuclear deal with US and mentioned that few years back India has been harping that the nuclear scientist and capability is so high in the country it did not lack technology, knowledge

and hence will not seek support from any outside agency/country. The day this agreement was on the table Indian Government started lobbying that its nuclear scientists do not have knowledge and capabilities. When the government started selling this proposal in the country the entire emphasis was that India is a power deficient country, and the deal is going to be panacea and India can generate huge amount of electricity from this deal and unfortunately the same has been thoroughly exposed, he stated.

Another participant mentioned that it is an established fact that India intends to convert its thorium reserves (which are abundantly present) into plutonium and then into uranium 235. The said process of conversion has been very slow, and hence, need to access this Uranium fissile material from outside is essential. Another point is that India will be able to add with nuclear power at least 5 to 6 percent of total power capacity but it will be very useful in meeting the peaking power deficit along with hydropower. **Zutshi** replied that our scientist although are working very efficiently there is no harm in importing such technology from abroad instead of spending billions on research.

Taking the discussion further on negotiation of nuclear deal between India and US, a participant pointed out the politics involved in the deal. He expressed that how one can enter into such a strategic commitment under the deal when the political opinion or the public opinion is not able to fully grasp the agreement and its implication. On this, another participant responded that it is very difficult to have transparency in negotiations particularly with respect to such sensitive issues such as nuclear deal or in the Siachin talks and that such negotiation cannot be brought under public domain because of their very nature. Thus the participants discussed that the entire issue of nuclear deal has journeyed from politics to other nuances. One of the participants informed that Indian nuclear energy technology is cheapest in the world.

While discussing Bali conference participants opined that it was not a good agreement since everyone claims for victory. The discussions have not produced much outcomes and the Kyoto Protocol proves to be a failure. He further stated that the intergovernmental panel on climate change is underestimating the gravity of fact that it is a threat.

**Geza Feketekuty** took the discussion forward by suggesting that this is the time when world could benefit from the government in US. As US will move to left parties labour issues, social issues will come to the forefront. He further stated that not only American public but also the government in US should have imposed taxes on the gasoline, like Europeans, so as to reduce the consumption level and keeping in view the exhaustible nature of gasoline. **Feketekuty** did not mention much about the trade offs but mentioned some finer points on the negotiations between India and US. With reference to climate change, he said that there is a major shift in US on this issue, not only on part of government accepting the carbon budget but also the big corporations like General Motors etc., have shown interest in the carbon budgeting.

**Geza Feketekuty** shared his experiences on how a global consensus was built on trade in services issues to be included in the WTO. The greatest breakthrough on services was

made in offside conferences that involved stakeholders, opinion leaders from industry, press, government and academia. He stated that Bali conference was a success because people were not put inside the pressure cooker negotiations but there was continuous brainstorming session. In such situations, people understand the issue and each other's concern. In order to tackle the anti globalisation reaction in any country, the business community should be involved, he argued.

## **Session VII**

### **Current State of Doha Round of Negotiations – B. K. Zutshi and Geza Feketekuty**

This session began with interventions from participants. One participant enquired about understanding the issues that are creating hurdle in furtherance of the Doha Round, while the other was interested in understanding the assessment of negotiating tactics experiences from the previous rounds of negotiations. Therefore, the resource persons decided to get into the intricacies of the Doha Round of negotiations with overall involvement of the participants rather than going in a presentation style. This session was more of an interactive session between all the participants and the resource persons.

**Geza Feketekuty** opined that the Doha Round will not be concluded before the year 2010 because no member country including the US is interested in pushing ahead the round. The prospect of getting these kinds of negotiations arise only when one has firm negotiating authority. For the US, such authority to negotiate will come only after the 2008 US presidential election though the new government may not immediately deal with the issue, as they will have several other domestic priorities, which means there will be a further delay in the Round. On the conclusion of the Doha Round, he said that the political timetable is not right in various countries such as several new leaders in Europe will first prioritise their issues at the domestic level to come to terms with the Doha round. Similarly, India and China need to contribute more to the Doha Round, though they do not have the right kind of political timetable either, with latter not ready to do anything before the Olympic Games, he argued.

At this, one of the participants asked **Feketekuty** whether these negotiations could have been done differently keeping in view the aforementioned issue of timetable. **Feketekuty** reacted positively and agreed with the participant that it could have been possible, citing an example of US and India in this regard. He said that the main issue lies in the fact that how do we overcome the gap in perception regarding any issue, for example, India says it has contributed a lot to the Doha Round by bringing down its tariff level significantly and why it should do more, which is quite a legitimate claim. However, on analysis, there is another angle to this issue: USA negotiators say they have been taking all the imports in services from India and that there is huge dislocation due to shift in back-office works to India and therefore they cannot go back to Congress and say that they have entered a deal with India where India has not given us the market access. Thus the only way to deal with these gaps in perception is to communicate effectively which will sooner or later pave way to overcome these political hurdles.

One of the participants then raised the issue of exchange rates and whether such issue could be dealt under the aegis of the WTO. Varied viewpoints on the issue generated a lively debate. **Feketekuty** suggested that for a round to end in fair conclusion, the technical work should not be stopped and that the round should not be suspended. The work of consensus building may go on as it is a part of the process called fermentation which will ultimately bring us to the conclusion of the round and hence the win-win situation in negotiations.

At this point, **Zutshi** began his deliberation on the Doha Round by differentiating the Doha Round from the Uruguay Round. He pointed out that it was premature to start this round as in Uruguay Round the member countries have accepted new negotiations on services in the year 2005 while in agriculture in the year 2006. However, going into the political economy side of the round, he apprised, that US and EU both did not want this round and so they put forward demands that they knew would not be acceptable to the developing and other countries like issues of inclusion of environment, investment etc. He explained that India too was not prepared for this round and so took up a bogey of non-implementation and made a clamour over the issue of imbalance in outcomes. He further suggested that the power equations in the Doha Round have changed with the Chinese entry and simultaneous economic development of India.

One of the participants asked why china is not involved in the present Quad of US, EU, India and Brazil. In reply, **Zutshi** stated that China is still in the learning phase, while **Feketekuty** pointed out that China is hanging back with a notion that no one will pay attention but is convinced that this tactic of China will not be successful. **Zutshi** further stated that the problem lies in the fact that the negotiating mandate is interpreted differently and hence an area of conflict. What is not sorted in this round is the necessary disciplines so that when commitments are made they should be adhered to, and that there should not be any circumvention to the issue.

**Zutshi** pointed out that some of the issues involved were non-existent or were not anticipated to be trade distorting like the blue box payments. However, these issues have now been demonstrated as trade distorting. Much of these issues are quite different in Doha Round than what were there in the Uruguay Round. He narrated the dilemma regarding non-agricultural market access (NAMA) negotiations and said that there is still enough flexibility to accommodate the developed country provided India safeguards its interest in agriculture and gets its desired outcome in services particularly in Mode 1. However, there has been absolutely no response from the US on this and hence the gap.

The discussion shifted from one topic to other ranging from the issues in immigration to change in basic US strategy and anti-globalisation reaction in US and in some of the political parties in India. **Feketekuty** underlined an important point that the real gain will come only from the dynamic growth levels and not from reallocation of boxes or through comparative advantage. He suggested a general equilibrium to which **Zutshi** agreed by citing an example that agriculture export of India boomed with minor reduction in domestic support.

The session concluded with a thought that when India would adopt the process of track II diplomacy, or there would be lack of scholarly input that really makes it difficult for government to negotiate. The participants and the panel suggested that sometimes it is difficult for the government to talk to stakeholders for various reasons and unless India develops networking it cannot have the database from which it can formulate a strategy. Hence, there should be more studies, broader consultation and a think tank to support the government with requisite inputs.

## **Session VIII**

### **Preferential Trading Agreement and India – N. C. Pahariya**

**N C Pahariya** stated that the current wave of PTAs has given rise to a lively debate between the free trade economists, who view the arrangement as harmful and others who see them as beneficial. He was of the view that all countries in the world are pursuing PTAs vigorously and the number is currently over 300. He mentioned that there are several factors contributed to the proliferation of RTAs. They are as follows:

- Multilateral trade negotiations have narrowed down the national policy space for developing countries, hence regional economic cooperation can provide some means to help countries to manage the financial shocks and crises, such as those witnessed towards the end of the 1990s in many developing countries of Latin and Central America and East Asia;
- Uncertainties about the future of the multilateral trade negotiations under the aegis of GATT/WTO, system following the failure to launch a round in Seattle, and the subsequent difficulties in reaching agreements following the Doha ministerial meeting; and
- A desire to leverage the strength of numbers into larger markets and enhance regional cooperation on a range of trade and non-trade issues.

**Pahariya** was of the view that RTAs have now assumed a more prominent place on the international development agenda, as regional economic cooperation occurs in various forms and degrees, and generally aims at increasing cross-border linkages and deepening interpenetration of economic activity for the mutual benefit of economies within a geographic region. He then made a distinction between policy induced integration (i.e. regionalism), which involves formal economic cooperation arrangements and market-driven integration (i.e. regionalisation), which is spurred by regional growth dynamics, the emergence of international production networks and related FDI flows.

**Pahariya** defined PTAs as a union of two or more countries in which goods produced is subject to lower barriers on trade than the goods produced outside the union. He mentioned that the MFN clause in Article I of the GATT forbids member countries from pursuing discriminatory trade policies against one another. PTAs are, thus, in conflict with Article I of GATT and had to be accommodated through a variety of additional provisions. There exist three alternative provisions for trade preferences within the GATT/WTO system:

1. Developed countries can give developing countries *one-way* (unilateral or non-reciprocal) trade preferences. This provision is the basis of the Generalised

- System of Preferences (GSP, 1968), designed to promote the exports from developing to developed countries.
2. Under the Enabling Clause (1979), developing countries can exchange virtually any trade preferences to which they agree. This provision is intended to promote trade among developing countries themselves.
  3. Under Article XXIV of GATT, any two or more members of WTO can form an FTA or Custom Union. The Article XXIV of GATT/WTO, allows members to form such arrangements provided they eliminate, rather than just lower, within union trade barriers on “substantially all trade”.

**Pahariya** further elaborated the nature of FTAs, custom union, common market and economic union. While providing the historical perspective, he mentioned that prior to early 1980s PTAs were limited to arrangements within Western Europe, i.e. the European Community (EC) and European Free Trade Area (EFTA). Throughout this earlier period, while the EC widened and deepened its integration, the US remained singularly committed to the multilateral approach. All this changed, however, when, at the GATT ministerial in November 1982, the US began efforts to start the 8<sup>th</sup> round of multilateral trade negotiations was unable to persuade the EC to go along. Recognising that PTAs were the only means left for keeping the process of trade liberalisation afloat, the US went on to conclude an FTA with Israel in 1985 and Canada in 1989. Moreover, the EC, renamed as the EU following the Maastricht Treaty, has moved aggressively to conclude FTAs with its neighbors in Eastern and Central Europe and with Baltic Republics while the US went on to promote the idea of a FTA of the Americas.

**Pahariya** then, with the help of graphs, described the concept of trade creation and trade diversion as introduced by Jacob Viner in 1950s and outlined the four new developments in PTAs, which include:

1. **Transport Costs and PTAs:** Several authors have strongly advocated that the presence of transport costs make PTAs among the geographically proximate or contiguous countries an attractive option.
2. **Rules of Origin in PTAs:** Rules of Origin (ROO) ensure that imports from third parties do not benefit from negotiated preferential treatment. There are three basic methods of determining ROO for goods, namely: value-added; changes in tariff classification and process definitions; and often combinations of these.
3. **Non-traditional Gains:** It was argued by economists and policy analysts that small developing countries forming PTAs with developed countries stand to gain much beyond the so-called static welfare effects. The dispute settlement system adopted in NAFTA and EU is much superior and effective as they allow even private parties to seek redressal of trade disputes as compared to the WTO’s dispute settlement mechanism, which is available exclusively to member-country governments.
4. **Peace Dividend:** Regional trading blocs may be an instrument for peace and prosperity. Trade and commerce have been the most effective way of establishing peace between rival nations.

While elaborating peace dividend he said that the World War II witnessed the worst enmity between the Allied forces led by UK and US, on the one hand, and the Axis powers, led by Germany, on the other. The bitter memories of the Nazi atrocities were vivid amongst the people especially of Poland, Holland and Russia. It took several decades after the War to mend relations between the people of Britain and those of France. The formation of the EU gave rise to higher levels of economic wellbeing resulting from enhanced economic cooperation, he argued. This in turn was instrumental in receding the enmity and bitterness from the World War II. He stated that in the similar vein the formation of South Asian Free Trade Area (SAFTA) between India and Pakistan along with 5 other South Asian nations (Bangladesh, Nepal, Bhutan, Maldives and Sri Lanka) may provide an all-time opportunity to forge sustained peaceful political and economic relations between the two nations based on mutual respect and cooperation much similar to what the European nations have developed under the umbrella of the EU.

**Pahariya** described the two models of PTAs namely: shallow integration and deep integration. Shallow integration implies lowering or eliminating barriers to the movement of goods and services across national borders within the region preferential reduction in tariffs and non-tariff barriers amongst member countries. On the other hand, deep integration go beyond border protection measures, which involve facilitating financial and FDI flows, regulatory harmonisation and removal of NTBs to trade, harmonisation of domestic tax and subsidy policy, liberalising the movement of labour within RTA, environment within RTA, etc.

**Pahariya** mentioned that an important feature of the rise in the number of RTAs is the growing number of overlapping agreements which is referred by Prof. Bhagwati (1995) as the “spaghetti bowl” of preferences and more recently Baldwin (2004), while analysing proliferation of PTAs in East Asia, preferred to call as “Noodle Bowl” syndrome. He argued that whether the PTAs are a building block or a stumbling block to multilateral trade agreements. He cited that in the view of some researchers, these PTAs reduce global welfare and undermine the institutional architecture of the multilateral trading system. Supporters of RTAs discount the extent to which trade diversion exceeds trade creation under RTAs, and argue that in some circumstances smaller RTAs may be easier for countries to negotiate. Those sceptical of RTAs argue that they are result in a “hub and spoke” type of growth, which the smaller being disadvantaged.

**Pahariya** pointed out that India is a champion of multilateralism and recently has turned to regional/bilateral PTAs, realising that regionalism will stay and in the wake of failure of the Doha Development Agenda (DDA) there was no alternative except to move on to the path of preferential trade liberalisation – both bilaterally as well as regionally. In the past, India had adopted a very cautious approach to regionalism, and was engaged in only a few bilateral/regional initiatives, mainly through PTAs. Recognising that RTAs would continue to feature in world trade for a long time, and with the intention of expanding its export market, India began concluding in-principle agreements as a possible step towards CECAs which cover free trade in goods (zero custom duty regime within a fixed timeframe on items covering substantial trade, and a relatively small negative list of sensitive items with no or limited duty concessions), services, investment and identified



areas of economic cooperation. CECAs are in a way involve “deeper integration” at the regional level, he reasoned.

India has signed bilateral FTAs with Sri Lanka (1999), Thailand (2004) and Singapore (2005). All these FTAs are now operational. The seven member countries of SAARC signed the SAFTA in January 2004. Framework Agreement on CECA with ASEAN; Bay of Bengal Initiative for Multi Sectoral Technical and Economic Cooperation (BIMSTEC); MERCOSURE; SACU; Gulf Cooperation Council (GCC) and Afghanistan FTA on goods, services and investment are under negotiations. Joint Study Groups have been set-up for FTA feasibility with respect to China, Japan, South Korea, Chile, Malaysia, Indonesia and other countries. He outlined the following policy options, which one should consider before entering any PTAs/FTAs.

- The best option for a developing country like India is to promote multilateral trade negotiations under the aegis of WTO.
- The present economic and political conditions of developing countries do not favour for any deep integration RTAs.
- India, being a large multi-party democratic country, popular political support and resolution of the stakeholders’ concerns are urgently required for much awaited economic reforms hindering disinvestments and foreign investment and bring in labour and legal reforms, curtailing fiscal deficits, flexible and transparent tax regime etc, for which the governments, both at the Centre and the States have to engage different political parties in national consensus building on economic reforms through informal meetings, public debates, seminars street/corner meetings etc. The civil society organisations (CSOs), academics and mass media should be encouraged to play greater effective positive role in this endeavour.
- Developed countries on their part should help create conditions for deep integration by developing countries through a flexible attitude. They need to assist them in capacity building and technological upgradation.
- For making FTAs/RTAs beneficial, the contracting parties should have minimum items in their sensitive/negative lists. Developing countries should have only those commodities/services in their negative lists, which are related to food security and livelihood concerns including national security concerns. Developed countries on their part should not have any negative list at all as they are able to display greater negotiating power and skills especially at the bilateral/regional levels.
- There is no conclusive empirical evidence as to whether formation of FTA/RTA by the developing countries, with developing countries and/or with developed countries or a combination thereof is more or less beneficial to the partners. But perhaps, the World Bank has rightly opined that South-North FTAs are more beneficial to developing countries. The South-South FTAs cannot be overlooked, simply on economic or technical basis.

### **Floor Discussions**

One of the participants remarked that there is a difference between theory of PTAs/RTAs and its implementation in practicality. Hence, one cannot afford to be dependent on the

research reports prepared by a research organisations and academia. Moreover, such integrations are also politically motivated (for example India-ASEAN FTA) where one cannot assess the cost benefit analysis. He goes on to suggest that such economic modelling is based on certain assumptions whereas negotiations are a completely different game and one has to consider national interest. In response, **Pahariya** said that it is always important to refer a study before negotiation. A research report is prepared while keeping in mind the different variables, which are qualitative in nature. Economists undergo rigorous econometric study followed by stakeholder consultations. Hence, one can refer these research reports before negotiating tariffs, safeguard measures, etc. and also strategise himself/herself for the models of integration, i.e. shallow or deep integration. These reports act as track II diplomacy that includes consultation outside government.

Another participant was of the view that one should commission research a year before the FTA negotiation, so that an economist or researcher could generate quality research over the pros and cons of FTA. He further mentioned that any PTAs/FTAs affects the third country hence one need to analyse it very carefully. He urged the need for a separate department on trade and commercial diplomacy within the Department of Commerce and cited the outcomes of Ashok Mitra committee, which has also recommended the same. One of the participants mentioned the problem of manpower and technical expertise during the negotiations. The participants cited the example of India-Israel FTA where Indian side comprise of three negotiators and Israel side comprise of one hundred and fifty representing various department and ministry. Another participant mentioned the need of institutionalising the research organisation and initiating the process of e-governance in India. He felt an important need of inter ministerial networking in order to get valuable inputs foe negotiations.

### **Closing and Evaluation**

In the closing session, participants were requested to provide the feedback on the training programme. They were of the opinion that the training programme provided them with better understanding and exposure 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. Most of the participants expressed their interest to attend similar training programmes in future.

During the session, **Geza Feketekuty** reiterated the need of having wider consultation with stakeholders before negotiations, while **Kishan S Rana** gave the example of administrative officers of Singapore and reminded the participants the pillars of economic diplomacy, which are, trade promotion, investment promotion, harvesting technology, tourism and managing economic aid. **Rana** mentioned that image of a country is based on the goods, services and the action performed to enhance it. He quoted the example of Economic Development Board (EDB) of Singapore. The per capita income of Singapore is approximately US\$30,000 and EDB has made a significant contribution in the economy. While describing the work done by diplomats in Singapore he mentioned that they reached out to the potential investors and influenced them to invest in the country. He referred that Singapore has always promoted young people while sending a delegation

for negotiations. These young people have generated investments for the country, negotiated agreements and have done a splendid job of promoting the country's image.

At the end of the training programme **Bipul Chatterjee** thanked all the participants and resource persons for their valued participation and contribution in the training programme. The feedback analysis report has been prepared separately and enclosed along with this report.

List of participants

S. No	Name	Coordinates
1.	<b>Yogendra Kumar</b>	Senior Directing Staff (Foreign Service) National Defence College Ministry of Defence 6, Tees January Marg New Delhi 110011 Phone: 91-11-23012390 Fax: 91-11-23012390 Mobile: 09811433527 Email: <a href="mailto:y.kumar@mea.gov.in">y.kumar@mea.gov.in</a>
2.	<b>O P Arya</b>	Additional Secretary Department of Commerce Ministry of Commerce and Industry Government of India Room No. 243, Udyog Bhawan New Delhi 110011 Phone: 91-11-23061100 Fax: 91-11-23061100 Email: <a href="mailto:oparya@nic.in">oparya@nic.in</a>
3.	<b>Dr Sutanu Behuria</b>	Additional Secretary and Financial Advisor Department of Commerce Ministry of Commerce and Industry Government of India Room No. 35, Udyog Bhawan New Delhi 110011 Phone: 91-11-23063215 Fax: 91-11-23063215 Mobile: 9871105435 Email: <a href="mailto:sutanu2911@yahoo.com">sutanu2911@yahoo.com</a>
4.	<b>Bharathi Sivaswami Sihag</b>	Joint Secretary Department of Commerce Ministry of Commerce and Industry Government of India Room No. 233, Udyog Bhawan New Delhi 110011 Phone: 91-11-23062526 Fax: 91-11-23062526 Mobile: 9312606676 Email: <a href="mailto:bharathi.sihag@nic.in">bharathi.sihag@nic.in</a>

5.	<b>Neeraj Kumar Gupta</b>	Joint Secretary Department of Commerce Ministry of Commerce and Industry Government of India Room No. 288, Udyog Bhawan New Delhi 110011 Phone: 91-11-23062660 Fax: 91-11-23063418 Mobile: 9871206697 Email: <a href="mailto:neerajk.gupta@nic.in">neerajk.gupta@nic.in</a>
6.	<b>Dr R B Lal</b>	Inspector General of Forests Ministry of Environment & Forests Government of India Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi 110003 Phone: 91-11-24360740 Fax: 91-11-24366842 Mobile: 09868707565 Email: <a href="mailto:igfwl-mef@nic.in">igfwl-mef@nic.in</a>
7.	<b>R S Ahlawat</b>	Economic Advisor Ministry of Environment & Forests Government of India Room No. 908, Paryavaran Bhavan, CGO Complex, Lodhi Road New Delhi 110003 Phone: 91-11-24362663 Fax: 91-11-24362663 Mobile: 09810585705 Email: <a href="mailto:rsahlawat-mef@nic.in">rsahlawat-mef@nic.in</a>
8.	<b>Dr Ashok Sahu</b>	Economic Advisor Ministry of Labour and Employment Government of India 105, Shram Shakti Bhavan, Rafi Marg New Delhi 110001 Phone: 91-11-23731588 Fax: 91-11-23731588 Mobile: 09818949896 Email: <a href="mailto:sahua@rediffmail.com">sahua@rediffmail.com</a>
9.	<b>L N Gupta</b>	Resident Commissioner Orissa Investment & Export Promotion Office (OIEPO) Government of Orissa

		Orissa Niwas, 4-Bordoloi Marg, Chanakyapuri New Delhi 110021 Phone: 91-11-23019771/23018498 Fax: 91-11-23010839 Mobile: 09818149640 Email: <a href="mailto:rc_orissa@yahoo.co.in">rc_orissa@yahoo.co.in</a> <a href="mailto:lnguptaorissa@sify.com">lnguptaorissa@sify.com</a>
10.	<b>Sanjeev Kaushal</b>	Joint Secretary and Additional Development Commissioner Office of Development Commissioner Ministry of Micro, Small and Medium Enterprises Government of India Nirman Bhavan, 7 <sup>th</sup> Floor, Maulana Azad Road, New Delhi Phone: 91-11-23062694 Fax: 91-11-23061972 Mobile: 09891500443 Email: <a href="mailto:msme@msme.in">msme@msme.in</a>
11.	<b>Madhav Lal, IAS</b>	Director General J&K Institute of Management, Public Administration and Rural Development (IMPA) Vikas Bhawan, Rail Head Complex, Jammu – 180012 Phone: 91-191-2474389 Fax: 91-191-2473778 Mobile: 09419000688 Email: <a href="mailto:madhavlal@gmail.com">madhavlal@gmail.com</a>
12.	<b>Vinay Kumar Tripathi</b>	Additional Director Commerce, Industries and Employment Division, Government of Madhya Pradesh Bhopal Phone: 91-755-2677988 Fax 91-755-2441841 Mobile: 09425608803 Email: <a href="mailto:vktripathi@mp.nic.in">vktripathi@mp.nic.in</a>

Agenda

<b>Day 1 (Tuesday): 08.01.2008</b>	
1300-2000	<i>Arrival/Registration of Participants</i>
2000	<i>Dinner</i>
<b>Day 2 (Wednesday): 09.01.2008</b>	
0830-1000	<i>Inaugural</i>
0830-0840	<i>Pradeep S. Mehta, Director General, CIRC</i>
0840-0850	<i>Kishan Rana, Former Ambassador of India and Course Director, CIRC</i>
0850-0900	<i>B. K. Zutshi, Member, Governing Council, CIRC</i>
0900-0910	<i>G. K. Pillai, Secretary, Department of Commerce, Government of India</i>
0910-0930	<i>Participants' Expectations</i>
0930-1000	<i>Tea/Coffee</i>
1000-1130	<p><b>Session 1: Domestic Political Economy Challenges for India</b>            What have been the achievements of the Indian economy in the present era of globalisation and economic liberalisation; Indian political economy environment (i.e. political compulsion due to a coalition government, on account of policy uncertainties, issues such as SEZs, etc); outsiders' perception about the Indian development and economic situation (India's image and how to improve) by drawing from documents such as the World Bank's Doing Business Report, UNDP's Human Development Report. etc.  <b>G. K. Pillai</b></p>
1130-1300	<p><b>Session 2: International Diplomatic Environment</b>            Diplomacy (Narrow definition vis-à-vis broad definition); difference between commercial and economic diplomacy; understanding of international diplomatic environment; integrated relationships among issues; trade offs and leverage across sectors; evolving 'whole of government' approaches; optimal management of human resources; networking skills, motivation and understanding intercultural management.  <b>Kishan Rana</b></p>
1300-1400	<i>Lunch</i>
1400-1530	<p><b>Session 3: A Practical Approach to Negotiations</b>            An examination of the broad issues in negotiations, with particular reference to the Indian style, and possible improvements in our external negotiation process  <b>Kishan Rana</b></p>

	<i>Geza Feketekuty, President, Institute for Trade and Commercial Diplomacy</i>
1530-1600	<i>Tea/Coffee</i>
1600-1800	<b>Session 4: Multilateral Trading System</b> Emergence of the new multilateral trade order - from GATT to WTO; understanding process, mechanics, key aspects, approaches of multilateral trade negotiation; WTO negotiation process; role and responsibility of the representatives, members, the WTO secretariat, NGOs, etc; role and responsibility of the chairpersons' of various councils, committees and negotiating groups; acceding member as a participant in multilateral trade negotiation. <i>B. K. Zutshi</i>
2000	<b>Dinner</b>
<b>Day 3 (Thursday): 10.01.2008</b>	
0900-1100	<b>Session 5: Practical Issues on Trade and Investment Negotiations</b> The inter-cultural dimension of negotiations; discussion of negotiation issues in depth, taking into account the experience of participants, and considering practical ways in which we can apply negotiation theory to our requirements. This would include an examination of case studies and simulation exercises. <i>Kishan Rana</i> <i>Geza Feketekuty</i> <i>B. K. Zutshi</i>
1100-1130	<i>Tea/Coffee</i>
1130-1300	<b>Session 5: Cont...</b>
1300-1400	<b>Lunch</b>
1400-1600	<b>Session 6: Trade-offs in Negotiation</b> 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; how to accomplish 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. <i>B. K. Zutshi</i> <i>Geza Feketekuty</i>
1600-1630	<i>Tea/Coffee</i>
2000	<b>Social Evening at Chokhi Dhani</b>
<b>Day 4 (Friday): 11.01.2008</b>	
0900-1100	<b>Session 7: Current State of the Doha Round of Negotiations</b> Overview of Doha Development Round; reasons for the launch of this particular round, main issues and concerns in Goods, Agriculture, Non Agricultural Market Access (NAMA); other related issues under the ongoing negotiations; role of different coalitions, the possible consequences of long term suspension or



	collapse and potential gains from the round. <i>Geza Feketekuty</i> <i>B. K. Zutshi</i>
1100-1130	<i>Tea/Coffee</i>
1130-1300	<b>Session 8: Preferential Trading Arrangements and India</b> India's approach on FTAs/RTAs (vis-a-vis its approach on multilateral liberalisation) through the example of India – EU FTA negotiation; the relative importance of politics and economics in this approach (is it only to enhance trade or to have a more robust strategic partnership in future) <i>N. C. Pahariya, Fellow, CUTS International</i>
1300-1400	<i>Lunch</i>
1400-1530	<i>Closing</i>
1400-1515	<b>Evaluation of the Training Seminar</b> <i>Kishan Rana</i> <i>B. K. Zutshi</i> <i>Geza Feketekuty</i>
1515-1530	<b>Closing Remarks</b> <i>Bipul Chatterjee</i>
1530	<b>Tea/Coffee &amp; Departure</b>