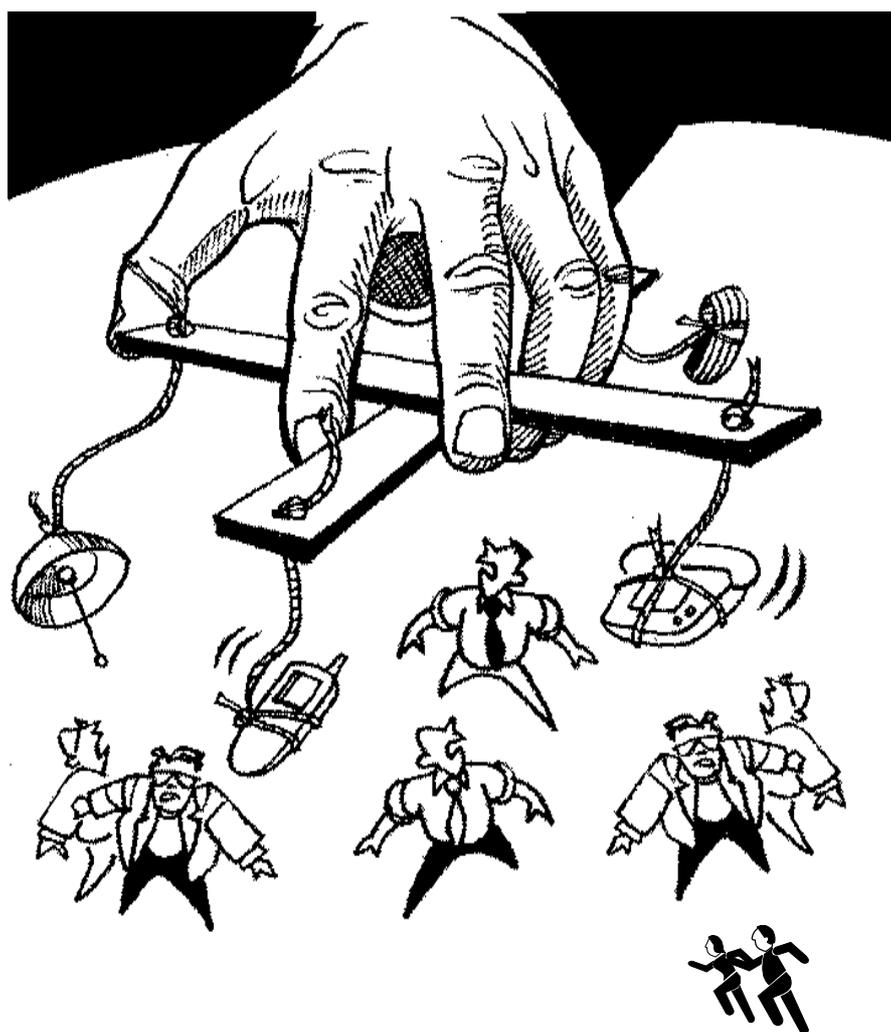


CUTS Centre for  
Competition, Investment  
& Economic Regulation  
**Discussion Paper**

# Capacity Building on Infrastructure Regulatory Issues



CUTS – C-CIER

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# Preface

With the opening up of the Indian economy in 1991, it was felt that regulation in the newly privatised sectors was crucial for ensuring a level playing field for the new entrants and also curbing monopolistic practices. Without a regulatory mechanism in place, the very objectives for which economic decontrol was sought could have been negated.

Infrastructure was among the first sectors to be privatised. But, it was a mammoth task to create a regulatory system, given the sheer size and reach of the infrastructure sector, which would guarantee efficient functioning of the opened-up sector. Moreover, services were in a mess under government control, running huge losses with rampant red tape.

Lack of leadership was one of the main reasons why the sector was full of incongruities before 1991. The Government followed a top-down approach; frequent changes in the leadership resulted in lackadaisical implementation in most of the service sectors.

However, after 1991, the Government could not take any more chances with such flaws, since now the sector was privatised. Moreover, the initial phase of privatisation did not bring in as many private players into the field as expected. This increased the need for a regulatory authority, which would keep track of the various actors — the Government and the private players — and also ensure healthy competition in the sector that would facilitate sectoral growth.

Still, simply creating a regulatory body does not mean the end of the road. Functional capacity of a regulator cannot be overlooked. Therefore, it is necessary that the regulatory body is autonomous; otherwise, it will exist only in name and would be susceptible to political pressure.

For the regulatory authority to be able to carry out its tasks in a desirable manner, it is essential that it possesses the required base to perform various functions. This calls for capacity-building of the personnel who will man the regulatory body. The capacity of any institution to manage its internal system and to comprehend changes in the external system is crucial to its taking forward its objectives and aims. Without the required capacity and skill, the regulatory mechanism will degenerate.

In this context, let me quote from an article by Ms. Mythili Bhusnurmath (“Bringing Bipasa Indoors”, Economic Times, 2004.06.14):

*“Today these institutions don’t have the wherewithal to discharge their responsibilities efficiently. They need help in capacity-building, in setting up proper systems of accounting, implementation, monitoring, auditing—the entire gamut of functions that is virtually non-existent at present.”*

The role of civil society is critical in shaping regulatory capacity. Civil society helps in resource mobilisation and experience-sharing, which, in turn, helps regulatory agencies to form a strong platform from where they can build further.

This document is intended to kick-start a debate on regulatory issues among the stakeholders — government, regulatory bodies and civil society — to catalyse an appropriate regulatory environment in India.

**Jaipur**  
February, 2004  
(Revised July 2004)

**Pradeep S. Mehta**  
Secretary General

## Chapter 1

# Introduction

Infrastructure sector reforms in India started in 1991-92, with policy initiatives permitting private participation, initially in power and telecom and subsequently in ports, roads and civil aviation. For well-established theoretical reasons, these are sectors where there are strong arguments for monopolies and/or large oligopolies, rather than small competitors (for example, economies of scale). Therefore, no one would have expected these industries to get fragmented with the setting in of privatisation and decontrol. However, with public and private monopolies in the market, infrastructure regulations assumed paramount importance, not only to protect consumers from harmful monopolistic practices but also to ensure that producers got a level playing field and a stable policy environment.

*Contrary to well-established practices, regulatory reforms were not a part of the original agenda for sectoral reforms.*

Contrary to well-established practices, regulatory reforms were not part of the original agenda for sectoral reforms in India. Only when the first wave of privatisation and liberalisation failed to arouse sufficient private interest did it dawn on policy makers that independent sectoral regulation was essential to build confidence among private investors to assure them that their interests were protected. Besides, unregulated privatisation meant that public monopolies would turn into private ones, especially in sectors having natural monopolies or limited competition. The British experience of the Thatcherite privatisation has shown how damaging this can be.

*Such a situation could have probably been avoided, had there been an effective regulator.*

For example, Enron, which set up a power plant in India, negotiated a power purchasing agreement with the Government that guaranteed outrageously high rates. There are allegations that side payments were made in the deal. The allegations of side payments are not authenticated, but one may wonder if charging such a high rate may not amount to cheating consumers. Obviously, the deal created a lot of controversy and a spat between Enron and the Government, vitiating the entire business environment, particularly in the power sector, making private investors shy of stepping into it. Such a situation could probably have been avoided, had there been an effective regulator.

*Regulators have been established for sectors like capital market and insurance, while Reserve Bank of India has been regulating the banking sector since long.*

With this realisation, independent regulatory bodies have been set up in the power, telecom and port sectors. Similarly, regulators have been established for sectors like capital market and insurance, while the Reserve Bank of India has been regulating the banking sector since long. Discussions are on to set up similar bodies for water and other sectors too.

However, a major difficulty that the evolution of an appropriate regulatory environment faces is that of moving from a command-and-control type regime to a regulatory framework that promotes

efficiency and consumer interests without stunting entrepreneurship. Very often, people concerned with regulation fail to distinguish between control and regulation and, hence, we see the emergence of “re-control”, rather than regulation. The problem gets compounded as retired bureaucrats and judges, without proper understanding and orientation, are chosen to head most of these regulatory bodies.

*Very often, people concerned with regulation fail to distinguish between control and regulation, and hence we see the emergence of “re-control” rather than regulation.*

### **Managing Regulation and Transition**

Whenever we talk about regulation or regulatory capacity-building, we have a natural tendency to look towards the US and Europe, especially the UK, for model regulatory arrangements or examples. The reasons are not difficult to understand. The regulatory literature itself is dominated by experiences of the US and Europe. However, there are two major problems in adopting the US or European models of regulation in India. We need to understand whether these models are suitable for India, due to political, economic and cultural differences. Secondly, even if these models are quite appropriate for us, we cannot adopt them overnight, given the prevailing situation. There has to be a transition phase. We must keep in mind that managing transition is much more complex than managing regulation *per se*.

*If we now suddenly declare that everybody has to pay a user fee for using roads or getting water, this will bring resentment and widespread protests, especially in rural areas.*

India is not only a country with enormous diversity across regions but diversity persists even within regions, especially between rural and urban areas. This is of crucial significance, as more than 70 percent of our population lives in rural areas, whose interface with our policy makers is at the minimum. Ignoring this peculiarity may derail the evolution of an effective regulatory regime. For example, traditionally, roads and water have been considered as free public goods in our society. If suddenly it is declared that everybody has to pay a user fee for using roads or getting water, this will bring resentment and widespread protests, especially in rural areas. However, there is one section of the population which would not mind paying user charges. Similarly, farmers in many States have been getting free electricity. Introduction of full user charges for them at one go will definitely create problems and may even derail the process.

*Very often, we tend to take a shock therapy approach, then later blame lack of political will for its failure.*

It is quite obvious that one of the important steps in promoting effective regulatory regime is sensitising the consumers. A related requirement is political will. However, a gradual approach needs to be adopted. Very often, we tend to take a shock therapy approach and later, lack of political will is blamed for its failure. This does not make any sense. It is not practical to adopt an approach that is difficult to accept politically.

The challenge, therefore, is adoption of a regulatory approach that is both culturally and politically acceptable, while managing the transition process and evolving an appropriate road map for it. There cannot be any ready-made models for this. We have to develop our own model. Looking at the experiences of other countries will definitely help. Although the US and European experiences would be helpful, it would be more useful to draw lessons from other developing countries, especially those nearer home, i.e., some of the Asian countries.

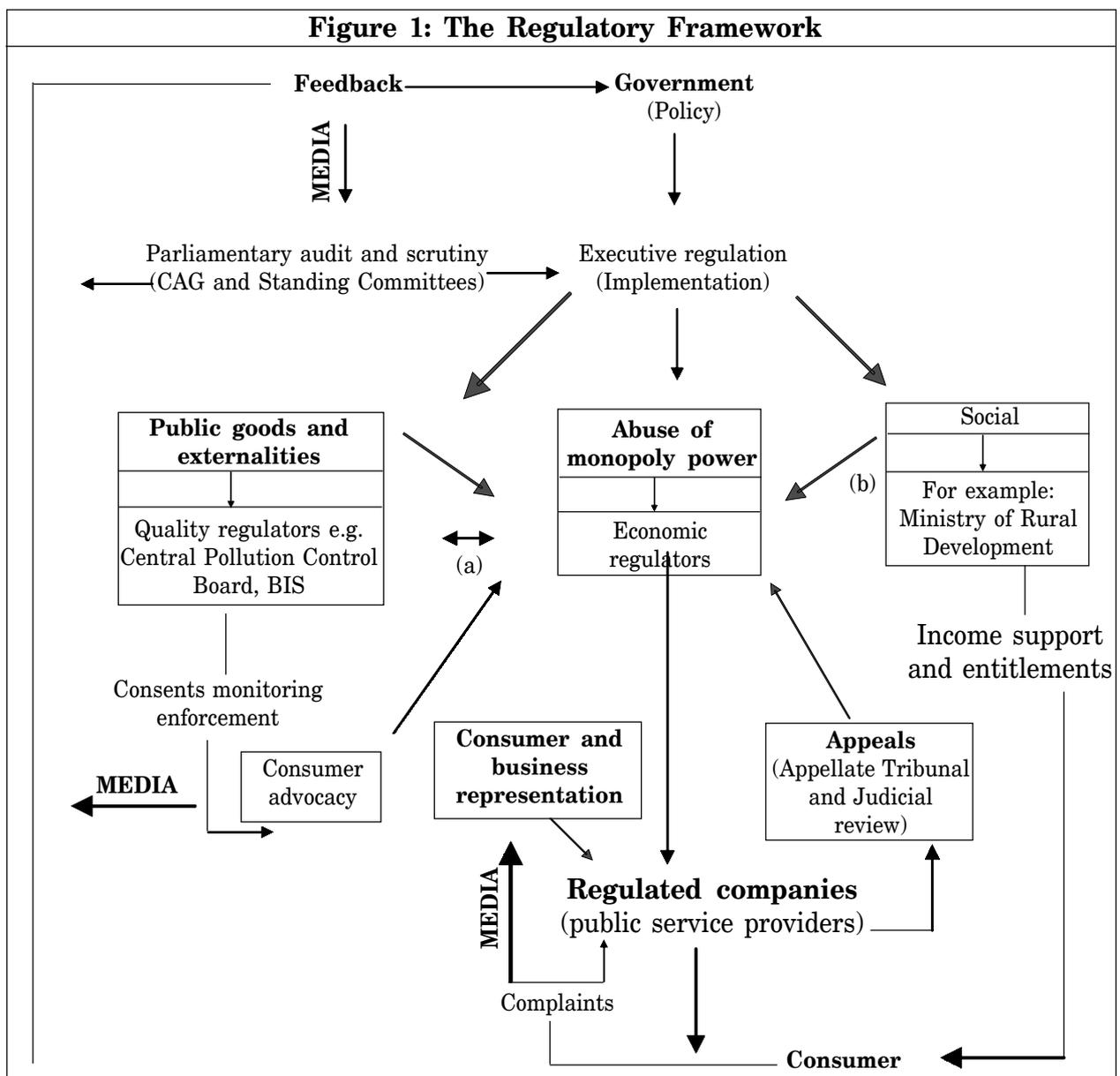
Before we proceed further, it would be worthwhile to briefly discuss the purposes of regulation and the functions of a regulator. Regulation has to be there for a purpose and not for its own sake. The key objective of a regulator is to correct market failures and to ensure accessibility. Broadly, there are three types of situations that arise from market failures:

1. Abuse of monopoly power;
2. Public goods and externalities; and
3. Unacceptable distributional outcomes.

*Regulation has to be there for a purpose and not for its own sake.*

The first two situations of market failures are often treated separately from the third, based on the argument that the first two are about economic efficiency (technical and allocative), while the third is fundamentally a 'political economic decision'.

The regulatory framework of the country should bring together the various elements of a regulatory framework to correct different types of market failures. The unified regulatory framework can be understood from the following diagram:



### Issues for Discussion

- How regulators should view the issue of transition and what role should they play in managing it?
- The form of privatisation acts/initial contracts between the Government and the firms taking over the public sector units like restructured electric utilities.
- The social and cultural dimensions that regulators need to consider.
- The implications of the increasing role of markets in infrastructure from social and environmental perspectives.
- What should be the nature and extent of autonomy that the regulators should enjoy?
- What are the regulatory models that have successfully been implemented in developing countries that can be instructive?

## Chapter 2

# The State of Play

### What Have the Regulators Achieved?

*In India, regulatory laws were enacted to achieve a set of objectives, most important of them being providing a fair, predictable and congenial environment that promotes sectoral growth.*

In India, regulatory laws were enacted to achieve a set of objectives, most important of them being providing a fair, predictable and congenial environment that promotes sectoral growth. The main functions of the regulators included tariff regulation, standards setting and improving the quality of services, promotion of competition, promoting efficiency and protection of consumer interests. It would be useful to look, in some detail, into some of these functions and also what the different regulators have achieved so far.

#### *Tariff Regulation and Competition*

*With the first stage of reforms achieving only limited success, the Government has realised the importance of user charges sufficient to cover supply costs.*

All forms of regulatory legislation focus on tariff regulation as the primary function of a regulatory authority. At the time of government control of infrastructure pricing, prices were way below costs and there was heavy cross-subsidisation of services, which was often done in an ad hoc manner. The situation is, of course, not very different today. Still, with the first stage of reforms achieving only limited success, the Government has realised the importance of user charges sufficient to cover supply costs. In the process, it has also felt the hazards of cross-subsidisation and the importance of targeting subsidies in a well-planned manner.

*In the power sector, tariffs are determined rather than regulated.*

The above principles have been broadly followed in the process of reforms in the telecom sector. The other sectors are still to catch up. In the telecom sector, regulatory intervention and competition have led to a phenomenal decline in the rates of long distance calls and subscriber trunk dialling (STD) costs, as well as in the costs of cellular and other services, such as the Internet. However, in the power sector, tariffs are determined rather than regulated. As a result, the tariff structure continues to be highly distorted. Regarding cross-subsidisation, despite persistent efforts to phase it out, very few regulators have taken proactive measures. West Bengal and Tamil Nadu Electricity Regulatory Commissions are among them.

However, one has to bear in mind that a regulator's job is not to remove cross-subsidisation. Indeed, a regulator may force a service provider to do away with some amount of cross-subsidisation to ensure that prices charged are not too high for a particular group of consumers. After all, a service provider should not be forced to cross-subsidise beyond a level. Undoubtedly, cross-subsidisation in the power sector is too high and is not sustainable in the long run. Nevertheless, government interference in the affairs of service providers in most States results in high levels of cross-subsidy. Suppliers should be allowed to bring to an end the cross-subsidies in a phased manner.

***One major reason for the unwillingness of the private players to invest is regulatory uncertainty.***

Technological progress had certainly introduced competition in the telecom sector. But, without effective regulation, competition would not have furnished its benefits to consumers. In the power sector, on the other hand, no attempt has been made to bring in competition, even when it could have been possible, to some extent. The government-owned electricity boards/corporations have not been privatised so far in any of the States, except Delhi and Orissa, and they continue to run inefficiently. One major reason for the unwillingness of the private players to enter the sector is regulatory uncertainty. Other reasons are unrealistic estimation of losses, receivables and loss reduction targets and a limited number of private players.

Even though most of the regulatory commissions have come out with Tariff Direction Papers, indicating the direction in which they would be moving in the future, tariff continues to be determined on a short-term basis.

#### *Standards Setting*

***Without penalties or other financial consequences, service providers are unlikely to have an incentive to invest resources for improving the QOS.***

This is one of the two most important functions of the regulators, as tariffs and standards setting normally constitute the primary functions of a sectoral regulator. Unfortunately, this has not received adequate attention of most of the regulators. For example, one can hardly get a quality supply of electricity, as frequent power cuts and voltage fluctuations are the order of the day.

Similarly, in the telecommunications sector, the quality of service and connectivity are often very poor, though TRAI is to be commended for at least drawing attention to Quality of Service (QOS) and establishing standards for the same. But, in TRAI's regulations, there are no penalties for not meeting the QOS standards. Without penalties or other financial consequences, service providers are unlikely to have an incentive to invest resources for improving the QOS.

***Sri Lanka has instituted the QOS standards and customers are compensated if the service provider does not meet the standard.***

Thus, lack of penalties for poor performance has considerably weakened the effectiveness of the QOS standards. Sri Lanka has enforced QOS standards and customers are compensated, if the service provider does not meet those standards. This system proved that the purpose of the penalty was not to cause financial drain for the company but to ensure improvement in service. After all, setting standards and ensuring that the service providers follow those requires substantial technical expertise among the regulators, which is currently not adequately available in India. Therefore, even if the TRAI decides to impose penalties for sub-standard performance, several questions remain: Firstly, what form should the penalty take? Secondly, how would TRAI determine the maximum amount of penalty to be imposed? And, thirdly, how would the TRAI apportion the maximum penalty level between the various performance measures.

#### *Efficiency and Consumer Protection*

Regulatory legislation for the electricity sector calls upon the regulators to improve efficiency in the sector, while in the telecom sector, the regulator is mandated to recommend to the Government

“measures to facilitate competition and promote efficiency in the operations of the telecommunication services so as to facilitate growth in such services”. Nonetheless, ideal regulatory mechanism involves improving efficiency through indirect means like issuing guidelines, suggestions and regulation of tariff, rather than issuing orders that may amount to interference with the management of service providers. This approach could be found in telecom and port sectors, where regulators used tariff-fixing as an instrument to improve efficiency.

*In the telecom sector, the regulator is mandated to recommend to the Government “measures to facilitate competition and promote efficiency in the operations of the telecommunication services so as to facilitate growth in such services”.*

In the electricity sector, however, all regulators have tried to improve efficiency, mainly by issuing orders to reduce transmission and distribution (T&D) losses. Often, the targets set initially by the regulators have proved to be too high to be attainable. Many regulatory commissions have suggested to the utilities to bring about productive efficiency through rationalisation of manpower by introducing voluntary retirement schemes. Some of these measures amount to interference in the management of the companies.

One may, of course, argue that enterprises in the electricity sector being controlled by governments are unlikely to take such measures, unless forced by an independent regulator. This is an issue of management of transition. On the other hand, the danger is that the regulators may start believing that this is their regular jobs and may become over zealous. Moreover, private investors will be shy of investing in the sector, if they see such over zealousness in the regulators.

*However, the danger is that the regulators may start believing that these are their regular jobs and may become overzealous.*

Another pitfall of regulatory over zealousness is that it may lead to loss of credibility among the stakeholders. For example, the Rajasthan Electricity Regulatory Commission (RERC) had issued an order to the three distribution companies in the State to bring down T&D losses by 5.4 percent every year, which, in any case, was on the higher side. But, what happened is exactly the opposite. T&D losses actually went up over the years following the order. This tarnished the image of the RERC, as the public found it ineffective in doing a job that was not its job anyway. Indeed, this is an example of failure to distinguish between control and regulation. Therefore, clear terms of reference for regulators are a must.

*Moreover, what is referred to as T&D losses are actually a theft of power and thus, an issue of governance and rule of law instead of regulation.*

Moreover, what are referred to as T&D losses are actually a theft of power and, therefore, not an issue of regulation, but that of governance and the rule of law. The Kanungo Committee report on power sector reforms in Orissa observed, “Billing and collection efficiency under the privatised distribution companies (DISCOMs), far from improving, actually worsened, and rampant theft of electricity continued unabated.” In contrast to this, West Bengal and Maharashtra were relatively successful in curbing theft. This was possible because of the involvement of police as well as the local people, especially in West Bengal. This pre-supposes effective institutions which facilitate trade and commerce overall, such as the independent and effective judicial and law enforcement system, to ensure the enforcement of contracts between the producers and the consumers. The State has to strengthen all such systems, not only sector-specific regulatory agencies.

***Transparency is an essential requirement for an effective regulation.***

Transparency is an essential requirement for an effective regulation. Some of the regulators have directed the regulated utilities to adopt various measures to bring in transparency in the overall system and also to come up with a revised Code of Supply and Consumer Charter. For instance, the Himachal Pradesh Electricity Regulatory Commission has directed the Electricity Board to maintain a fixed-assets register and provide generation, transmission and distribution costs separately.

An effective regulator requires comparable information, accounting as well as general, such as production and distribution. The definitions have to be clear so that meaningful comparison is possible. In the absence of objective and good quality information, regulators will be at the mercy of the regulated to supply information. The Karnataka Electricity Regulatory Commission has a consumer cell which has the responsibility to directly interact with consumers in order to get their views on various issues, before the Commission takes a decision on any matter. Similarly, the TRAI issues consultation papers on various subjects and conducts open-house discussions in select metros to solicit comments and suggestions from all the concerned stakeholders. This can be an alternative mode of getting feedback and collecting information.

***Consumer satisfaction in the power sector is low perhaps lower than what it was in the pre-reforms era.***

However, the overall impact of regulatory measures in India is not visible, either in terms of improvement in efficiency or quality of services provided, except in the telecom sector. In fact, consumer satisfaction in the power sector is pretty low, perhaps lower than what it was in the pre-reforms era.

### **What is Lacking?**

Sectoral growth is the common objective of the Government and the regulators. Unfortunately, this is often forgotten. For the orderly growth of a sector, regular consultation among the industry, the government, the regulators and other stakeholders is essential. So far, barring the TRAI, no regulator has either put down its thoughts on issues related to creation of an environment that will facilitate the growth of the sector, or shared its vision with the Government or other stakeholders.

***Sectoral growth is the common objective of the government and the regulators. Unfortunately, this is often forgotten.***

Secondly, so far as progressive tariff rationalisation is concerned, better data and improved accounting are required. In case of an integrated monopoly providing different services, it is necessary to maintain separate accounts for different services, as this will facilitate transparency in the determination of the costs of a particular service.

Thirdly, there is lack of co-ordination between the infrastructure regulators and other Government departments/agencies responsible for making and implementing Foreign Direct Investment (FDI) and related policies. For instance, in the power sector, there has been very little, or no, interest evinced by the private sector to invest lately, due to lengthy procedures for granting of licences, even though single-window clearance facility is in place. In addition, the Enron fiasco has also caused many independent power producers and distributors to shelve their plans of investing in the sector.

The functioning of the newly established regulators, like the TRAI, SEBI (Securities and Exchange Board of India) and many of the state electricity regulators, have been shrouded with controversy. Controversies were on issues like autonomy or government interference, impartiality and, of course, competence. Comparatively, the Reserve Bank of India (RBI), which has a long history of regulating the banking sector, has been doing its job quite well, even during the current deregulated policy environment, primarily because of its own huge capacity built over the years.

*Most of our regulators are not experts from the relevant sectors and are primarily bureaucrats or from the judiciary, with little or no experience and understanding of the science of regulation.*

One important reason for the above-mentioned state of affairs involving a broad range of areas and actors is the lack of sufficient capacity-building initiatives, especially for the regulators. Regulatory capacity-building is extremely important, given that regulation is a new territory for India. In fact, most of our regulators do not have expertise on the relevant sectors and are largely taken from the bureaucracy, or from the judiciary, with little or no experience and understanding of the science of regulation. For example, the Secretaries of the State Electricity Regulatory Commissions are, by and large, IAS officers who serve in these capacities for brief periods and then get transferred. Most of these officers bring with them the hangover of earlier command-and-control regime. Very often, they fail to distinguish between control and regulation. The situation gets worsened by the appointment of retired bureaucrats and judges as the heads of the regulatory bodies, because they are not even willing to learn. However, this has become a norm, rather than an exception.

#### Issues for Discussion

- How should the regulators deal with the issue of cross-subsidisation?
- How, or where, to divide the line between ‘regulation of companies’ and ‘interference in their internal management’?
- What are the issues that regulators should address to promote sectoral growth and which of the government departments/agencies need to be involved?

## Chapter 3

# Capacity-building - Critical Issues

The critical component of capacity is related to the perspective that drives the intellectual and conceptual analysis of the regulatory structures and practices in the national policy-making space. The perspective includes values, ethics, history and the political ground that create the foundation of markets.

*It is this capacity which provides a strong basis for taking an autonomous and independent position on issues of market distortions without being subject to political interference and regulatory apprehension.*

Experience suggests that the material resource base is an important element of capacity, as far as regulatory institutions are concerned. This includes the physical infrastructure and other assets and resources. It is also important to provide financial and functional autonomy, as it provides a strong basis for taking independent position on issues of market distortions, without being subject to political interference and regulatory apprehension.

Another critical component of capacity is related to institution-building. It involves the internal and external relationships and linkages. The capacity of an institution to manage its internal system and procedures is crucial for fostering and pursuing its mission and purpose. In this context, the internal capacity to relate and respond to the external environment and become adaptive and resilient is a prerequisite for achieving the goals of the organisation. Therefore, enhancing the capacity for organisational management and renewal is critical for its success.

*The capacity of an institution to manage its internal systems and procedures is crucial to foster and pursue its mission and purpose.*

External relationships and linkages are equally important. Different groups of stakeholders have different expectations from the regulators and, very often, these are conflicting. Consumers expect lower prices, but the regulators cannot be populist at the cost of the financial health of the service providers. But, failing to meet popular expectations can bring criticisms that may create credibility problems for the regulators. Thus, regulators should be able to communicate their viewpoints and concerns to different stakeholders in an appropriate manner.

*Consumers expect lower prices but the regulators cannot be populists at the cost of the health of service providers.*

Capacity-building should underpin the following desirable principles:

**1. Local context:** It is essential to have locally-based, locally-articulated and locally-originated capacity for critical reflection, learning, documentation and dissemination. The local bodies know and understand their constituency and their needs better than anyone else. Capacity-building initiatives should be looked at in this context and should be related to the work the regulators are involved in. Therefore, interventions towards building capacity of regulatory agencies should be rooted into the changing context and requirements of the institutions themselves (See Box 1).

*The ongoing nature of capacity building encourages acknowledgement of its dynamic and procedural nature as opposed to mere events and structure.*

*It is also well recognised that for effective enforcement of regulations, a vocal and well-informed constituency is an imperative.*

**2. Continuous and ongoing process:** This view implies that capacity formation in an institution is an ongoing and long-term process. At different stages in the life of an institution, different types of capacities may become important. The ongoing nature of capacity-building encourages the acknowledgement of its dynamic and procedural nature, as opposed to mere events and structure.

**3. Futuristic in approach:** Capacity-building has to be in relation to a search for relevance, identity and clarity of roles and perspective-building. It needs to be more futuristic in its approach. It is important to look at the sector's future needs and see how best one can use different methodologies to enhance existing capacities.

**4. A systemic approach:** Capacity-building should be looked at with a systemic approach. There are other sets of actors whose capacities have to be enhanced to strike a balance. This would operationally mean building effective linkages, coalitions and alliances between the range of regulators and other economic and development actors.

### **Box 1: The Bidding Imbroglia under the Indian Telecom Policy, 1994**

Pursuant to the Telecom Policy, 1994, a competitive bidding process was adopted for issuing licences for Cellular Telephone Services, the Basic Telephone Services and Radio-paging Services.

The Government adopted a competitive bidding process which meant that the main criteria for the selection of a licensee would be the amount of annual licence fee it proposed to give to the Department of Telecommunications (DoT) at the end of each year during the term of the licence. Although there were certain other specified criteria, the main weightage was given to the quantum of the licence fee.

The response of the private sector to the invitation for tenders was quite remarkable. Completely unrealistic amounts were quoted as licence fee. Most bidders employed foreign consultants who used data of calling patterns in countries like Singapore and Hong Kong to draw conclusions about places say like Bahraich in the State of Uttar Pradesh (India). Certain companies went on to quote, and were eventually awarded licences, annual fees that were four times the bidding companies' total net worth. Bids were accepted and licences awarded, for all practical purposes, solely on the amount of licence fee quoted and on no other relevant criteria such as the track record of the bidding consortium, the ability of the licensee to implement the licence, the viability of the fees being quoted, the technical soundness of the bidding consortium, etc. These are essential pre-requisites of the licensing process and should, ordinarily, be the responsibility of the independent regulator. Moreover, the price-conscious Indian consumer was not willing to change his telephoning habits, refusing to answer calls on his mobile (and if he did so very sparingly) when a much cheaper fixed or land-line could serve the same purpose.

The DoT failed to make the essential examination and analysis before accepting the bids and the consequences of the grant of such licences were felt almost immediately. Certain licensees could not even execute the licences awarded to them, as they could not come up with the advance licence fee that had to be given at the time of the execution of the licence. Thirteen basic licences failed to be executed, and went into a second round of competitive bidding, which attracted very poor response. The resulting arrears of aggregate licence fee owed to the Government by various telecom licensees of the specified services stood at Rs.35,725 million by the end of April'99.

*Source: "Regulation of Utilities – A Case Study of the Liberalisation of the Indian Telecommunication Sector", unpublished dissertation by Arun K. Thiruvengadam submitted for the National Law School of India University (2001).*

## The Whom and What of Capacity Building

### *For Whom*

*Not all types of recipients of capacity building will be administered all the modules, but a combination of some of them depending upon the proposed functional responsibilities of the trainee.*

Most of our regulators, be they Central or State (as in the case of the power sector), are constrained by lack of financial and human resources. The problem of human resources is more critical. Even if the Government provides enough funds to the regulators, getting people with adequate knowledge, skills and attitude will continue to be a challenge, at least in the short to medium run.

As mentioned before, regulation is a new area in India. It is, therefore, difficult for the authorities to find personnel who are trained in the techno-economic and legal aspects of regulation. Hence, it is necessary that the staff get training outside with a similar authority or institution. On-the-job training will, of course, evolve as the personnel progress. In addition, it is also well recognised that for effective enforcement of regulations, a vocal and well-informed constituency is imperative. This will require a strategic and comprehensive approach, as the capacity-building programme will need to be targeted at several levels:

- the staff and members of the regulatory authorities;
- select representatives of the service providers;
- the staff of relevant government departments/agencies at national and sub-national levels;
- the staff and members of voluntary organisations, including consumer groups;
- the staff and members of trade unions, especially of the service providers;
- the legislators at the national and sub-national levels;
- the staff and members of the competition authority; and
- members/chairpersons of consumer forums at the national, state and district levels.

*Competition cannot thrive under these conditions, and eventually, all firms but one exit the market.*

The strategic approach to a capacity-building programme will need to take care of:

- strengthening the capacity of the institutions dealing with the regulatory issues; and
- providing the backbone/infrastructure for effective implementation.

### *What*

*Economic regulation is seen then as the necessary and explicit public or governmental intervention into a market to achieve a public policy or a social objective that the market fails to accomplish on its own.*

A typical capacity-building programme will have the following modules. Not all types of recipients of capacity-building will be administered all the modules, but a combination of some of them, depending upon the proposed functional responsibilities of the trainee:

- Perspectives on Regulation and Economic Development;
- Technical Know-how Issues;
- Legal Issues in Regulation;
- Financial Planning and Control;
- Market Analysis and Demand Forecasting;
- Tariffs and Standards Setting;
- Promotion and Maintenance of Competition;
- Planning, Monitoring and Evaluation;
- Research and Survey Methodology;
- Regulatory Impact Assessment;
- Participatory Training Methodology (Training of Trainers); and
- Advocacy and Communication Skills.

## Box 2: Development of Regulatory Capacity in Argentina

Although a well-defined regulatory framework was legally in place in Argentina after the privatisation of telecommunications, regulatory practice did not conform to the framework. Charged with regulatory responsibilities in November 1990, the Comision Nacional de Telecomunicaciones (CNT) did little until the end of 1991. No clear regulatory processes were developed and a backlog of decisions began to pile up. Experienced staff was lacking, as were resources to hire additional staff, or even pay the existing staff, on a regular basis.

The outcome of these regulatory and staffing gaps was that the development of new telecommunication services proceeded slowly. This was due, in part, to CNT's failure to formulate standards and processes for issuing licences, making most of these services uneconomic. Meanwhile a number of radio operators and telephone co-operatives, faced with little or no regulation, started operations without licences. Consumers also suffered from CNT's inability to effectively address service complaints.

Since mid-1993 – almost three years after the beginning of the reform process – CNT improved its performance, in particular with respect to the concerns of consumers. A team of outside consultants working with CNT made progress in developing strategies and procedures. Moreover, after some early difficulties in the selection process, CNT's top staff (six directors) is now in place. The selection was made by an independent private recruitment company after a rigorous screening of 125 professionals and its five nominees were retained as directors, including the president.

Progress in Argentina's telecommunication sector has been significant, and privatisation has been able to move ahead in spite of the delays in implementing regulatory changes.

Source: "Infrastructure for Development", World Development Report 1994, Oxford University Press.

***For goods and services that can be provided by competitive markets, the markets by themselves will go a long way toward meeting these goals.***

***It is not possible to understand regulatory issues in a particular sector without understanding the technical know-how that is used in providing the services in the sector.***

### *Perspectives on Regulation and Economic Development*

There are two broad, fundamental justifications for governmental oversight of the utility sector. The first is the widely held belief that the sector's outputs are essential for the well-being of the society – its households and businesses – and the second is that its technological and economic features are such that a single firm can often serve the overall demand for its output at a lower total cost than can any combination of more than one firm. Competition cannot thrive under these conditions and, eventually, all firms but one exit the market. This is called "natural monopoly," and, as in the case of other monopolies, it bestows upon the surviving firm the power to restrict output and set prices at levels higher than are economically justified.

Economic regulation is seen then as the necessary and explicit public or governmental intervention in a market to achieve a public policy or a social objective that the market fails to accomplish on its own. In the light of the economic and public welfare characteristics of utilities, certain purposes of price regulation emerge. They can be generalised in the two goals of *economic efficiency* and *fairness* (or equity), which can then be further broken down as follows:

- *Economic efficiency*: Since electric utilities generally do not operate in competitive markets that would impose cost discipline upon them, regulation must fulfil that function. This objective is promoted by setting rates that reflect, to the greatest extent possible, the long-run marginal costs of production.
- *Fair prices*, for both consumers and investors: Price regulation is intended to guard against the reaping of supra-normal profits (called economic "rents"), while still enabling the utility to generate

revenues adequate to cover expenses and investment and reasonable return on that investment. Prices should also be fair to competitive providers or, more accurately, the competitive process.

- *Non-discriminatory access* to service for all consumers.
- *Adequate quality and reliability*: Because utilities, for example electricity, are essential services, reliability is important.
- *Other stated public policy objectives* (e.g., environmental protection, universal service, low-income support, energy efficiency, etc.).

***Understanding regulation will require some knowledge of the market situation and market dynamics, as the kind of regulatory policies and practices followed will depend on them.***

For goods and services that can be provided by competitive markets, the markets by themselves will go a long way towards meeting these goals. Thus, it can be said that economic regulation is intended to achieve outcomes that competition, were it feasible in the market in question, would otherwise achieve. Also, prices in regulated industries naturally affect prices in competitive ones, and vice versa, and affect, therefore, the overall efficiency of the economy. This provides a strong reason to adopt tariff designs that most closely resemble price structures in competitive markets. The present module will be to help the trainees appreciate these issues in greater detail.

#### *Technical Know-how Issues*

It is not possible to understand regulatory issues in a particular sector without understanding the technical know-how that is used in providing the services in the sector. The costs of providing services depend on the technology that is used. Moreover, an important function of a regulator is setting and monitoring standards that cannot be determined without reference to technology. Training on this will help the stakeholders understand the technical issues involved. However, the level of knowledge required in this area would not be the same for all stakeholder groups. A basic module covering all the relevant sectors will be sufficient for stakeholders who would be interested in different sectors. However, regulators, or those more closely involved with a particular sector, will require a more in-depth knowledge. Thus, a number of sector-specific advanced modules need to be designed for them.

***The reconciliation of the need to cover historical costs with the desire to set economically efficient prices, and then to meet other objectives of regulation requires much judgment.***

#### *Legal Issues in Regulation*

Regulation is as much a 'legal' issue as it is 'technical'. Hence, all the stakeholders need to understand the legal issues surrounding regulation in the country. This is to ensure that the actions taken are in conformity with the laws, rules and regulations laid down. Just like technical issues, the level of knowledge required in this area would not be the same for all stakeholder groups. Hence, two types of modules need to be designed – a basic module covering all the relevant sectors and a number of sector-specific advanced modules.

***One object of regulation is to serve as a proxy for competition, to impose upon a single provider the disciplines of competitive markets.***

***One needs to be careful about the extent to which competition should be promoted, especially in network-based service industries where sunk cost is very high.***

***Regulators need to do careful planning for the sector keeping a long term perspective and monitor the situation on a continuous basis.***

***A regulator needs to understand the market situation, importance of particular sector in the economy, as well as the economics of operating as a service provider in the sector.***

***The potential impacts are identified as being positive and negative and the information is conveyed to decision makers in a way that allows them to consider the full range of benefits and costs that will be associated with proposed regulatory change or action.***

### *Financial Planning and Control*

As we will see later, one of the major functions of a regulator is tariff setting. This involves, very often, setting a price cap that is based on financial variables like return on investment, price-cost margins, etc. Obviously, this will require a thorough analysis of the financial aspects of providing a service. This module will introduce the participants to the financial management issues.

### *Market Analysis and Demand Forecasting*

Understanding of regulation will require some knowledge of the market situation and market dynamics, as the kind of regulatory policies and practices followed will depend on them. The demand situation may have an important bearing on the policies related to the licensing of service providers. Often, the demand also determines the kind of technology to be used. An estimation of the financial variables would also require a forecasting of the demand. The module on market analysis and demand forecasting has to be designed keeping these requirements in mind.

### *Tariffs and Standards Setting*

This is the most important part of the training of the regulators, as tariffs and standards setting normally constitute the primary functions of a sectoral regulator. The general goals of economic regulation inform the rate design process. More specifically, the object is to set economically efficient and fair prices, while simultaneously giving the regulated firm a reasonable opportunity to recover its legitimate costs of providing service (including return of, and on, its investment).

The particular problem faced by regulators in this exercise is that the legitimate historical (accounting or “embedded”) costs that a utility incurs are to be recovered in tariffs, but these costs may only bear a passing resemblance to the marginal costs that form the basis of economically efficient prices. The reconciliation of the need to cover historical costs with the desire to set economically efficient prices and then to meet other objectives of regulation requires informed and mature judgement.

The potential effects of a rate design must also be weighed. Will it induce economically efficient behaviour by both the utility and its customers? Will it promote socially least-cost production and consumption? How will it affect customers’ costs for energy services? How does it shift revenue burdens among classes of customers? What impact will it have on company revenues? How does it affect the allocation of risk between the customers and the utility? Regulator has always to be aware of the revenue effects of a particular rate structure – who benefits, who loses? Here, the admonition, to be practical, cannot be stressed enough. Seemingly, small changes in a rate design can have very significant consequences for different customers.

The above issues can be fairly addressed by adhering to the following objectives:

*Revenue-related Objectives:*

- Rates should yield the total revenue requirement.
- Rates should provide predictable and stable revenues.
- Rates themselves should be stable and predictable.

*Cost-related Objectives:*

- Rates should be set so as to promote economically efficient consumption (static efficiency).
- Rates should reflect the present and future private and social costs and benefits of providing service (i.e., all internalities and externalities).
- Rates should be apportioned fairly among customers and customer classes.
- Undue discrimination should be avoided.
- Rates should promote innovation in demand and supply (dynamic efficiency).

*Practical Considerations:*

- Rates should be simple, certain, payable conveniently, understandable, acceptable to the public and easily administered.
- Rates should be, to the extent possible, free from controversies as to proper interpretation.

*Promoting and Maintaining Competition*

One object of regulation is to serve as a proxy for competition to impose upon a single provider the disciplines of competitive markets. Thus, it can be said that economic regulation is intended to achieve outcomes that competition, were it feasible in the market in question, would otherwise achieve. This means that regulators would try to achieve a competitive situation, wherever possible and feasible. For example, even if there were to be a monopoly in electricity transmission and distribution, in general, for efficiency reasons, competition could still be possible in generation and distribution to bulk purchasers.

***A regulator's job is indeed quite thankless, especially in India. Indeed, a public outcry is very often responsible for not allowing the operators to raise their rates even if it is reasonable.***

**Box 3: Chile's 1998-99 Electricity Shortage**

In the early eighties, Chile completely reformed its electricity sector, introducing a regulatory framework that became extremely influential in the rest of the world. In 1998 and 1999, however, during one of the worst droughts on record, the price system collapsed. Random outages and three-hour long rotating electricity cuts occurred.

Studies have pointed out that it was feasible to manage the supply restriction with no outages. The shortage has, to some extent, been blamed on the rigidity of the price system, which was unable to respond to large supply shocks, and on deficiencies in regulatory governance, which led to a weak regulator that proved incapable of making the system work. In addition to lack of independence, the regulator seems not to have fully understood the nature of the incentives in the price system during supply restrictions.

*Source: "Regulatory Governance and Chile's 1998-99 Electricity Shortage", by Ronald Fischer and Alexander Galetovic, World Bank Working Paper, July 2000.*

However, one needs to be careful about the extent to which competition should be promoted, especially in the network-based service industries where the sunk cost is very high. The advent of mobile telephony has made competition in telecom sector possible. But, allowing too many operators in a given area may not be economically efficient. Moreover, getting too many operators is not sufficient for ensuring competition. If the operators do not allow interconnectivity among themselves, then competition would not make any sense. Hence, regulation is inevitable, even if there is competition. Thus, while promoting competition, care should be taken to ensure that it does not lead to inefficient allocation of resources.

#### *Planning, Monitoring and Evaluation*

The business of regulation cannot be conducted in an ad hoc manner. Regulation is a continuous process. Regulators need to do careful planning for the sector, keeping a long-term perspective, and monitor the situation on a continuous basis. Unless they have a long-term vision for the sector, they cannot be effective regulators. Thus, they need to acquire the skill of preparing a long-term vision, much in the same way as corporate planning. They also need to conduct a periodic evaluation of their activities and revise their plan accordingly. Hence, this module on planning, monitoring and evaluation would be of extreme importance for the regulators.

***A regulator's job is not only to check tariff hike, but also ensure rates that would be fair for both consumers and operators, and ensure that the sector grows and the quality of service also improves.***

#### *Research and Survey Methodology*

Regulatory research is quite crucial for determining the success of the regulatory authorities. A regulator needs to understand the market situation, the importance of the particular sector in the economy, as well as the economics of operating as a service provider in the sector. All these require good amount of research. Moreover, due to the absence of independent research, regulators very often rely heavily on businesses for crucial information. This can lead to regulatory capture. Hence, the staff of regulators needs training in research and survey methodology that would develop their research capabilities.

#### *Regulatory Impact Assessment*

Regulatory impact assessment (RIA) is a technique for improving the empirical basis of regulatory decisions. It does this by systematically and consistently examining potential impacts arising from regulatory action and communicating this information to decision-makers. The potential impacts are identified as being positive and negative and the information is conveyed to decision-makers in a way that allows them to consider the full range of benefits and costs that will be associated with the proposed regulatory change or action. RIA includes both regulatory appraisal and regulatory evaluation. Regulatory appraisal is used to describe the ex ante assessment of the proposed new or revised regulations, whereas regulatory evaluation refers to the ex post assessment of existing regulations.

While the general principles of RIA are straightforward and generally accepted, the methodology for conducting RIA is much less well developed. The concept is relatively new, for which there is limited practical experience, particularly in developing countries. Thus,

capacity-building in this regard should enable the regulators to develop a methodology for undertaking RIA in the context of India. Some efforts in this area have already been made by The Energy & Resources Institute (TERI), New Delhi.

#### *Participatory Training Methodology (Training of Trainers)*

In some of the areas of infrastructure services (e.g., electricity, road transport, etc.), the State agencies also have a major role in regulation. However, it may not be possible to undertake custom-designed capacity-building programmes at sub-national levels. At the same time, a uniform design may not be suitable for all the States. Hence, there is a need to create a pool of trainers in critical areas who can design capacity-building programmes for State agencies, according to their needs and local situations. The training of trainers, therefore, should be an integral component of capacity-building.

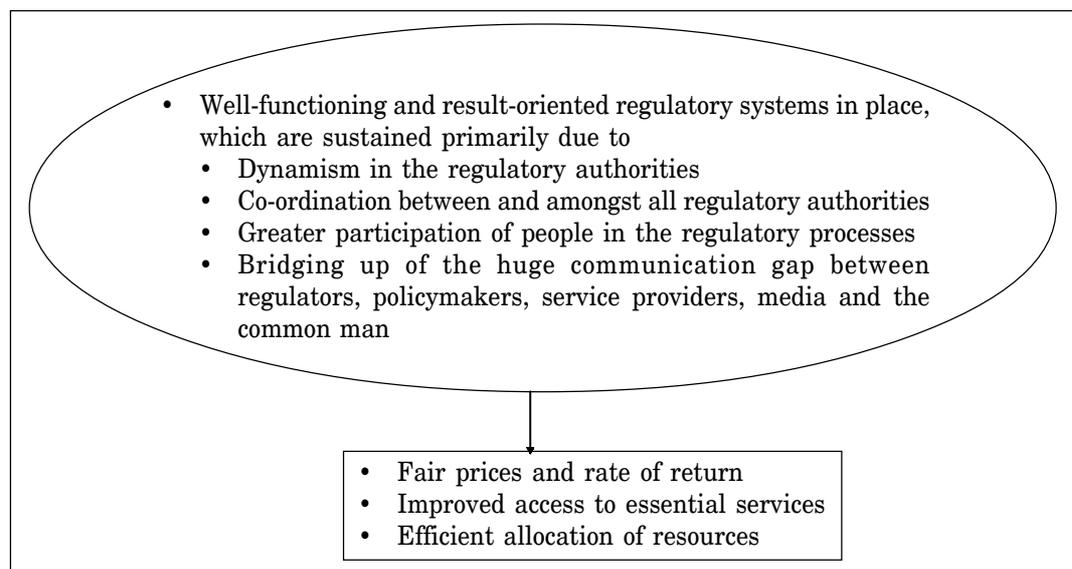
#### *Advocacy and Communication Skills*

Regulators need to communicate with the business, consumers and the media. A regulator's job is, indeed, quite thankless, especially in India. Even the slightest increase in tariff on utilities invites criticism from consumers and media, while the operators are never satisfied with the tariffs set by the regulators. Indeed, a public outcry is very often responsible for not allowing the operators to raise the rates, even when it is reasonable. This can be harmful to the extent of stagnation in the sector and deterioration in the quality of service.

A regulator's job is not only to check tariff hike but also to ensure fair rate for consumers as well as operators, growth in the sector and improvement in the quality of services. However, regulators are not always able to communicate their concerns to the media and the public. Hence, regulators need to acquire appropriate advocacy and communication skills so that the stakeholders adequately understand their concerns.

#### **Expected Outcome**

The expected outcomes of this whole process of capacity-building can be understood with the help of following the diagram:



### Issues for Discussion

- What are the areas in different sectors where competition can be promoted?
- What are the local issues that should be taken care of by the regulators?
- What role should the local bodies, like the *panchayats* and NGOs, play in regulation?
- How to develop appropriate methodology for RIA in developing countries like India?
- What should be the limits of public interests/policies in regulatory actions?

## Chapter 4

# The Toolkit of Capacity-building

As discussed in the previous Chapter, the staff of regulatory authorities will be given regular training through structured modules. However, such structured classroom-type training is not sufficient to fulfil its holistic capacity-building needs. Therefore, there is need to adopt other methods also. Moreover, as indicated before, capacity-building should not end in training the staff of regulators. Capacity-building of other stakeholders is also important. Indeed, the performance of the regulators, to a significant extent, depends also on the degree of co-operation from the other stakeholders. Following are some of the means that can be useful for such capacity-building:

*Indeed, performance of the regulators, to a significant extent, depends also on the degree of cooperation from other stakeholders.*

1. case study seminars;
2. exchange of officials;
3. research;
4. secondment of officials;
5. specialised courses;
6. focussed workshops for judges and lawyers;
7. compliance education for business; and
8. awareness generation.

### *Case Study Seminars*

The focus here would be on the enforcement of regulation and would be targeted at the staff of the regulators. A small panel of experienced regulation enforcement officials from the developed and developing countries could be involved in such programmes. In such seminars, they would discuss various recent cases handled by them in their countries. The cases would be chosen carefully so that they bring into light the different dimensions in otherwise similar looking cases. Some interesting cases, both success and non-success stories, from Indian regulators will also be part of such programmes – for example, the Himachal Pradesh Regulatory Commission's order to the electricity service provider to maintain an assets register or the Karnataka Regulatory Commission appointing an Advocacy Officer – and the impact of such initiatives can be highlighted.

*Although pedagogic training is necessary, there is no substitute for practical experience.*

### *Exchange of Officials*

Although pedagogic training is necessary, there is no substitute for practical experience. Thus, it would be useful for the officials of the regulators to see how other regulators, both inside and outside the country, handle different cases. This can be done through exchange of officials and experts in two ways. Firstly, relatively inexperienced officials of the regulatory authorities can do internships or make study visits to other regulatory authorities to gain first-hand knowledge there. Secondly, experienced staff from regulatory authorities can visit the office of newly set up regulatory bodies for

short duration and guide the officials there in handling their cases. This method has proved highly successful in many countries.

### *Research*

***Most of the regulatory tools that Indian regulators use are typically imported from abroad.***

Regulatory research is quite crucial for determining the success of the regulatory authorities and the concomitant internal confidence and external support. However, there has not been much of research on regulatory issues in India. Most of the regulatory tools that Indian regulators use are typically imported from abroad. Some of them are not well suited for India due to socio-economic, cultural and historical differences. Moreover, due to an absence of independent research, regulators very often rely heavily on businesses for crucial information. This raises the risk of regulatory capture, as these are the groups that have to be regulated. This means that a good amount of research would be required to uncover the hidden realities of underhand market behaviour. Research institutions, consumer organisations and other NGOs can be involved in the process.

The Telecom Regulatory Authority of India undertakes some regular research and often puts out discussion papers on specific issues of tariffs, standards, etc. Such practices should be regularised and other regulators should also emulate them. The interaction between regulators and academic researchers is also important to bring different perspectives into the research that regulators might undertake.

### *Secondment of Officials*

***Interaction between regulators and academic researchers is also important to bring different perspectives into the research that regulators might undertake.***

In order to orientate people on enforcement of regulation, authorities could invite officials from the private sector and consumer activists on short-term secondment. This will provide valuable cross-fertilisation opportunities and ensure that neither an anti-business nor an anti-consumer mentality infects the authority or its staff. This approach can be found in the UK Government agencies, where officials from NGOs are seconded to the Government agencies on a short-term basis to work and gain first hand experience about these. In turn, they bring freshness to the Government agency, by providing inputs that do not have the same biases as those from civil servants.

### *Specialised Courses*

It is also recognised that there is very little understanding of regulatory issues by professionals, economists and lawyers. These lacunae can be overcome by offering both long-term and short-term training courses by open and regular universities and colleges. To begin with, short-term courses can be offered by leading law universities like the National Law School University of India (NLSIU) Bangalore; the National Law University (NLU), Jodhpur; the National University of Juridical Sciences (NUJS), Kolkata, and economics and management schools such as the Delhi School of Economics, Delhi; the Jawaharlal Nehru University, New Delhi; and the IIMs.

### *Focussed Workshops for Judges and Lawyers*

Judges and lawyers in India are generally used to working in a legal environment where everything is clearly defined and there is very little room for any 'techno-economic analysis' as such. The 'rule of

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*Publicity without examples is quite dry and people do not understand the issues.*

reason' approach is yet to gain currency here. The regulators are administrative or a quasi-judicial bodies and their decisions can go for judicial review. Thus, the judicial community needs to be sensitised accordingly. Judges and lawyers interested or involved in regulatory issues should be given special training. In this exercise, the Bar Council of India and the State Bar Councils can be involved.

#### *Compliance Education for Business*

An important component of a healthy regulatory environment is to take up compliance education programmes for business, including other stakeholders, with a constructive (moral suasion) approach, rather than an enforcer's approach. If their genuine fears have to be addressed, a proper structured compliance programme can do wonders. Such programmes will build up confidence and ensure credibility for the regulatory authorities.

However, this is easier said than done. This cannot be achieved by simply issuing orders which the government officials and regulators are so used to. It requires effective communication skills which the training programmes for regulators would have to take into account.

#### *Awareness Generation*

- a) *Media:* One good way of creating public awareness is through media interaction, advertisement and publicity. Besides, publication and distribution of literature through various targeted means is also desirable. This is a dynamic process that needs to be ratcheted up, as and when the authorities decide cases, which helps to put the issues in the right perspective. However, publicity without examples is quite dry, as people do not understand the issues. Writing regular periodical columns can also be very helpful.
- b) *Public meetings:* Well-designed public meetings with simple literature can be very effective in raising basic awareness. Such meetings can be organised under the banner of social organisations such as the Rotary Club and the Lions Club, university and college teachers associations and so on. Meets can also be organised as sessions during other meetings in an organisation. There are several such opportunities: professional association meets, trade union and staff association meets and even staff annual meetings. The consumer movement can best execute these types of activities.

#### **Issues for Discussion**

- How to get relevant cases for discussing in case study seminars – what are the aspects that need to be highlighted through such seminars?
- What should be the priority research areas for regulatory issues?
- What should be the contours of specialised courses on regulatory issues?
- Is there a need for specialisation on sector-specific regulatory issues?
- Who should bear the cost of regulation?

## Chapter 5

# Conclusion

*A recent body of research has shown that differences in physical capital and educational attainment can only partially explain the differences in productivity that exist between the developed and the developing world.*

The role of an impartial and effective regulatory framework overseeing free markets is becoming increasingly important. This is a crucial institutional infrastructure that has to be properly built up, if we have to reach anywhere near the goal of achieving a developed country standard of life by the year 2020. A recent body of research has shown that differences in physical capital and educational attainment can only partially explain the differences in productivity that exist between the developed and the developing world. The differences in capital accumulation and productivity are, to a great extent, driven by differences in institutions and government policies, of which regulatory bodies are, undoubtedly, important components.

*Over the past few years, we have seen that not only the ministry concerned, but also the Prime Minister's Office (PMO) had to intervene in the affairs that should have been handled at the regulator's level.*

However, the state of the regulatory framework that exists today in our country is not very encouraging. Over the past few years, we have seen that not only the ministry concerned but also the Prime Minister's Office (PMO) had to intervene in the affairs that should have been handled at the regulator's level. This is not to say that the ministry or the PMO should not have any business in this regard, but that it should happen only in extreme situations. A frequent happening of such incidents shows that there is something wrong somewhere. Either the regulators are not adequately capable of handling their affairs or the major stakeholders do not hold them in high esteem and, hence, the PMO has to intervene.

*The recent observation by the Supreme Court on the issue of the appointment of the Chairman of the proposed Competition Commission of India (CCI) has triggered a debate as to whether the CCI should serve as the sinecure for the bureaucracy or the judiciary.*

India has recently adopted a new competition law to create a generic market regulator that has an important bearing for all the sectors of the economy. However, the law is yet to come into force. The recent observation by the Supreme Court on the issue of the appointment of the Chairman of the proposed Competition Commission of India (CCI) has triggered a debate as to whether the CCI should serve as the sinecure for the bureaucracy or the judiciary! However, the fact is that neither a typical 'retired bureaucrat' nor a 'retired judge' is best suited for the position, unless they have the specific knowledge that is required for the job. In view of the criticism from several quarters, the Supreme Court has taken the plea that the present arrangement in the law is unconstitutional. However, one fails to understand how the problem of constitutionality would be solved if a retired judge were appointed to head the CCI. The chaos and confusion created by the Government on the issue of cable TV regulation is another instance of the way we approach the issue of regulation in our country.

The problem is exacerbated by the fact that the capacity of other stakeholder groups is also limited. The infrastructure reforms policies in India have been an amalgam of regulation, administrative

*The consumer lobby has, by and large, been bypassed in the process, except in a relatively few cases where the consumer concerns have been highlighted by the media.*

intervention and political decision, with the business lobby working as a strong pressure group. The consumer lobby has, by and large, been bypassed in the process, except in a relatively few cases, where the consumer concerns have been highlighted by the media. Such asymmetric power equations may lead to political or regulatory capture.

The challenge, therefore, lies in how to make the infrastructure industries more competitive and create independent, effective regulatory institutions that are able to address market failures as well as distributional objectives. The response to such challenges lies, to a great extent, in adequate capacity-building of the regulators and other stakeholders.

## CUTS' PUBLICATIONS

### TRADE, ECONOMICS AND ENVIRONMENT

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#### STUDIES

##### 1. Policy Shift in Indian Economy

A survey on the public perceptions of the New Economic Policy in the states of Maharashtra, Rajasthan, Tamil Nadu and West Bengal in India conducted during June/July 1995 and recommendations to the government which were discussed at the above mentioned India-Nepal Training Seminar. (100pp, #9512, Rs.100/US\$25)

##### 2. Policy Shift in Nepal Economy

A survey on the public perceptions of New Economic Policy in Nepal conducted during June/July 1995 and recommendations to the government which were discussed at the above mentioned India-Nepal Training Seminar. (80pp, #9513, Rs.30/US\$15)

##### 3. Environmental Conditions in International Trade

A study on the impact on India's exports in the area of Textiles and Garments including Carpets, Leather and Leather Goods, Agricultural and Food Products including Tea and Packaging for the Central Pollution Control Board, Ministry of Environment & Forests, Government of India. (39pp, # 9508, Rs.200/US\$50)

##### 4. Costs on Consumers due to Non-Cooperation Among SAARC Countries

A study by noted scholars on the costs on consumers of the countries in South Asia due to economic non-cooperation among them. (#9605, Rs.50/US\$25)

##### 5. Tariff Escalation—A Tax on Sustainability

The study finds that the existence of escalating tariff structure, particularly in developed countries, results in "third-best" allocation of resources. It also harms both environment and development, and crucially the balance of trade.

(Rs.100/US\$25) ISBN 81-87222-00-X

##### 6. Trade, Labour, Global Competition and the Social Clause

The social clause issue has remained one of the most heated areas of international debate for a number of years. The study says that the quality of that debate has not met its volume and the real issues underlying the issue have rarely been analysed as a whole. It attempts to string the various debates together.

(Rs.100/US\$25) ISBN 81-87222-01-8

##### 7. TRIPs, Biotechnology and Global Competition

The study shows, with some evidence, that the provisions in the TRIPs agreement concerning biotechnology are of great concern to the developing

world. According to the new GATT agreement, all bio-technology products may be patented. Nearly 80% of all biotechnology patents are currently held by large multinationals.

(Rs.100/US\$25) ISBN 81-87222-02-6

##### 8. Eradicating Child-labour While Saving the Child

In the scenario of a growing interest in banning child labour this research report argues that the trade restricting measures have every potential of eliminating the child itself. The report provides logical arguments and a case study for those groups who are against the use of trade bans for the solution of this social malaise. It also makes certain recommendations for the *effective* solution of the problem.

(Rs.100/US\$25) ISBN 81-87222-23-9

##### 9. Non-trade Concerns in the WTO Agreement on Agriculture

This research report written by Dr. Biswajit Dhar and Dr. Sachin Chaturvedi of the Research and Information System for the Non-Aligned and Other Developing Countries, New Delhi, provides a detailed analysis of non-trade concerns, covering the various dimensions indicated by the Agreement on Agriculture of the World Trade Organisation.

(Rs.50/US\$10) ISBN 81-87222-30-1

##### 10. Liberalisation and Poverty: Is There a Virtuous Circle?

This is the report of a project: "Conditions Necessary for the Liberalisation of Trade and Investment to Reduce Poverty", which was carried out by the Consumer Unity & Trust Society in association with the Indira Gandhi Institute for Development Research, Mumbai, the Sustainable Development Policy Institute, Islamabad, Pakistan and the Centre for Policy Dialogue, Dhaka, Bangladesh, with the support of the Department for International Development, Government of the UK.

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##### 11. Analyses of the Interaction between Trade and Competition Policy

This not only provides information about the views of different countries on various issues being discussed at the working group on competition, but also informs them about the views of experts on competition concerns being discussed on the WTO platform and the possible direction these discussions would take place in near future. It also contains an analyses on the country's presentations by CUTS.

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## **12. The Functioning of Patent Monopoly Rights in Developing Economies: In Whose Interest?**

Advocates of strong international protection for patents argue that developing countries would gain from increased flows of trade, investment and technology transfer. The paper questions this view by examining both the functioning of patents in developing economies in the past and current structural trends in the world economy in these areas. The historical research revealed no positive links between a strong patent regime and FDI and technology transfer. Current trends are largely limited to exchanges amongst the industrialised countries and to some extent, the newly industrialising countries. While increased North/South trade flows are expected, negative consequences are possible.

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## **13. Negotiating the TRIPs Agreement: India's Experience and some Domestic Policy Issues**

This report shows particularities about the subject that distinguished the TRIPs (Trade Related Aspects of Intellectual Property Rights) negotiations from other agreements that make up the Uruguay Round results. It also analyses the way in which the TRIPs Agreement was actually negotiated and handled.

The author finds that many of the lessons that can be drawn from India's experience with the TRIPs negotiations are the same as those that can be drawn from the negotiations more generally and true for many other countries. It goes beyond a narrow analysis of events relating strictly to the negotiations during the Uruguay Round and looks at the negotiating context in which these negotiations took place.

The research findings draw lessons from what actually happened and suggest how policy processes can be reformed and reorganised to address the negotiating requirements in dealing with such issues in the future. (Rs.100/US\$25) ISBN 81-87222-50-6

## **14. Multilateral Environmental Agreements, Trade and Development: Issues and Policy Options Concerning Compliance and Enforcement**

The latest report of CUTS on Multilateral Environmental Agreement, Trade and Development, examines the role of provisions for technology and financial transfer as well as capacity building as an alternative to trade measures for improving compliance and enforcement. It acquires specific significance in the light of the fact that the WTO members for the first time, in the trade body's history, agreed to negotiate on environmental issues at the fourth Ministerial Conference of the WTO at Doha.

This study also examines pros and cons of Carrots and Sticks approaches, and analyses incorporation of these approaches in three major MEAs, the Montreal Protocol, The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Basel Convention, to find out which approach has been more successful in ensuring enforcement and compliance.

A must read for different stakeholders involved in this process, as this study would provide useful inputs towards trade and environment negotiations.

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## **15. Market Access Implications of SPS and TBT: Bangladesh Perspective**

As both tariffs and other traditional trade barriers are being progressively lowered, there are growing concerns about the fact that new technical non-tariff barriers are taking their place, such as sanitary and phytosanitary measures (SPS) and technical regulations and standards.

The poor countries have been denied market access on quite a number of occasions when they failed to comply with a developed country's SPS or TBT requirements or both. The seriousness of this denial of market access is often not realised unless their impact on exports, income and employment is quantified.

In this paper, the author focuses on the findings of a 1998 case study into the European Commission's ban of fishery products from Bangladesh into the EU, imposed in July 1997.

This research report intends to increase awareness in the North about the ground-level situation in poor and developing countries. At the same time, it makes some useful suggestions on how the concerns of LDCs can be addressed best within the multilateral framework. The suggestions are equally applicable to the developing countries.

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## **16. Voluntary Self-regulation versus Mandatory Legislative Schemes for Implementing Labour Standards**

Since the early 1990s, globally there has been a proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility. The idea is that companies voluntarily adopt codes of conduct to fulfil their social obligations and although these companies are responsible only for a fraction of the total labour force, they set the standards that can potentially lead to an overall improvement in the working conditions of labour.

These voluntary approaches are seen as a way forward in a situation where state institutions are weakened with the rise to dominance of the policies of neo-liberalism, and failure of the state-based and international regulatory initiatives.

Given this background, this paper examines how the failure of 1980s codes, regulated by international bodies, resulted in the proliferation of corporate codes of conduct and an increased emphasis on corporate social responsibility.

This paper further tries to explore whether voluntary codes of conduct can ensure workers' rights in a developing country like India.

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## 17. Child Labour in South Asia are Trade Sanctions the Answer?

South Asian Countries have the highest rates of child labour practices in the world.

As a result of the advocacy by powerful political lobbying groups supported by Europe and the US, the trade sanction approach to encounter the issue of child labour has gained influence since the nineties.

These sanctions were exercised to alleviate the problem of child labour by US policy-makers and also by some countries in the EU. But, the question arises – Have the trade sanctions imposed by these countries in any way helped eliminate this problem? This research report of CUTS Centre for International Trade, Economics & Environment tries to address this question.

It has explored the impact of these trade sanctions and finds that these sanctions resulted in the contradiction of the basic objective, elimination of child labour. By banning the import of those goods in the production process of which child labour was used wholly or partly, the developed countries have aggravated the sufferings of child labour and their families.

Besides highlighting the causes of child labour, the report makes some very useful recommendations on how the issue of child labour can be addressed best at the domestic as well as international level.

(Rs.100/US\$25) ISBN 81-87222-82-4

## 18. TRIPs and Public Health: Ways Forward for South Asia

Trade Related Aspects of Intellectual Property Rights—or TRIPs—has always been one of the most contentious issues in the WTO. Several studies have been conducted on the political economy of TRIPs *vis-à-vis* WTO, the outcome of which are crucial to the policymakers of the developing economies more than those in the rich countries. Increasing realisation of the poor countries' suffering at the hands of the patent holders is yet another cause of worry in the developing and poor countries.

This research document tries to reach the answer to one specific question: what genuine choices do policymakers in South Asian developing nations now have; more so after the linkage between the trade regime and pharmaceuticals? Starting with a brief overview of the key features of the corporate model of pharmaceuticals, the paper provides some insight into the challenges faced by the governments in South Asian countries. The aim is to anchor the present discussion of public health and the impact of TRIPs in the socio-cultural environment of this region.

(Rs.100/US\$25) ISBN 81-87222-83-2

## 19. Putting our Fears on the Table Analyses of the Proposals on Investment and Competition Agreements at the WTO

Let them put their fears on the table and that should guide the negotiations.” The UNCTAD Secretary General, Rubens Ricupero, made this comment just

after the Doha ministerial meeting of the WTO held in November 2001.

He was referring to India's stand at Doha on the 'Singapore issues' and arguing that it was pointless in just opposing the 'new' issues at the WTO without putting forward constructive arguments.

“Putting our Fears on the Table” is the title of a recently published report of the CUTS Centre for International Trade, Economics & Environment. It provides analyses of the proposals on investment and competition agreements at the WTO, especially in the areas taken up and/or proposed at Doha for possible future negotiations.

This volume is a product of comprehensive research and dialogue of leading international experts, practitioners and other stakeholders. It will really help developing countries to comprehend and deal with the issues in the WTO context.

(Rs. 300 for India/US\$25 for OECD Countries/\$15 for others) ISBN 81-87222-84-0

## 20. Bridging the Differences Analyses of Five Issues of the WTO Agenda

This book is a product of the project, EU-India Network on Trade and Development (EINTAD), launched about a year back at Brussels. CUTS and University of Sussex are the lead partners in this project, implemented with financial support from the European Commission (EC). The CUTS-Sussex University study has been jointly edited by Prof. L. Alan Winters of the University of Sussex and Pradeep S. Mehta, Secretary-General of CUTS, India.

The five issues discussed in the book are Investment, Competition Policy, Anti-dumping, Textiles & Clothing and Movement of Natural Persons. Each of these papers has been co-authored by eminent researchers from Europe and India.

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A much appreciated paper written by Pradeep S Mehta and presented at the GATT Symposium on Trade, Environment & sustainable Development, Geneva, 10-11 June, 1994 which highlights the inconsistencies in the contentious debates around trade and environment. (10pp, #9406, Rs.30/US\$5)
- 2. Multilateralisation of Sovereignty: Proposals for Multilateral Frameworks for Investment**  
The paper written by Pradeep S Mehta and Raghav Narsalay analyses the past, present and future of investment liberalisation and regulation. It also contains an alternative draft International Agreement on Investment. (#9807, Rs.100/US\$25)
- 3. Ratchetting Market Access**  
Bipul Chatterjee and Raghav Narsalay analyses the impact of the GATT Agreements on developing countries. The analyses takes stock of what has

happened at the WTO until now, and flags issues for comments. (#9810, Rs.100/US\$25)

#### 4. **Domestically Prohibited Goods, Trade in Toxic Waste and Technology Transfer: Issues and Developments**

This study by CUTS Centre for International Trade, Economics & Environment attempts to highlight concerns about the industrialised countries exporting domestically prohibited goods (DPGs) and technologies to the developing countries that are not capable of disposing off these substances safely and protecting their people from health and environmental hazards. (90pp, #0106) ISBN 81-87222-40-9

### EVENT REPORT

#### 1. **Challenges in Implementing a Competition Policy and Law: An Agenda for Action**

This report is an outcome of the symposium held in Geneva on "Competition Policy and Consumer Interest in the Global Economy" on 12-13 October 2001. The one-and-a-half-day event was organized by CUTS and supported by the International Development Research Centre (IDRC), Canada. The symposium was addressed by international experts and practitioners representing different stakeholder groups viz. consumer organisations, NGOs, media, academia, etc. and the audience comprised of participants from all over the world, including representatives of Geneva trade missions, UNCTAD, WTO, EC, etc. This publication will assist people in understanding the domestic as well as international challenges in respect of competition law and policy. (48pp, #0202, Rs.100/US\$25)

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The central question is whether poor labour standards results in comparative advantage for a country or not. The document analyses the political economy of the debate on trade and labour standards. (14 pp, #9804, Rs.15/US\$5)

#### 3. **Is Trade Liberalisation Sustainable Over Time?**

Economic policy is not an easy area for either the laity or social activist to comprehend. To understand the process of reforms, Dr. Kalyan Raipuria, Adviser, Ministry of Commerce, Government of India wrote a reader-friendly guide by using question/answer format. (29 pp, #9805, Rs.15/US\$5)

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This second monograph – and more – is about the World Trade Organisation (WTO) which has become the tool for globalisation. This monograph is an attempt to inform the layperson about the WTO in a simple question-answer format. It is the first in our

series of monographs covering WTO-related issues and their implications for India. Its aim is to create an informed society through better public knowledge, and thus enhance transparency and accountability in the system of economic governance. (36pp, #0213, Rs.30/US\$5)

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FDI — a term heard by many but understood by few. In the present times of liberalisation and integration of world economy, the phenomenon of Foreign Direct Investment (FDI) is fast becoming a favourite jargon, though without much knowledge about it. That is why, CUTS decided to come out with a handy, yet easy-to-afford monograph, dwelling upon the “hows” and “whys” of FDI. This monograph is third in the series of “Globalisation and India – Myths and Realities”, launched by CUTS in September 2001. “How is FDI defined?” “What does it constitute?” “Does it increase jobs, exports and economic growth?” Or, “Does it drive out domestic investment or enhance it?” are only some of the topics addressed to in a layman’s language in this monograph. (48pp, #0306, Rs.30/US\$5)

#### 11. WTO Agreement on Agriculture Frequently Asked Questions

As a befitting reply to the overwhelming response to our earlier three monographs, we decided to come out with a monograph on *WTO Agreement on Agriculture* in a simple Q&A format. This is the fourth one in our series of monographs on *Globalisation and India – Myths and Realities*, started in September 2001.

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### GUIDES

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#### 2. Consumer Agenda and the WTO—An Indian Viewpoint

Analyses of strategic and WTO-related issues under two broad heads, international agenda and domestic agenda. (21pp, #9907)

### NEWSLETTERS

#### Economiquity

A quarterly newsletter of the CUTS Centre for International Trade, Economics & Environment for

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### BRIEFING PAPERS

Our Briefing Papers inform the layperson and raise issues for further debate. These have been written by several persons, with comments from others. Re-publication, circulation etc. are encouraged for wider education. They are available for free, but contributions towards postage (Rs.20/US\$5) are welcome.

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Develop healthy competition regimes in developing countries through research and advocacy.	Strengthen capacity of state and non-state actors on relevant issues, particularly in developing countries.	Foster an enabling environment for the economy and promote effective regulatory frameworks.
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