It is interesting to note that while developing countries which, in the past, were against globalisation, have wide opened their doors for globalisation, many people in developed countries like U S A are angry against globalisation because the deindustrialisation, job cuts etc., and the associated problems

Although globalisation can benefit the developing countries in several ways, unregulated globalisation will cause serious problems for developing countries. The almost universal acceptance of the *market economy* and the globalisation driven by private enterprise tend to aggravate, in the absence of proper regulation, most of the harmful effects traditionally attributed to neocolonialism. Several measures at the national and international levels are required to mitigate the harmful effects and to reap the benefits of globalisation.

Fig. 40.1 : Foreign Market Entry Strategies

India's economic integration with the rest of the world was very limited because of the restrictive economic policies followed until 1991. Indian firms confined themselves, by and large, to the home market. Foreign investment by Indian firms was very insignificant.With the new economic policy ushered in 1991, there has, however, been a change. Globalisation has in fact become a buzz-word with Indian firms now and many are expanding their overseas business by different strategies.

The Indian business, however, suffers from a number of disadvantages in respect of globalisation of business. Not only that the government policy lacks a positive orientation in some respects but also the government policy and procedures in India are among the most complex, confusing and cumbersome in the world. Another problem is that the high cost/inadequacy of many vital inputs and other factors like raw materials and intermediates, power, finance infrastructural facilities like port etc., tend to reduce the international competitiveness of the Indian business. There are also problems related to technology, small size and lack experience of firms, poor quality, lack of R&D efforts etc.

Although India has several handicaps, there are also a number of favourable factors for globalisation of Indian business. These include the human resources, growing entrepreneurship; growing domestic market; the growing foreign market the is opening up more and more, niche markets; large number of non-resident Indians who are resourceful; etc. If the Indian firms have the facility to obtain the latest technology in the world, to raise finance from the cheapest source and procure the materials from the best source in the world, they are on equal footing with the foreign firms in many respects. And if the Indian firms can muster some edge ever the foreign firms in respect of labour cost, productivity, product quality/features etc., that could be a competitive advantage.

very high import duties and foreign exchange restrictions. The foreign trade policy was characterised by the overtone of negativism.

THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

This Act which replaced the Imports and Exports (Control) Act, 1947, came into force on 19th June 1992.

No export or import shall be made by any person except in accordance with the provisions of this Act, the orders and rules made under this Act and the export and import policy.

Objective

The objective of the FTDR Act is to *provide for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from India and for matters connected therewith or incidental thereto.*

Main Provisions

The main provisions of the FTDR Act are the following.

1. Development and Regulation: The FTDRA empowers the Central Government to make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

2. Prohibition and Restriction: The Act also empowers the Central Government to make provision for prohibiting, restricting or otherwise regulating the import or export of goods as and when required. All goods which are so regulated under this sub-section shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly.

It may be noted that it is according to this sub-clause that the Government has provided for negative lists of exports and imports in the Exim policy.

3. Exim Policy: The Act lays down that the Central Government may, from time to time, formulate and announce the export and import policy and may also amend that policy.

4. Director General of Foreign Trade: The Act provides for the appointment by the Central Government, of a Director General of Foreign Trade for the purpose of this Act. The DGFT shall advise the Central Government in the formulation of the export and import policy and shall be responsible for carrying out that policy. [The corresponding authority under the Imports and Exports (Control Act), 1947, was called the Chief Controller of Imports and Exports (CCIE)]

5. Importer - Exporter Code Number: The Act lays down that no person shall make any import or export except under an Importer-Exporter Code (IEC) Numbers granted by the DGFT or the Officer authorised by him in his behalf.

The Director General is empowered to suspend or cancel the Importer - Exporter Code Number granted to any person if there is valid reason to do so, like contravention of law relating to Central excise or customs or foreign exchange or having conducted import/export in a manner gravely prejudicial to the trade relations of India with any foreign country or in a way detrimental to the interests of the country.

6. Issue and Suspension/Cancellation of licence: The Director General or any other Officer authorised under this Act is empowered to suspend or cancel a licence issued for export or import

of good in accordance with this Act for good and sufficient reasons, after giving the licence holder a reasonable opportunity of being heard.

7. Search, Inspection and Seizure: Where any contravention of any condition of the licence of authority under which any goods are imported is suspected or made, any person authorised by the Central Government may search, inspect and seize such goods, documents, things and conveyances subject to such requirements and conditions as may be prescribed.

8. Penalty for Contravention: Where any person makes or abets or attempts to make any export or import in contravention of any provisions of this Act or any rules or orders made under this Act or the Exim policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods involved, whichever is more.

EXPORT - IMPORT POLICY

The Export-Import Policy (Exim Policy), announced under the Foreign Trade (Development and Regulation Act), 1992, would reflect the extent of regulation or liberalization of foreign trade and indicate the measures for export promotion. It may be noted that although the Exim Policy is announced for a five year period, announcing a Policy on March 31st of every year, within the broad frame of the Five Year Policy, for the ensuing year is a practice in India.

A very important feature of the Exim policy since 1992 is freedom. Licensing, quantitative restrictions and other regulatory and discretionary controls have been substantially eliminated

Exim Policy, 2002-2007

The Exim Policy, announced on March 31, 2002, effective from April 1, 2002, contains a bouquet of concessions for exporters, focusing sharply on SEZs, industrial clusters, agri-exports, infrastructural developments and reduction in transaction costs. There are specific measures for encouraging exports of gems and jewellery, leather goods, textiles, chemicals and petrochemicals and electronics hardware. Emphasis has also been placed on diversification of markets. Encouraged by the success of the *Focus Latin American Countries*, the new policy proposes to launch such scheme for Africa and CIS countries.

While popular export-promotion tools like the Duty Entitlement Pass Book (DEPB) scheme and the Export Promotion Capital Goods (EPCG) schemes have been retained and made more flexible, new incentives have been granted to the cottage sector, handicrafts, chemicals and pharmaceuticals, textiles and leather industries. The time granted for fulfillment of export obligation has been increased to 12 years in the case of EPCG imports worth more than Rs.100 crore.

An outline of some of the important features/proposals are given below.

The Mission: The Exim Policy 2002-2007, which coincides with the Tenth Five Year Plan period, aims at increasing India's share in the global exports from 0.67 per cent to one per cent over this period. This implies that the total exports will have to nearly double from $46 billion to over $80 billion achieving a compound annual growth rate of (CAGR) of 11.9 per cent in dollar terms.

Agricultural Exports: Promotion of agricultural exports has been given considerable attention by the Policy. Agri Export Zones Scheme which embodies 'a farm to port' approach and under which 20 zones were sanctioned, under the Agri-Export Policy, prior to the announcement of the new Exim policy, are proposed to be supported with development of necessary infrastructure, flow of credit and other facilities for promoting agro exports. Transport assistance would be made available

of India. These corporations need to redefine the scope of their business and reorient their strategies for success in future. Indeed they have been doing that.

9. A commendable aspect of the current Exim Policy is the importance given to elimination or minimisation of quantitative, licensing and other discretionary controls. However, we are yet to go a long way to procedural simplification.
10. The recent import liberalisation has substantially changed the competitive environment in India making it very difficult for a large number of Indian companies to survive the competition. Many companies have reformulated their strategies. A number of them are resorting to global sourcing instead of making or sourcing domestically.
11. A drastic and welcome change in the attitude of the Government is reflected in the statement of objective of the new law, the *Foreign Trade (Development and Regulation) Act*, 1992, which has replaced the *Imports and Exports (Control) Act*, 1947. The objective of this Act is to *provide for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from India and for matters connected there with or incidental thereto.* Contrast this with the objective of the 1947 Act: *to prohibit or control imports and exports. The objective of the new* Act reflects a positive and dynamic attitude in contrast to the negative attitude of the old Act. However, the bureaucracy is yet to imbibe the spirit of the new attitude which is laid down in the paper.

The Exim Policy since 1992 acknowledges that trade can flourish only in a regime of substantial freedom. It also recognises the need for reasonable stability of the policy, by making the duration of the policy 5 years.

The policy aims at simplification and transparency.

It is, therefore, endeavoured to make the procedures simple and easy to administer.

The Exim Policy since 1992 is quite in line with the economic reforms introduced in India. Due recognition of the need to give the Indian business a global orientation is a very important feature of the policy.

The procedural simplification and minimisation of quantitative, licensing and other discretionary controls addressed to by the new policy were measures which were long overdue.

It needs to be added here that the liberalisation of imports does not mean that there is an indiscriminate removal of import restrictions. Imports, on the whole, are still highly restricted. A salient feature of the liberalisation is the elimination of unnecessary procedural hurdles and simplification of procedures. Even though import duty on a number of items has been significantly reduced, the duty rates are still very high in comparison with many other countries.

EXPORT PROMOTION

Government of India, like almost all other nations, has been endeavouring to develop exports.

Export development is important to the firm and to the economy as a whole. Government measures aim, normally, at the general improvement of the export performance of the nation for the general benefit of the economy. Such measures help exporting firms in several ways.

The benefits of exports to the economy are many.

When the domestic market is small, foreign market provides opportunities to achieve economies of scale and growth. *Secondly,* the supply of many commodities, as in the case of a number of agricultural products in India, is more than the domestic demand. *Thirdly,* exports enable certain countries to achieve export-led growth. *Fourthly,* export markets may help mitigate the effects of domestic recession. *Fifthly,* a country may need to boost its exports to earn enough foreign exchange to finance its imports and service its foreign debt. It may be noted that many countries are suffering from trade deficit and foreign debt. *Lastly,* even in the case of countries with trade surplus, export promotion may be required to maintain its position against the international competition and the level of domestic economic activity.

The principal objectives of export promotion measures in India have been to:

- Compensate the exporters for the high domestic cost of production.
- Provide necessary assistance to the new and infant exporters to develop the export business.
- Increase the relative profitability of the export business via-a-vis the domestic business.

ORGANISATIONAL SET UP

Government has established or sponsored a number of organisations to provide different types of assistance to the exporters. Apart from the organisations established exclusively for export promotion, there are also a number of other institutions which assist the export sector. An outline of the important organisations which help to promote exports is given below.

Ministry of Commerce

The Ministry of Commerce, Government of India, is the most important organ concerned with the promotion and regulation of the foreign trade of the country. The ministry has elaborate organisational arrangement to look after various aspects of trade regulation and promotion. The Department of Commerce in the Ministry of Commerce is assigned a very important role in different matters concerned with foreign trade of the country including commercial relation with other countries, promotion and regulation of foreign trade, state trading etc. Matters related to foreign trade are dealt with by eight divisions in the Department of Commerce, namely, *(i)* Administrative and General Division, *(ii)* Finance Division, *(iii)* Economic Division, *(iv)* Trade Policy Division, *(v)* Foreign Trade Territorial Division, *(vi)* Exports Products Division, *(vii)* Services Division, and *(viii)* Industries Division.

Autonomous Bodies

1. *Export Inspection Council:* The Export Inspection Council, a statutory body, is responsible for the enforcement of quality control and compulsory preshipment inspection of various exportable commodities.
2. *Indian Institute of Foreign Trade*: The Indian Institute of Foreign Trade, registered under the Societies Registration Act, is engaged in activities like training of personnel in modern techniques of international trade; organisation of research in problems of foreign trade; organisation of marketing research, area surveys, commodity surveys and market surveys; and dissemination of information arising from its activities relating to research and market studies.
3. *Indian Institute of Packaging:* The Indian Institute of Packaging is registered under the Societies Registration Act. The main aims of the Institute are to undertake research on

Duty Exemption/Drawback

The scheme of duty exemption is designed to avoid the incidence of commodity taxes like excise duty and customs duties on the exports so as to make the exports more price competitive. "This is a world-wide practice and the rationale is straight forward. Customs duties and excise duties on inputs raise the cost of production in export industries and thereby affect the competitiveness of exports. Therefore, exporters need to be compensated for the escalation in their costs attributable to such customs and excise duties.

Duty exemption as an export promotion measure had its origin in India during the Second Plan. Over the years the scheme has been enlarged and modified.

The exporters are either exempted from the payment of duty while procuring inputs like raw materials and intermediates or, in cases where the duty is paid on the inputs, the duty is refunded. Thus, under the duty drawback system the exporters are reimbursed for tariff paid on the imported raw materials and intermediates and central excise duties on domestically produced inputs which enter into export production.

Because of a series of modifications to the import policy for registered exporters, particularly the introduction of the advance licensing system, exporters can now make most of the import of inputs without payment of customs duty.

Eligible exporters are entitled to interest-free bank credit against the duty drawback applicable to them up to a period of 90 days or up to the time they realise the drawback, whichever is earlier. Similarly, with the application of MODVAT, a large number of products, covered by the MODVAT, can be exported in bond and in that event, the duty relief in the form of drawback would be restricted only to basic customs and auxiliary duties suffered, if any, by the inputs.

There are two types of drawback rates, *viz.*, all industry rate applicable to a group of products and brand rate applicable to individual products not covered by the industry rate.

The all industry drawback rates are derived from estimates of average quantity of value of materials used in the manufacture of exports, the average amount of duties paid on imported materials or excisable materials used in the manufacture of these goods, and the average amount of duties paid on the materials wasted in the manufacturing process. Such average industry rates are fixed by the Drawback Directorate in the Ministry of Finance.

Awards

A number of awards have been instituted to encourage exports and to recognise excellence in exports. There are separate awards for different categories of exporters. Awards are given on the basis of certain specified criteria such as development of market for products which have not been exported previously, substantial increase in exports, successful introduction of new products, product development, successful break-through in foreign markets where conditions have been especially difficult etc. References to some other incentives are made in the sub-section on Marketing Assistance.

Other Incentives

Some important incentives were terminated consequent to certain measures taken as part of the economic liberalisation.

The *Cash Compensatory Support* (C.C.S.) was a cash subsidy scheme designed to compensate the exporters for unrebated indirect taxes and to provide resources for product/market development.

The CCS enabled the exporters to increase the profit or to reduce the price to the extent of the subsidy without incurring a loss. With the devaluation of the Rupee in July 1991, the CCS was abolished.

Another important incentive was the system of *Import Replenishment* (REP) licenses, which were related to the f.o.b. value of exports. The REP was, for the most part, a facility in so far as it enabled exporters to import inputs where the domestic substitutes were not adequate in terms of price, quality or delivery rates; it was also an incentive in so far as there was a premium on REP licences which were transferable. The new trade policy announced in July 1991 which renamed the Rep as *Exim Scrip* significantly modified the scheme. The Exim Scrip Scheme was, however, abolished with the introduction of the partial convertibility of Rupee since April 1992.

The *International Price Reimbursement Scheme* (IPRS) was designed to make available specified inputs to exporters at international prices. The scheme which was initially available to steel was later extended to aluminium also and there was a proposal to extend to other items. The IPRS has been replaced by *Engineering Products Exports (Replenishment of Iron and Steel Intermediates) Scheme.*

PRODUCTION ASSISTANCE / FACILITIES

Exports depend, inter alia., on exportable surplus and the quality and price of the goods. Government have, therefore, taken a number of measures to enlarge and strengthen the production base, to improve the productive efficiency and quality of products and to make the products more cost effective. Measures in these directions include making available raw materials and other inputs of required quality of reasonable prices; facilities to establish and expand productive capacity, including import of capital goods and technology; facilities to modernise production facilities provision of infrastructure for the growth of export oriented industries etc.

MARKETING ASSISTANCE

A number of steps have been taken to assist the exporters in their marketing effort. These include conducting, sponsoring or otherwise assisting market surveys and research; collection, storage and dissemination of marketing information, organising and facilitating participation in international trade fairs and exhibitions; credit and insurance facilities; release of foreign exchange for export marketing activities; assistance in export procedures; quality control and pre-shipment inspection; identifying markets and products with export potential; helping buyer-seller interaction, etc. Some of the schemes and facilities which assist export marketing are mentioned below.

Market Development Assistance

An important export promotion measure taken by the Government is institution of the Market Development Assistance (MDA). Assistance under the MDA is available for market and commodity researches; trade delegations and study teams; participation in trade fairs and exhibitions; establishment of offices and branches in foreign countries; and grants-in-aid to EPCs and other approved organisations for export promotion.

An EPZ/EOU unit had to be a net foreign exchange earner. The level of foreign exchange earning as a percentage of exports (NFEP) was calculated annually and cumulatively for a period of 5 years since the commencement of commercial production. The NFEP requirement for different products varied from 10 per cent for plain gold jewellery to 60 per cent for computer soft ware and tissue culture plants. However, electronic hardware units were allowed to be set up without stipulation of a positive NFEP.

The following supplies were also allowed to be counted towards fulfilment of the export obligation:

1. Supplies effected in domestic tariff area (DTA - all parts of the country where the national tariff laws are applicable) which are eligible to be regarded as *deemed exports*.
2. Supplies effected in DTA against payment in foreign exchange.
3. Supplies, with the permission of the Development Commissioner, to other EOUs/EPZ/EHTP/STP units, as per the Policy.
   (*a*) The entire production of EOU/EPZ/EHTP/STP units was required to be exported, except:
   (*b*) Rejects up to 5% or such percentage approved by the Development Commissioner in consultation with the local customs authority. Rejects could be sold in the DTA, subject to payment of appropriate duties.
   (*c*) 25% of the production in value terms was allowed to be sold in the DTA subject to the fulfilment of NFEP and payment of applicable duties. No DTA sale was permissible in respect of certain items like motor cars and alcoholic liquor.
   (*d*) However, units in agriculture and related fields were permitted to sell upto 50% of the production in value terms in the DTA subject to positive NFE earnings.
   (*e*) Electronics hardware products could be sold in the DTA subject to the conditions laid down in the Policy.

An EOU/EPZ/EHTP/STP unit could export goods manufactured by it through an Export House/ Trading House/Star Trading House/Superstar Trading House recognised under the Exim Policy or any other EOU/EPZ/EHTP/STP unit. This permission is extended only to the marketing of the goods by the above category of exporters. The manufacture of the goods shall be done in the EOU/ EPZ units.

SEZs

While announcing the Exim Policy for 2000-01, the Commerce Minister stated that India would develop Special Economic Zones to boost the country's exports. Any State Government or corporate body may set up a SEZ. The only laws which will operate in these Zones will be the labour and banking laws. The SEZs are different from the EPZs : in the SEZs there will not be any inspector raj and once commodities go in, nobody will ask any questions until they come out, clarified the Minister. Units in the SEZs may also do domestic sales by paying all relevant duties. However, they have to be net foreign exchange earners.

"While EPZs are industrial estates, SEZs are virtually industrial townships that provide appropriate infrastructure such as housing, roads, ports and telecommunication. The scope of activities that can be undertaken in the SEZs is much wider, their linkages with the domestic economy are stronger. Resultantly they have a diversified industrial base. Their role is not transient like the

EPZs, as they intended to be instruments of regional development as well as export promotion. As such, SEZs can have tremendous impact on exports, inflow of foreign investment and employment generation."[1]

The first two SEZs are to be set up in Positra in Gujarat where the State Government has made available 880 hectares of land and in Nangunery in Tamil Nadu where over a thousand hectares of land was allocated. According to the Commerce Minister, the minimum size of a Zone should be 400 – 500 hectares. The Positra project, the work on which started in April 2000, is expected to become operational in three years. This Rs. 10,000 core project would comprise an international airport, star hotel, hospital and a huge housing complex, among others. The project will have equity participation of Gujarat Government, Private firms (including Sumitoma Corporation of Japan), Singapore Government and multilateral agencies.

Proposals have already come up for establishment of SEZs in some other States also.

It was also announced that all the existing EPZs will be converted into SEZs.

The move to develop SEZs was inspired by the success of the SEZs in China which contribute about 40 per cent of her exports. The Indian EPZs have contributed hardly four per cent of the country's exports. The SEZs are expected to bring about a major breakthrough. It is pointed out that one important reason for the success of the Chinese SEZs is the absence of trade union rights there. A democratic country like India cannot think of denying the labour rights. Yet, the big push of development envisaged by the SEZs should be expected to have a very significant impact.

EXPORT HOUSES AND TRADING HOUSES

From the beginning of the Second Five-Year Plan, the foreign exchange problem began to assume serious proportions, and the Government began to realise the need for vigorous export promotion. It was very clear the concentrated efforts should be made for the promotion of the export of non-traditional items. It was also realised that unless positive steps were taken to build up a number of merchant houses, concentrating almost exclusively on exports and capable of undertaking trade on a sustained basis, it would be impossible to compete successfully against the highly experienced and resourceful trading houses of other countries. The importance of promoting merchant houses was further underlined by the need for providing channels for the export of the products of the small-scale sector.

An export house is defined as a registered exporter holding a valid Export House Certificate issued by the Director General of Foreign Trade.

The objective of the scheme is to recognise established exporters as Export House, Trading House, Star Trading House and Superstar Trading House with a view to build marketing infrastructure and expertise required for promotion. Such Houses should operate as highly professional and dynamic institutions and act as important instruments of export growth.

The scheme of export houses has been modified a number of times.

Merchant and manufacturer exporters EOUs and units located in EPZ/EHTP/STP may be recognised as Export Houses, Trading Houses, Star Trading Houses and Superstar Trading Houses subject to the fulfilment of the criteria laid down by the Government.

The Reserve Bank may prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

The Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

Export of Goods and Services

1. Every exporter of goods shall—

   (a) furnish to the Reserve Bank or to such other authority a declaration as specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertained at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;

   (b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

For the purpose of ensuring that export value of the goods is received without any delay, the Reserve Bank may direct any exporter to comply with such requirements as it deems fit.

Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration as specified, containing the true and correct material particulars in relation to payment for such services.

Realisation and Repatriation of Foreign Exchange

Where any amount of foreign exchange is due or has accrued to any person, he shall take all reasonable steps to realize and repatriate it to India with in the time and in the manner prescribed by the RBI. Several exemptions are, however, granted to this clause.

Contravention and Penalties

Under this chapter, penalty for any kind of contravention under this Act is liable to a penalty up to thrice the amount involved where it is quantifiable or up to Rs. 2 lakhs where it is not quantifiable and where such contravention is continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues. This provision is in total contrast to the respective provision in the erstwhile FERA which provided for imprisonment and no limit on fine. Under FEMA, a person will be liable to civil imprisonment only if he does not pay the fine within 90 days from the date of notice and that too after formalities of show cause notice and personal hearing. If he does not respond to the notice, there can be a warrant of arrest.

Administration of the Act

The FEMA has assigned an important role to the Reserve Bank of India in the administration of this Act. The rules, regulations and norms pertaining to several sections of the Act are to be laid down by the RBI, in consultation with the Central Government.

The Act requires the Central Government to appoint as many officers of the Central Government as Adjudicating Authorities for holding inquiries pertaining to contravention of the Act. There is also a provision for appointing one or more Special Directors (Appeals) to hear appeals against the

order of the Adjudicating Authorities. The Central Government shall also establish an Appellate Tribunal For Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals).

The FEMA provides for the establishment, by the Central Government, of a Director of Enforcement with a Director and such other officers or class of officers as it thinks fit for taking up for investigation the contraventions under this Act.

FERA and FEMA – A Comparison

Important differences between FERA and FEMA have been summed up as follows[1].

1. In FEMA, only the specified acts relating to foreign exchange are regulated, while in FERA, anything and everything that has to do with foreign exchange was controlled. Also, the aim of FEMA is facilitating trade as against that of FERA which was to prevent misuse. In other words, the theme of FERA was : 'everything that is specified is under control'. While the theme of FEMA is : 'everything other than what is expressly covered is not controlled'. Thus there is a lot of deregulation.
2. FEMA is a much smaller enactment - only 49 sections as against 81 of FERA.
3. In the process of simplification, many of the "laid downs" of the erstwhile FERA have been withdrawn.
4. Many provisions of FERA like the ones relating to blocked accounts, Indians taking up employment abroad, employment of foreign technicians in India, contracts in evasion of the act, vexatious search, culpable mental state etc., have no appearance in FEMA.

SUMMARY

The Foreign Exchange Management Act (FEMA), 1999, replaced the Foreign Exchange Regulations Act (FERA), 1973, which regulated the foreign exchange transactions in India and which sought to control certain aspects of the conduct of business outside the country by Indian companies and in India by foreign companies.

. The FEMA, which came in to effect from January 1, 2000, extends to the whole of India and also applies to all branches, offices, and agencies outside India, owned or controlled by a person resident in India.

The objectives of FEMA are to facilitate external trade and payments; and to promote the orderly development and maintenance of foreign exchange market.

The Reserve Bank of India is assigned an important role in the administration of this Act.

The FEMA empowers the Central Government to impose restrictions on dealings in foreign exchange and foreign security and payments to and receipts from any person outside India.

The Act imposes restrictions on persons resident in India on acquiring, holding or owning foreign exchange, foreign security and immovable property abroad and on transfer of foreign exchange or security abroad.

The FEMA lays down that all dealings in foreign exchange or foreign security and all payments from outside the country to India shall be made only through authorised persons, except with the general or special permission of the Reserve Bank. The Act also prohibits any payment outside India except with the general or special permission of the Reserve Bank.

The FEMA permits dealings in foreign exchange through authorised persons for current account transactions. However, the Central Government can impose reasonable restrictions in public interest.

Any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction permitted by the Reserve Bank. However, the Act empowers the RBI to impose a number of restrictions on capital account transactions.

The FEMA permits a person resident in India to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. Also, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

The Reserve Bank is empowered by this Act to prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business. However, the RBI shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

The Act requires the exporters to furnish to the Reserve Bank or to such other authority certain details regarding the exports.

For the purpose of ensuring that export value of the goods is received without any delay, the Reserve Bank may direct any exporter to comply with such requirements as it deems fit.

Where any amount of foreign exchange is due or has accrued to any person, he shall take all reasonable steps to realize and repatriate it to India with in the time and in the manner prescribed by the RBI. Several exemptions are, however, granted to this clause.

Under this chapter, penalty for Any kind of contravention under this Act is liable to a penalty up to thrice the amount involved where it is quantifiable or up to Rs. 2 lakhs where it is not quantifiable and where such contravention is continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues. This provision is in total contrast to the respective provision in the erstwhile FERA which provided for imprisonment and no limit on fine. Under FEMA, a person will be liable to civil imprisonment only if he does not pay the fine within 90 days from the date of notice and that too after formalities of show cause notice and personal hearing. If he does not respond to the notice, there can be a warrant of arrest.

An important difference between FERA and FEMA is that while in FEMA, only the specified acts relating to foreign exchange are regulated, in FERA, anything and everything that has to do with foreign exchange was controlled. Also, the aim of FEMA is facilitating trade as against that of FERA, which was to prevent misuse. In other words, the theme of FERA was : 'everything that is specified is under control'. While the theme of FEMA is : 'everything other than what is expressly covered is not controlled'. Thus there is a lot of deregulation.

REFERENCE

1. Chinubhai R Shah and Komal Parikh, *"FERA to FEMA: A Journey from Forbidden Lands to Semi-Open Pastures"*, *Chartered Secretary*, May 2000, pp. A175:590-2.

ANNEXURE 42.1

DEFINITIONS

The meaning some of the important terms used in FEMA are given below.

Foreign Exchange

Foreign exchange means foreign currency and includes-

(i) Deposits, credits and balances payable in any foreign currency,

(ii) Drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) Drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

Foreign Currency

Foreign currency means any currency other than Indian currency

Foreign Security

Foreign security means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.

Person

Person includes -

(i) An individual.

(ii) A Hindu undivided family,

(iii) A company,

(iv) A firm,

(v) An association of persons or a body of individuals, whether incorporated or not,

(vi) Every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) Any agency, office or branch owned or controlled by such person;

Person Resident in India

Person resident in India means -

(i) A person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include -

(A) a person who has gone out of India or who stays outside India, in either case -

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than -

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) Any person or body corporate registered or incorporated in India,

(iii) An office, branch or agency in India owned or controlled by a person resident outside India,

(iv) An office, branch or agency outside India owned or controlled by a person resident in India;

Person Resident Outside India

Person resident outside India means a person who is not resident in India.

Service

Service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or: other information, but does not include the rendering of any service free of charge or under a contract of personal service

Authorised Person

Authorised person means an authorised dealer, money changer, off- shore banking unit or any other person for the time being authorized under the Act to deal in foreign exchange or foreign securities;

Currency

Currency includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

Current Account Transaction

Current account transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes, -

(i) Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,

(ii) Payments due as interest on loans and as net income from investments,

(iii) Remittances for living expenses of parents, spouse and children residing abroad, and

(iv) Expenses in connection with foreign travel, education and medical care of parent, spouse and children.

Part 8

CASES

Title of the Case	Area/Dimensions
McKinsey's Agenda for India's Economic reforms	Economic and political $ government environments
South-East Asian economic crisis	Global economic environment
Remains of a dream	Political & government environment
The cost of delay	Political & government environment
Natural thrust	Social and global environments
The swap	Domestic and global environments
A question of ethics	Business ethics
Different for gamble	Social and global environments
Ill treatment	Social and global environments
Human Rights Protection	Social responsibility, business ethics
Whose basmati is it?	Global and political & government environments
The Sensex	Economic, political & government, social and global environments
Globalisation of pop culture	Social and global environments
The environmental services business	Technological and natural environments

The MGI has estimated that together these inhibit GDP growth by around 4 per cent year. In contrast, it was found that the factors more generally believed to retard growth — inflexible labour laws and poor transport infrastructure — while important, constrain India's economic performance by less than 0.5 per cent of GDP a year. Therefore, it would be a mistake to focus growth policies exclusively on these familiar problems. To raise India's growth trajectory a broader reform agenda is required.

The Report argues that removing the main barriers to growth would enable India's economy to grow as fast as China's, at 10 per cent a year. Annual growth in labour productivity would double to 8 per cent. Some 75 million new jobs would be created, sufficient not only to ward off the looming crisis in employment, but also to reabsorb any workers that might be displaced by productivity improvements.

In order to overcome the main hurdles to growth and to ensure that India's economy grows as fast as it must, the government will have to adopt a deeper, faster process of reform immediately. The MGI has identified 13 policy changes the government should enact. See Table C.1.2. It may be noted that the McKinsey proposals have many thing in common with the recommendations made by some official bodies as well as by others in India. See Box C.1.1.

TABLE C. 1.2 : REFORM MEASURES REQUIRED

Category	*Action*		*Key sectors directly affected*
Product market	1	Eliminate reservation of all products for small-scale industry; start with 68 sectors accounting for 80 per cent of output of reserved sectors	• 836 manufactured goods
	2	Equalize sales tax and excise duties for all categories of players in each sector and strengthen enforcement	• Hotels and restaurants • Manufacturing (e.g. steel, textiles, apparel) • Retail trade
	3	Establish effective regulatory framework and strong regulatory bodies	• Power • Telecom • Water supply
	4	Remove all licensing and quasi-licensing restrictions that limit number of players in affected industries	• Banking • Dairy processing • Petroleum marketing • Provident fund management • Sugar
	5	Reduce import duties on all goods to levels of South East Asian Nations (10 percent) over 5 years	• Manufacturing
	6	Remove ban on foreign direct investment in retail sector and allow unrestricted foreign direct investment in all sectors	• Insurance • Retail trade
Land market	7	Resolve unclear real-estate titles by setting up fast-track courts to settle disputes, computerising land records, freeing all property from constraints on sale, and removing limits on property ownership	• Telecom • Construction • Hotels and restaurants

	8	Raise property taxes and user charges for municipal services and cut stamp duties (tax levied on property transactions to promote development of residential and commercial land and to increase liquidity of land market)	• Retail trade
	9	Reform tenancy laws to allow rents to move to market levels	
Government ownership	10	Privatise electricity sector and all central and state government-owned companies; in electricity sector, start by privatising distribution; in all other sectors, first privatise largest companies	• Airlines • Banking and insurance • Manufacturing and mining • Power • Telecom
Others	11	Reform labour laws by repealing section 5-B of the Industrial Disputes Act; introducing standard retrenchment-compensation norms; allowing full flexibility in use of contract labour	• Labour-intensive manufacturing and service sectors
	12	Transfer management of existing transport infrastructure to private players, and contract out construction and management of new infrastructure to private sector	• Airports • Ports • Roads
	13	Strengthen extension services to help farmers improve yields	• Agriculture

The Effects of Reform

According to the MGI report, if India immediately removes all the existing barriers to higher productivity, the resulting increases in labour and capital productivity will boost growth in overall GDP to 10 per cent a year; they will release capital for investment worth 5.7 per cent of GDP; and they will generate 75 million new jobs outside agriculture, in modern as well as transitional sectors. (The report observes that India's economy has three types of sector: modem sectors with production processes resembling those in modem economies — provide 24 per cent of employment and 47 per cent of output; transitional sectors provide 16 per cent of employment and 27 per cent of output; and agricultural sectors provide 60 per cent of employment and 26 per cent of output. Transitional sectors comprise those informal goods and services consumed by a growing urban population: street vending domestic service, small-scale food processing and cheap, mud housing, to name a few. The transitional businesses typically require elementary skills and very little capital, so they tend to absorb workers moving out of agriculture.)

Removing all the productivity barriers would almost double growth in labour productivity to 8 per cent a year over the next ten years. The modem sectors would account for around 90 per cent of the growth, while it would remain low in the other two sectors. In fact, productive in the modern sectors of the economy would increase almost three times over the next 10 years. Though there may be small improvements in agricultural productivity, mainly from yield increases, the massive rise in agricultural productivity which mechanised farming has supported in developed countries is unlikely to occur in India for another ten years, at least, while there is still a surplus of low cost rural labour to deter farmers from investing in advanced machines. Enterprises in the transitional sectors have inherently low labour productivity' because they use labour intensive "low-tech" materials, technologies or business formats.

2 SOUTH-EAST ASIAN ECONOMIC CRISIS

An economic crisis, which erupted in Thailand in mid–1997 and which soon spread to neighbouring countries—Malaysia, Indonesia, Philippines and South Korea – came to be popularly referred to as South-East Asian economic crisis (although South Korea is in East Asia and only the other countries are in South East Asia).

Although experts do not fully agree on the reasons behind the crisis, it is generally held that the crisis was caused mainly by the following factors.

1. Persistence of large current account deficit.
2. Large foreign debt and particularly, a high proportion of short-term debt.
3. Large inflow of foreign capital, particularly the sensitive short-term capital.
4. Indiscriminate lending by banks and other financial institutions, arising from lack of adherence of financial intermediaries to prudent norms concerning capital adequacy, asset classification, provisioning, and absence of disclosure requirements.
5. Lack of transparency in the economic system that made proper judgement by investors and others, for decision making difficult.
6. Over-investment in several sectors.
7. Imprudent lending by international lenders.
8. Large *real effective exchange rate* appreciation.

As the crisis first occurred in Thailand, a look at the factors which led to the Thai crisis would help understand reasons for the emergence of the crisis. These factors are depicted in Fig. C. 2.1.

Because of the appreciation of the Yen against the US dollar after the *Plaza Accord* of 1985, Japanese exports were becoming costlier and hence Japanese firms were on the lockout for cheap manufacturing locations. The cheap Thai labour attracted lot of FDI from Japan. (and also from other countries). The high returns on short-term investments attracted large portfolio investments and short-term funds to Thailand. The pegged exchange rate system followed by the SE Asian countries encouraged such investments because of the absence of exchange rate risk under that system. The high interest rate differential between the developed markets and Thailand (also other SE Asian countries) tempted banks to channel funds from developed economies to Thailand. The indiscriminate lending by banks (and other financial institutions) resulted in the over-expansion of several industries. The speculative investments in real estate created such a situation that the occupancy rates in new buildings were only about 20 per cent. The inability of the borrowers to repay resulted in 58 of the 91 finance companies downing the shutters.

The investment spurt and increase in the demand for labour made Thai labour very costly—reported to be 3 to 5 times than the labour in neighbouring countries including China. The Thai exports suffered a setback due to increasing cost and increasing competition from cheap Chinese goods. The increased spending and high cost in Thailand encouraged imports, causing alarming current account deficit.

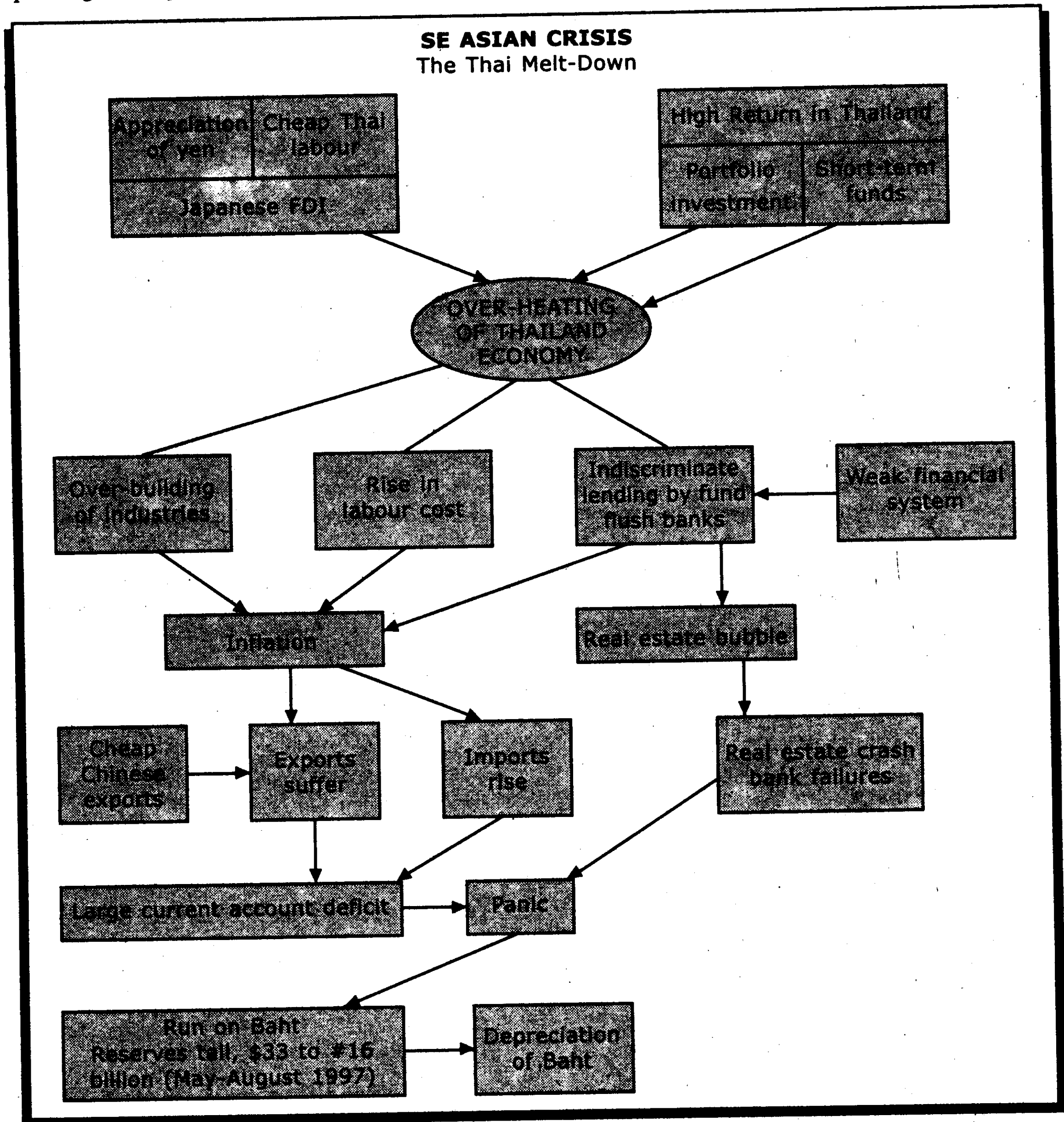

Fig. C. 2.1 : Factors that contributed to the Thai crisis

All the above developments created an all around panic and the feeling that the Thai currency, *Baht,* would have to be devalued became stronger. There was a run on the *Baht*—people wanted to convert *Baht* into dollar so that they could re-exchange dollar for more units of *Baht* when it would be devalued. The Thai Central bank sold more than $ 23 billions forward in a desperate attempt to defend *Baht.*

The next obstacle came from the Uttar Pradesh Financial Corporation (UPFC). It could release the first instalment after I completed construction till the plinth level. I continued work with the help of a diesel generating set. It took another month to reach the plinth level.

But before I could request UPFC to release my first instalment, I received a letter from UPFC that I had to deposit interest against the amount paid to the UPSIDC for land possession. This was a shock, because interest had to be paid even before anything was produced.

But I had no alternative, because the first instalment was due. The UPFC promptly released the first instalment after inspecting the construction. It helped me continue construction work, and also book for plant and machinery.

Six months went by. Construction was almost complete. I had received three instalments from the Uttar Pradesh Financial Corporation (UPFC). Each time the payment of interest was due, the required sum was adjusted from the instalment released. If there was any shortfall in money required for construction, I paid from my own pocket.

But after nine months, my coffers went empty. Machinery suppliers were after me, for payment. UPFC insisted on interest payments, because this was the last instalment of my term loan and interest due couldn't be deducted from future instalments. I borrowed from family and friends and paid up. Then I received the final instalment from UPFC for plant and machinery, with another notice that the yearly instalment for the principal was due.

Within two months, machinery was commissioned at the site. But electricity was yet to reach the complex. In the previous year, I had visited the Uttar Pradesh State Electricity Board (UPSEB) office innumerable times. I also approached the industry association to assist me. But all my efforts were in vain. This did not help me, or others like me, to get the grid supply.

There were 14 others who were in the same boat. The biggest company of them all—obviously with contacts at higher levels—arranged for grid supply from the rural feeder. But that plan also did no take off, because the rural feeder supplied poor quality power for a mere six hours. A process industry requires 24 hours of uninterrupted electricity supply without load fluctuations. It is precisely because of this that all 15 of us, who were waiting for electricity, had insisted on industrial power from UPSEB.

All plans failed. Captive generation was not a viable alternative now. And we continued to wait for the grid supply. We met the former minister for industry and pleaded our case. He assured us that he would take up the case with the power ministry.

Meanwhile, I defaulted on interest payments. So did the others. The final blow came in the Assembly elections, when both the sitting : Member of Legislative Assembly, from Basti, and the state industrial minister lost their seats. Suddenly, everything—from road construction work, to the laying of sewer and phone lines—came to a standstill.

Only the police post and the UPSKB rural feeder office remained. The new incumbent in the industrial ministry hailed from Saharanpur, so the thrust of the ministry changed. Basti was not on their priority list anymore. After waiting for two years, UPSEB was not able to connect the complex with grid supply.

In the end, UPFC initiated recovery action and sealed my unit. Besides, they claimed that I could not get NRI treatment, with preferential interest rates, because I had permanently moved to India. Thus, there were also plans to file a case against me on account of misinforming the corporation. Experts suggested I should file for insolvency if I wanted to avoid going to prison. This I did in 1994. I spent Rs. 15 lakh from my own pocket.

Now, all that remains of an entrepreneurial dream is a sealed chemical unit in Basti and a complex legal tangle.

I was better off working for the transnational in Germany. Power does not come out of the barrel of a gun. A gun's barrel comes out of power, especially when the latter does not exist.

QUESTIONS

1. Identify and analyse the environmental factors in this case.
2. Who were all responsible for this tragic end?
3. Is it right on the part of the government and promotional agencies to woo entrepreneurs by promising facilities and incentives which they are not sure of being able to provide?
4. Should there be legislation to compensate entrepreneurs for the loss suffered due to the irresponsibility of public agencies? What problems are likely to be solved and created by such a legislation?
5. What are the lessons of this case for an entrepreneur and government and promotional agencies?

6 THE SWAP

The Economic Times, 22 October 2000, reported that Reliance Industries entered into a swap deal for the export and import of 36 cargoes of naphtha over the next six months. Accordingly, three cargoes of 50,000 tonnes each were to be exported every month from Reliance Petroleum's Jamnagar refinery and three cargoes of the same amount were to be imported to the Reliance Industries' Hazira facility. The deal was done through Japanese traders Mitsubishi, Marubeni, ltochu, IdCmitsu and Shell. The export was done at around Arabian Gulf prices plus $22.

Reliance, needs petrochemical grade naphtha for its Hazira facility which is not being produced at Jamnagar. Therefore, its cracker at Hazira gets petrochemical grade naphtha from the international markets in return for Reliance Petroleum selling another grade of naphtha from its Jamnagar refinery to the international oil trade.

If RIL imports naphtha for Hazira petrochemical plant, the company does not have to pay the 24 per cent sales tax, which it will have to pay on a local purchase, even if it is from Reliance Petro. Besides, Reliance Petro will also get a 10 per cent duty drawback on its crude imports if it exports naphtha from the refinery at Jamnagar.

The export of naphtha with Japanese traders is being looked as a coup for Reliance as it gives the company an entry into the large Japanese market.

Indian refineries have a freight advantage over the Singapore market and can quote better prices.

QUESTIONS

1. Examine the internal and external factors behind Reliance's decision for the swap deal.
2. What environmental changes could make swap deal unattractive in future?
3. Could there be any strategic reason behind the decision to import and export naphtha?
4. Should Reliance import and export naphtha even if it does not provide any profit advantage?

CASE

7 A QUESTION OF ETHICS

TELCO opened bookings for different models of its proud small car *Indica* in late 1998. The consumer response was overwhelming. Most of the bookings were for the AC models, DLE and DLX. The DLE model accounted for more than 70 per cent of the bookings.

Telco has planned to commence delivery of the vehicles by early 1999. However, delivery schedules for the AC models were upset because of some problems on the roll out front. According to a report in *The Economic Times* dated 13 March 1999, Telco officials attributed the delay to non-availability of air conditioning kits.

Subros Ltd. supplies AC kits for the DLE version and Voltes is the vendor for the DLX version. Incidentally, Subros is also the AC supplier to Maruti Udyog Ltd.

Telco officials alleged that Subros was being pressured by the competitor to delay the supply of kits. "If this continues, we will be forced to ask Voltas to supply kits for the DLE version too," a company official said.

QUESTIONS

1. Why did Telco land itself in the problem (supply problem in respect of AC kits)?
2. If the allegation about the supplier is right, discuss its implications for the supplier.
3. Evaluate the ethical issues involved in the case. (Also consider the fact Maruti was 50 per cent Government owned).

CASE 9 ILL TREATMENT

Indian leather exports, an important foreign exchange earner for the country has been reportedly hit hard by the decision of some major US retail chains like Eddie Bauer, LL Bean, Timberland and Casual Corner, and a German company Bader to boycott leather goods from India in protest against the ill-treatment of animals here. This move came shortly after a decision by global retail chains Gap, Marks & L. Spencer, Liz Claiborne and J. Crew not to buy Indian leather goods. This development has a lot to do with the lobbying by the US-based animal rights group People for Ethical Treatment of Animals (PETA) for a ban on leather goods from India by documenting evidence of "cruelty to animals" killed for making leather. It has been reported that the overseas firms have officially communicated to the Indian outfit of PETA that they will not be sourcing leather products from India until there is strict enforcement of animal protection laws. Following this, the Mumbai-based Teja Industries, the official supplier of leather goods for Marks & Spencer in India, started out-sourcing leather from other countries to manufacture products for the global chain.

QUESTIONS

1. In the light of the above, discuss the implications of social activist groups for business.
2. With reference to this case, discuss the failure of the governments, Council for Leather Exports and the leather industry and the lessons of this case.
3. What should the governments, Council for Leather Exports and the leather industry do to overcome the problem?

CASE

10 HUMAN RIGHTS PROTECTION

Reebok. The well known athletic shoe multinational gets its product contract manufactured by independent firms in the developing countries. The MNC which gives importance to low cost and high quality is also concerned with human rights protection and requires its suppliers to follow the following human rights standards.

Nondiscrimination: Reebok will seek business partners that do not discriminate in hiring and employment practices on grounds of race, colour, national origin, gender, religion, or political or other opinion.

Working hours/overtime: Reebok will seek business partners who do not require more than 60-hour work weeks on a regularly scheduled basis, except for appropriately compensated overtime in compliance with local laws, and we will favour business partners who use 48-hour work weeks as their maximum normal requirement.

Forced or compulsory labour: Reebok will not work with business partners that use forced or other compulsory labour, including labour that is required as a means for political coercion or as punishment for holding or for peacefully expressing political views, in the manufacture of its products. Reebok will not purchase materials that were produced by forced prison or other compulsory labour and will terminate business relationships with any sources found to utilize such labour.

Fair wages: Reebok will seek business partners who share our commitment to the betterment of wage and benefit levels that address the basic needs of workers and their families so far as possible and appropriate in light of national practices and conditions. Reebok will not select business partners that pay less than the minimum wage required by local law or that pay less than prevailing local industry practices (whichever is higher).

Child labour: Reebok will not work with business partners that use child labour. The term "child" generally refers to a person who is less than 14 years of age, or younger than the age for completing compulsory education if that age is higher than 14. In countries where the law defines "child" to include individuals who are older than 14, Reebok will apply that definition.

Freedom of association: Reebok will seek business partners that share its commitment to the right of employees to establish and join organizations of their own choosing. Reebok will seek to assure that no employee is penalized because of his or her non-violent exercise of this right. Reebok recognizes and respects the right of all employees to organize and bargain collectively.

Safe and healthy work environment: Reebok will seek business partners that strive to assure employees a safe and healthy workplace and that do not expose workers to hazardous conditions.

QUESTIONS

1. Discuss the human rights protection endeavours of Reebok.
2. What are its implications for the developing country suppliers? Will these standards pose a problem for the suppliers? In what ways will these standards benefit the suppliers in particular and developing country industrial sector in general?