Evolution of India's MBRT FDI Policy

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India's Post-1991 Inward FDI Experience: Looking Beyond the Aggregates

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Abbreviations

AICC	All India Congress Committee
AMCHAM	American Chamber of Commerce
BI	Backend infrastructure
BIPA	Bi-lateral Investment Promotion Agreements
BJP	Bharatiya Janata Party
BRL	Bharti Retail Ltd
BWM	Bharti Walmart Pvt Ltd
CAD	Current account deficit
CAIT	Confederation of All India Traders
CCDs	Compulsorily Convertible Debentures
CCW	Cash and carry wholesale trade
Cedar	Cedar Support Services Ltd (formerly Bharti Retail Holdings Ltd)
CoS	Committee of Secretaries
CPI	Communist Party of India
CPM	Communist Part of India (Marxist)
CSS	Cedar Support Services Ltd (formerly Bharti Retail Holdings Ltd)
DIPP	Department of Industrial Policy and Promotion, Ministry of Commerce and Industry
DP	Discussion Paper
ED	Enforcement Directorate, Department of Revenue, Ministry of Finance
FCPA	Foreign Corrupt Practices Act of United States of America
FDI	Foreign direct investment
FEMA	Foreign Exchange Management Act, 1999
FERA	Foreign Exchange Regulation Act, 1973 (was replaced by FEMA)
FIPB	Foreign Investment Promotion Board in the Ministry of Finance
FTA	Free Trade Agreement
ICRIER	Indian Council for Research on International Economic Relations
JV	Joint Venture
MBRT	Multi-brand retail trade
MSME	Micro, Small and Medium Enterprises
PIL	Public Interest Litigation
PMO	Prime Minister's Office
RBI	Reserve Bank of India
RFDI	FDI policy relating to multi-brand retail trade
RILA	Retail Industry Leaders Association
SBRT	Single brand retail trade
SEZ	Special Economic Zones
WM	Walmart

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Section 1
Introduction

Regulations are a critical component of the toolkit that the governments, particularly in developing countries, use in order to influence development outcomes. However, effectiveness of regulations depend not only on the regulations themselves, but also on the regulator and the regulated and the environment in which they are implemented. Equally importantly, if the regulator does not have the requisite information or faces risks arising from "regulatory capture"[1], then again, the regulations may not achieve the desired objectives. Regulation of foreign direct investment (FDI) in retail trade in India provides an interesting context where several of the aforementioned issues have arisen.

After a long and winding process, which began in 1997 when 100% foreign equity holding was permitted in Cash & Carry Wholesale Trade (CCW) through the approval route, the government finally allowed FDI up to 51% in multi brand retail trade (MBRT) in September 2012, albeit with some caveats. In between, 100% FDI was allowed under the automatic route in CCW in February 2006. It was also for the first time that FDI up to 51% was allowed in single brand retail trade (SBRT) through the approval route. Though Metro of Germany (ranked 4th globally in 2011[2]) entered the Indian market in 2001 through CCW business as a 100% foreign owned entity, it was only after 2006, following the entry of Hong Kong-based Dairy Farm International (joint venture with Spencer's), and South Africa's Shoprite, (franchise arrangement with the Nirmal Lifestyle group) that the ball started really rolling[3]. In 2007, the two largest firms in global retail business, Walmart and Carrefour, entered India the former as a joint venture with India's Bharti group and the latter as a 100% foreign subsidiary. Another major global retailer, Tesco of UK (global rank 3) preferred to follow the franchise route with Tatas.

The decision to allow 51% foreign equity in MBRT has been one of the most contentious decisions taken by the government in recent years. The debate has been extremely polarised, with both sides of the divide basing their arguments on the gains and losses for the small producers, including farmers, and traders. The government backed its position supporting entry of big retail by arguing that small producers and farmers would get an opportunity to by-pass the exploitative middlemen by selling

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1 This term owes its origin to George Stigler. Stigler argued that regulatory capture happens when a regulatory agency, formed to act in the public's interest, eventually acts in ways that benefit the industry it is supposed to be regulating, rather than the public interest for which the regulations were put in place. See, George J. Stigler, "The Theory of Economic Regulation", *The Bell Journal of Economics and Management Science*, vol. 2, no. 1 (Spring, 1971).

2 http://www.stores.org/2011/Top-250-List#.US7ik6JGSZw

3 For the present, we are also not going to touch upon the entry of direct selling companies or some others like Adidas, etc.

their products directly to the retail business. In fact, the initial policy pronouncement allowing 51% FDI in MBRT stated that the foreign investor had to procure from India's small scale sector. The opponents, on the other hand, have argued that the mega stores would displace small traders leading to substantial job losses.

In a scenario such as the one alluded to above, the factors leading to the eventual decision of the government to opt for the retail FDI (henceforth MFDI) becomes an interesting issue. In the following we shall try to piece together publicly available evidence over the years[4] to understand the forms in which the MFDI policy could have been influenced. The Timeline in the Annexure lists chronologically various important relevant policy announcements and events. An understanding of the process through which this policy has evolved and approach of the various actors plus the whittling down of the sourcing condition associated with FDI in Single Brand retail trade (SBRT) may help in foreseeing the extent to which the safeguards would be adhered to. Such an exercise acquires added significance in the context of India's known weaknesses in implementing 'tough laws'. This is irrespective of whether the conditions incorporated in the policy towards MFDI are sufficient to meet the stated objectives or not. We would also take a brief look at a missing element in the discussion on this issue, *i.e.*, the contribution of inflows in meeting the current account gap. We feel that this is necessary because attracting large FDI inflows has turned out to be an independent objective of policy makers in the context of huge current account gap the country has been experiencing and about which the policy makers have repeatedly been airing concern. This objective has the potential to override other considerations even if the policy makers were not unduly influenced by the foreign investors or no pecuniary benefits were offered or accepted.

- **Policies determining FDI in retail trade**

India's FDI policy (end March 2013), places trading under five main categories.[5]

(i) Cash and Carry Wholesale Trading/Wholesale trading (100% FDI, through the automatic route[6])

> Cash & Carry Wholesale trading/Wholesale trading means sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. *The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales.*(emphasis added). Trading of

4 The Press Clippings Archive of the Institute for Studies in Industrial Development (ISID) is supplemented by documents and press reports available on the internet and company documents available at the website of Ministry of Corporate Affairs are the main sources. References to newspaper reports unaccompanied by internet URLs are all from the ISID Archive.

5 Based on Press Notes and FDI Policy circulars available at http://dipp.nic.in till the third week of March 2013.

6 Under the automatic route, in case of eligible products and services companies can first issue shares, within the permissible limits, to foreign investors and inform the Reserve Bank of India later within 30 days. In all other cases, specific central government approval is required.

items sourced from MSE sector for which 100% FDI was allowed through the approval route has been combined with the above.

(ii) Single Brand Product retail trading (100% FDI, through the approval route)

Products to be sold should be of a 'Single Brand' only. Products should be sold under the same brand internationally in one or more countries other than India. 'Single Brand' product-retail trading would cover only products which are branded during manufacturing and the foreign investor should be the owner of the brand.

(iii) Multi-brand retail trading (FDI up to 51%, through the approval route)

This involves retail trading, *i.e.*, direct sales to the ultimate consumer, in all products.

(iv) E-commerce activities (100% FDI, through the automatic route)

E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business e-commerce and not in retail trading.

(v) Test Marketing (100% FDI, through the approval route).

Test marketing of items for which a company has approval for manufacture is permitted subject to the conditions that test marketing will be for a period of two years and investment in setting up manufacturing facilities commences simultaneously with test marketing.

Trading of items for export which was earlier listed as open to 100% FDI through the approval route is no longer mentioned in the current consolidated FDI policy.

Of all the above categories, the most contentious decision has been with regard to MBRT, or in common parlance retail trade. A lot has been written and said both in favour of and against allowing FDI in India's retail trade. The main arguments in favour are: development of supply chain infrastructure, reduction in post-harvest losses, reduced role of middlemen, better remuneration to farmers, better quality, wider choice and lower prices (which also helps in fighting inflation) to consumers, upgradation of local traders due to increased competition -- which again will benefit consumers, creation of large number of better quality jobs, new opportunities for export of farm produce and products of small and medium enterprises, infusion of large amount of foreign capital which will help meet the current account gap, etc.[7]Those who oppose emphasize loss of livelihood opportunities for large number of persons dependent upon *mom and pop* shops, abuse of power by large retailers at both ends of the chain, huge quantum of imports hurting domestic manufacturing, indirect exploitation of labour by the large retailers in farms and factories, being privately-owned the backend infrastructure's benefits not reaching an overwhelming number of small farmers, etc. International experiences have been quoted extensively by both the sides.

Certain restrictions have been incorporated in India's policy towards FDI in MBRT in order to address some of the above concerns. According to the FDI policy relating to MBRT (hereafter MFDI) , the conditions FDI companies in MBRT would be

[7] The official position has been best summed up in the reply to Unstarred Question No. 1257, replied in Rajya Sabha on December 5, 2012.

subjected to are: (i) foreign equity not to exceed 51%; (ii) minimum inflow to be $100 million; (iii) half of the inflow to be invested in backend infrastructure (BI); (iv) at least 30% of the value of procurement of manufactured/ processed products to be sourced from Indian 'small industries'; (v) retail outlets can be set up only within municipal limits of cities with at least 1 million population in states that allow MFDI; (vi) Government will have the first right to procurement of agricultural products; and (vii) retail trading by means of e-commerce would not be permissible for MFDI companies. FDI in SBRT is far less restricted. In case FDI exceeds 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, etc.

A dominant feature of the discussion on MFDI in India has been that a lot of it revolved around Walmart of USA, the world's largest retailer,[8] directly and indirectly. Indeed, the entry of Walmart is the most talked about cases of foreign investment in India after Enron because of various reasons including the already existing large amount of literature on Walmart's operations at home and globally, intense lobbying by the company in USA and sustained pursuit in India and finally the nature of arrangement it had entered into with India's Bharti group. Given the well-acknowledged lobbying by the Walmart and the manner in which the policy has evolved in the face of a variety of objections we do not see much purpose being served in going over the pros and cons of MFDI yet another time. Though the on-going enquiry into the bribery issue by Walmart, US official agencies and the Indian government provide the backdrop to us, we feel bribing of local authorities for store clearances in India, if at all happened, through the reported two dozen consultants[9]would be a much lesser evil. We also feel that India's investigations would yield little especially in terms of identifying the main channels of gratification because bribing need not always have to take place in monetary terms and within the boundaries of the host developing country. The reported actions of Walmart with respect to the Mexican bribery issue also do not inspire confidence in India's ability to get to the bottom of the things.

Section 2
Beginnings of Walmart's Engagement with India

With a view to explore sourcing possibilities Walmart had set up an office in India in 2001 for sourcing merchandise from India. This was also the time the debate on MFDI was getting intensified in India. For instance, while the Report of the **Task Force on** Employment **Opportunities** (July 2001) favoured immediate opening up of the sector for FDI, the **Special Group on Targeting Ten Million Employment**

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8 See: http://www.smh.com.au/business/the-worlds-top-20-retailers-20130116-2cssw.html. While Walmart stands at the top with revenue of US $ 447 billion, the next placed Carrefour of France is a distant second with a revenue of US $ 114 billion.

9 "The Inside Story: Walmart and the shadow of corruption", *Economic Times*, January 15, 2013.

Opportunities (May 2002), which followed, proscribed the same for the 10th Plan period.[10] **The Steering Group on Foreign Direct Investment**, (August 2002) after discussing pros and cons of FDI in retail trade recommended continuation of the ban.[11] The Study Group was also constituted by the Planning Commission. Some of the earliest interest in India's retail sector by Walmart can be traced to 2003 when the company started seeking to expand its global operations.[12] Mr. Lee Scott, then chief executive of Walmart Stores Inc., had said that Walmart was keen on India especially against the background of the government's plans to relax excessive regulations that had hampered retail growth in the past.[13]In June 2004 the government planned to set up an inter-ministerial committee to promote exports through global retailers. It was projected that the exports through the retails chains would be of the order of $20-25 bn. over the next two-three years.[14]

Subsequently, Walmart had established a sourcing arm in March 2005 by name WM Global Sourcing India Pvt Ltd. Press reports suggest that in April 2005 Walmart's representatives met about 10 large foreign companies which had been operating in India and which also happen to be its global suppliers, to understand the domestic retail market. It was underlined that this was in contrast to the earlier trips of the company's representatives when meetings were held with a number of textile, garments and leather manufacturers.[15] Further confirmation to the company's interest in the domestic market also comes from Mr. Lee Scott who was reported to have said that "It's (India) going to be a great retail market. When the time is right, we are going to do it".[16] On the same day, it was also reported that a policy paper of the Department of Industrial Policy and Promotion (DIPP) while expressing reservations about branded dedicated retail stores (implying SBRT) as they would be mere outlets for imported goods, proposed to open up all types of retailing irrespective of the product categories. The comments credited to a senior official were: "We are devising a policy that is simple, straight forward and protective to the extent of an initial equity cap, which might be reviewed at a later stage".[17] It is apparent that the thrust of the paper

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10 Planning Commission, *Report of the Special Group on Targeting Ten Million Employment Opportunities per year over the Tenth Plan Period*, May 2002. (Chairman: S.P. Gupta). The Task Force on Employment Opportunities, also of the Planning Commission, was headed by Montek Singh Ahluwalia.

11 The Steering Group, set up by the Planning Commission, was headed by N.K. Singh.

12 "Walmart eyes global expansion", *Business Standard*, July 5, 2003.

13 "Scott to come scouting this month", *Economic Times*, January 10, 2004. A few weeks later then US Ambassador to India while advocating the opening up of the retail sector said: "Such change will inevitably lead to greater choice at lower prices for consumers, including offerings of more food and beverage products from the US and elsewhere. However, this progress is being hampered by the ban on FDI in the retail sector". See: US mounts pressure on India to lift ban on retail FDI", *Economic Times*, March 13, 2013.

14 "Panel to help Wal-Mart to source goods from India", http://www.rediff.com/money/2004/jun/03bpo1.htm

15 "Walmart gets a feel of India from MNC partners", *Economic Times*, April 12, 2005. A little earlier, the US Ambassador to India said that India's desire to attract large amount of FDI will be met if it opens the retail sector for foreign investment. He also said that the small retailers would not get hurt. "FDI in retailing not to hurt Indian small trade: Mulford", *Financial Express*, February 23, 2005. Subsequently, US Department of State Special Representative for commercial and business affairs during a visit to India also spoke in favour of MFDI. "FDI in retail to go in India's favour: US", *Business Standard*, February 28, 2005.

16 "India is first choice: Walmart", *Financial Express*, April, 23, 2005.

17 "Retail FDI set to flow freely", *Financial Express*, April 23, 2005.

was not so much on MFDI directly contributing to improving the domestic conditions in the form of benefits to farmers, consumers, backend infrastructure, etc. -- which became the selling points subsequently both by Indian policy makers and the foreign investors/governments -- but to promote exports from India, following China's experience with large retail chains like Walmart. Interestingly, a former Joint Secretary in the Ministry of Finance commented subsequently that

> Some of our economists in the Ministry of Finance and Planning Commission have strongly recommended FDI in retail trade in India and quote the Chinese experience. Are they fully aware of all the facts and the implications of their prescriptions for a country like India?[18]

Further reports quoting *Business World*'s observation that 'Walmart was leaving no stones unturned to lobby its way into India', explain that Mr. David Mulford, then US Ambassador to India, met the Indian Prime Minister, Finance Minister and the Commerce Minister, "purportedly at the behest of the US retailer" to prepare the ground for the following visit of Mr. John B. Menzer, then President and Chief Executive Officer (CEO) of Walmart.[19] The company had also started looking for local partners as it wanted to avoid the troubled start it has had in China.[20] Mr. Menzer did visit India on May 12, 2005 and started emphasizing right away that instead of hurting small retailers, Walmart's entry will help them grow faster. Consumers would also benefit from its 'everyday low price' offers.[21] After meeting the Prime Minister and the Commerce Minister, Mr. Menzer indicated that the company would outsource more from India if it gets to set up base in India. "By having a retail base here, we will be close to the market. Much of India's fruits and vegetables are spoilt because they are not preserved. We can take care of this by investing in cold chains". He further added: "We had a good meeting with the Prime Minster. I hope there will be a change in the FDI policy and we are allowed to come in".[22]The meeting led to protests from the left parties who said that the move will go against UPA's Common Minimum Programme. Then General Secretary of the Communist Party of India wrote to the PM saying that his own position as an opposition leader was that such reforms would destroy rather than create employment.[23]In October 2005 Mr. Buddhadeb Bhattacharya, then Chief Minister of West Bengal, visited Delhi and met the Prime Minister two days after Walmart's representatives had met him in Kolkata. Press reports suggest that the meeting of the Walmart's representatives with the Chief Minister "was purportedly facilitated by the PMO".[24]

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18 K. Subramanian, "Wholesale lessons for India's policy makers", *Hindu Business Line*, July 1, 2005.

19 "Walmart set to enter India", May 6, 2005. Rediff.com. at around the same time the World Bank also lent its voice. "FDI in retail sector to benefit India, says World Bank", *Hindu Business Line*, April 14, 2005.

20 "Ally shopping: Walmart draws up India shortlist", *Economic Times,* May 9, 2005.

21 "CEO Menzer says Won't drive kiranas to the wall: Walmart pitches for retail FDI", *Economic Times*, May 13, 2005.

22 "Walmart seeks PM blessings", *The Telegraph*, May 13, 2005.

23 "Walmart chief seeks FDI in retail sector', *The Hindu*, May 13, 2005.

24 "We'll study FDI in retail, Buddha tells Walmart', *The Times of India*", October 25, 2005. This matter came up again much later. See: "PM asked Walmart chief to 'convince' Buddhadeb on FDI: Prakash Karat", *Business Standard*, September 5, 2011.

Then came the first major policy change, post-1997, with regard to FDI in India's retail sector. In early 2006, the government permitted FDI up to 51% in single brand retail outlets, thereby freeing them from necessarily following the franchise route and changed the mode of entry of 100% FDI into CCW from approval route to the automatic route. FDI in SBRT was defended by saying that it would not result in "replacement and displacement of existing labour nor would it affect the business of the neighbourhood *kirana* store".[25] It was also stated that the ramifications of opening up the overall retail sector were being examined.

Walmart then made a further move by setting up a market research and business development office in Bangalore.[26] Soon it was reported that Walmart entered the Board of Indo-US Knowledge Initiative on Agriculture Research and Education along with Monsanto, leading agricultural biotechnology company of USA and Archer Daniels Midland, an American global food processing and commodities trading company. The Initiative, however, would have no US government funding and India would have to invest substantial amounts in this Public Private Partnership. The work on the Initiative was apace to get it ready for a formal announcement by the President of USA in March 2006.[27] After signing the agreement along with the Indian Prime Minister, the American President declared: "By working together with the United States, India will develop better ways to grow crops and *get them to market*, and lead a second Green Revolution".[28](emphasis added)

Section 3
Joint Venture with Bharti Causes Furore

Mr. Michael Duke, the new CEO of Walmart, and his colleagues visited India in March 2006. Sensing that not much progress would be made in view of the ensuing polls, he said "We are patient and persistent. We are hopeful that the Indian government would allow FDI in food and grocery retailing soon".[29] By August 2006, things moved further and the company's liaison office received government's permission and was "proceeding with plans to open small office in Bangalore focused on retail market research".[30]It, was, however, interpreted that the real purpose of this Delhi-based office was to lobby with the government to enter into retail trade.[31]Within

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25 "Armani okay, not Walmart", *The Telegraph*, January 25, 2006.

26 "Walmart Window-shops", *Financial Express*, February 2, 2006.

27 "Walmart, Monsanto on Indo-U.S. agriculture initiative board: Will set the agenda for collaborative research to be pursued with Indian labs", *The Hindu*, February 10, 2006.

28 http://georgewbush-whitehouse.archives.gov/news/releases/2006/03/20060303-5.html. The initiative was, however, criticised as being harmful to the scientific capability in the country and the forced nature of research agenda. Rajeswari S. Raina, "Indo-US Knowledge Initiative: Need for Public Debate", *Economic and Political Weekly*, April 29, 2006, pp. 1622-1624. See also Raj Patel, "The Long Green Revolution", *The Journal of Peasant Studies*, 2013, Vol. 40, No. 1, 1–63, http://dx.doi.org/10.1080/03066150.2012.719224.

29 "Reforms on back burner with polls round the corner; move aims to keep left quiet: No FDI in retail now, govt tells Walmart", *The Economic Times,* March 18, 2006.

30 "India high on agenda: Walmart", *The Statesman*, August 2, 2006.

31 "Wal-Mart: Rapping On India's Door", http://www.businessweek.com/stories/2006-04-30/wal-mart-

a few months, in November 2006, Walmart entered into a MoU with the Bharti group. The group's chief said: "Bharti will carry out the front end and retail operations. Walmart will be the franchisee (sic) and provide technology". According to a statement released by Bharti Enterprises, "This (MoU) will allow the two companies to study and evaluate the retail market in India and identify business opportunities together within the existing guidelines".[32] Thus while 100% FDI was allowed in CCW, Walmart preferred to form Bharti-Walmart Pvt Ltd (BWM) as 50:50 joint venture with the Bharti group. While the JV was to focus on CCW and build the necessary backend infrastructure, Bharti was to focus upon the retail business in a franchise arrangement with Walmart. Critics and analysts saw this as a way of circumventing the provisions which ban FDI in MBRT.[33]Understandably, this raised a storm.

According to the press, then Commerce Minister broke the news of the MoU even before the collaborating parties made a public announcement. Subsequently, referring to the criticism, he said that "We will have a look (at) whether permissible limits have been adhered to". Mr. Mukesh Ambani, Chairman of Reliance Industries, a new domestic entrant into the retail sector, was reported to have said (sarcastically?) that "FDI should be allowed else friends like Sunil will find a way to get around it".[34]In fact even earlier when CCW was opened to 100% FDI through the automatic route, apprehensions were expressed about its misuse. The Chairman of Pantaloon group said that "(t)he category has no regulations and its opening will lead to anyone and everyone entering the Indian market. In the garb of being a wholesaler, anyone can enter the market and set up their retail business".[35]. He was also reported to have said: "We are trying to close the back door and the front door" to keep Walmart out.[36]Obviously, Walmart made the right move by aligning with an influential local business house.[37]Private consultants and retail experts, however, did not find any fault with the arrangement and noted that it conformed to the official policy. On its part, the *New York Times*, however, made it clear that

> …Walmart has seized upon two loopholes: Foreign retailers can operate through franchisees and invest their own capital in wholesale shops,...Walmart, *with backing from Washington*, has lobbied aggressively to pry

rapping-on-indias-door

32 "Bharti, Walmart sign MoU", *The Statesman*, November 28, 2006.

33 See for example: Sunil Jain, "Cash 'n' carry – Walmart", *Business Standard*, December 4, 2006. See also: Mohan Guruswamy, Kamal Sharma, Maria Mini Jos, "FDI in Retail –III, Implications of Wal Mart's Backdoor Entry", Centre for Policy Alternatives, New Delhi, February 2007. Available at http://cpasindia.org/reports/20-fdi-retail-implications-backdoor-entry.pdf.

34 "Govt to scan FDI norm in Bharti, Walmart deal", *Times of* India, November 29, 2006.

35 "But what is single-brand retail", http://www.thehindubusinessline.in/2006/01/26/stories/2006012601070800.htm.

36 "Wal-Mart: Rapping on India's Door", http://www.businessweek.com/stories/2006-04-30/wal-mart-rapping-on-indias-door

37 That Walmart was not averse to using politically influential local partners is evident from a report on its entry into China. Walmart was reported to have entered China in 1996 on the back of a joint venture with a company run by the son of a former Chinese vice president. Again in 2005 a major expansion was facilitated by a joint venture with Citic Pacific, promoted by a person with strong relations with China's leaders. See: Peter Cohan, "How Did Wal-Mart Crack Open China?", http://www.forbes.com/sites/petercohan/2012/05/18/how-did-wal-mart-crack-open-china/

open a market where just 3 percent of consumers shop in large-format, Western-style stores".[38] (emphasis added)

The furore has even made the Congress President concerned about the matter of FDI in retail and its impact on the livelihood of small traders. She was believed to have written to the Prime Minister to ensure that regulatory laws were not being misinterpreted to allow FDI in retail and requested the government to move further "only after examining the impact of the decision on livelihood security of those engaged in small-scale operations".[39]While it is not clear whether it followed or preceded the Congress President's request, in February 2007 the Commerce Ministry conveyed to the PMO the Bharti group's clarification that its JV with Walmart complied with the FDI norms. The Minister was reported to have said: "The PMO had asked for details on FDI policy and we have sent our comments".[40] Within a few days of this clarification, during his visit to New Delhi, then US Commerce Secretary said that entry of Walmart in India will help millions of farmers and small retailers as they will get access to an efficient supply chain. He further stated that "Foreign investment will be prohibited in the front end but there could be some partnership structure on wholesale. It could represent effective outlet for farm products and bring benefit to farmers and agriculture sector".[41]

Mr. Michael Duke, then Vice-Chairman of Walmart, was back in India along with a team of about a dozen Walmart representatives towards the end of February 2007 and met -- either on his own or accompanied by the prospective JV partners -- senior government functionaries including the Deputy Chairman of the Planning Commission, Minister for Agriculture and the Commerce Minister. The very same day, however, PMO's letter to DIPP surfaced which was reported to have said:

> After perusal of the comments sent by DIPP, the Prime Minister observed that the President, AICC, had raised a specific issue in her letter, referring to the need for a careful study of the likely impact of the entry into retail trade of 'transnational supermarkets' on the livelihood security of small scale traders and vendors and that the DIPP has not responded to this issue in its comments,…[42]

The letter asked DIPP to commission a study to assess the possible impact of large scale retail operations by both foreign and Indian companies. The same day, the Bharti Chief said "we will proceed with our plans unless the government specifically asks us to stop…Walmart is going to apply for a joint venture, only in the area where policy exists". On his part the Commerce Minister clarified that "There is no question

[38] "Walmart to Open Hundreds of Stores in India", New York Times, November 27, 2006. http://www.nytimes.com/2006/11/27/business/worldbusiness/27cnd-walmart.html?pagewanted=all

[39] "Go slow on retail FDI: Sonia to PM", *Economic Times*, February 7, 2007.

[40] "Bharti & Walmart JV follows FDI norms: Commerce Ministry", *Economic* Times, February 9, 2007.

[41] "Walmart entry to benefit Indian farmers: US secy", *Indian Express*, February 15, 2007.

[42] "Walmart 'letter-welcome'", *The Telegraph*, February 24, 2007. See also : "Walmart row gathers heat as PMO steps in" and "Duke meets Bureaucrats", *Financial Express*, February 24, 2007.

of a relook since there is no proposal to allow FDI in multi-brand retail".[43] The Bharti Chief added that Bharti Retail Ltd (BRL) was completely Bharti Enterprises' initiative and that he was only looking at 'technology transfer, cold chain, and supply chain expertise and back end operations with Walmart'. It may be underlined that there was no mention of financial involvement of Walmart in the retail venture. The press report also indicated that Bharti Enterprises will maintain an arm's length (relationship) with its joint venture partner. It was even mentioned that Walmart would not hold equity in the front-end retail operations.[44]The Agriculture Minister was attributed with the view that "the expertise of Walmart in the area of supply chain will definitely be useful for Bharti to set up their own network".[45]

Within a week of Mr. Duke's meetings and the PMO's letter, DIPP conveyed to the Indian Council for Research on International Economic Relations (ICRIER), on March 2, 2007, the government's sanction to conduct a study on the "Impact of Organised Retailing on the Unorganised Retail Sector". The study, completed in May 2008, had inputs from different outside agencies. Among the partners of the study were Co-Directors of the International Food Policy Research Institute-Michigan State University Joint Programme on Markets in Asia, who contributed to the chapter on international retail experience and helped with the survey and analysis of the impact of organized retail on farmers.[46] Technopak Advisers Private Ltd, a retail consultancy firm, was another important acknowledged partner. Besides the partners of the study, those acknowledged included different organized retail companies, Metro Cash & Carry India, PricewaterhouseCoopers Pvt Ltd, Retailers Association of India and AMP Retail Services and Go Fish Retail Solutions, both providers of consultancy services to the retail sector.[47] It would be difficult not to notice the heavy reliance on protagonists of organised retail. That the government relied heavily --almost solely -- on this study for its subsequent opening of the retail sector is quite evident from its repeated references to its conclusions and recommendations at various for a including the Parliament.

Subsequently, the Departmentally Related Parliamentary Standing Committee on Commerce submitted a report in May 2009. The Committee relied on oral evidence and interactions during field visits to different parts of the country. Domestic and foreign retail chains and industry bodies were, however, conspicuous by their absence. Both ruling and opposition parties were represented on the Committee and the report *did not contain even a single dissenting note.* The Committee recommended that:

> …a blanket ban should be imposed on domestic corporate heavy weights and foreign retailers from entering into retail trade in grocery, fruits and vegetables,

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[43] "Walmart 'letter-welcome'", *The Telegraph*, February 24, 2007.

[44] "Retail FDI: After Sonia's Jan 11 note, PM talked to Kamal Nath"

[45] "Bharti-Walmart JV free to serve other retailers", *Financial Express*, February 24, 2007.

[46] Earlier he was also associated with a background paper for the World Development Report 2008: Agriculture for Development.

[47] Mathew Joseph, et. al., *Impact of Organised Retailing on the Unorganised Sector*, Indian Council for International Economic Relations, May 2008. http://dipp.nic.in/English/Publications/Reports/icrier_report_27052008.pdf

> and restrictions should be entered for opening large malls by them for selling other consumer products. … Government should stop issuing further licenses for "cash and carry", either to the transnational retailers or to a combination of transnational retailers and the Indian partner, as it is mere a camouflage for doing retail trade through back door.[48]

The Committee also recommended formulation of a kind of reservation policy for indigenous small and medium retailers and for devising schemes to provide financial assistance to them for undertaking expansion and modernization.

Section 4
Franchise Arrangement with Bhartis

In the meantime, BWM's first store 'Best Price' came up in May 2009 in Amritsar while BRL's first retail outlet under the banner '*easyday*' became operational earlier in April 2008. e*asyday*s' merchandise also consisted of private labels of Walmart including its top selling 'Great Value' food and 'George' clothing brands. It was noted that this was the first time that Walmart's private labels were being sold in stores not owned by it. It was felt that this move would help Walmart as its brands would gain familiarity with the Indian consumers by the time it was allowed direct entry in MBRT and consequently help Walmart stay ahead of its rivals.[49]While the '*easyday*' trademark is owned by Bharti Enterprises Holding Pvt Ltd, it also contains the upper three rays of Walmart's sun logo. In April 2012, BRL appointed Walmart Mexico's Mr. Michell Slape as COO replacing Mr. Andrew Levermore of South Africa.[50]Possibly in response to the criticism about the heavy dependence of the retail outlet on BWM, in April 2010, the DIPP was reported to have come out with the stipulation that wholesale trading companies cannot derive more than 25% of their sales from group companies and such sales should be for the internal use of group companies. The Department of Economic Affairs, in its comments on the draft guidelines for FDI in wholesale trade, seems to have expressed the opinion that

> …If the backend wholesale trader and the frontend retail venture specifically advertise their tie-up and/or the backend wholesale cash and carry deals virtually entirely with its own front-end group company, then it is evident that it would only be a *thin veneer for retail trading*. Thus, while trading between companies of the same group should be allowed, it should not form more than

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48 India, Rajya Sabha, Department Related Parliamentary Standing Committee on Commerce, Ninetieth Report on Foreign and Domestic Investment in Retail Sector, June 2009.
The issue is of the arrangement allowing Walmart access to the retail trade. Even earlier, there was considerable resentment that Dairy Farm International's Cash & Carry JV with the Spencer's, was transgressing into retail trade. While acknowledging that there were complaints, it was merely stated in August 2001 in Rajya Sabha that "Any violation of the terms and conditions of foreign collaboration approval will attract appropriate action by the Administrative Ministry concerned." While one is not aware of any action being taken against the JV, the partners disengaged themselves in 2005.

49 "Walmart's own labels in Bharti Stores", *Economic Times*, September 9, 2009.

50 http://www.retailangle.com/Newsdetail.asp?Newsid=3965&Newstitle=Bharti_Retail_appoints_Walmart_Mexico%92s_Mitchell_Slape_as_new_COO

> 25% of the turnover of the wholesale venture, as it would otherwise vitiate the entire retail trading policy…,[51](emphasis added)

The Finance Ministry was later credited with the view that the condition of 'internal use' should be dropped.[52]It was clear that the rule would have hurt BWM and BRL operations most. Vice-Chairman of Bharti Enterprises indeed said that "We have requested the government that this policy be changed because it is irrational". "Why should trade between group companies be limited", he asked. The group had earlier written to the Finance Ministry that "We respectfully submit that both these conditions are arbitrary and discriminate against companies in the same group, besides not being practical".[53]This provision, however, never seems to have been implemented as there was inter-departmental tussle about what should constitute a group. The following extract from a press report makes it amply clear.

> … officials concede that two years later, the government has still not been able to define what it means by 'group companies' for the purpose of this regulation. "There are many definitions of a 'group company'. So it is not possible to say if Bharti Walmart is violating the group sourcing norm... We will be able to judge the issue only when the department of economic affairs in the finance ministry finalises the definition of 'group company' that should be followed in this case," said a government official. He said the issue had been raised with Bharti Walmart but the company claimed it complied with the regulations. The matter has been *compounded by inter-ministerial wranglings*. *The DIPP*, which frames foreign investment norms in the country, *had proposed that only wholly owned subsidiaries be treated as 'group companies'* for the purpose of this regulation. But the *finance ministry* said the *more commonly used descriptions of 'group companies' should be considered* while finalising the definition.[54] (emphasis added)

Thus, even as late as December 2012 it was reported that BWM derives bulk of its sales from *easyday* by taking advantage of the unclear group definition.[55] On its part, BRL gets almost its entire supplies from BWM.

Apart from this, there has been the general criticism of the way CCWs were operating in India as their operations at times amount to retail sales. This issue was raised way back in 2003 with regard to Metro's operations in Bangalore[56]but no action seems to have ever been taken. BWM was also accused of similar practices. For instance, it was explained that providing two complimentary cards with one membership card is a way of encouraging retail buyers as such people mostly do retail purchases. The Chairman of Chandigarh Beopar Mandal complained that "The best

51 "Bharti, Walmart may have to restructure partnership", *Economic Times*, July 24, 2010.
52 "Finmin wants curbs on sales by foreign wholesaler to arm eased", *Economic Times*, July 8, 2010.
53 "Bharti, Walmart may have to restructure partnership", *Economic Times*, July 24, 2010.
54 "Bharti Walmart Sells Bulk of Wares to Easy Day Retail", *Economic Times*, December 28, 2012.
55 "Bharti Walmart Sells Bulk of Wares to Easy Day Retail", *Economic Times*, December 28, 2012. Also see "FDI Tweak for wholesalers: Relief for Walmarts, cap on group sales may go", *Economic* Times, December 12, 2011.
56 "Local retailers cry foul over FDI violations", *Economic Times*, October 5, 2003.

price store is doing a lot of retail sale, though not openly. Government should strictly monitor such stores so they restrict themselves to wholesale business. We will take this matter up with the Centre". Another trader said that "There is no bar on buying half a kg of vegetables, a single packet of noodles or a single television set".[57] This practice was also noted by the Standing Committee, referred to in the above.

Section 5
Operation Phase II

Walmart continued its efforts to open the MBRT for FDI. Mr. Robson Walton, Chairman of Walmart Stores Inc. visited India in November 2009 and met the Prime Minister and highlighted the benefits organised retailers like Walmart can bring to farmers as well as small and medium enterprise and help in employment generation. About four months earlier, Mr. Doug McMillon, then CEO of the company's international business, met the agriculture and commerce ministers who in turn seem to have impressed upon the company to strengthen supply chain that could benefit Indian farmers. Mr. McMillan was reported to have assured them that there was no constraint on funds and that "We have a $4.8-5.3 billion fund earmarked for our international business. India can use as much as it wants".[58]

Walmart's lobbying in USA to further open India's MBRT surfaced prominently during the middle of 2010. It was noticed that the company's lobbying with the American lawmakers intensified after the joint venture agreement was signed with Bharti in August 2007.[59] Mr. Michael Duke, President and CEO of Walmart Stores Inc., visited India again in October 2010. Mr. Duke said that he had positive discussions with officials such as Commerce and Industry Minister and the Deputy Chairman of the Planning Commission.[60] He felt that the tone and tenor of the response was encouraging and very positive.[61] Mr. Duke's visit was preceded by the visit of US Undersecretary of Commerce for International Trade who reportedly said that the issue of further opening MBRT for FDI would figure in the bilateral trade talks ahead of US President's visit to India during November 2010.

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57 "Is Walmart retailing in India? : JV with Bharti faces criticism for allowing retail under garb of wholesale", *Times of India*, August 9, 2010.
A not so well publicised report indeed said that the Punjab State Excise and Taxation Department found issue of membership cards by BWM violated the VAT norms and the government was loses crore of revenue when sales are made to retailers. It further said that whereas Jalandhar VAT department issued only 23,000 VAT numbers, Best Price made 30,000 members many of whom were not wholesalers and did not possess VAT numbers. ("Vat 'evasion' detected in raid on Bharti Walmart", *Tribune*, October 1, 2010.)
A confirmation for this allegation could be found in BWM's Annual report for the year ended December 2011 wherein an amount of Rs. 4.89 crore was shown as disputed VAT amount pending with the Dy. Excise and Taxation Commissioner, Patiala Division, Patiala.

58 Walmart knocks again at FDI doors: Walton Junior meets PM in renewed effort to open up foreign investment in multi-brand retail", *Economic Times*, November 6, 2009.

59 Walmart seeks US help for entry into Indian retail mkt", *Economic Times*, May 31, 2010.

60 "Walmart pitches for FDI hike in retail", *Mint*, October 26, 2010.

61 "Walmart okay with pace of retail FDI reforms", *Financial Express*, October 26, 2010.

In early 2011 foreign retail majors were assured at Davos that there were political problems in allowing MBRT and "From our (Planning Commission) side, we totally favour opening up the sector for FDI. …be there and hope that in due course it will all be sorted out".[62] On his part, the Commerce Minister told them to keep investing in the back-end infrastructure and have patience.[63]Interestingly, just as it had approached the West Bengal government, Walmart tried to make inroads into Bihar, a state controlled by NDA constituents who are opposed to MFDI. The Deputy Chief Minister of Bihar disclosed that "Last week, people from the American Embassy and Americans visited Bihar and they said that Walmart wants to invest in the state".[64] He, however, stated that the state did not take any decision on the issue.

On the official front in India things started speeding up as a Committee of Secretaries (CoS) approved the proposal to allow up to 51% FDI in MBRT with certain restrictions. The Ministry of Labour, however, wanted some conditions beyond what the CoS had proposed. The Secretary of the Ministry had said:

> There has been a debate on whether foreign direct investment in multi-brand retail will create or take away jobs. We want the investors to declare through a credible study what impact their ventures might have on employment locally.[65]

The Ministry expected the job impact studies to play a key role in determining whether an individual proposal would be accepted or not. "The net job creation has to be assessed for each of the stores before a decision is reached", said the Secretary of the Ministry. While the investors could engage any agency with good credentials to prepare these studies, if later it was found that 'the claims made by the investor were false, the government could take appropriate action'.[66]As one can see, such a restriction does not figure in the declared policy.

The ICRIER came out with another study in 2011, a few weeks before the government decided to open up the retail sector in November 2011,and this time focussed mainly on consumer welfare. The Cabinet cleared the proposal on November 24, 2011 enabling 51% FDI in MBRT and also enhanced the limit for FDI in SBRT from 51% to 100%.The Minister concerned had declared that the decision was reached through a "transparent and democratic process of consultation with all the stake holders."[67] Yet, the decision with regard to MBRT had to be kept in abeyance due to severe opposition[68], till a 'consensus' was arrived at. In January 2012 the government

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62 "Multi-brand retail FDI won't hit small shops - Walmart: Large retail chains can address inflation concerns: CEO Doug McMillon", *Business Line*, January 28, 2011.

63 "Govt asks Walmart, Tesco to stay invested", *Indian Express*, January 30, 2011.

64 "Walmart wants to Invest in Bihar: Sushil Modi", *Indian Express*, June 22, 2011.

65 "Let Walmarts assure jobs won't be cut: Labour Min", *Economic Times*, August 19, 2011.

66 "Let Walmarts assure jobs won't be cut: Labour Min", *Economic Times*, August 19, 2011.

67 http://www.businessweek.com/ap/financialnews/D9R7LJ9G0.htm

68 Not only the non-UPA parties even some within the Congress were apprehensive of the new policy. Kerala PCC Chief Mr. Ramesh Chennithala was reported to have written to the PM demanding withdrawal of the decision while Ms. Kiran Chaudhary, Excise and Taxation Minister of Haryana expressed fears that domestic retailers would be badly hurt. Finance Minister of Delhi refrained from defending the Central Government's decision. Mulayam Singh Yadav, Chief of Samajwadi Party even threatened to "burn any such shop in the state". "We'll burn Walmart stores: Mulayam", *Times of India*, November 29, 2011.

issued the revised policy with regard to SBRT with the main stipulation that "in respect of proposals involving FDI beyond 51%, mandatory sourcing of at least 30% of the value of products sold would have to be done from Indian 'small industries/ village and cottage industries, artisans and craftsmen'.[69] This again created confusion, as earlier the wording of the official announcement gave rise to the impression that the small units need not necessarily be 'Indian'. It is also worth noting that unlike the usual practice of referring to the investment in Indian rupees, the amount was mentioned in dollar terms.

Section 6
Transparent and Democratic Process?

In the context of the claim in November 2011 that the policy was arrived through 'transparent and democratic' process, it is worth referring to the experience with the Discussion Paper issued by the DIPP. In July 2010 DIPP released a Discussion Paper on FDI in MBRT. The responses to the paper which followed the study were on predictable lines. Broadly speaking, as expected, foreign retail chains, consultants, legal firms and chambers of commerce supported the government's proposal. A large number of individual traders' associations vehemently opposed and asked the government to implement the recommendations of the Parliamentary Standing Committee. A number of such responses from South India were near replicas of each other reflecting concerted action to air their views. Further, a single letter opposing MFDI was signed by more than 600entities from the Bangalore-Mysore region. In these cases the concerted action of interested parties was quite obvious. On the other hand, there were responses from three farmers from different locations in Punjab supporting MFDI. That the response could have been mobilised by interested parties (who could be a political party, a company or an individual) was evident from the fact that all of them were handwritten in Punjabi on ruled loose sheets, probably torn from a single exercise book, and the scanned images were emailed to DIPP within a few minutes on the night of August 15, 2010 through different rediffmail accounts. Another response supporting FDI appears to be from a large farmer in Sirhind (Punjab),as generally small farmers do not name their activities. It is also possible that this respondent was related to another consenting respondent who runs a Sirhind-based cold storage unit.

The critique of DP can probably be best summed up in the comments of Maharashtra State Committee of Confederation of All India Traders which also said that the DP should have been issued in regional languages so that more people could have understood the issue and responded to it.

> The discussion paper has failed to establish need for FDI in multi-brand retailing. It has extrapolated the problems of fruits and vegetables to entire retail trade. In the process it has demonised intermediaries and reached unwarranted conclusions. It has blown up the alleged deficiencies of the

69 DIPP (FC-I Section), Press Note No.1 (2012 Series) dated January 10, 2012.

existing arrangements and totally ignored the malpractices, exploitation and devastation caused by foreign retail chains.[70]

As seen above, if the purpose of floating a Discussion Paper was to generate "informed discussion" and obtain the "views and comments of various stakeholders", it should be stated that the Paper had failed in its objective due to the limited response. On the other hand, irrespective of the coverage, if the feedback should provide a basis for further policy guidance, even in this respect too, the exercise failed due to the manner in which the analysis was gone about. In fact, the then Finance minister, replying to a Calling Attention Motion in Lok Sabha, disclosed on March 25, 2011 that an Inter-ministerial Committee headed by the Senior Economic Advisor, Department of Consumer Affairs examined the responses to the DIPP's Discussion Paper and submitted its report. The Minister said:

> The Committee's report has not made any recommendation relating to FDI in Multi-Brand Retail Trading. It has analysed the responses received to the Discussion Paper, collated and summarized them.[71]

The minister also stated that out of the 109 respondents, representing various interests, 73 had expressed their opposition before an official committee to the entry of FDI in multi-brand retail -- those who opposed included farmers and small traders.[72]

Mere collating is not what one would expect from a Committee headed by a Senior Economic Advisor and comprising of officials representing the Ministry of Micro, Small & Medium Enterprises, Department of Agriculture and Cooperation, Department of Economic Affairs, Department of Commerce and Department of Industrial Policy and Promotion.(Interestingly, the Ministry of Labour was not represented.) In fact, earlier in October 2010, the then Minister of State for Commerce and Industry stated at a meet of the Confederation of Indian Industry (CII) that

> Let me assure you that it (the inter-ministerial committee set up for the purpose) will not take inordinate amount of time...there cannot be an open-ended time line, we are monitoring the progress of that group,"…
>
> They (the committee) are working on the feedback. There is going to be a single recommendation that will come out and then a consensus will have to be built around that before we take that in terms of a policy,"...[73]

Why the Committee could not go further than mere tabulation of responses? Was the exercise stymied because of the inability to arrive at a consensus? One may never know. Given the tone of the Discussion Paper and the nature of responses,

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70 http://dipp.nic.in/English/Discuss_paper/FeedBack_AmericanChamberofCommerce_ 30July2010.pdf.

71 "No hasty decision on FDI in multi-brand retail, says FM, http://www.agenceindiapress.com/2011/03/no-hasty-decision-on-fdi-in-multi-brand-retail-says-fm/ accessed on February 3, 2013.

72 No hasty decision on FDI in multi-brand retail, says FM, http://www.agenceindiapress.com/2011/03/no-hasty-decision-on-fdi-in-multi-brand-retail-says-fm/ accessed on February 3, 2013. See also the discussion on the Calling Attention Motion in Lok Sabha on March 25, 2011. AT http://164.100.47.132/LssNew/psearch/ Result15.aspx?dbsl=4136

73 http://articles.economictimes.indiatimes.com/2010-10-07/news/27590720_1_multi-brand-retail-sector-single-brand

failure to arrive at a consensus by the Committee could imply strong opposition within the Committee to the opening of MBRT to FDI. On the other hand, the Minister of State in the Ministry of Commerce and Industry hinted that the Committee was expected to come out with a positive recommendation. Obviously, the entire exercise proved to be a futile one and if the government wanted to use it to justify its steps, it just could not do it.

In the context of the implementation of the requirement of sourcing from local MSEs, it should be underlined that the government wanted the respondents to the DP to tell it whether the proposed conditions on sourcing and limiting the retail operations to cities with at least 1 million population would attract the provisions of WTO and Article 301 of the Constitution respectively. While some respondents ignored this question, the general observation including that of foreign companies and chambers was that the government should consult legal experts both within itself and outside it. For instance, AMCHAM in India said "It would be best for an international trade attorney to provide an opinion on this issue." It is obvious that the regulated would not commit themselves because if they say that the provisions violate WTO commitments, they would deny the government their strongest argument in favour of permitting MFDI and thus delaying/sabotaging their own case. On the other hand, even if it would not be binding on themselves, an affirmative response would put them in some sort of bind when in practice they try to wriggle out of the commitments later. One wonders whether a Discussion Paper is the right forum for taking decision on a key element of the policy. In any case, it would be necessary to find out if the government had sought formal legal opinion, both internal and external, and if so from whom and what the advice was. The "Concept Paper on FDI in Retail Trade" issued later by the Department of Consumer Affairs merely stated that the conditions attached to FDI both in MBRT and SBRT were "consistent with international conditions".[74]

Within the government too there had been some apprehensions[75] but as was evident from the defence in Lok Sabha during the debate on retail trade related FEMA Notifications, in December 2012, the government took comfort from two things. One, that India (unlike South Africa which being signatory to GATS was open to threat from Walmart in placing local procurement restrictions) is not a signatory to GATS and that the BIPAs would come into play only with regard to post-approval changes in the policy environment. One is, however, not sure whether the existing BIPAs would leave

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74 The Paper was undated. However, the fact that it refers to the suspension of the decision with regard to MFDI to evolve a broader consensus and refers to the date of submission by the Administrator as December 28, 2011, it must have been prepared during November-December 2011. See:http://consumeraffairs.nic.in/consumer/sites/default/files/userfiles/Concept%20paper%20on%20FDI%20in%20Retail%20Trade(1).doc

75 Even in August 2011, the Department of Commerce was credited with the view that 'the proposal to mandate local sourcing of products, especially from small scale units, by foreign retailers setting up stores in India is not compatible with India's commitment at the World Trade Organisation (WTO)'. See: "Must local sourcing for retailers against WTO", Times of India, August 27, 2011.

some scope for action on part of foreign investors especially because the investors can pick and choose the provisions from among all the BIPAs which suit them the best.[76]

Ironically when the Parliament negated the motion regarding the notifications under FEMA in early December 2012, the outcome neither reflected the views of majority of the political parties which participated in the discussion nor majority in the respective houses. Different reasons were attributed for this dichotomy. One party even explained that it supported the government as it did not wish to stand with 'communal forces' as if the issue had something to do with communal problems.[77]The President of another important party started accusing the government of blackmail.[78]At one point a vital constituent of UPA-II opposed MFDI in Maharashtra, its main base.[79] Probably this was one of the most bizarre decisions ever taken by the Indian Parliament. Even the number of states willing to welcome MFDI was not in numerical majority. While the ruling party organised rallies in Delhi and placards with slogans like "FDI *Aayegi, khushiyan hi khushiyan laayegi*" were displayed[80], Kerala state, where the same party was ruling, expressed itself against MFDI.

Unfortunately, there were even allegations about serious distortion of facts and side-stepping of issues by the government especially with regard to the estimates of crop losses.[81]For instance, while defending the government's action during the debate in Lok Sabha it was stated that due to high real estate costs companies like Walmart would choose places which are at a considerable distance from the main city where only those having cars can afford to go. It was specifically emphasised that these large chains cannot afford to set shop in Delhi and will have to go to the neighbouring locations in NCR. Thus they will be out of reach of those having cycles and even two-wheelers and such people cannot stock large quantities because they live in small accommodations and hence have to depend upon local *kiranas* for regular purchases. Seen in the context of Walmart's plans for small stores, declared much earlier, the already existing *easyday* outlets within Delhi and the open support extended by the Chief Minister of Delhi to MFDI, one does not know how to interpret these assertions. Mr. Raj Jain, MD & CEO of BWM had indeed said in September 2012 that "In order to have a store spread across several lakh square feet, we would have to locate them on the outskirts of a city. In the Indian context it will not be the right thing to do so". Their

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76 See: Biswajit Dhar, Reji Joseph and T C James, "India's Bilateral Investment Agreements: Time to Review", *Economic and Political Weekly*, Vol - XLVII No. 52, December 29, 2012, pp. 113-122.

77 http://origin-www.livemint.com/Politics/RVzCh9pp14ngaiWCZLds1I/Supported-FDI-as-it-was-not-being-forced-on-states-Mayawati.html

78 "SP says UPA using CBI to blackmail Mulayam", December 17, 2012, http://www.indianexpress.com/news/sp-says-upa-using-cbi-to-blackmail-mulayam/1046370

79 "After DMK, UPA ally NCP says it is opposed to FDI in retail", December 5, 2012. http://articles.timesofindia.indiatimes.com/2012-12-05/india/35619121_1_fdi-upa-constituent-dmk-ncp

80 Two other placards were reported to have proclaimed: "*FDI aayegi, berojgari jayegi*" and "*FDI se badlegi kisan ki taqdeer, aur buland hogi, buland Bharat ki tasveer*". See: http://www.financialexpress.com/news/will-fdi-help-or-hurt-the-farmers-2-rallies-come-up-with-2-answers/1010591/0

81 An idea of the exaggeration of post-harvest losses could be obtained from Sukhpal Singh, "Role of FDI in multi-brand retail trade in India and it implications", paper presented at the Two-day International Seminar on Organised Retailing vis-à-vis Farm Economy of India, Centre for Economic and Social Studies, Hyderabad, September 21-22, 2012.

internal research showed that people do not wish to travel for more than 15 minutes to make their monthly purchases. "In this scenario having multiple stores will make more business sense", he added.[82]

The issue is still simmering as the constitutional validity of the decision to allow FDI in MBRT is being examined by the Supreme Court.[83] It is also reported that the Confederation of All India Traders (CAIT), apex body of the trading community of the country has decided to submit a petition on the issue of FDI in retail to Committee on Petitions of both Lok Sabha and Rajya Sabha accusing the Union Government of concealing many facts related to this issue from the Parliament. There are plans to hold massive rallies and All Party Conferences in the coming months.[84]It is expected that opposition parties will move amendment to the FEMA notification in Rajya Sabha.[85]

Seen in the context of the above, the following explanation for allowing MFDI will be quite difficult to accept. The feeble explanation offered by the government was that its discussions with stakeholders "generally indicate support for the policy, subject to the introduction of adequate safeguards".[86]It is evident that the government proceeded with the policy in spite of major opposition against opening up the sector and it relied mainly on one single study whose assumptions and methodology and selective recommendations have been questioned by critics. Obviously, this reflects a subjective decision of the policy makers rather than any consensus or majority opinion.

Section 7
Franchise Arrangement Revisited plus Walmart's Investment in Cedar

Even more importantly, the allegation that Walmart was using Bharti group as a front to directly cater to the retail segment and even funding it unlike Tesco which provided technical support to Tata's Trent Hypermarket Ltd. without investment, was not looked at seriously beyond the correspondence cited earlier, till very recently. It needs to be underlined that the new policy was announced in September 2012 even while the matter was being challenged in the Delhi High Court consequent to which the petition was dismissed as withdrawn. To elaborate: on July 11, 2012, the Delhi High Court issued notices to the central government, Bharti Walmart Pvt Ltd and Bharti Retail Ltd on a plea that the firms were illegally carrying out retail trading in multi-

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82 See for instance, "Walmart looks for smaller stores in India strategy", *Hindustan Times*, September 28, 2012. Also refer to…

83 "Is FDI in retail trade a gimmick? SC asks", http://articles.timesofindia.indiatimes.com/2013-01-23/india/36504659_1_small-traders-fema-regulations-fdi accessed on 28-1-2013.

84 CAIT to submit petition on FDI in Retail to Parliament Petition Committee, http://www.cityairnews.com/content/cait-submit-petition-fdi-retail-parliament-petition-committee, accessed on 28-1-2013.

85 "FEMA amendments on FDI in retail tabled in Rajya Sabha", http://www.dnaindia.com/india/report_fema-amendments-on-fdi-in-retail-tabled-in-rajya-sabha_1777146.

86 Rajya Sabha, Unstarred Question No. 1876, answered on August 28, 2012.

brand sector.[87] The first hearing of the writ petition took place on August 22, 2012 and the Court ordered fresh notice to be served on Respondent 2 returnable on September 26, 2012. On September 3, 2012 the prayer was admitted to allow intervention in the PIL by an applicant. In the interregnum, the Government issued the notification allowing up to 51% FDI in MBRT on September 20, 2012. On September 26 the High Court's bench noted that the "counsel for the petitioner seeks time to withdraw the writ petition in view of the subsequent developments" after the government had informed the bench that the petition lost its "relevance" in the changed circumstances. The petition was dismissed as withdrawn on October 3, 2012.[88] Incidentally, the initial deadline for conversion of the interest-free compulsorily convertible debentures (CCDs)issued by Cedar Support Services Ltd (CSS) to the Walmart group was to end by September 302012. A plain reading of these facts suggests that the government might have hurriedly issued the notification to avoid facing the High Court on September 26, 2012. The MFDI policy also came after the world was alerted by the *New York Times* regarding the Mexican bribery scandal, in April 2012. Seen in the above context, the view that the government might be responding to the criticism of 'policy paralysis' appears to be misplaced.

Walmart's investment in the CCDs of Cedar Support Services Ltd (Cedar) is in sharp contrast to the impression which the Bharti group's explanations seemed to convey that no financial investment was envisaged.[89]Cedar was incorporated on February 12, 2007 as Bharti Retail Holdings Ltd. Bharti Retail Ltd., the front-end retail arm of Bharti group was incorporated a few days earlier on February 7, 2007. Bharti Retail Holdings changed its name to Cedar Support Services Ltd during January 2010, a few weeks before the CCDs were to be issued. Cedar issued the CCDs in March 29, 2010 against the Rs. 455.80 crore (incidentally this was the equivalent of $100 mn. minimum FDI that needs to be invested under the MFDI policy, at the then prevailing exchange rate) it received from the Walmart group's Walmart Mauritius (4) Holdings Co. Ltd. Only a few days earlier on March 26, 2010 Cedar issued equity shares worth Rs. 443.30 crore to Bharti Ventures Ltd. Thus both Bharti and Walmart invested in CSS almost simultaneously. Incidentally, Cedar sold most of its shareholding in BWM to Bharti Ventures Ltd on March 18, 2010 consequent to which its share in BWM fell from 49.99% to 0.99%. This was probably intended to sever the direct connection between Cedar and BWM. Otherwise, Cedar would have been the major shareholder of both BWM and BRL. A little earlier in December 2009, the memorandum of association of Cedar was amended. The new clauses, besides providing for the company's entry into facilities management and real estate consultancy and advisory services, permit it to enter directly or indirectly into any activity:

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87 "Delhi HC notices to Bharti-Walmart on FDI norm violation", *Indian Express*, July 12, 2012.

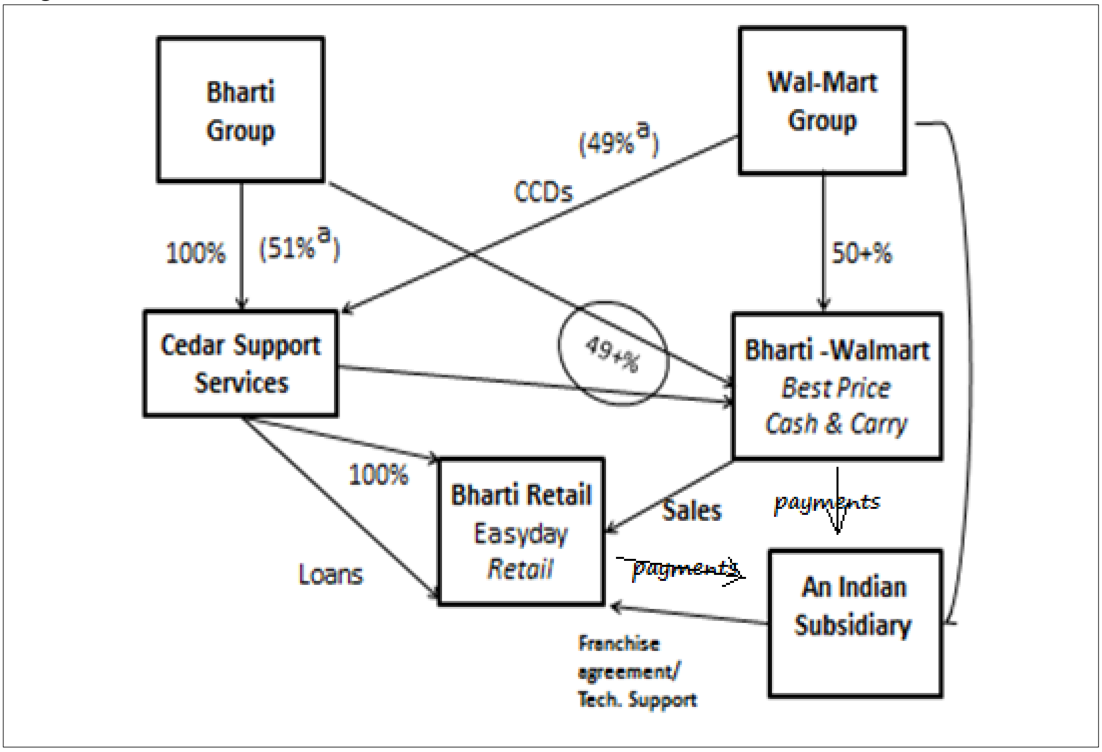
88 The relevant details of W.P. (C) 4035/2012 are available at http://delhihighcourt.nic.in/dhc_case_status_oj_list.asp?pno=622690

89 "Walmart 'letter-welcome'", *The Telegraph*, February 24, 2007.

To promote, manage, create, run and invest in companies, which are into any business either on its own or by entering into agreements, contracts, partnerships, alliance or any other arrangement.[90]

The scheme of the arrangement among different Bharti and Walmart entities can be seen from the following diagram.[91]

Diagram: Bharti-Walmart Ventures



a: These will be the respective shares of Bharti and Walmart after conversion of CCDs at a small premium.
Source: Adopted from K.S. Chalapati Rao and Biswajit Dhar, "Vaulting over India's Retail FDI Policy Wall", *Economic and Political Weekly*, November 17, 2012, pp.10-13.

The funds received by Cedar from Walmart did flow into BRL, subsidiary of Cedar and the retail arm in the set-up, first as debt capital and gradually as equity. There are enough indications which suggest that Cedar operated as a JV of Bharti and Walmart in spite of it being wholly owned by the Bharti entities in terms of the subscribed equity capital. Indeed, on March 25, 2010 Cedar itself referred to a joint venture agreement following which Cedar's Articles of Association (AoA) were amended.[92]The periodic filings with the Ministry of Corporate Affairs clearly reveal the nature of arrangement Cedar and Walmart have. In fact, the explanatory statement for issuing the CCDs explained:

> At present, the Company, is a wholly owned subsidiary of Bharti Ventures Limited. After the issue of proposed equity shares upon conversion of CCDs, shareholding of BVL would be 51% of the paid up share capital of the company.

90 Clause III(A)3 of the Memorandum of Association of the company filed on December 24, 2009.
91 K.S. Chalapati Rao and Biswajit Dhar, "Vaulting over India's Retail FDI Policy Wall", *Economic and Political Weekly*, November 17, 2012, pp. 10-13.
92 Form 23 dated March 31, 2010 filed with the MCA.

> The proposed issue of CCDs and equity shares resulting upon conversion of CCDs, would not result in change in control of the Company and the Company shall continue to be a subsidiary of BVL.
>
> The proposed issue of CCDs is expected to be completed in 3 months and the CCDs would be converted into equity shares within 18 months of allotment.[93]

Even without conversion of the CCDs the joint venture was to work on "As if Converted Basis".[94]Pegging Walmart's post-conversion equity to 49% of Cedar might have been planned so that Cedar's downstream equity investments would not be counted as indirect FDI under the new guidelines which came into force on April 1, 2010. That this could even be an afterthought is suggested by the fact that the conversion was to take place at a very small premium. But for the premium, Walmart would be in the majority. (See Table-1) Further, Bharti's majority on the Board, which is necessary to retain its Indian character, was neutralized by specifying that one of the nominees of Bharti should mandatorily be unaffiliated to the group.[95]It is quite relevant to note here that at around the same time the government changed the manner in which indirect FDI was to be reckoned with. A Draft Press Note was issued towards the end of 2009 and the definition was incorporated into the first Consolidated FDI Policy which became effective from April 1, 2010.[96]

Table -1: Equity Structure of Cedar Support Services Ltd

	Item	*Amount (Rs.)*	*Share in Capital (%)*	*Share in Equity (%)*
1	Equity Capital			
1a	- Bharti Ventures Ltd	443,35,22,150	49.31	51.00
1b	- Six Individuals	60		
2	Compulsorily Convertible Debentures issued to Walmart Mauritius (4) Co Ltd	455,80,00,000	50.69	
2a	- Face Value of the Equity Shares to be Issued on conversion#	425,96,58,590		49.00
2b	- Premium	29,83,41,410		
3	Total Capital (1a+1b+2)	899,15,22,210	100.00	
4	Total Equity Capital (1a+1b+2a)	869,31,80,800		100.00

Debentures issued on March 29, 2010. Final date of conversion extended from 18 months to 30 months. Extended by further 12 months during September 2012.

At the end of 2011, BRL had equity capital (including share application money) worth Rs. 532.81 crore and Rs. 349 crore worth of long terms loans from Cedar. Considering the fact that the total funds of Cedar at the end of 2011 were Rs. 901.25 cr. (Rs. 443.35 crore equity from the Bharti group and Rs. 457.90 crore of loans, essentially

93 Form 23 dated March 31, 2010 filed with the MCA.

94 Article 5 of the Articles of Association of the company filed through Form 23 dated March 31, 2010.

95 Article 16(c) of the Articles of Association.

96 Following this change, companies which are majority owned by Indians and in which they have the power to appoint a majority of directors will be treated as Indian owned and controlled companies. Their downstream investments would be treated as wholly-Indian unlike the earlier position that investment proportionate to the share of FDI in the investing company would be reckoned as foreign.

the CCDs subscribed by Walmart), it is obvious that Cedar's investments in and loans to BRL would not have been possible without deploying the funds raised through the CCDs. The CCDs were to be converted into equity shares within 18 months *i.e.*, by September 2011. The date of conversion was however extended first by 12 months *i.e.*, till September 2012 and on September 20, 2012 by another 12 months. The delay in converting CCDs could be either to avoid repetition of the initial criticism till the time MFDI was officially allowed or to keep a leeway so that the relative shares could be tailored according to the declared official policy.[97] It could even be due to the fact that the RBI did not take the investment on record due to its own reservations. (This we shall discuss a little later)

BRL reported purchase of Rs. 1,067.47 crore worth of Traded Goods during 2011. As a part of the related party transactions it reported purchase of goods worth Rs. 1,095.55 crore (including taxes) from BWM. For 2010 the corresponding figures were: Rs. 513.04 crore and Rs. 526.34 cr. The company reported a total income of Rs. 1,021 cr. and Rs. 470 cr. for 2011 and 2010 respectively. It is thus apparent that practically the entire income of BRL came out of the items it purchased from BWM. Interestingly, BRL incurred an expenditure of Rs. 0.57 crore and Rs. 1.28 crore in 2010 and 2011 respectively on behalf of BWM. The company also reported payment of Royalty and Management Fees of Rs.1.51 crore and Rs. 9.95 crore for 2010 and 2011 respectively. The corresponding payments for Business Support Services were as much as Rs. 46.96 crore and Rs. 46.62 crore. Only a part of these payments could be traced to Bharti entities in the form of related party transactions. The remaining amounts could have been paid to Walmart's entities in India, most probably to WM India Technical and Consulting Service Pvt Ltd which received substantial payments from BWM also.[98]

From the reply in Rajya Sabha on 12-12-2012, it was evident that the Reserve Bank of India did not take on record the reported inflow of Rs. 455.80 crore into CSS, the parent company of BRL, the retail arm of Bhartis, in the form of CCDs, as it was examining whether the inflow was in conformity with India's FDI policy. It appears that RBI had written to Cedar to approach DIPP to confirm that its activities were fully compliant with the FDI policy".[99] Did Cedar write to DIPP? Did RBI follow it up with Cedar? What was DIPP's response? One does not know. The net result, however, is: the status of the investment could not be decided for almost two and a half years while

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97 For instance, in its response to the Discussion Paper, Bharti Walmart had said: "Bharti Walmart recognizes, however, the political sensitivity around the retail sector. Recognizing the government's stand to adopt a calibrated approach, we would endorse a position where as a first step, multi-brand retail is opened up at 49%. Should the government pursue this option, there should be a clear path towards 100% FDI in the near future." See: http://dipp.nic.in/English/Discuss_paper/FeedBack_AmericanChamberofCommerce_30July2010.pdf

98 The recipient could most probably be WM India Technical and Consultancy Services Pvt Ltd whose operations include providing services and assistance to "wholesale business, Supply Chain and logistics support, retail business and other related operations". The company reported gross revenue of Rs. 50.85 crore and Rs. 47.38 crore for the years 2011 and 2010 respectively.

99 "ED Started its probe after receiving a reference from PMO – Bharti Walmart probe: ED Issues notices to four firms", *Indian Express,* December 21, 2012 (ISID Clipping Service)

the money was put to use in retail business! Interestingly, it is now being stated that RBI had referred the case along with that of Flipkart Services to the Enforcement Directorate (ED) for further investigation. Would the matter have been referred to the ED but for Mr. M.P. Achuthan's persistence is a 100 million dollar question. In fact, the initial impression one got was that there was no record with RBI of inflows into Cedar from the Walmart group.[100]

Section 8
Official Inquiries

Following pressure from opposition parties, on January, 31, 2013, the government set up a one-man Committee, headed by a retired Chief Justice of Punjab and Haryana High Court, to inquire into the lobbying and possible contravention of Indian laws. The report was to be submitted in three months. There was also the parallel enquiry by the Enforcement Directorate (ED) regarding the investment in CSS. It is a moot question whether the two can run independently of each other, the common factor being Walmart's investment in the CCDs of Cedar which has ramifications for violation of local laws, one of the terms of reference of the Committee. In the context of reported stonewalling of House enquiry by the company in USA, the question is how much cooperation it will extend to the Inquiry Committee set up by India. Another question is the Committee's lack of requisite powers as it was not constituted under the *Commissions of Inquiry Act, 1952*. The Mexican case is extremely relevant in this context. The *New York Times* story underlines that Walmart headquarters kept the issue to itself as long as it could. It is said that the person at the centre of controversy namely, then chief executive of Walmart de Mexico Mr. Eduardo Castro-Wright, was even promoted as vice chairman of Walmart.[101] According to the *New York Times*, the corporate headquarters of Walmartk new about the development in Mexico as early as 2005.[102]A responsible management would be expected to alert the officials of the Indian JV (which was formed in 2007) as India is only slightly better than Mexico in terms of the corruption perception index. And Walmart has been represented on the Indian JV's Board through expatriates. In fact, on May 13, 2008 (date of AGM) there were as many as six of them including Mr. Michael Duke. One, therefore, feels uneasy from the *Economic Times* report that a Walmart investigation team flagged a disturbing observation about Bharti Walmart's employees and the entities they dealt with: "their knowledge and compliance of an American anti-corruption law that Walmart is governed by needed to be looked into".[103]

Apart from the fact that the company's headquarters had failed to inform Mexican and American authorities and took refuse under internal investigations, the

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[100] Rajya Sabha Starred Question No. 346 replied on September 5, 2012.

[101] "Vast Mexico Bribery Case Hushed Up by Walmart after Top-Level Struggle", http://www.nytimes.com/2012/04/22/business/at-Walmart-in-mexico-a-bribe-inquiry-silenced.html?pagewanted=all&_r=0

[102] 'Walmart top brass knew of bribery cases since 2005', *Indian Express*, January 12, 2013.

[103] "The Inside Story: Walmart and the shadow of corruption", *Economic Times*, January 15, 2013.

fact is that its lukewarm response to Ranking Members of the US House of Representatives – one belonging to the Committee on Oversight and Government Reform and the other to the Committee on Energy and Commerce, as reflected in the following excerpts, indicate the difficulties which India might face if it really wishes to dig deep.

> We are writing regarding new allegations that Walmart systematically bribed officials throughout Mexico in order to evade zoning, environmental, and permitting laws at the company's Bodega Aurrera store in Teotihuacan, Mexico. *We are concerned that your company's public statements that the company was unaware of the allegations appear to be inconsistent with documents we have obtained through our investigation…*
>
> These documents and e-mails call into question your company's statement that "[n]one of the associates we have interviewed, including people responsible for real estate projects in Mexico during this time period, recall any mention of bribery allegations related to this store." It *would be a serious matter if the CEO of one of our nation's largest companies (Michael Duke) failed to address allegations of a bribery scheme*.
>
> The e-mails also cast a new and unfavorable light on Walmart's *continued unwillingness* to provide our investigators with access to Ms. Munich, who appears to be a key witness who would know about your knowledge of the Teotihuacan bribes. On *June 13,2012*, your attorneys informed us that you were in the process of working through a protocol that would allow Ms. Munich to speak with our investigators. *Since then, however, we have received no additional information from Walmart* about when you intend to make Ms. Munich available to our investigators. *This ongoing delay frustrates our investigation.*(emphasis added)[104]

The reality in India is that BRL has set up more than 200 stores (who are dependent upon Walmart for their supplies) across different states (some of whom do not have any plans to allow foreign retailers) giving a huge advantage to Walmart over other new entrants. The pace of setting up the stores indeed hastened after Walmart's investment in Cedar's CCDs. Whether it had bribed a local authority here and there or not, is really of little consequence.[105]Even for this, the investigations need to cover other Walmart entities in India – not just BWM, Cedar and BRL and the 24 consultants. To the best of our knowledge, the other companies in India, besides the branch Walmart Stores Inc., are: WM Global Sourcing India Pvt Ltd, WM Global Technology Services India Pvt Ltd and WM India Technical and Consultancy Services Pvt Ltd. The following extracts from *New York Times* report sound a warning bell and one is not sure how the process adopted by the company in India falls into a similar pattern as far as opening the retail sector for FDI and gaining the first mover advantage.

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[104] http://democrats.energycommerce.house.gov/sites/default/files/documents/Letter-WalMart-Official-Bribery-Allegations-2012-1-10_0.pdf

[105] http://www.nytimes.com/2012/12/18/business/walmart-bribes-teotihuacan.html?pagewanted=all&_r=0

… Walmart de Mexico was not the reluctant victim of a corrupt culture that insisted on bribes as the cost of doing business. Nor did it pay bribes merely to speed up routine approvals. Rather, Walmart de Mexico was an *aggressive and creative corrupter, offering large payoffs to get what the law otherwise prohibited*. It used bribes to subvert democratic governance — *public votes, open debates, transparent procedures*. It used bribes to circumvent regulatory safeguards that protect Mexican citizens from unsafe construction. It used bribes to outflank rivals. *(*emphasis added*)*[106]

Interestingly, the House Democrats were trying to unearth the role of Walmart in the ongoing efforts to 'weaken' Foreign Corrupt Practices Act (FCPA) by making use of its membership in Retail Industry Leaders Association (RILA) and US Chamber of Commerce.[107]

Section 9
Single Brand Retail Trade

As was noted at the beginning, FDI up to 51% under the approval route was allowed initially in 2006. Subsequently, following the aborted attempt at opening up the MBRT, SBRT was opened for 100% FDI in January 2012. The increased limit, however, came with certain conditions, the chief among these being mandatory sourcing of at least 30% of the value of products sold, from Indian 'small industries/ village and cottage industries, artisans and craftsmen'. This was, however, diluted in September 20, 2012 by making it optional.

In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, *preferably from* MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. (sic) (emphasis added)[108]

It may also be noted that the sourcing requirement was changed from value of goods *sold* to the value of goods *purchased*. This would obviously make a lot of difference in terms of the value of goods sourced. There could be valid arguments in favour of such a 'correction',[109] there is a possibility of it reflecting the causal manner in which policies are made with key provisions not getting the attention they deserve.

The strident protests of the MSME Ministry finally came to no avail.[110] It seems that IKEA's argument that its suppliers were bound to grow due to their association

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106 http://www.nytimes.com/2012/12/18/business/walmart-bribes-teotihuacan.html?hp&_r=1&, accessed on January 26, 2013.

107 The relevant correspondence is available at democrats.energycommerce.house.gov

108 Vide Press Note No. 4 dated September 20, 2012 of the Department of Industrial Policy and Promotion.

109 See: "100% Foreign Direct Investment in Single Brand Retail Allowed!!!", January 12, 2012, http://www.nishithdesai.com/old/New_Hotline/CorpSec/Corpsec%20Hotline_Jan1212.htm

110 http://www.financialexpress.com/news/vayalar-writes-to-pm-on-sourcing-norms-for-fdi-in-single-brand-retail/1001651. The Minister for Micro, Small and Medium Enterprises (MSME) said in his letter to the prime minister: "If there is any relaxation in this norm, itself, it would lead to major upsurge in cheap imported goods, which are being made in non-transparent economies where direct and indirect subsidy

with the company and that such firms should continue to qualify as small industries even if their investments exceed the limit subsequently was accepted by the government.[111]It has also reversed its earlier decision not to allow IKEA to run cafeterias.[112]It is relevant to note that IKEA promised to invest about Rs. 10,000 crore in stages. It needs to be seen whether the government will show such flexibility in case of MFDI too.

According to the government, permitting FDI in SBRT is aimed at

> … attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.[113]

This should be seen in the context of the earlier reported official position about branded dedicated retail stores that they would be mere outlets for imported goods. Indeed, a question arises as to why a local sourcing condition was not imposed in case of FDI up to 51%. It is another matter how the restriction could be defeated in practice as described in the following section on "Rationale and Implementation of Safeguards". While a few companies notably, IKEA of Sweden and Pavers of UK, responded to the new policy, according to the government, 63 approvals were given earlier for FDI in SBRT. How much local production got established due to this policy is yet to be assessed. In some of the luxury brands one cannot expect much to be happening with or without a local partner. A few of the joint ventures we could take a look at suggest that these were entered into (i) by existing large local retailers or (ii) real estate developers or (iii) already existing distributors/franchisees of the respective products. Prominent among the first category is the Reliance group which has joined hands with Marks & Spencer, Diesel, Paul & Shark, Zegna (all leading clothes brands) and GrandVision, a leading optical retailer. The Future group (Biyani) also entered into some JVs with Celio (menswear), Etamint (women's wear) and Clarks (footwear). DLF's JVs fall in the second category: the foreign partners being Giorgio Armani, Ferragamo, Mothercare, Piquadro and Early Learning Centre. While some of these have already faltered, DLF seems to be looking for other alliances. While in the first category domestic retailers could be looking for additional business and better use of the existing space, companies in the second category are most probably looking for getting rental income in the already built up space in malls. Indeed, when the SBRT policy was announced initially in 2006, some mall developers enthusiastically responded.[114] Interestingly, further opening up of the retail sector followed the

regimes coupled with currency controls, which ensure unfair exports to third countries..". He, however, agreed that the "Government can always give a relaxation that if small units have grown bigger, sourcing from such units would still be considered sourcing from small industry".

111 http://www.hindustantimes.com/business-news/CorporateNews/IKEA-gets-its-way-govt-eases-rules/Article1-933720.aspx

112 "IKEA's Rs Rs 10,000 crore investment gets FIPB nod", http://timesofindia.indiatimes.com/business/india-business/IKEAs-Rs-Rs-10000-crore-investment-gets-FIPB-nod/articleshow/18124008.cms

113 DIPP Press Note No. 4 (2012 Series)

114 For instance, then CEO of Inorbit Malls, said that "(t)he move will especially boost luxury retailing, and as

permission for 100% FDI through the automatic route in 'townships, housing, built-up infrastructure and construction-development projects'. In the third category, the existing franchisees may come under more direct control by the foreign investors and may eventually have to exit the business. In essence, to what extent FDI in SBRT will be beneficial in terms of local sourcing for exports, coming up of production facilities, etc. is a big question. What, however, guaranteed are: getting marginal amount of inflows, larger sales of imported luxury/high value items and continuous drain of foreign exchange through imports.

The case of Swatch group of Switzerland, the world's largest watch maker and owner of brands like Rado, Tissot, Omega, Longines and Breguet illustrates how an initial manufacturing proposal got turned into a trading enterprise. Swatch was allowed in June 1999 by the government to set up a wholly-owned subsidiary for manufacturing and assembling wrist watches for domestic and export markets. To begin with it was to import watches and test market them in India for two years. Simultaneously, it was to take steps to establish manufacturing facilities.[115]Prior to that, back in July 1996, the company received approval for a joint venture with India's RPG group to manufacture quartz analog wrist watches. This in itself was a culmination of the Letter of Intent signed between the two in December 1994. The JV agreement however remained dormant. Responding to RPG's concern about the continuing delay, even in 1998, Mr. Nicholas G Hayek, Chairman of the Board and CEO of Swatch group personally conveyed the company's commitment to the joint venture. When in 1999 the company approached the government for setting up a 100% owned subsidiary, the RPG group initially objected but finally gave the necessary no objection certificate. Interestingly and prophetically the RPG group's letter to the Ministry of Industry said:

> Their present application has also been timed perfectly since the import of watches has now been allowed under the import policy announced on March 31, 1999. They do not seem to have any plans to set up a manufacturing unit as their current strategy is that Swiss watches should only be made in Switzerland.[116]

In preparation to approaching the government, the company also floated the idea of the possibility of setting up a hybrid car assembly plant. Mr. Hayek had said:

> India is a great country with great culture and we want to be there. We are studying the Indian market and would like to produce watches, make our car and sell the Swatch brand of watches…[117]

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a mall developer, it is good news for me as there will be more takers for mall space". See: "But what is single-brand retail?", http://www.thehindubusinessline.in/ 2006/01/26/stories/2006012601070800.htm

115 "FIPB clears Swatch, Delphi, Denso, Nokia proposals", http://www.financialexpress.com/old/fe/daily/19990608/fco08020.html

116 NOC must before nod to Swatch: RPG", *Business Standard*, May 26, 1999.

117 "Swatch to set up subsidiary, mulls car launch", *Business Standard*, May 8, 1999.

There was also a hint, may be by way of pressurising the Indian government, that the company was viewing Italy as another possible location for the car project.[118] Another hint suggested that the venture would look at both the domestic and export markets and that the investment would be export positive.[119]Interestingly, the assembly unit proposed by the company was to "mainly for assembling components such as leather straps, buckles, display counters and packing material."[120]

In August 2001, the government gave its approval amending the existing approval to:

> "Undertake test marketing of (??) for a period of 2-3 years and simultaneously set up manufacturing/assembly operations for domestic market and export to other countries".[121]

No fresh inflow of FDI was involved in this approval. In 2002 it was reported that the company was planning to open franchisee-run exclusive retail outlets.[122] In February 2005, the company received another approval for 'import and wholesale trading of jewellery'. This too involved no additional inflow. Interestingly, in early 2006, Ms. Nayla Hayek, member of the company's management board and daughter of Mr. Nicholas G Hayek, was reported to have 'ruled out Swatch shifting some of the watch making facilities to low cost economies like India or China' and added that 'Swiss-made watches remain Swiss-made' and in the long run the company may consider making non-Swiss-made brands like *Endura* in India.[123] Her father, Mr. Nicholas G. Hayek, only talked about forming a joint venture for setting up a dedicated distribution network.[124]As of now, the group's production facilities in Asia are located in China (electronic components), Malaysia (assembly of electronic components) and Thailand (electronic components). It has distribution facilities in all the three countries whereas the Indian operations are restricted to distribution only.[125]Incidentally, the basic duty on watches imports has fallen from 50% in 1995-96 to 10% now.

The company's imports into India predominantly comprise finished goods, spare parts and some capital goods. In 2011 these were Rs. 265.18 crore, Rs 5.49 crore, and Rs. 1.40 crore respectively. Other expenditure in foreign exchange includes Rs. 12.02 crore towards reimbursement of advertisement expenses (including material). The total expenditure during the year worked out to Rs. 286.25 crore. Corresponding earning in foreign exchange on account of miscellaneous income was Rs. 0.31 crore. During the past four years, the total outgo was about Rs. 800 crore whereas the paid-up capital is Rs. 111 crore. One does not know whether the requirement to

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118 "FIPB shelves Swatch's Rs 10 cr proposal to set up 100% arm", *Financial Express*, May 19, 1999.

119 "RPG agrees to entry of Swatch subsidiary", *Economic Times*, May 25, 1999.

120 "FIPB shelves Swatch's Rs 10 cr proposal to set up 100% arm", *Financial Express*, May 19, 1999.

121 DIPP Press Release relating to FIPB approvals dated August 6, 2001.

122 "Swatch group mulls exclusive outlets", Business Line, Tuesday, May 14, 2002. http://www.thehindubusinessline.in/2002/05/14/stories/2002051400930600.htm

123 "Indian standard time for Swatch", *Financial Express*, April 2, 2006.

124 "Swatch plans joint venture for Indian market", Business Line September 13, 2008.

125 Swatch Group *Annual Report2012*: Consolidated Financial Statements, p. 204.

manufacture locally was dropped or there was no follow up on part of the government. The essential point is that this 100% foreign-owned company is engaged only in importing and selling its watches and jewellery (through kiosks and exclusive outlets possibly owned by franchisees) under different brand names.

Sony India Pvt Ltd, a wholly foreign-owned company, shut down its manufacturing operations in 2004-05 and is now engaged mainly in selling imported products and software development. The closing down of the plant in Dharuhera appears to be fallout of India's FTA with Thailand.[126]Samsung India Electronics Pvt Ltd falls into a similar if not identical category. The company report suggests that the ratio of 'Own production' sales to sale of 'Traded items' was roughly 1.3:1. However, imported raw materials and components constitute about three-fourths of total consumption, thereby making it more of an assembler rather than a manufacturer. The company also engages in software development. Samsung once again is a 100% foreign-owned company. Incidentally, Samsung pays huge amount of royalty to its parent company – the out go on this account alone during the past three years exceeded the company's paid-up capital of Rs. 217 crore. Imports however, run into a few thousand crore, the figures for 2011 alone being Rs. 9,339 crore.[127]

In the above we have presented three different types of cases. All the three are well known by their main brand names. Swatch entered with the promise of setting up manufacturing facilities but did not set up any such operations. Sony had some manufacturing facility but exited manufacturing. Samsung does show manufacturing activity but the extent of local 'manufacturing' is open for questioning. Under which provisions of India's FDI policy their operations fall is a question that needs to be looked into. Leaving aside the software development activity which is subsidiary to their operations, if selling through franchisee outlets is not treated as trading by the foreign companies then these will be mere importers. If it is treated as retail, SBRT rules would apply to them. Or, do they fall under CCW which includes "resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales"? Or, is there a policy vacuum?

In fact, some pertinent comments were made when SBRT was opened initially in 2006.Then Chief Operating Officer (Watches) of Titan Industries, said, "What do they mean by single brand? A multi-brand retailer such as Harrods is also a single brand, while an Omega is a single brand in itself." Similarly, then CEO of Home Solutions India Ltd asked whether Tesco selling all its products under its own brand could be termed as single brand retail.[128]

In the context of monitoring the safeguards, it might also be relevant to note the export commitment of Adidas India Marketing Pvt Ltd. The company reported:

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[126] "Sony India's CTV Prodn In Freeze Frame", http://www.financialexpress.com/news/sony-indias-ctv-prodn-in-freeze-frame/111259

[127] More recent data suggest that imports during 2011-12 and 2012-13 were Rs. 12,502 and Rs. 17,428 crore respectively.

[128] "But what is single-brand retail?" http://www.thehindubusinessline.in/2006/01/26/stories/2006012601070800.htm

> The approval granted to the Company to conduct business in India from Foreign Investment Promotion Board (FIPB) has a remark that it has noted the proposal made by the company. The proposal was that "through these proposed activities in India, adidas by current projections estimates to bring about foreign exchange earnings for India through exports by Indian manufacturers to the tune of USD 100 million over the next five years of its operations". The company has discussions with representatives of FIPB and as the estimate of exports given in the proposal could not be fulfilled and are of the opinion, based on discussions with FIPB, that non-adherence to the estimate will not have any impact on the approval granted.[129]

It is quite possible that the offer to promote exports from unaffiliated manufacturers might have prompted the Indian authorities to grant permission to invest in India.

On the other hand, with such a large variety of products one wonders how IKEA cannot be treated as any regular retailer just because all its products ranging from furniture to textiles, kitchen and dining room accessories, domestic appliances, lighting fittings, toys and cafeterias are under IKEA's umbrella. Had it been treated as an MBRT, IKEA would not have been able to take up more than 51%. In fact, at one time the view in the government, in response to the investment proposal of Loro Piana of Italy, was deferred because "The range of products proposed to be traded by Loro Piana is too large and diverse – from apparel to machinery equipment".[130]

It does appear that there are a lot of grey areas in classification and gaps in follow up action. The latter will have significant implications for the monitoring of the conditions associated with both SBRT and MBRT. It also raises serious doubts about realisation of objectives in allowing FDI in SBRT as they may end up promoting consumption of imported luxury goods without meaningful local production possibilities.

Section 10
Rationale and Implementation of the Safeguards

For us the main issue, as far as India is concerned and emerging from the above lengthy narration of events and decisions since 2003, is that behind the opening up of MBRT for FDI there has been long and sustained lobbying by interested foreign parties. It is difficult to say the precise extent of lobbying and external pressure on each of the following: (i) the 'acceptance' of the structure of the relationship between Walmart and Bharti as 'permissible'; (ii) the long delay in deciding about the CCDs issued by Cedar to Walmart; (iii) taking no action against CCW companies indulging in 'retail' sales; (iv) disregarding the rule with regard to sales to group companies by CCW companies and the delay in deciding about the definition of group; (v) declaring the new policy while the issue was in Delhi High Court; and (vi) changing the way in

[129] Adidas India Marketing Private Ltd., Annual Report 2010

[130] "Categories under single brand may be capped", *Economic Times*, January 16, 2009.

which indirect FDI was to be reckoned with. But these do indicate that once the Indian policy makers were convinced either based on their own assessment of the benefits of MFDI or due to the pressure from abroad, the process has been unidirectional. Instead of being bureaucratic negligence/inefficiency it appears to be a grand strategy to provide a window of opportunity to begin with and work towards further opening the doors widely while simultaneously turning a blind eye to the transgressions of the extant provisions. Effectiveness of the conditions incorporated in the MFDI policy should, therefore, be seen in this context. We shall examine these in the following.

- **51% Cap on FDI**

The standard argument in favour of the 51% cap on FDI is that Indian investors would necessarily be involved in the ventures and that they would learn from foreign companies and in the processing of protecting their own interests they would exercise a degree of control that could be useful in safeguarding national economic interests. However, given the manner in which foreign investors secure their rights, often reducing the Indian collaborator to just a sleeping partner, one is not sure how the 51% cap can help especially when the local investors look for returns from built-up/hired space. The domestic partners could even be some local suppliers who would be obliged to the foreign investor. The MFDI companies could also go for a public issue in which case there will be no question of a domestic partner. The experience of equity dilution under FERA is quite relevant in this context. In fact, keeping in view the strong opposition, Walmart was even prepared to accept a 'minority' share of 49%. The Indian partners can neither claim even part ownership of the brand names nor the knowledge embedded in the databases of the foreign retailers and their global supply chains which is the latter's main strength. This is wholly unlike manufacturing companies. From many indications and past experience the cap is going to be an intermediate stage and the limit could be raised progressively thus diminishing whatever advantages that this arrangement was expected to offer. In fact, the 51% limit may provide the foreign investor an opportunity to tap more local risk capital than otherwise.

On the other hand, one does not understand why conditions should apply only when foreign companies opt for equity levels above 51% in case of SBRT. Given the limited benefit, if at all, expected from them, conditions should have been imposed even otherwise. Most of these sell high value luxury branded items and there is no possibility of these investors sharing anything with local partners. In their case brand name is even more important which is zealously guarded by the foreign. A few of them were found to be importing even packing materials not to speak of the spares!

- **50% Minimum Investment in BI**

The minimum investment of $100 million is meant to keep non-serious players away. However, the corresponding minimum investment in backend infrastructure which is about Rs. 250 crore, is unlikely to make a meaningful contribution to development of backend infrastructure especially as such infrastructure is defined to cover a wide variety of activities. Since there is no bar on accessing domestic capital market, deployment of local financial resources may further reduce the effectiveness of this requirement. Additionally, if partial or complete takeover of existing logistics operations is considered as investment for this purpose, no additional facilities would be developed. Unless there is a stipulation that the investment should be on a continuing basis the foreign investors can withdraw from it after sometime, with or without premium on such investment. Some of these may sound farfetched but given the way things have gone so far, such possibilities cannot be ruled out. The condition could have been more effective had it been placed on the total investment and on specific categories of activities rather than a host of activities.[131]

- **30% Sourcing from 'Small Industries'**

A lot of emphasis has been placed on the requirement of sourcing a minimum of 30% requirement from Indian small industries. This is expected to address the fears that imports would hurt local small units badly. However, going by the official criterion which identifies small industries only on the basis of investment in plant and machinery with no reference to the ownership, quite a few possibilities suggest for themselves. First of all, it is inexplicable why the investment limit was expressed in terms of US dollars whereas the MSMED Act, 2006 defines small enterprises as those having investment in plant and machinery between Rs. 25 lakh and Rs. 5 crore. Will the investment limit for MBRT change according to the exchange rate? We do not think the policy makers would be having such a ridiculous possibility in mind. However, devoid of the ownership criteria even 100% foreign-owned companies can qualify as small industries.[132] What one generally perceives as small need not necessarily be small at all. It can be a subsidiary/affiliate of a foreign company or a large/medium Indian company. It could just be assembling, doing some final processing or even doing repacking of a nearly finished (imported) product. The 30% requirement in any case, does not act as a safeguard against large scale imports. Will rice, flour, edible oils and split pulses be counted as processed items? The larger the basket, the less effective will be the condition. On the other hand, the condition has no provisions for safeguarding the interests of *genuine* local small units.

- **Franchise Route**

It also needs to be underlined that franchise agreements need not be confined to providing the knowledge of supply chains but could actually be another backdoor entry is illustrated by the arrangement between Tatas and Tesco. The essential elements of the arrangement in the words of the franchisee, namely, Trent Hypermarket Ltd. are:

> Trent Hyper entered into a franchise and wholesale supply arrangement with Tesco Plc and its wholly owned subsidiary in India respectively, in respect of the Star Bazaar business. The exclusive franchise agreement allows the

[131] 'Back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units. It will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. See: http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2012.pdf

[132] The government in fact, explained in no uncertain terms that "As per the existing policy, 100% FDI is permitted in MSME sector subject to sectoral caps". This was stated in Lok Sabha the reply to the Unstarred Question No. 1405, answered on August 3, 2010.

> Company to access Tesco's retail expertise and technical capability processes and best practices … Under the wholesale supply arrangement, Star Bazaar now sources merchandise from Tesco's wholesale business in India, benefitting from Tesco's sourcing capability and supply chain expertise. Given concerted efforts from both teams, *a significant share of merchandise retailed across Star Bazaar stores is now being sourced by Tesco Hindustan Wholesaling Pvt Ltd*.

Implications of such arrangements with obliging Indian parties for investment in backend infrastructure, sourcing from small industries and locational restrictions are obvious. Also when the arrangements are so comprehensive, the Indian franchisees are unlikely to learn from the arrangement.

Given the manner in which the CCW policy has been operating, the stipulation on the location of retail outlets may not prove to be as big a hurdle as one expects it to be. For instance, many of BRL's *easyday* outlets are already in states which are not prepared to have MFDI. Some of them are in locations having much less than 10 lakh population. Cedar type of arrangement comes handy for many particularly as long as the definition of indirect FDI remains as it has been since April 2010.

While providing access to global markets for domestic agricultural produce and local small and medium enterprises through the large foreign retailers figures in the official scheme of things, surprisingly no obligations are being placed on them to generate export revenues. The issue of employment impact studies for each store proposed by the labour ministry also do not figure among the conditions. The proposal of minimum sales requirement to local retailers by the large retailers, proposed by the official Discussion Paper is also missing from the list.

- **Monitoring & Self-certification**

It is said that compliance with the conditions will be ensured through self-certification and certification by the auditors. This could be 'cross-checked as and when required'. While the DIPP Press Note is not specific in this regard, we presume that this will be by the government. Given the manner in which government agencies behaved at various instances, described in the foregoing, it is highly debatable how much reliance one can place on this provision. It also needs to be underlined here that large trading companies have been obtaining exemptions from disclosing details of sales, purchases and stocks, which they were to disclose under Clauses 3(i)a and 3(ii)(b) of Part II of Schedule VI of the Companies Act, almost as a matter of routine. Indeed, one expected a lot from a government which has been keen on introducing FDI in the country's MBRT than the following type of responses. In reply to Rajya Sabha Unstarred Question No 1557 which asked for the city-wise details and number of branches of foreign companies engaged in CCW in India, it was stated merely that:

> City-wise data, with regard to the number of branches set up/proposed to be set up by such multinational companies, is not centrally maintained.[133]

[133] Answered on March 28, 2012.

Similarly, in reply to Lok Sabha Unstarred Question No 4083 which sought information on investment in infrastructure, warehouses and cold storage by foreign companies engaged in CCW and also of their violations in terms of tax evasion and VAT declaration, etc., the member was informed that:

> Over 900 companies have received FDI, for undertaking Wholesale Cash and Carry Trading/Wholesale Trading, from April, 2000 to February, 2012. As FDI in this activity does not require Government approval, information regarding proposed investment by such companies is not available.
>
> Details with regard to areas of investment, by entities in the Wholesale cash & carry sector, in infrastructure, warehouses and cold storage sectors, are not centrally maintained by the Department of Industrial Policy & Promotion. Sector-wise details of tax evasion are not maintained centrally.[134]

If the member was expecting some information on Walmart's VAT controversy which we had referred to earlier, he/she obviously was in for big disappointment.[135] One would have expected policymakers to have a good idea of the ground reality before further relaxing the policy and fixing an arbitrary minimum invest limit of $ 100 mn.

The periods over which foreign companies have to meet the obligations from the time of initial inflow of investment are three years in case of backend infrastructure and five years in case of procurement from small industries. While these may sound reasonable, the possibility of dilution of the stipulations within this period places a question mark on their utility. Further, as in case of SBRT, if there is provision for small units to grow into medium and larger enterprises, it may be just enough that the units were registered as small units at the time of initial procurement.

Unless the loopholes in operation of CCW operations, which have no such restrictions, are plugged, the foreign companies may freely combine the two as also franchising and avoid spending substantial amounts on backend infrastructure. In fact, local retailers could have benefited had the FDI been confined to CCW by placing some obligations and eliminating the scope for backdoor retailing. Indeed expressing surprise over the Department of Industrial Policy and Promotion (DIPP) seeking public opinion on the conditions that should be placed on foreign retailers if they are allowed, through its Discussion paper, the Nag-Vidarbha Chamber of Commerce said:

> The reason why we feel so (surprised) is that your department has not been able to enforce any of the conditions which were laid down in the Licences granted for 'Cash & Carry Wholesale Trade'.... Even today the violations are continuing & in spite of that *you are audaciously asking the public at large to give their views on the conditionality* to be placed on MNC retailers. ... It will therefore be *better not to expose your department to further embarrassment* on those sensitive issues. (emphasis added)[136]

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134 Answered on April 30, 2012.

135 *Supra Note* 56.

136 See: http://dipp.nic.in/English/Discuss_paper/Feedback_FedrationAssociation_Maharashtra_13July2010.pdf

A lot depends upon the way the actual guidelines are framed. In the end, just as one has seen the progressive yielding of space to FDI in SBRT, one cannot rule out the possibility of the guidelines being tailored to meet the foreign investors' convenience. Reports indicate that large retailers have already sought clarifications from the Government. For instance, representatives of Walmart and Tesco met India's Minister for Commerce & Industry at the World Economic Forum meeting in Davos towards the end of January 2013 wherein the Minister was reported to have promised to do the necessary 'handholding'.[137] Tesco also used the visit of the British Prime Minister to India during February 2013 to bolster its case.[138] There is also the push towards doing away with the restriction on FDI in online retail.[139] While it is a different matter that the government may not be able to withstand the pressure, especially in the context of the need to attract large capital inflows, to stick to its stand of not going back on the safeguards, it is clear that the foreign investors do not wish to be bound by the requirements of sourcing from small enterprises and investment in backend infrastructure.[140] Thus, as long as the restrictions remain on paper, they are likely to be followed in letter but not in spirit. After all, Bharti and Walmart have been consistently maintaining that their operations are in conformity with the official policy. With questions being raised about the quantum of inflows that India could attract following the September 2012 announcement, the government would be under even more pressure to show results and is thus more likely to concede foreign investors' demands.

Section 11
Stable Character of Inflows: A Quick Take

The way MFDI has been approached raises many questions not merely the ones relating to circumvention of the extant laws. One of the expectations from MFDI was that it will go towards meeting India's current account gap. But there is hardly any systematic and regular monitoring to examine whether this expectation is being met in general by FDI or FDI itself is contributing to the widening of the gap. For example, looking solely at BWM, it is evident that within 4 years of its formation, the inflow of Rs. 100 crore in the form of equity participation by Walmart has been more than balanced by outflows on account of a variety of transactions, activities and imports (Rs. 111 crore). This is the situation when the company is yet to make profits and remit dividends. Further, BWM paid nearly Rs. 148 crore to WM India technical and Consultancy Services Pvt Ltd between 2007 and 2011 on account of services and

137 http://news.indiamart.com/story/anand-sharma-assures-full-support-tesco-walmart-174305.html
138 http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/9875414/Tesco-calls-on-Cameron-to-aid-Indian-growth.html and http://articles.timesofindia.indiatimes.com/2013-02-18/india-business/37160053_1_ceo-philip-clarke-foreign-retailers-star-bazaar
139 http://www.financialexpress.com/news/montek-pitches-for-fdi-in-online-retail/1085245#
140 "No change in FDI policy: Foreign retailers told to work out India rollout under existing rules" http://economictimes.indiatimes.com/news/news-by-industry/services/retail/no-change-in-fdi-policy-foreign-retailers-told-to-work-out-india-rollout-under-existing-rules/articleshow/18960804.cms

royalty. The situation would be worse if the royalties and other payments made by BRL to Walmart's entities, indicated earlier, are also taken into account. Thus, even if the inflows in the form of CCDs into Cedar are also taken into account, the inflows will soon be overshadowed by outflows. On the other hand, BWM did not report any worthwhile earnings in foreign exchange.[141]Further, against the total equity capital of Rs. 200 crore, BWM depended upon as much as Rs. 1,100 crore loans from local banks. (See Table-2) Similarly, the imports of Carrefour WC&C India Pvt Ltd amounted to Rs. 180 crore in 2011 alone, whereas the capital inflow on its account, including premium, was Rs. 230 crore. (See Table-3) The Directors categorically stated in the Annual Report that the company was "concentrating on the domestic markets … does not have any specific export initiatives..." Since Metro Cash and Carry India Pvt Ltd did not report data on its imports we are not in a position to comment on the net impact. On top of this, further revenue loss will be there for the exchequer as most of these investors are bound to use the Mauritius transit route.

Table-2: A Snap Shot of Bharti Walmart Pvt Ltd

Item	*As on Dec. 31, 2011 (Rs. Cr.)*
Total Equity Capital	200.01
Of which,	
- Walmart's direct contribution via Mauritius	100.05
- Cedar Support Services Ltd	2.00
- Bharti Ventures Ltd	98.05
Secured Loans (from Banks)	1,104.35
Sundry Creditors	265.09
Total Income	1,876.43
Accumulated Losses	765.39
Foreign Exchange Outgo (Till Dec. 31, 2011)	111.24
- Professional Fees, Royalty, Travel, Personnel Expenses, etc.	57.15
- Imports	54.09
Payments to WM India Technical and Consultancy Services Pvt Ltd (in Indian Currency 2007-2011)	148.25

141 An interesting and relevant development is the case of Del Monte Pacific (DMP). Following the formation of Bharti Walmart joint venture, DMP's subsidiary in India, Del Monte Foods India Pvt Ltd. (DMF), part-replaced Rothschild in the JV with the Bharti group, Fieldfresh Foods in 2007. During 2008 DMF de-bonded its unit in MEPZ, which was processing mango pulp for export, and transferred the same to its JV with Bharti group. The JV imported equipment under EPCG with export obligations and was also eligible for export incentives. The JV, a supplier to BWM, received subsidies under (i) Vishesh Krishi and Gram Udyog Yojana, (ii) Transport Assistance Scheme and (iii) Infrastructure Development Scheme. Interestingly, over the past three years, the JV's earnings in foreign exchange were far lower than expenditure in foreign exchange. Besides finished goods, packing materials form an important component of spending in foreign exchange. It was indeed said in 2007 that "The company now plans to enhance its focus on the Indian market – a pointer to its logical integration with the Bharti-Walmart retail chain, which is in the works. FieldFresh will also be undertaking exports as and when opportunities arise". Thus, an export-oriented unit has turned itself into a domestic market oriented one and received a variety of subsidies and concessions. It is a different matter that the MEPZ unit in Tamil Nadu was accused of causing serious ground water pollution. The unit was reported to have been closed down.

Table-3: Some Basic Figures of Two Major Cash and Carry Companies (Rs. Cr.)

Item	*Carrefour (2007)*		*Metro (2001)*	
	2011	*2010*	*2011*	*2010*
PUC + Share Premium	230.32	147.32	1,292.68	1,292.68
Loans	90.00	60.00	482.43	249.94
Sundry Creditors	28.78	12.62	153.54	91.69
Imports	179.54	13.77	NR	NR
Other Expenditure in FX	0.35	0.97	*19.12	*11.60
Sales	171.32	0.56	1,624.82	1,219.64
FX Earnings	#	#	0.71	0.30

\# The Company categorically stated that it was "concentrating on the domestic markets … does not have any specific export initiatives..."

* Royalty due to parent company was Rs. 16.25 cr. and Rs. 12.20 cr. respectively constituting 1% of the corresponding year's sales.

Operations of other FDI trading companies including those engaged in SBRT reveal that there are many ways in which outflows take place irrespective of the profitability. Such remittances and expenses do not necessarily bear any relationship with the initial investments. For instance Amway India Enterprises Pvt Ltd , having a paid-up capital of Rs. 21 crore spent as much as Rs. 699 crore in foreign exchange under various heads between 2008-09 and 2010-11. (See Table-4) Out of the total expenditure in foreign exchange of Rs. 19.18 crore by Modi Revlon in 2010, as much as Rs. 8.38 crore was on account of 'royalty'. In case of Herbalife, external payments on account of 'administrative expenses' were Rs. 15.30 crore while the total expenditure in foreign exchange during 2009-10 year was Rs. 23.54 crore. Some of these incur huge losses but yet remain in business. In case of some companies import of finished goods is a major item on which foreign exchange is spent. Many of these do not have compensatory earnings in the form of exports. (See Table-5) Like BWM, use of substantial local financial resources is not also uncommon. (See Table-6)

Table-4: Amway India's Expenditure in Foreign Exchange (Rs. Cr.)

Year	*Share Capital*	*Reserves*	*Dividends*	*Others*	*Imports*	*Total*
2008-09	21	96	128	40	27	195
2009-10	21	115	139	50	27	216
2010-11	21	145	171	68	48	288
Total			438	159	102	699

Table -5: Illustrative Cases of FDI Trading Companies having relatively Large Expenditures in Foreign Exchange and/or Finished Goods Imports (Rs. Cr.)

Name of the Company (Year of Incorporation)	*Accounting Period Ending*	*Paid-up Capital*	*Expenditure in Foreign Currency*	*Of which Traded/ Finished Goods*	*Earnings in Foreign Currency*
Adidas India Mktg (1995)	31.12.2010	54.97	59.58	54.28	negl.
Avon Beauty Prod. (1995)	31.03.2011	235.63	47.53	41.63	not reported
Swatch Group (India) Pvt Ltd (2000)	31.12.2011	111.13	286.26	265.18	not reported
Christian Dior Trading (India) (2005)	31.03.2011	0.20	12.31		Nil

Modi Revlon (1994)	31.12.2010	0.94	19.18	9.53	0.36
Glencore (India) Pvt Ltd (1995)	31.12.2010	8.02	95.35	95.16	33.46
Glencore Grain (India) (2005)	31.03.2011	12.50	404.17	400.61	133.01
Herbalife International (1998)	31.03.2010	4.08	23.54	1.09	negl.
Life Style International (1997)	31.03.2011	112.05/ 52.25	124.79	not reported	Nil
Louis Dreyfus Comm. (1995)	31.03.2010	6.96	853.79	410.82	574.69

Table-6: Illustrative Cases of reliance on Loans/Sundry Creditors (Rs. Cr.)

FDI Company (Year of Incorporation)	*Accounting Period Ending*	*PUC*	*Reserves*	*Loans*	*Sundry Creditors*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
Adidas India Mktg (1995)	31.12.2010	54.97		220.01	143.65
Samsonite South Asia (1995)	31.12.2010	35.49 (21.29)		19.38	114.19
Christian Dior Trading (India) (2005)	31.03.2011	0.20	0.94	94.33	
Nike India Pvt Ltd (2004)	31.05.2010	8.68	13.82	156.79	12.45
Glencore Grain (India) (2005)	31.03.2011	12.50	20.00	187.20	225.56
Herbalife International (1998)	31.03.2010	4.08	30.01		44.48
Life Style International (1997)	31.03.2011	112.05 (52.25)	179.01	345.01	418.11
Louis Dreyfus Commodities (1995)	31.03.2010	6.96	40.77	299.15	
Noble Resources Tdg (1991)	31.03.2010	66.12		206.11	340.03
Levi Strauss (India) (1994)	31.03.2010	37.50		121.57	141.67

Figures in brackets in Column (3) indicate foreign share in case of joint ventures. In the remaining ones, the entire capital is foreign-owned.

It is more likely that the foreign retail companies will expand gradually, with limited investment from abroad. Since the ploughing back starts almost from day one, the same could comeback as FDI if needed. Also, for purposes of the backend infrastructure stipulation, retained earnings would not be counted but would come in handy for expansion purposes.

Section 12
Summing Up

What concerns us more is that the case of MFDI seems to provide a classic example of large global corporations succeeding in influencing public policy of developing countries and putting the regulatory system to stupor with the backing of powerful home governments and exploiting the developing countries' need for foreign capital. No foreign investor would spend millions on lobbying just to get the opportunity to serve host country's interests. It also falls into the usual pattern of blindly following others (e.g. promoting SEZs by India) without caring for their essence and ground realities of the host country. It could also be reflective of the faith in textbook type results. Otherwise it would be difficult to explain some of the omissions and commissions made by India. Effectiveness of the safeguards depends upon the way the actual guidelines are framed and known loopholes plugged. Given the above track record one cannot rule out the possibility of the guidelines being tailored to meet the foreign investors' convenience. Equally importantly, the safeguards do not address the concerns of the vast number of farmers and small traders.

On the other hand, while the government took comfort from the fact that India is not a signatory to GATS and that the Bilateral Investment Promotion Agreements (BIPAs) would come into play only with regard to post-approval changes in the policy environment, one is not sure whether the existing BIPAs and Free Trade Agreements (FTAs) would leave some scope for action on part of foreign investors especially because the investors can pick and choose the provisions from among all the agreements which suit them the best.

The government is simultaneously underplaying and highlighting the role of MFDI. While it extrapolates the finding that organized retail in India did not cause much negative impact on small traders it also expects MFDI to be a game changer thereby implying that foreign retail majors are vastly different from Indian organized sector players. Logically, their impact should also be different. Again, the government told the Supreme Court that since MFDI will be limited to 53 cities with a minimum population of one million and hence only 13.3% of India's population will be covered by MFDI[142] thereby trying to convey that negative impact on small traders if at all would be quite limited and localized. Does this mean that the policy will remain static for all times to come? If this was to be the case why did the ruling alliance put its own survival at stake and resort to deft floor management to carry the day? Will it help contain inflation? Will it transform Indian agriculture? Similarly, it was forcefully argued in the parliament that large retailers cannot set up their operations in cities like Delhi due to high real estate prices, the attempt was once again to downplay the negative impact on local small traders. It is obvious that this tactic is aimed at blunting the opposition so that the initial hurdle can be crossed and once this objective is achieved, subsequent relaxations would face much less opposition.

In sum, the protection offered by the safeguards is illusory. Given so many possibilities, it would be difficult to expect India to implement the conditions strictly. They may even be diluted or completely withdrawn before the time arrives for assessment. The devil will lie in the details of the guidelines. While the central government can be expected to be more accommodative, a lot depends upon the state governments in actual implementation.

The net addition to investable capital could also be short-lived. A country which openly states that it does not have a choice between welcoming and spurning foreign investment and that foreign investment is an 'imperative'[143]is unlikely to set terms to foreign investors. Clearing investment proposals before major international events and important foreign visits and interactions with foreign investors to demonstrate India's willingness to accommodate foreign investors' demands need not

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142 http://articles.timesofindia.indiatimes.com/2013-02-23/india/37256431_1_multi-brand-distributional-efficiencies-fdi

143 Ministry of Finance, "Union Budget Speech", 2013-14.

be in tune with the objective of encouraging "foreign investment that is consistent with our objectives".[144]In this context again, the issue of relative quantum of FDI into the retail sector and the associated imports and other payments acquires significance. Indian economy has become far more import intensive within a decade: the imports to GDP ratio increased from 10.6% in 2001 to 25% in 2011. This is in sharp contrast to the experience of Brazil and Indonesia where the share fell.[145]Unfortunately, the policy makers' attention has been riveted on measuring the inflows rather than on their impact. Given India's experience so far, instead of bridging the gap foreign investment of all shades may even be contributing to its widening. Fire fighting operations may actually be fuelling the fire and escalating it.

Section 13
Some Later Developments

A number of relevant developments have subsequently taken place. For one thing pressure started building up on the Indian government that there was not a single application even after nearly nine months of announcement of the MFDI policy.[146] On May 1, the Supreme Court dismissed a PIL and upheld the government's right to permit FDI into MBRT. The Cabinet Committee on Economic Affairs cleared IKEA's proposal to invest in SBRT on May 2 which the Minister of Commerce termed as reflecting the "commitment of the government for maintaining a liberal economic agenda".[147] A little later in the same month the one-man Committee set up by the Ministry of Corporate Affairs to enquire into Walmart's lobbying in India and possible violation of Indian laws submitted its report. In early June, the government finally defined what constitutes a group company for purposes of administering the FDI policy which is also relevant for MFDI.[148] From the DIPP's earlier position of wholly owned subsidiaries the new requirement was reduced to 26% of voting rights. It also covers companies which are in a position to appoint majority members of a Board of another enterprise.[149] A few days later, on June 6, the DIPP came out with clarifications on MFDI that were seen to be quite restrictive, with the promise to issue some more clarifications.[150] These and related matters were discussed in a round-table with

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144 *Op. cit.*

145 Biswajit Dhar, "Gold as a convenient villain", *Live Mint*, March 11, 2013.

146 "India's retail FDI bid fails to sell", *Asian Times*, May 3, 2013. http://www.atimes.com/atimes/South_Asia/SOU-02-030513.html. "India's multi-brand retail policy has no buyers", fDi Intelligence. May 29, 2003, http://www.fdiintelligence.com/News/India-s-multi-brand-retail-policy-has-no-buyers. "FDI in Multi-Brand Retail Skids; Will Not take Off", http://www.retailmantra.com/fdi-in-multi-brand-retail-skids-will-not-take-off/

147 "India Clears IKEA's $1.95 Billion Investment Plan", http://online.wsj.com/article/SB10001424127887324266904578458840277908564.html

148 "DIPP comes out with definition of 'group company'", Economic Times. DIPP Press Note No. 2 (2013 Series)

149 Press Note No. 2 (2013 Series), June 3, 2013.

150 Incidentally, the explanations have been announced through a PIB release unlike the definition of group companies for purpose of MFDI which was announced through a DIPP Press Note. Is the government still trying to keep the options open?

representatives of organised retail trade on June 27, 2013.[151] Walmart Asia's chief, however, met the Commerce & Industry Minister separately in the morning.[152] Interestingly, just a day before the round-table, BWM's chief, who had spearheaded its entry, quit and the company's cryptic remark was that he was "no longer" with it.[153] June also witnessed the much delayed clarifications being issued by the RBI for defining control and calculating indirect FDI,[154] which followed the Press Note 2 of February 2009. Following changes in the governments, Himachal Pradesh and Karnataka expressed their willingness to allow MFDI.

The "Committee for Rationalizing the Definition of FDI and FII", was constituted by the Ministry of Finance with Dr. Arvind Mayaram, Secretary Economic Affairs, as the Chairman, as a follow up of Budget Speech 2013-14 wherein the Minister had laid down the broad principle of differentiating between the two based on 10% voting power. Following the Committee's recommendations (one is not sure whether Committee has finalised its report), the Union Cabinet decided on July 16 to either relax some caps and/or make entry of FDI easier by replacing the requirement for getting specific government approval with automatic route in some sectors. In case of SBRT, while earlier all investments (the maximum being 100%) required specific government approval, the revised policy dispensed with the requirement for shareholding up to 49%. Shareholdings beyond 49% would still require government approval.[155] Again on August 1, the Cabinet made significant relaxations to the MFDI policy. Simultaneously, 'control' was redefined to cover either majority in the board or control over the management or policy decisions including by virtue of shareholding or management rights or shareholders agreements or voting rights. These changes were notified by the DIPP on 22nd August 2013.[156]

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151 "Walmart, Tesco, others seek changes in multi-brand FDI norms", http://profit.ndtv.com/news/industries/article-walmart-tesco-others-seek-changes-in-multi-brand-fdi-norms-323809. The retailers reported to have raised three main points (i) sourcing requirement to be made similar to that of SBRT, (ii) SMEs should be reckoned as such at the entry point and not subsequently and (iii) the requirement of backend infrastructure should be applicable to the first tranche of investment. The government also seems to have expressed its preparedness to allow MBRT in smaller cities. See: "Govt may ease rules for retailers", http://timesofindia.indiatimes.com/business/india-business/Govt-may-ease-rules-for-retailers/articleshow/20808301.cms. There was also the hint that the policy could not be reversed as the decision was a sovereign one by the Parliament.

152 http://www.indianexpress.com/news/retailers-meet-sharma-ask-for-more-in-fdi-policy/1134902/

153 "Bharti Walmart head Raj Jain walks out amid flurry of probes", http://articles.economictimes.indiatimes.com/2013-06-27/news/40233459_1_bharti-walmart-raj-jain-whirlpool-india

154 Notified by RBI on June 7, 2013.

155 The Committee's report has not been released for the public so far. It was even suggested that the committee's report was in the form of a discussion paper. While the main focus of the Committee was to delineate the differences between foreign direct and portfolio investments, press reports highlighted its recommendations regarding the caps. Was it selective leaks or giving access to selected journalists one does not know. There appears to be a tendency to implement the 'recommendations' without making the reports/papers public. Contents of the Walmart Inquiry Committee's report also found its way to the press but the report itself is not public.

156 DIPP Press Notes 5, 6 and 4, respectively.

- **Walmart Inquiry Committee**

Though the report is yet to be made public, and may not be put in the public domain until it is placed in the Parliament, newspapers seem to have got access to the contents of the Walmart Inquiry Committee[157], just as they did in case of the Mayaram Committees recommendations.[158] Press reports suggest that the Committee[159] was unhappy that Walmart did not adequately cooperate with it. The Committee found the responses by then chief of BWM (who has since quit the company) even in respect of year of incorporation of CSS, the key element in the operations, to be inconsistent. Specifically, the company refused to disclose money spent on external consultants which could have been the starting point for the Committee to investigate the matter. The explanations provided by the company were termed as "incomprehensible" as they tended to "obfuscate the information provided to the committee". The Committee seems to have recommended that the investigations should be taken up again as and when Walmart replies to the queries of the US Congress fully and an adverse report or disclosure indicating violations of Indian laws is made.[160] On its part the DIPP seems to have told the Ministry of Corporate Affairs that no action was being contemplated in view of the continuing investigations of 'FDI policy issues' by the ED. Press reports tried to relate this delay to the ensuing meeting of the Commerce Minister with Walmart's senior management in US.[161]

The Committee was unable to reach a definitive conclusion because it lacked "investigative" or "summoning power".[162] This and its recommendation that the investigations should continue based on the information provided to the US Congress raise some fundamental questions. The fact that the Committee was not set up under the *Commissions of Inquiry Act, 1952* was known even to begin with and some commentators did point out to this major weakness. The fact also is that the investigations of ED, which is looking into the possible FEMA violations in the Walmart's investment in the CCDs of CSS are still continuing. The same is under consideration of Madras High Court following a Petition filed by the President of Federation of Tamil Nadu Traders' Association.[163] Similarly, one is not aware of the status of Walmart's own investigations and US official investigations into the possible

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157 Though the Minister said it would be tabled in Parliament during the monsoon session, it was not. "Govt to table Walmart probe report in next session: Pilot", *Financial Express*, August 2, 2013.

158 Though the Minister for Corporate Affairs had announced, it was not placed in Parliament during the monsoon session which ended on September 6, 2013.

159 "Bribery probe against Walmart inconclusive, but no clean chit to US retailer", http://articles.economictimes.indiatimes.com/2013-06-28/news/40255706_1_by-walmart-clean-chit-justice-mudgal

160 "Walmart lobbying inquiry inconclusive; fresh probe likely", http://articles.economictimes.indiatimes.com/2013-06-30/news/40286993_1_lobbying-activities-corporate-affairs-ministry-walmart

161 "RBI notification to affect ED's Walmart probe", http://www.business-standard.com/article/companies/rbi-notification-to-affect-ed-s-walmart-probe-113071000043_1.html

162 http://articles.economictimes.indiatimes.com/2013-06-28/news/40255706_1_by-walmart-clean-chit-justice-mudgal

163 "Probe Into Walmart To Take More Time: ED", 02 Mar, 2013, http://www.businessworld.in/news/business/retail/probe-into-walmart-to-take-more-time:-ed/801845/page-1.html

wrongdoings in Mexico, India and other countries. One fails to understand how the Committee could have come to a definitive conclusion within a short time and with limited powers. Even the learned retired Chief Justice of Punjab and Haryana High Court, who headed the Committee, should have known the lack of powers on one hand and the type of corporate giant he had to deal with on the other. In the end it turned out to be just an attempt to mollify the opposition. It is strange that even the opposition had not objected to such an arrangement which was destined to fail.

Interestingly, the Central Bureau of Investigation (CBI) is reported to have written to Mr. M.P. Achuthan in July, that it did find Walmart to have violated FEMA regulations and RBI Guidelines. But it had to close the matter as FEMA violations did not fall under its purview.[164] A question arises as to why ED was finding it difficult to fix the blame while CBI was quick to come to a conclusion. In what way the much delayed notifications regarding group companies and control by RBI affected ED's probe? Is ED confused because of the RBI notifications? Will it interpret the case retrospectively following the policy change which allowed 51% FDI in MBRT? Whatever will be the final outcome, it is clear that the policymakers are in a bind of their own making and are finding it extremely difficult to extricate themselves.

- **Relaxations follow Tough Clarifications**

On June 6, 2013 the government issued, through a press release, certain clarifications regarding the conditions specified in the MFDI policy which was notified in September 2012.[165] These state that BI should be set up through greenfield investments only. Acquisitions of existing facilities/companies was explicitly ruled out. Acquisition route is also barred for front-end stores. Nor investment in CCW ventures will be taken into account for this purpose. The attempt was to keep MBRT and CCW separate. The front end stores set up by multi-brand chains will have to be 'company owned and company operated' thus prohibiting them from exploiting the franchise route. It was reiterated that procurement of fresh produce will not be counted against the sourcing requirement. The sourcing would also be reckoned only in relation to the sales through the front-end stores. The States can impose additional conditions if they so desire. On the positive side for the retailers, minimum investment of 50% in BI can be in any state irrespective of whether the state allows retail trade by FDI companies or not. Similar is the case with the clarification that any amendment in the policy in respect of states that have opted for MFDI and notified by the central government will fall under the domain of the central government. The clarifications aim at making companies develop additional infrastructure, plugging the loopholes and facilitating monitoring. Coupled with the definition of the group these partly address the issues raised by us in the paper.

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164 Mr. Achuthan claimed that he had approached CBI because even after nine months the case was not moving at the ED and that CBI's findings should force ED to speed up its investigations. See: "CBI says Wal-Mart violated investment rules", http://www.livemint.com/Politics/LLz7Wyqtr5IbfYdkxV6ZkO/CBI-says-WalMart-violated-investment-rules.html.

165 http://dipp.nic.in/English/News/MBRT_Clarification_06June2013.pdf

One of the questions to which the government gave only a partial reply and which strengthens the apprehensions expressed by us earlier is regarding the exploitation of the definition of small industries. It read like this.

> Whether a 'small industry' referred to the actual legal entity of manufactured/processed products purchased with investment within USD 1 million which shall not include its parent company, subsidiaries, affiliates and/or franchisor?[166]

The government's reply tacitly confirms that investment is the sole determinant and ownership and group associations do not matter. Its reply was:

> The phrase used in the FDI policy is 'small industries' with maximum investment in Plant & Machinery at USD 1 million.[167]

However, what surprised us most is that the clarifications run quite contrary to the tenor of the developments which led to the ruling coalition even risking its survival to open the MBRT to FDI and the subsequent promises to foreign companies to do the necessary handholding. For some time, the overall feeling has been that not much would happen till the next year's general elections. One wondered whether the government was really worried about the fall-out, notwithstanding its success to push the policy through. Or, as some have indicated, was it a strategy to give more time and space to some of the large Indian business houses possessing large financial resources to acquire some critical mass in the trade?[168] The clarifications, which seek to plug many a loophole, are expected to slow down the progress of foreign retailers and hence give time to domestic large players to establish themselves. On the other hand, those domestic players who were hoping to form joint ventures with foreign companies would be at a disadvantage thus further helping the domestic players who have access to large resources.

The response of the foreign retail majors was on predictable lines. It became even more evident that they were prepared to do some long and hard bargaining. There was nothing new in their opposition to the safeguards. In fact, they and the supporters of MFDI had expressed their dislike for the specific quantifiable conditions in their feedback to the DIPP's Discussion Paper way back in 2010. If in spite of the unequivocal expression by the foreign investors, their supporters and advocates, the government had persisted with the safeguards it was obviously to gain support/convince the critics. However, it is quite baffling that the government took almost eight months to come out with the clarifications and that too with an incomplete set. Was the government not clear of the contours of the commitments

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166 *Ibid.*

167 *Ibid.*

168 See also: "Indian politicians make life tougher for Walmart", http://www.forbes.com/sites/kenrapoza/2013/06/06/indian-politicians-make-life-tougher-for-walmart/ Interestingly, on the same day the government announced the clarifications, the Chairman of Reliance Industries told the company's shareholders that plans to grow retail sales by 50% year-on-year till it reaches Rs.40,000 to Rs.50,000 crore. It was similarly viewed in 2011, when the policy was kept in abeyance. See: "Delayed FDI-in-Retail Helps Reliance", http://www.boloji.com/index.cfm?md=Content&sd=Articles&ArticleID=11683

sought from foreign retail majors even while mobilising support by emphasizing the anticipated benefits of MFDI? The delay also gives credence to the suspicion that the policy could have been announced suddenly in September 2012 to meet the exigency created by the PIL in the Delhi High Court. Be that as it may, the explanations, obviously given in response to the foreign investors' queries, and which go beyond what was stated initially, substantiate the concerns and problems expressed by us. They also indicate the large gap between how the foreign investors would like to go about and what the government has been telling the public.

The real twist to the tale, however, came in the form of the cabinet decisions of August 1 and the subsequent Press Notes of August 22.[169] Given the tough stand taken by the government just a few weeks before, it would be difficult to fathom the reasons for the about turn. Was it the CAD and the forewarnings of impending currency depreciation? Was it something to do with the visit of the US Vice-President on July 23? Whatever is the trigger, the point is that the watered down conditions came much earlier than what we had anticipated and have hit all the three critical elements of the policy namely, investment in backend infrastructure, sourcing from small enterprises and the protection provided to traders who are outside the vicinity of large cities with 1 million population. Table 7 gives the comparative picture of the new provisions vis-à-vis the older ones. It may be recalled that while defending the MFDI policy in the Supreme Court, the government had sought to dispel the apprehensions regarding the adverse impact on small traders,[170] by emphasizing the limited scope of MFDI. Its affidavit stated that since MFDI will be restricted to 53 urban agglomerates/cities with million plus population, it will only cover 0.67% of the total number of cities and just 13.3% of the country's total population.[171] These figures no longer are relevant in the changed circumstances. Further, the government stated in response to a question in Lok Sabha

Table-7: Critical Modifications to the Safeguards Built into the MFDI Policy

Safeguard Relating to	Press Note of September 2012	Press Note of August 22, 2013 following the Cabinet decision of August 1, 2013
Backend Infrastructure	At least 50% of total FDI brought in shall be invested in 'backend infrastructure' within three years of the first tranche of FDI, …	At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'backend infrastructure' within three years, ... Subsequent investment in the backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.
Sourcing	At least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian 'small industries' which have a total investment in plant & machinery not exceeding US $ .1.00 million. … Further, if at any point in time, this	At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium enterprises, which have a total investment in plant & machinery not exceeding US $ 2.00 million. … The small industry status Would be reckoned at the time of first engagement with the retailer

169 "Govt queers the pitch for multi-brand retail", http://www.business-standard.com/article/printer-friendly-version?article_id=113061001049_1

170 "Apex Court Tells Centre: Spell out steps to protect small traders", *Business Line*, January 23, 2013.

171 "Retail FDI to touch only 13.3% of Indians", *Times of India*, February 23, 2013.

	valuation is exceeded, the industry shall not qualify as a 'small industry' for this purpose.	and such industry shall continue to qualify as 'small industry' for this purpose even if it outgrows the said investment of US$ 2.00 million, during the course of its relationship with the said retailer. Sourcing from agricultural cooperatives and farmers co-operatives would also be considered in this category.
Location	Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities;…; In States/ Union Territories not having cities with population of more than 10 lakh as per 2011 Census, retail sales outlets may be set up in the cities of their choice…	Retail outlets may be set up only in cities with population of more than 10 lakh as per the 2011 Census or any other cities as per the decision of the respective state governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities;

that its consultations with various stakeholders brought out views both for and against FDI in MBRT. It stated further that:

> On balance, however, the discussions generally indicated support for the policy, subject to the introduction of safeguards. The necessary safeguards have, accordingly been incorporated in the policy and are expected to protect the interests of various stakeholders.[172]

Obviously, it is a laboured and weak defence of the September 2012 decision which draws great strength from the imposition of safeguards. Would the government then be justified in lowering these very safeguards without taking the other stakeholders into confidence?

Just a few days earlier to the August 1 decision of the Cabinet, Walmart insisted in its representation to the government that it cannot meet the 30% sourcing requirement and that even if medium enterprises are included it could at best source 19.5% from such enterprises.[173] The strident response of the ruling party to this was that "If Wal-Mart has gone, more marts are there. They will come. We are not going to change our policy. Our policy is a national policy. We are for national benefit".[174] The very next day, the US Vice-President in his address to the Bombay Stock Exchange pointed out certain obstacles in India's businesses environment which inter alia

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172 Lok Sabha Started Question No. 82, answered on March 4, 2013.

173 "30% sourcing from SMEs not possible, Walmart tells Govt", *Business Line*, July 24, 2013. Walmart's CEO (Asia Pacific) was reported to have met senior officials of DIPP regarding the sourcing issue. Comments attributed to a senior Commerce Ministry official were: "Global retailers want to set up shop in cities with less than one million population to make their business viable. DIPP is looking at demands of retailers. We may come out with some more clarifications. We are also looking at advice of industry bodies". See: http://www.dailymail.co.uk/indiahome/indianews/article-2396698/MY-BIZ-Walmart-claims-sourcing-30-cent-Indian-SMEs-impossible.html.

174 "No change in conditions for FDI in multi-brand retail: Congress", July 24, 2013, http://articles.economictimes.indiatimes.com/2013-07-23/news/40749438_1_fdi-policy-multi-brand-retail-trading-cent-fdi

included "requirements that companies buy local content", "limits on foreign direct investment" and "barriers to market access". He also declared that American companies have tremendous opportunities in technology and infrastructure, and in creating more efficient supply chains in India.[175] MFDI is also reported to have figured in his delegation's meetings with Indian officials including the Prime Minister.[176]

Early July saw the visits of the Finance Minister and the Commerce and Industry Minister to the US to convince foreign investors. The Finance Minister indeed said that "A few cases of business rivalry ought not to be brought to the political table and converted into a political issue between two countries…" He could well be referring to a conflict of interest in MBRT by some very large Indian business houses and western retail giants.[177] He also explained to the US business leaders that India would raise the caps on a number of sectors as recommended by the Mayaram Committee.[178] The US Vice-President's visit on July 23 was preceded by more pressure on the Indian government. A *Wall Street Journal* report said that since the Commerce Minister had promised that the MFDI regulations would be amended to provide greater clarity, Walmart was expecting liberalisation of the provisions relating to local sourcing and BI. Instead when there was no mention of MBRT in the July 16 FDI policy announcements, the company's official said that "You as a minister committed … How will you expect the industry to put in even a rupee when you don't stand by your words".[179] The Minster's response to the newspaper's queries was that the concerns expressed by the potential investors in the round table and during his visits to US and other countries were noted and "Wherever we feel that there is a rationale or justification to bring greater clarity and comfort – that shall be done soon".[180]He even said in an interview that "investors, particularly the global majors, needed some more clarity and we also felt there was room for flexibility to give the space to the investors and comfort both to the domestic and foreign". He added, "can you expect foreign investors to come in this country when you are restrictive and when you are threatening in your approach?".[181]*Wall Street Journal* provides further evidence to US pressure. It refers to a Carnegie Foundation's senior associate's observation that the ties between the two countries were not expanding because "of the paralysis that has characterized policy-making in India". It also informs that members of US Congress

175 "Remarks by Vice President Joe Biden on the U.S.-India Partnership at the Bombay Stock Exchange", July 24, 2013. http://www.whitehouse.gov/the-press-office/2013/07/24/remarks-vice-president-joe-biden-us-india-partnership-bombay-stock-excha

176 "Walmart says can't meet norms; Congress says other 'marts' will come: top 10 facts", http://profit.ndtv.com/news/cheat-sheet/article-walmart-says-cant-meet-norms-congress-says-other-marts-will-come-top-10-facts-324851

177 "Biden Calls on India to Lower Barriers to Trade", July 24, 2013. http://online.wsj.com/article/SB10001424127887324110404578625693835584254.html

178 http://finmin.nic.in/press_room/2013/FM_US_visit11072013.pdf

179 "Frustrated by Indian Policy, Foreign Investors Pull Back", July 19, 2013. http://online.wsj.com/article/SB10001424127887323993804578613730684912770.html

180 "Frustrated by Indian Policy, Foreign Investors Pull Back", July 19, 2013. http://online.wsj.com/article/SB10001424127887323993804578613730684912770.html

181 http://ibnlive.in.com/news/govt-was-forced-to-relax-fdi-norms-as-no-investment-was-coming-anand-sharma/411536-37-64.html

and representatives of US business complained to the US government about India's policies being "protectionist and discourage innovation". Suspending the "Buy India" policy for electronics by India was cited as a positive outcome of these efforts.[182]

As noted earlier, the government did announce a much-diluted MFDI policy provisions on August 1. Even if the above entreaties were not the sole reasons for these relaxations, the point is that they reflect the continued pressure by the US to open India's MBRT. This is notwithstanding the fact that Walmart did not report any lobbying expenditure on India related matters for the quarter ending June 30.[183]

Significantly, the clarifications given on June 6 through a press release do not form part of the August 1 announcements and the August 22 Press Note. Why they were not incorporated into the Press Note which would have given them the statutory status? Do they still hold good in spite of being mere announcements through a Press Information Bureau release? Will they become part of the rules? Will they be silently forgotten? These again are some other $100 million questions. Even if they remain, a good part of their sting was taken away the relaxations. For instance, by making the 50% investment in backend infrastructure applicable to only the first tranche of $100 mn., the requirement of spending large sums on BI was obviated. An individual investor's obligation on this account was limited to about Rs. 300 crore (at the current exchange rate). By widening the scope, the requirement to procure from *genuine* small industries was not only diluted but the scope for meeting the requirement only technically has been widened. While the franchise route has been shut, the necessity to cater to non-large cities through this mode has been removed by allowing MFDI even in smaller cities. The needles may still be there but they can no longer hurt deeply as their points have been blunted!

The government's recent explanation for the need to give comfort to foreign investors and discovering scope for flexibility stands on feeble grounds. Both sides have been in touch directly for a long time and foreign investors' preferences and demands are well known. If in spite of that the government persisted with the safeguards means that it believed that those were essential either to get the best out of the foreign investments or to make 'politically sensitive' MFDI acceptable. In the first case it would have remained firm. In the latter case, given the slackened resistance from the opponents, relaxations are a natural corollary. That is what has happened.

- **Implications of the Final Hurdle?**

Foreign retailers, led by Walmart are still haggling over local sourcing. In spite of the large leeway given, the resistance to 30% sourcing from MSMEs even after the requirement itself has been diluted is disquieting. Pertinently, foreign investors are not prepared to meet the requirement even within five years in spite of the provision that the contracted MSMEs can outgrow their initial status. Obviously, having spent

[182] "Biden Calls on India to Lower Barriers to Trade", July 24, 2013. http://online.wsj.com/article/SB10001424127887324110404578625693835584254.html

[183] "Wal-Mart stops lobbying with US lawmakers on India-specific issues", http://timesofindia.indiatimes.com/business/india-business/Wal-Mart-stops-lobbying-with-US-lawmakers-on-India-specific-issues/articleshow/21423654.cms

considerable time and resources in getting India's MBRT opened and knowing the weaknesses of Indian regulatory systems[184], if they continue to resist on the sourcing requirement, it should be taken very seriously. One, may be either they are not prepared to invest the required time and other resources in MSME development. Two, since by now all the major retailers have first hand knowledge of the local conditions and capabilities, they might have found that the gap between their international suppliers and local manufacturers is so wide that it could not be bridged easily. If the other side of this means dependence on imports, it could spell disaster for local manufacturing as the Indian organised retailers would also be forced to import more to remain competitive. It may be recalled that one of the arguments of the opponents of MFDI was that India cannot expect to reap the benefits that China did from MFDI and for that to happen Indian manufacturing should be made competitive before the retail trade is opened for FDI. What the government, however, is trying to do is to use foreign investors to make the MSMEs competitive and it is finding it quite difficult. Third, foreign investors may of the view that since the government yielded to pressure from foreign SBRT companies, it could be forced to adopt a similar approach for MBRT also, especially because they also know that political sensitivity played a more important part than economic logic.

- **SBRT Policy: Definitional Tangle**

The SBRT policy has been in place since February 2006. We raised some doubts about the concept of SBRT in the context of IKEA being allowed to sell a variety of items under the SBRT policy. To our surprise, the issue of what constitutes 'single brand' surfaced recently. However, the issue of whether more than one brand should be allowed or not under the same company was raised much earlier. It was then said that "…, the policy appears unclear regarding establishment of separate single brand retail ventures by an owner for different brands within its portfolio".[185] When the Ministry of Finance raised the issue of sale of items with sub-brands by Marks & Spencer, the DIPP was reported to have replied in June 2013 that there was "no concept of 'sub-brands' under the FDI policy in the sector".[186] Even when the MFDI policy was announced in September 2012 a leading law firm noted that both SBRT and MBRT were not defined under the FDI policy.[187] The Commerce Minister clarified in early August 2013 that SBRT companies can market sub-brands too.[188] Possibly as a follow up of this announcement the words "in respect of the specific brand for which approval is being sought" were dropped in the August 22 Press Note.

It is also relevant to note that the policy went through some convulsions in respect of ownership of the brand itself, progressively widening the scope. Further, as

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184 We do expect that the international investors would know about the loopholes that can be exploited as far as MSMEs are concerned, much better than us.

185 Alishan Naqvee, "Press Note maze in retail trading not getting simpler", November 20, 2009, http://www.legallyindia.com/20091120296/Legal-opinions/press-note-maze-in-retail-trading-not-getting-better.

186 "No concept of sub-brands under single brand policy", *Financial Express*, June 10, 2013.

187 http://www.nishithdesai.com/old/New_Hotline/Other/Retail%20Alert_Sep2512.htm

188 http://articles.economictimes.indiatimes.com/2013-08-03/news/41034034_1_foreign-single-brand-retailers-100-fdi-multi-brand-retail-sector

noted earlier, local sourcing from small, micro and village enterprises has been shifted from 'mandatory' to 'preferably'. The initial term '30% of the *sales*' was changed to '30% of the *purchases*'. The sourcing requirement, instead of from the very first year, is now to be met within the first five years and thereafter annually. All these changes suggest that the policy was not well thought out and the government was in a hurry to open up in order to show that the reforms were on track. Attracting large investment from IKEA prompted the subsequent dilutions which the MBRT investors are trying to exploit for themselves.

- **Shaky Grounds**

In its various responses, the government relied upon a very narrow empirical base and preferred to ignore contrary evidence. The circumstances in which that empirical evidence was sought, responses of the government regarding information on outlets and investment by retail units, the long time taken to spell out the contours of the safeguards even though the matter has been on the anvil for many years suggest that the government never did its own homework properly. Interestingly, the Parliamentary Standing Committee on Industry while asking for validation of the figures given out by the study on which the government relied heavily to open up MBRT to FDI noted that:

> The Committee finds this arrangement rather strange where Government commissions a study with an independent research body which in turn depends on another non-Government source for data and estimates. The Government should ascertain the methodology of study and validate the estimates and figures, before taking such a major policy decision on the basis of this study.
>
> …
>
> The Committee takes cognizance of several studies done by industry bodies and refers to study note provided by the DIPP, in support of prospective benefits which FDI in multi-brand retail may bring. However, the Committee suggests that the Ministries of MS&ME and DIPP should have done a study on impact of FDI in single brand retail and wholesale sectors in the MSME segment and the same could have been factored into the recent policy.[189]

Similarly in respect of the government's argument that it was not able to give an accurate picture of greenfield FDI in the pharmaceutical sector because the inflows data maintained by RBI, does not distinguish between greenfield and brownfield FDI in pharmaceutical industry, the departmentally related standing committee on Commerce found the argument to be "naive" and told the government to "stop behaving like an ostrich" and to take cognizance of the ground reality.

> Absence of such a mechanism is a handicap for the government while formulating policies for the sector. It is, therefore, high time that suitable mechanism be established to keep track of the nature of Foreign Direct Investments … coming in the country.[190]

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189 Rajya Sabha, Department-Related Parliamentary Standing Committee on Industry, *Two Hundred And Fiftieth Report, on Impact of Foreign Direct Investment (FDI) In Multi-Brand Retail On MSME Sector Pertaining to the Ministry of Micro, Small and Medium Enterprises*, July 2013.

190 http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Commerce/110.pdf

These observations provide a little but decisive indication of lack of empirical base to understand the role, place and impact of FDI on the Indian economy which it can access to formulate FDI policy. Another disconcerting trend is that retail companies are using exemption provisions under the Companies Act to withhold information from the public. This will have serious implications for monitoring of the safeguards. But the safeguards may run into problems in future. The government did come out with explanations that its MFDI policy does not violate international commitments.[191] However, legal opinion differs.[192] Considering the fact that Walmart had expressed its reservations in response to the Discussion Paper of 2010, there could still be some tussles in future.

- **Post-September 2013 Developments in Brief**

Press reports indicate that official investigations found the bribery problem in Mexico was of a far less magnitude than was initially projected. It was however, highlighted that in India thousands of small payments were made to "low-level local officials to help move goods through customs or obtain real-estate permits".[193] This issue was taken up by India's Central Vigilance Commission. After initial examination of the companies officials in India, the Commission was reported to have asked the company to submit certain documents.[194] US investigations also seem to have come across evidence of bribing in Brazil and American authorities are reported to be pursuing this angle.[195]

On the other hand, India has further relaxed the conditions related to SBRT. Late last year, SBRT entities operating through 'brick and mortar stores' were allowed to undertake retail trading through e-commerce. Interestingly, it was also specified that the government would be willing to consider relaxation of sourcing norms for SBRT entities trading in products having 'state-of-art' and 'cutting-edge' technology where local sourcing is not possible.[196] Following changes in the governments, Delhi and Rajasthan were reported to have withdrawn their earlier commitment to permit MBRT in their respective states, the latest Consolidated FDI Policy Circular (effective from May 12, 2015) includes the two among the consenting states. It seems the government has yet to make up its mind regarding FDI in MBRT.

- **Closing Remarks**

What started as a means of promoting exports from India, as in the case of China, gradually turned out to be an exercise of market access with little meaningful commitments. Whatever might ultimately happen to the policy with regard to FDI in

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191 Ministry of Commerce & Industry, "FDI Policy on Multi Brand Retail Trading and India's Commitments under International Investment Agreements ", PIB Press Release dated September 18, 2012.

192 Bhargav Mansatta, "FDI in multi-brand retail – Consistency with international trade law", http://www.lakshmisri.com/News-and-Publications/Publications/Articles/Tax/FDI-in-multi-brand-retail-Consistency-with-international-trade-law (accessed on September 14, 2013)

193 http://www.wsj.com/articles/wal-mart-bribery-probe-finds-little-misconduct-in-mexico-1445215737

194 https://fashionunited.in/news/retail/cvc-examines-top-walmart-officials-over-alleged-corruption/2015120112728

195 http://www.reuters.com/article/wal-mart-probe-idUSL3N13J4X420151124

196 DIPP, Press Note No. 12 (2015 Series), dated November 24, 2015.

the retail sector in general and MFDI in particular and at whatever pace, the case of opening up India's retail trade exposed the weaknesses of FDI policy making in India as it is characterised by vague expectations, little analysis/understanding of the operations of existing FDI companies, persistent indistinguishable foreign corporate-cum-political influences, primacy for foreign investors' comfort and confidence, compulsions of coalition politics, pursuit of liberal policies becoming an end in itself, and so on. There are too many trails to be dismissed as mere coincidences. Interested parties can exploit the situation fully to their advantage. The government's helplessness in the face of huge current account deficits made their job easier. The way the government went back after issuing tough clarifications does not augur well for the emergence of a well thought out policy.

Annexure

The Timeline: Chronological List of Relevant Policy Announcements and Events

Year/Month/Date	*Steps Taken/Statements of*	
	Indian Government	*Walmart (WM), Bharti & American Officials*
1997 Jan	100% FDI allowed in CCW under the approval route	
2001	Report of the Task Force on Employment Opportunities, set up by the Planning Commission, recommends immediate opening up of the sector for FDI	WM sets up office for sourcing merchandise from India
2002 May	Special Group on Targeting Ten Million Employment Opportunities, set up by the Planning Commission, proscribes the same for the 10th Plan period.	
2002 August	Study Group on Foreign Direct Investment, set up by the Planning Commission, after discussing pros and cons of FDI in retail trade recommends continuation of the ban.	
2002 Dec	Tenth Plan proposes 26% FDI in food retailing.	
2004 Jan		Mr. Lee Scott, Chief executive of WM International, expresses interest in India's retail business
2004 Jun	India plans to set up an inter-ministerial committee to promote exports through sourcing by the global retailers. Over the following three years, the expected exports were $20-25 bn.	
2004 Nov	ICRIER presents the study *FDI in Retail Sector: India* to the Department of Consumer Affairs, the sponsor.	
2005 Mar		WM establishes sourcing arm, WM Global Sourcing India Pvt Ltd.
2005 April	Mid-term Appraisal of 10th Five Year Plan recommends FDI in retail as the resultant backward linkages could promote exports as in the case of China. DIPP comes out with a policy paper with similar expectations.	WM representatives meet 10 MNCs operating in India. Mr. Lee Scott says "When the time is right, we are going to do it (retail)"
2005 May		US Ambassador to India meets the PM, Finance and Commerce Ministers, purportedly to prepare the ground for the following visit of Mr. John Menzer, then President and CEO of Walmart International. Mr. Menzer, after a "good meeting' with the PM, says: "By having a retail base here, we will be close to the market. Much of India's fruits and vegetables are spoilt because they are not preserved. We can take care of this by investing in cold chains".
2005 Jul		Announcement of U.S–India Knowledge Initiative on Agricultural Education, Teaching, Research, Service, and Commercial Linkages (AKI) by US President and India's Prime Minister.

Year/Month/Date	Steps Taken/Statements of	
	Indian Government	*Walmart (WM), Bharti & American Officials*
2005 Oct		WM's representatives meet the Chief Minister of West Bengal
2006 Feb	100% FDI in CCW – (automatic route) & 51% FDI in SBRT (approval route) was allowed	Bharti starts looking for partners: Tesco, Carrefour, Wal-Mart in fray. WM sets up market research and business development office. WM & Monsanto along with Archer Daniels Midland join US-India Agricultural Knowledge Initiative, to represent US private sector interests.
2006 Feb 6	Congress President reminds PMO expressing concern over the arrangement	
2006 March		Mr. Michael Duke, the new CEO of Wal-Mart, and his colleagues visit India. He says: "We are patient and persistent. We are hopeful that the Indian government would allow FDI in food and grocery retailing soon". The US President says: "By working together with the United States, India will develop better ways to grow crops and get them to market, and lead a second Green Revolution"
2006 Aug		WM was permitted to open office focused on retail market research. Some perceived lobbying as its real purpose.
2006 Nov 27		WM & Bharti sign MoU; JV to be CCW and Bhartis to operate retail ; widely seen as backdoor entry into retail by WM
2007 Feb 6	Congress President writes to PM to go slow on retail and to assess the impact on small traders	
2007 Feb 7		Bharti Retail Ltd (BRL) was incorporated
2007 Feb 12		Bharti Retail Holdings (later renamed as Cedar Support Services) was incorporated.
2007 Feb 14		US Secretary of Commerce says: "Foreign investment will be prohibited in the front end but there could be some partnership structure on wholesale. It could represent effective outlet for farm products and bring benefit to farmers and agriculture sector".
2007 Feb 23	Congress President/PMO once again seek a study	Mr. Michael Duke, Vice-Chairman of WM meets Commerce & Industry, agriculture ministers, Dy. Chairman Planning Commission and other officials.
2007 Mar 2	DIPP commissions Study by ICRIER	
2007 Apr 24		WM India Technical & Consultancy Services Pvt Ltd
2007 Aug 17		Bharti Wal-Mart Pvt Ltd (BWM) incorporated
2008 Apr		BRL's first *easyday* outlet becomes operational
2008 May	ICRIER study report submitted	
2009 May	Standing Committee on Commerce submits report. Seeks ban on entry of both domestic and foreign large players	First CCW (Best Price) of BWM opened in Amritsar
2009 July 9		Doug McMillon, CEO of the intl divn of WM : "We have $4.8-5.3 billion fund earmarked for our intl business. India can use as much as it wants. "

Year/Month/Date	Steps Taken/Statements of	
	Indian Government	*Walmart (WM), Bharti & American Officials*
2009 Nov		Mr. Robson Walton, Chairman of Wal-Mart Stores Inc. visits India and meets PM. Highlights the benefits organised retailers like Wal-Mart can bring to farmers as well as small and medium enterprises
2009 Dec	Draft Consolidated FDI Policy proposes criteria for indirect FDI	Memorandum of Association of Cedar amended
2010 Jan		Bharti Retail Holdings Ltd's name changed to Cedar Support Services Ltd
2010 Mar 18		Cedar sells its 49% shareholding in BWM to Bharti Ventures Ltd. Thus bringing its share in BWM to 0.99%
2010 Mar 25		Cedar's Articles of Association amended in line with the 'JV' with WM
2010 Mar 26		Cedar Issues shares to Bharti Ventures Ltd in lieu of its shares in BWM
2010 Mar 29		Cedar issues CCDs to a WM group co in Mauritius
2010 Apr 1	Consolidated FDI Policy issued with new criteria for indirect FDI	
2010 April	25% limit on sales to group cos. for 'internal consumption' proposed	
2010 May30		WM's lobbying in US for India entry surfaces. The effort said to have been started in 2007, after formation of JV
2010 July	DIPP issues the Discussion Paper "FDI Multi-Brand Retail Trading"	
2010 Sep		US Under Secy. of Commerce for International Trade : "Washington wants removal of ban on foreign investment in MBRT"
2010 Oct		Mr. Duke visits again. Finds official response positive. Wal-Mart would like 100% FDI in retail segment but "we respect the government's calibrated approach."
2011 Jan		Indian officials assure the retail majors at Davos: "be there and hope that in due course...all will be sorted out."
2011 Jun		US Embassy Officials visit Bihar and convey WM's desire to invest in the state.
2011 Mar	Position Paper No.1 from the Inter-Ministerial Group on Inflation strongly recommends FDI in retail	
2011 Nov 24	51% FDI in MBRT approved by cabinet, but kept in abeyance to build consensus	
2012 Jan	100% FDI in SBRT (with government approval) was allowed	
2012 April		*New York Times* reports Mexican Bribery Scandal. Walmart Mexico's Mr. Michell Slape becomes COO of BRL.
2012 July 11	PIL in Delhi High Court filed by Ms. Vandana Shiva alleging that BWM and BRL were illegally carrying on retail trade	
2012 Aug 22	First hearing of the PIL in Delhi High Court	

Year/Month/Date	*Steps Taken/Statements of*	
	Indian Government	*Walmart (WM), Bharti & American Officials*
2012 Sep 20	51% FDI in MBRT (through the approval route) was allowed	First extension for conversion of CCDs issued by Cedar was to end in this month. Extended further by 12 months.
2012 Sep 26	Notice served by the Delhi High Court to a respondent to be returned on this date	
2012 Oct 3	PIL in the Delhi High Court dismissed as withdrawn as the PIL lost its "relevance" in the changed circumstances.	
2012 Nov 23		Walmart extends bribery investigation to India, China and Brazil. BWM suspends five officials including the CFO pending the outcome of the investigations
2012 Dec 4-7	Parliament rejects opposition's motion against FEMA amendments	
2013 Jan 31	Walmart Inquiry Committee headed by a retired Chief Justice of Punjab and Haryana High Court was set up	
2013 May 1	Supreme Court dismisses PIL challenging the MFDI policy.	
2013 May 16	Walmart Inquiry Committee submits report.	
2013 June 6	Government issues Clarifications on the conditions in the MFDI policy announced in September 2012 with the promise to issue a few more later	
2013 June		
2013 June 26		Mr. Raj Jain, CEO of BWM exits
2013 June 27	Government's Round Table discussions with the retailers	Mr. Scott Price, President and CEO of Walmart Asia, meets the Commerce Minister separately in the morning
2013 July 2nd week	Finance and Commerce Ministers visit USA	
2013 Jul 23		US Vice-President starts his India visit. He underlines weaknesses of India's business environment which include "requirements that companies buy local content", "limits on foreign direct investment" and "barriers to market access"
2013 Aug 1	Cabinet relaxes terms of the safeguards. No reference to the clarifications issued on June 6	
2013 Aug 22	DIPP issues Press Notes relaxing conditions relating to BI, sourcing and location. Again no mention of the clarifications issued on Jun 6	
2013 Aug 29	Motion against FEMA amendments in Rajya Sabha could not be taken up	
2013 Aug 30		Mr. Scott Price meets Secretary DIPP to seeking clarification on the 30% sourcing norm.
2013 Sept 19		Mr. Scott Price meets DIPP officials to seek clarity in MFDI regulations.
2013 Sept 29	Govt expresses its inability to reduce the sourcing obligation from 30% to	

Year/Month/Date	*Steps Taken/Statements of*	
	Indian Government	*Walmart (WM), Bharti & American Officials*
	20% and asks WM to come out with *innovative* methods of complying.	
2013 Oct		Break up of Walmart and Bharti JV announced. WM would buy Bharti's stake in BWM and will disinvest its CCDs from CSS. Bharti Wal-mart Pvt Ltd renamed as Wal-mart India Pvt Ltd.
2015 Oct		WSJ reported that US official enquiry found little evidence *of major misconduct* by WM in Mexico. The report also indicated that small amounts, which added up to a few million, were paid in India. Reports indicate that WM removed "Made in USA" claims from its website following discoveries of mis-labelling.
2015 Nov	The CVC is reported to have started *suo moto* enquiry based on the WSJ report	Reports indicate possible misconduct in Brazil by WM
2015 Nov	DIPP announced that (i) a wholesale/cash & carry trader can undertake SBRT (ii) Govt may relax SBRT sourcing norms in case of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. (iii) a SBRT entity operating through brick and mortar stores was permitted to undertake retail trade through e-commerce	