CHAPTER THREE

THE COMMERCIAL ENVIRONMENT

Introduction

3.1 The Australia-India Business Council painted a fairly positive picture of the commercial environment in India.[1] This view was shared by most submissions which, while recognising considerable difficulties and frustrations, believed that a well-informed, tenacious businessman with the right product or service and with a good local agent could do good business in India.[2]

3.2 The Business Council cited the following summary of the business climate in India that had been prepared by Coopers and Lybrand in 1989:[3]

ASSETS
Large urban consumer and industrial market
Strong human capital and R&D base
Low labour rates
Improving manufacturing quality and competition
Good infrastructure
Increasingly responsive bureaucracy
More attractive direct foreign investment rules
Stable political environment
Significant private sector capital

LIABILITIES
Exchange controls
Equity participation restrictions
Reputation for bureaucracy, poor manufacturing, and pirating
Very large poor segment of the population
Financial business sector restrictions

1 *Evidence*, p.880
2 *ibid.*, pp.460, 533
3 *ibid.*, p.880

The Indian Business Culture

3.3 The ANZ Banking Group took the view that 'in terms of the general spectrum of business...India is one of the more comfortable countries' and reported no difficulty in finding staff who are happy to live and work in India for a long time.[4] However, there was a clear need to bridge the gap between the Australian and Indian business cultures in some way, according to a number of submissions. The Melbourne South Asian Studies Group reported that successful Canadian firms in India could attribute their progress to use of employees with Indian experience in the planning stage of their Indian ventures.[5]

3.4 It was asserted that Australian businesses have yet to appreciate the value of employees with knowledge of India in spite of general recognition by the Australian business community that to crack the India market required patience, persistence and the ability to build relationships.[6]

3.5 There was no reference in the submissions of Australian government departments to the view that India has a vigorous traditional business culture which is accessible only to those who know Indian languages.[7] The importance of Indian languages was highlighted in other evidence. Dr Bhattacharya of the University of Sydney reported that only three per cent of Indians speak English.[8] Dr Chakrabarty expressed the view that 'so long as you communicate only in English, you miss out on all the crucial inflexions of the culture'.[9] The implication of these facts would appear to be that many Australian businessmen are unlikely to be aware of the finer points of business negotiations in India.

3.6 Cultural differences aside, there were a number of business practices that set the two business communities apart. For example, according to Dr Mayer, Australians found it difficult to deal with the 'imposition by the [Indian] government of post-agreement conditions, and the leaking of sensitive commercial information to competitors'.[10]

3.7 The long lead times characteristic of contract negotiation in India tended to exclude smaller Australian firms (in practice, the high technology exporters) because such firms could least afford the diversion of senior members of staff for lengthy periods.[11]

3.8 Dr Mayer identified several flow-on effects of the overly protectionist trade regime.[12] These included:

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[4] *ibid.*, p.318
[5] *ibid.*, p.333
[6] *ibid.*, p.337
[7] *ibid.*
[8] *ibid.*, p.596
[9] *ibid.*, p.375
[10] *ibid.*, p.459
[11] *ibid.*, p.460
[12] *ibid.*, p.461

- the creation of quasi-monopolistic sectors as a result of the granting of exclusive licences;
- the resulting expectation among Indian manufacturers for high returns without needing to put too much effort into development;
- the development of a short term 'trading' approach with little commitment to engineering;
- a tendency by Indian negotiators to focus exclusively on price, neglecting depth of expertise in technology transfer; and
- an attitude that time is not money, that bargaining for a lower purchase price is more important.

3.9 Dr Bhattacharya had a similar view, though with slightly different emphasis:[13]

> ...basically the business leaders are guided by market profitability – and that is immediate profitability. They are not prepared to wait for a long time. On the other hand, India is still a traditional society, the people are not slaves to time. Time does not mean that much in India. Indian business people are prepared to wait a long time before they cultivate a friendship and then ultimately make the decision: 'I can depend on this person, I can do business with that person...'. So if you want an immediate horizon, immediate profitability, India is not the country.

3.10 Mr Ward, the Managing Director of Atlas Air Australia, expressed the view that despite excessive regulation of foreign participation in the Indian economy, the Government is prepared to bend its own rules if it has a strong need for the product that you are offering.[14]

Public Sector vs Private Sector

3.11 The Indian Government regulates and controls large-scale industry by means of specific price and allocation controls and general capital issues, by its industrial licensing policy, and the Monopolies and Restrictive Practices Act. Thus, government influence is felt in the private sector decision-making process at every level, determining such matters as salary paid to company directors, the nature of a company's imports, the location of its plant, and the amount of capital it can raise. These controls are reinforced by elaborate taxation laws that discriminate against companies with very few shareholders as well as against intercorporate investment.[15]

3.12 The Government has sought to take a strict line with private industry and to discourage its growth in key and basic industries. Government policy encourages private ownership in small and medium sized business, leaving the commanding heights of the economy to the public sector. Relations between Government and industry have frequently been strained. This has been partly

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[13] *ibid.*, p.586

[14] *ibid.*, p.540

[15] *The New Encyclopaedia Britannica*, 15th ed., 1988, Vol.21, *India*, p.16

because of an excessive preoccupation by the private sector with profit to the neglect of the broader social justice goals of the Government, and because of a failure on the part of the Government to recognise the importance of the profit motive and the economies of scale that can be achieved by large corporations.[16]

3.13 The reality is that government regulations have worked to the advantage of a number of industrialists who have learned to manipulate the regime of controls to their advantage. Such industrialists dominate the private sector. They dislike competition and fight against import liberalisation measures and the removal of licence controls that would introduce an element of competitiveness. Thus, there is a coincidence of interests between the big industrialists and the bureaucrats who support the rigid controls.[17]

3.14 The public sector is accorded pride of place in the Indian economy by the Government. Rail, air and sea transport, power generation, banking, insurance, petroleum, steel, mining, and heavy engineering are predominantly public sector industries.[18] The productivity of many of these public enterprises has been unimpressive because of parliamentary and governmental interference, and management by bureaucrats rather than people with business experience.[19]

3.15 A number of public sector enterprises have discretionary purchasing and importing powers. Many imports must be channelled through a public sector organisation before being disbursed to other private or government enterprises. The main enterprises with such discretionary powers are:

Steel Authority of India
Railway Board of India
Oil and Natural Gas Commission
Indian Oil Corporation
Department of Telecommunications
Ministry of Defence[20]

3.16 Most other imports are purchased by the Directorate of Supplies and Disposals or the two trading authorities, the State Trading Corporation of India and the Minerals and Metals Trading Corporation of India.[21] Australian companies have had relatively little success in securing major government contracts other than for the supply of raw materials.[22]

3.17 The public sector organisations for the most part adhere inflexibly to the Indian Government's policies and attitudes in their business dealings. The process of getting official approval for a new trade or investment venture can involve a number of government departments. There have been instances of one

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16 *ibid.*
17 *ibid.*
18 *ibid.*
19 *ibid.*
20 *Evidence*, p.710
21 *ibid.*
22 *ibid.*, pp.710-711

department trying to expedite a contract or licence while another has tried to slow it down.[23] The business person trying to get contracts in public sector enterprises must spend a lot of time talking to bureaucrats to succeed.[24]

3.18 According to some observers, the private sector is more dynamic and more approachable than the public sector,[25] and is beginning to rival the public sector as a buyer of unrestricted imports.[26] The private sector received very little attention in the submissions received by the Committee, including the AUSTRADE submission.

3.19 The fact that there is a big public sector does not mean that there is a high degree of 'command' in government planning which might manifest itself in such things as mandatory production quotas. The Indian Government attempts to manipulate economic activity rather than dictate it.

Legal Framework

3.20 The legal framework is a central element of any business relationship and in international business is usually a major issue to be tackled, especially in respect of dispute settlement. The submissions received by the Committee did not address legal issues in any detail. Problems of contract negotiation (time taken – from nine to forty-eight months)[27] and payment[28] were mentioned. Poor protection of intellectual property (patents and copyright) was also cited as a major obstacle to increased trade with India.[29]

3.21 Legal education of foreign business people and pressure from foreign governments to change laws must play a major part in the opening up of closed, centrally planned economies. This was certainly the case with China in the last decade where several hundred new laws had to be drafted to accommodate the new trade and investment regime. Obviously, the degree of change required to India's laws would be substantially less than in China's case but lack of attention to these issues is probably detrimental to Australian attempts to achieve greater penetration of the Indian market. If the submissions received by the Committee are a guide, Australian public bodies, government departments and businessmen have not done much work in this area.

Finance and Banking

3.22 India has a relatively well developed banking and financial system. The Reserve Bank of India, as the central bank, strictly regulates all banking activity, about ninety per cent of which is in the public sector as a result nationalisations of major banks in 1969 and 1980. Since nationalisation in 1969, credit to agriculture and small scale industry has grown rapidly, but larger scale industry

23 *ibid.*, p.294
24 *ibid.*, p.372
25 *ibid.*, p.389
26 *ibid.*, p.700
27 *ibid.*, p.459
28 *ibid.*, pp.460, 709
29 *ibid.*, p.638

and trade have faced tight credit conditions.[30] Interest rates for deposits and loans are controlled by the Reserve Bank. Foreign exchange regulations are stringent.[31]

3.23 There are four major principles governing foreign exchange policy in India. First, receipt and conversion of foreign exchange into rupees is freely permitted, but only through scheduled commercial banks authorised to deal in foreign exchange. Second, payments from foreign currency funds acquired from transactions abroad must be handled by and surrendered to an authorised dealer in foreign exchange. Third, foreign currency borrowings require the approval of both the Reserve Bank and the Ministry of Finance. Fourth, all release of foreign exchange in India, such as payment for imports, is controlled by the Reserve Bank.[32] The Government regulates its foreign exchange resources to pay for imports through its import licensing system.[33]

3.24 There are a number of sources of finance, including bilateral or multilateral aid (loans or grants), soft loan/mixed credits, and internal resources of Indian industry. Foreign currency is generally available provided the Indian customer can convince the Government of the high priority of the proposed undertaking.[34]

3.25 The Export-Import Bank of India (EXIMBANK) has a refinancing facility for deferred payment exports. The focus of EXIMBANK is on financing the sale of Indian machinery, manufactured goods, technology and consultancy services on deferred payment terms. The financing, except by special arrangement, is in rupees.[35]

3.26 Countertrade is another way of financing commercial activities in India. Countertrade is favoured by the Indian Government but it is not widely used by Australian exporters. BHP, like some other larger Australian companies, has a countertrade unit.[36] Use of countertrade could seal a contract that the Indian authorities otherwise might refuse to approve or issue an import licence for.[37]

3.27 Dr Fisher of AUSTRADE suggested a new proposal for finance arrangements: a line of credit for a particular industry, negotiated between an Indian ministry and an Indian bank for a specific range of imports or projects provided by an Australian firm. There would be a standard set of terms and conditions on the basis of which an Indian consumer in the industry would negotiate supply terms with the Australian supplier. The advantage of such a

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30 *The New Encyclopaedia Britannica*, 15th ed., 1988, Vol.21, *India*, p.15
31 *Evidence*, p.284
32 *ibid.*
33 *ibid.*, p.267
34 *ibid.*, p.426
35 *ibid.*, p.294
36 *ibid.*, p.334
37 *ibid.*, p.612

system is that the Australia supplier is guaranteed payment and leaves any legal problems with the end user to be settled by Indian agencies. This proposal reportedly has the support of the head of India's export credit agency.[38]

3.28 According to AUSTRADE, the demand from Australian exporters for Australian Government financial assistance for projects in India has been quite limited to date. In recent years, only two Export Finance and Insurance Corporation (EFIC) loans have been made. One loan, of $1.56 million, negotiated in 1984, financed the sale of fishing vessels, while the other, for mining equipment in 1985, involved an EFIC loan of $336,000 and a Development Import Finance Facility grant of $114,000.[39]

3.29 In addition, AUSTRADE-EFIC has made about fifty 'without commitment' indications of finance in support of prospective capital goods exports to India, mainly in the mining and shipbuilding sectors.[40] These exports have either found alternative finance arrangements, often from Indian authorities, or have not proceeded.

3.30 A strong argument advanced to the Committee was that Australia must be able to offer concessional finance packages to its businessmen to allow them to compete for major projects against businessmen from the major industrial countries, such as Japan or Germany. The argument was that if only Australia can be seen to win several projects and thus demonstrate its level of technology, there is an increased likelihood that future contract bids by Australian companies will have a better chance of succeeding.[41]

3.31 A counter argument would be that since concessional finance is becoming the norm, and Australia cannot consistently match the resources of the majors countries any Australian bid in the future for a large project in India — to be competitive — will have to be Government assisted.

3.32 Exchange rate variations can have a strong inhibiting influence on the export of consultancies where the margins are reportedly relatively small and where the contracts can be in operation for several years.[42] Most contracts for exports to India are signed in US dollars. One attempt reported to the Committee to get an Australian contract expressed in Australian dollars was not successful.[43]

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[38] *ibid.*, p.774
[39] *ibid.*, p.737
[40] *ibid.*
[41] *ibid.*, pp.643, 693
[42] *ibid.*, p.427
[43] *ibid.*, p.445

Foreign Investment and Joint Ventures

3.33 Industries in India open to foreign collaboration have been specified in the Industrial Policy Guidelines. The Government has issued an 'Illustrative List of Industries for which Foreign Collaboration is Welcome'. The list is not exhaustive and is subject to revision from time to time.[44] The list concentrates exclusively on heavy industry and other industrial products rather than consumer goods.

SUMMARY OF INDUSTRIES OPEN FOR OVERSEAS COLLABORATION

ENGINEERING INDUSTRIES

Metallurgy
Prime Movers
Electricity Industry
Automobile Ancillaries
Industrial Machinery
Agricultural Machinery
Commercial Office and Household Equipment
Electric and Electronic Equipment
Machine Tools

NON-ENGINEERING INDUSTRIES

Fertilizers
Inorganic Chemicals
Organic Chemicals
Drugs & Pharmaceuticals
Man-made Fibres
Paints
Dyes
Paper
Rubber Products
Glass & Glass Products
Engineering Plastics & Resins
Synthetic Rubber
Electronic Components
Telecommunications
Industrial Electronics
Computers

3.34 An authoritative booklet titled *Foreign Collaborations and Investments in India: Law and Procedure* has been published by Singhania and Co. This covers the main policies affecting collaborative ventures including repatriation of earnings and tax implications.[45]

3.35 Foreign investment in India is approved on a case by case basis. It is only permitted where it would serve to introduce important technology not available in India. Even in those cases, there is a distinct preference for technical collaboration agreements — to foster technology transfer. Key considerations in evaluating proposals are the level of sophistication of the technology involved; the need for the technology; and the impact on the balance of payments.

[44] *Potential in the Indian Market for Western Australian Products and Services*, Report prepared for the Technology and Industry Development Authority of Western Australia by Interex Ltd, August 1988, p.86

[45] *ibid.*

Generally, no more than 40 per cent foreign equity is permitted.[46] This is the normal limit set under the *Foreign Exchange Regulation Act 1973*, but in some high technology ventures, up to 74 per cent may be allowed. Investment without technology transfer (that is, financial collaboration only) is possible for OECD investors (including Australians) and for non-resident Indians up to 40 per cent in approved cases.[47]

3.36 There has been little interest by Australian firms in investment in India. This can be attributed principally to Indian restrictions on foreign investment; restrictions on industrial capacity expansion; complex administrative procedures; restrictions on remittances; and lack of clarification on taxation in the absence of a double taxation agreement.[48]

3.37 According to a Western Australian study, government clearance for ventures involving foreign collaboration may take up to 6 months in some cases. Where rejection occurs, it is generally for non-compliance with policies. Once the joint venture is in place, some delay may be experienced in repatriation of dividends and royalties, but these are never blocked (at least in the experience of Grindlays Bank).[49]

3.38 Some examples of Australian joint ventures in India include a factory in Madras making India's first locally produced lap-top computer, designed in Australia, and produced under licence from HRC Technologies of Brisbane; and Amalgamations Repco, 40 per cent owned by Repco Ltd of Melbourne, and one of India's leading domestic suppliers of clutch parts and assemblies.[50]

3.39 One advantage of joint ventures in India is reportedly the access they provide to other markets. For example, the USSR and India have a bilateral 'balanced trade' agreement which is supposed to operate on the basis that no foreign exchange has to be spent by either country importing goods from the other. The result is that the USSR has an incentive to give India preference over suppliers from countries with hard currencies. The United States company, Xerox, has formed a joint venture with the Modi Industrial group in India to manufacture copiers, most of which are exported to the USSR. But the opportunity this type of access provides is limited by the imbalance in India-USSR trade in India's favour.[51]

3.40 The Indian Government has set up six export processing zones where most of the restrictive regulations applying to foreign investment and trade do not apply. Approvals for investment in these zones are supposed to be easy to obtain quickly (45 days).[52]

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[46] DFAT, *Trade and Commercial Development Program...*, p.38
[47] *Potential in the Indian Market...*, p.87
[48] DFAT, *Trade and Commercial Development Program...* p.19
[49] *Potential in the Indian Market...*, p.89
[50] *Evidence*, p.153
[51] *ibid.*, p.638
[52] *ibid.*, pp.307, 542

3.41 Plants in the zones can be 100 per cent export oriented ventures or can sell 25 per cent of their production in the local market against a valid licence. All capital goods, raw materials, consumables, spares and office equipment required can be freely imported with no licenses and no customs duty. Alternatively, local inputs are available at reduced prices. Output is exempt from all duties and taxes. Other infrastructural and interest rate concessions are available.[53]

3.42 Picking the right partner is of course an important decision for joint ventures in India as elsewhere. It has already been noted that the public sector dominates key industry areas. In the private sector, however, there is another pattern of dominance — by family groups. It is expedient to be aligned with the appropriate group to ensure that the local partner has sufficient strength and knowledge to be effective.[54]

3.43 Major private sector industrial activity is heavily controlled by a number of wealthy extended families. Commercial life in Calcutta is almost entirely dominated by such families and a potential investor/importer/collaborator would be imprudent to ignore this.[55]

3.44 Another factor to be kept in mind is the likely political support which a joint venture may attract. Areas of India in conflict with the Government (such as the Punjab region) may not be propitious locations and, in fact, have experienced something of a flight of capital in recent years.[56]

3.45 On the other hand, the high per capita income of the Punjab has a countervailing influence on this trend of disinvestment. The Indian Government has also introduced special measures to encourage new investment in the Punjab to counteract any disinvestment trend.

3.46 The Indian Government has given special incentives to non-residents of Indian origin to invest in India and establish economic ties.[57] Investment by non-resident Indians in the country was estimated at 86 billion rupees as of 1 January 1987.[58]

Direct Sales of Products and Services

3.47 According to a major consultancy report prepared for the Western Australian Government, direct sales must be undertaken with the assistance of an Indian agent or representative. The main problem when selling to India is finding the *right* agent, particularly given the size of the country. Most firms do

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53 *ibid., p.307*
54 *Potential in the Indian Market...*, p.88
55 *ibid.*, p.89
56 *ibid.*
57 *ibid., p.90*
58 Lincoln Kaye, 'An Overseas Harvest.' *Far Eastern Economic Review*, 21 May 1987, p.83

not have the resources to retain a number of agents who are able to cover all regions. Hence, it is important to limit ambitions and to target intelligently the most prospective cities, regions or markets.[59]

3.48 The same study also suggests the most effective way to identify an agent when dealing with the government sector may be to make inquiries of the state organisation which may be a prospective buyer, via AUSTRADE or a bank. In the course of discussions about the nature of the product/services which are to be offered, any preference by the state representative for particular import channels (that is, agents) should be ascertained. Then an approach to the appropriate agent to begin the process can be made.[60]

3.49 There are a number of ways for companies to obtain assistance in finding suitable agents – for example, by use of AUSTRADE; companies in Australia which specialise in links with India; and the banking system. Nonetheless, it has been suggested that trying to sell 'cold' into India by use of an agent selected at arm's length by an intermediary is not a strategy for success.[61]

Sale by Tender

3.50 Government departments, agencies and public sector companies use tenders for major procurement and projects. About 70 per cent of the total value of imports into India is for the government sector. Aid-funded projects in key sectors are also normally offered by tender. Tenders are usually published in the newspapers and government publications.[62] In most cases, the AUSTRADE office is also informed when tenders are issued and these are then circulated by that office to interested Australian firms through the Australian publication *Tenders*.

3.51 According to the study provided to the Western Australian Government, there are several pre-requisites for successful tendering: representation by a competent local agent; willingness to 'lobby' and facilitate the transaction (in the case of aid-funded projects, this includes ongoing contact with officials in such places as the Asian Development Bank headquarters in Manila and the World Bank in Washington); and the resources and patience to sustain a long lead time where the decision may be slow in India and/or in the main funding agency.[63]

3.52 Australian firms have had differing experiences with the Indian tendering process. Some major companies have become discouraged by their lack of success and have been inhibited from further attempts even when a new project appears 'tailor-made'. In other instances, the tender process has been the preferred approach. Unilab, for example, has expressed a preference for the tender route because they do not wish to devote the resources required for a more substantial business exploration program in India designed to lead to joint ventures.[64]

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59 *Potential in the Indian Market...*, p.83
60 *ibid.*, p.85
61 *ibid.*, p.84
62 *ibid.*
63 *ibid.*, pp.84-85
64 *ibid.*, p.85

Business Support

3.53 As noted, the Australia-India Business Council (AIBC) was inaugurated in December 1986 following the visit to Australia of Rajiv Gandhi. The Council's membership is open to any Australian firm, company or person engaged in trade, commerce or investment between Australia and India. Its aim is to promote mutual understanding and contacts as the basis for expanded commercial relations. The Council meets once a year with its counterpart, the Indo-Australian Business Council.

3.54 The Australia-India Chamber of Commerce aims to further two way trade between the two countries; to study and report where necessary on economic developments which might affect trade; to provide trade related information; and to provide contacts for business people.[65] There is no Indian equivalent. Neither the AIBC or the Chamber of Commerce receive government funds.[66] The AIBC secretariat operates out of the national headquarters of the Confederation of Australian Industry in Canberra.

3.55 AUSTRADE operates a post in New Delhi and a sub-post in Bombay, the centre of India's private sector commerce. As of July 1989, a Senior Trade Commissioner and Trade Commissioner had responsibility for all facets of export facilitation, with the assistance of eleven Indian marketing and support personnel, two of whom are located permanently in Bombay. (The New Delhi post also has responsibility for sub-posts in Dacca and Colombo.)[67] AUSTRADE sees one of its primary objectives as the education of Australian exporters to the realities of doing business in India. Another is to find ways to eliminate or at least minimise the 'problems experienced by some of our clients'.[68] Many of the marketing activities of the New Delhi post are 'directed towards demonstrating areas of Australian technological superiority'.[69]

3.56 In a number of submissions received by the Committee considerable praise was given by the business community for AUSTRADE's activities in India and the strong commitment of the officers currently serving there. At the same time, the Committee was interested in how the AUSTRADE mission reviewed its performance in promoting exports to India and whether their functions might not be better performed in different ways. One businessman was quite critical of the inflexibility of the AUSTRADE mission regarding compliance with regulations, suggesting that such rigour was not observed by Australia's competitor trade missions.[70]

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65 *Evidence*, p.521
66 *ibid.*, p.539
67 *ibid.*, p.696
68 *ibid.*, p.707
69 *ibid.*, p.705
70 *ibid.*, p.532

3.57 The roles of other government departments, such as Foreign Affairs and Trade or Immigration and Ethnic Affairs were not discussed at length in any of the public hearings or submissions. One plea was made for a more sympathetic approach from Australian immigration officers to visa applications from Indian business people.[71]

Conclusion

3.58 The preceding discussion of the commercial environment in India bears out the guidance on company preparation advised by a consultant engaged by the Western Australian Government: delineation of the most promising opportunities; identification of specific potential buyers; their preference as to contracting channels; identification of traditional sources of supply and main competitors; identification of suitable partners, joint venturers, or agents in India; data on precedents of supply; and data on governmental and regional importance attached to the industry concerned with a view to possible support from an Australian Government agency or other aid agencies.[72]

3.59 On the basis of this sort of market research, an action plan can be devised: identification of the specific skills and equipment required to compete; linkages with other firms which have the capability to supply some or all of the required inputs; nomination or formation of an entity which would then pursue the business by vigorous marketing and organisation of supply; and clarification of all the necessary inputs at the Indian end (such as funding, or negotiation channels).[73]

3.60 Much of the advised strategy is fairly commonplace for business activity but its value in the opinion of the Committee, as a guide to action for India-Australia trade, is that it emphasises the central place that improved market intelligence and improved education of Australian business people about India will play in any expansion of trade with India.

[71] *ibid.*, p.547
[72] *Potential in the Indian Market...*, p.102
[73] *ibid.*, p.103