

# **Domestic Implementation of International Trade Laws in India**

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# Scheme of Discussion

- What is ITR, Why we have to Discuss ITR, What to Discuss in ITR, and Why India has to Implement ITR?
- What is Regulations and why Trade Regulations?-An Overview of National, Bilateral, Regional and Global Trade Regulations
- International Trade Regulations before Bretton Woods Conference
- Bretton Woods Conference and establishment of IMF and IBRD
- GATT and International Trade Regulations
- Initiative of WTO--The Objectives, Purposes and Principles of the Uruguay Round Negotiations.
- Achievements of Uruguay and the establishment of the WTO and various Annexes to WTO for International Trade Regulations
- Domestic Implementation of ITR in India– Why Domestic Implementation and How Domestic Implementation of ITR in India?

# Four Basic Questions

- What is International Trade Law (ITL)?
- Why We Have to Discuss International Trade Law Today?
- What to Discuss in International Trade Law? (Issues)
- Why and How India Implements International Trade Laws?

# Introduction to ITL

- **1. What is ITL?**-ITL is Branch of Public International Law
- Traditional ITL—Cross border Sale of Goods between States--Modern ITL --- Cross border Exchanges between the Subjects of International Law--Scope of the ITL Expanded Due to the Inclusion of New Subjects of ITL
- **2. Why we have to Discuss ITL?**--ITL is a New Subject, ITL is a Broad, Complex and Rapidly Developing Area, Practical Problems Needs Practical Solutions --National Laws Drafted with State's Economic, Political and Social Interests---we cannot apply--To maintain Uniformity in International system we need ITL
- **3. What to Discuss in ITL** or Issues Covered in ITL--International Economic Relations –History and Development, International Economic and Trade Institutions(IMF,IBRD,ITO,GATT,WTO) and Their Role --Issues in ITL includes Market Access, Tariff Regulations, Cross border Sale of Goods, Services, Capital, Labour,Dumping, Anti-Dumping, Subsidies,Countervailing Measures.etc., ,
- **4. Why and How Domestic Implementation** of IL and ITL in India?

# Int. Trade Regulations: An Overview

- What is Regulation? -Giving of authoritative directions to bring about and maintain a desired degree of order in any given society
- Why we need Global Trade and Financial Regulations?
- The global financial crisis caused widespread harm not just to the financial system, but also to millions of households and businesses and to the global economy.
- The global financial and economic crisis which started in 2008 has had devastating effects around the globe. It has caused a rethinking in different areas of law and posed new challenges to regulators and private actors alike
- Kinds or Venues of Trade Regulations
- 1. National 2. Bilateral 3. Regional and 4. Global or International Trade Regulations

# Int. Trade Regulations: an Overview

- **Three Phases of Trade Regulations-Ancient, Medieval and Modern**
- **Trade Regulations in Ancient Times--**Trade predates the nations states and it pre dates IL--People have always brought and sold to others outside their family, their community, towns, cities or people who spoke different languages or people who lived thousand Kilometers away Ex: the Greeks of Ancient times, the Romans, the Italian city states
- **Trade in middle ages- *Lex Mercatoria* or law of merchants**
- **Trade between 18th & 19th centuries**
- Theories – Laissez-faire or free trade and Theory of protectionism
- Colonialism and international trade
- **Trade in the 20th century**, World wars, Creation of Int. Institutions, rise and fall of Socialism, division of worlds- first, second & third
- **Trade Regulations in 21<sup>st</sup> Century-** Role of the WTO and Covidization

# Why Bretton Woods Conference?

- Why Bretton Woods Conference ?  
Economic Policies of late 19<sup>th</sup> and early 20<sup>th</sup> Century- beggar-thy neighbor, Great Depression, World War II let to set back to international trade and business activities.
- Due to the lack of international institutional mechanism for regulating monetary as well as developmental activities led to the collapse of global economy.
- During the Great Depression of the 1930s, countries attempted to shore up their failing economies by sharply raising barriers to foreign trade, devaluing their currencies to compete against each other for export markets, and curtailing their citizens' freedom to hold foreign exchange.
- World trade declined sharply and employment and living standards plummeted in many countries.

# Why IMF and its Objectives

- **The need of IMF** was emphasized American Secretary of treasury-What are the conditions under which commerce among the nations can once more flourish?
  - Why : Due to competitive currency depreciation, excessive tariff barriers, uneconomic barter deals, multiple currency practices etc which ultimately resulted in world wide depreciation and wars.
  - Stable International Exchange without loosing country's freedom
- Objectives of IMF: To promote monetary cooperation through a permanent institution for solving monetary problems.
- To facilitate the expansion and balanced growth of int. trade and business
- To promote exchange stability and avoid competitive exchange depreciation
- To assist in the establishment of a multilateral payments system
- To make the Fund's resources available to members so as to enable them to correct maladjustments in their balance of payments



# World Bank-IBRD

- Bretton woods conference also establishment of the IBRD

## Objectives of IBRD

- a) To assist in the reconstruction and development of member countries.
  - b) To promote private foreign investment
  - c) To promote long range balanced growth of international trade and maintenance of equilibrium.
- The World Bank is one of the two Bretton Woods Institutions which were created in 1944 to rebuild a war-torn Europe after World War II.
  - Subsequently, it began attempting to rebuild the infrastructure of Europe's former colonies. Since then it has made a variety of changes regarding its focus and goals.
  - From 1968-1981 it focused largely on poverty alleviation.
  - In the 1980s and 1990s its main focus was both debt management and structural adjustment.

# Stages of granting loan by world bank

## Stage I: Exploratory discussion and preliminary investigation

## Stage II: Investigation of specific Project.

☞ In the second stage Mission investigates about the specific project in its Technical, Financial, and administrative aspects, Project plan, local capital etc.

## Stage III: Stage of Negotiation

☞ This stage involves determination of the part of total investment to be provided by Bank, interest rates, Period of the loan payment

## Stage IV: Administration of Loan

☞ The Bank's representatives visit the borrowing country and check the end-use of the funds are put

# Beneficial Projects

- Capacity Building and Infrastructure creation
- Development of Financial Systems
- Combating Corruption
- Research, Consultancy and Training
- The Bank offers two basic types of loans: investment loans and development policy loans.
- The former are made for the support of economic and social development projects, whereas the latter provide quick disbursing finance to support countries' policy and institutional reforms.
- While the IBRD provides loans with a relatively low interest rate, the IDA's "credits" are interest free.
- The project proposals of borrowers are evaluated for their economical, financial, social and environmental aspects prior to their approval.

# World Bank Group

- The **International Finance Corporation (IFC)** promotes sustainable private sector investment in developing countries as a way to reduce poverty and improve people's lives.
- The **International Development Association (IDA)** created on September 24, 1960 to help the world's poorest countries. IDA loans, address primary education, basic health services, clean water supply and sanitation, environmental safeguards, business-climate improvements, infrastructure and institutional reforms.
- **ICSID** established in 1966 to settle the investments disputes. With the proliferation of BITs most of which refer present and future investment disputes to the ICSID, the caseload of the ICSID substantially increased.
- **MIGA** promotes foreign direct investments into developing countries by insuring investors against political risk, advising governments on attracting investment, sharing information through on-line investment information services, etc.. MIGA provides guarantees against noncommercial risks to protect cross-border investment in developing member countries.

# GATT and International Trade

- Objectives of the GATT: Raising standards of living, ensuring full employment, tariff reduction, free trade, etc.,
- Basic principles of GATT: MFN, National Treatment, Binding commitments, transparency, etc.,
- General Description of GATT: GATT now consists of Objectives and Four parts-
- Part 1 (art. 1 & 2) on MFN Clause and tariff binding or schedules of concessions;
- Part II ( Art.3-23) containing commercial provisions which form the GATT's code of for its C.Ps with regards to trade matter
- Part III (Art, 24-35) Procedural and miscellaneous provisions
- Part IV (Art. 36-38) Provisions relating to developing countries.
- GATT Contribution to International Trade Regulations
- GATT and Various Rounds of Negotiations

# Establishment of WTO--A Note on GATT Rounds

- Why Rounds of Negotiations?
- The Geneva, 1947: 23 founder CPs 45000 Tariff concessions were agreed covering 10 Billions and scope of future negotiations
- The Annecy,( France)1948-49, 33 CPs,5000 Tariff concessions were exchanged
- The Torquay ( England) 1950-51, 37 CPs 8700 tariff concessions were agreed
- The Geneva, 1955-56, 22 CPs participated worth 2.5 billion tariff concessions were agreed
- The Dillon Round (Geneva)1960-61 45 CPs, about 4400 T.C. covering 4.9 billion trade. Single schedule concession was agreed to EEC (1957)
- The Kennedy Round ( Geneva) 1964-67, 50 CPs who accounts 75 per cent of world trade. T.C covered 40 billions trade and code on anti dumping was approved.
- The Tokyo Round 1973-79, 102 CPs and worth 300 billion trade agreements were reached. Other codes like TBT, Subsidies, import licenses custom valuations etc.. Were developed

# Why Uruguay Round?

- Failures of earlier GATT rounds of Negotiations in bringing all trading issues
- Why Rounds of Negotiations in the GATT?
- Role of Various GATT Rounds of Negotiations in the development of international trade Regulations (earlier 7 rounds)
- By 1980s, world-trading system changed, the factors, which are responsible for these changes include; the liberalization, globalization and the privatization process.
- As a consequence, investments required guarantees, the IPRs required better protection and the proper dispute settlement mechanism was required.
- Added to above, the service sector contributed more than 40% to Global Trade but it was out of the GATT system.
- As GATT could not address above-mentioned important areas and need aroused to include in the Uruguay round of negotiations

# Goals of the Uruguay Round

To further liberalization of trade by reducing tariffs and other barriers to trade.

To Create Institutional Mechanism for effective implementation of trade regulations

To properly reflect the modern developments in the world trade by including in the GATT negotiations for the first time TRIMS, GATS, and IPRs.

To bring an end to exemptions of the GATT rules such as those granted to the agriculture, clothing and textiles sectors and resubmit them to GATT

To improve and strengthen the GATT dispute settlement procedure for effective implementation of international trade regulations



# Uruguay Round—Problems and Prospects

- Differences between developed and developing countries
- LDCs put reservation on inclusion of new subjects and they demanded preferential treatment, & respect their sovereign rights
- No other int. treaty has been as little understood and yet has raised as much concern and hostility in our country.
- Wide range apprehensions have been expressed in many developing countries including India, Which include;
- Our sovereignty was compromised; our agriculture would be ruined; farmers would have to buy their seed every year from multinational corporations; genetic wealth would lost; drug prices would shoot up; and our market would become heaven for foreigners.
- Main contentious issues were the agricultural subsidies, public distribution system, patenting of seeds and life forms, and textiles and clothing

# Achievements of the Uruguay Round and the WTO

- Uruguay Round Established the WTO and put important treaties as Annexes to the WTO
- 4 Annexes to the WTO
- Annex 1A-Trade in Goods
- Annex 1B- Trade in Services
- Annex 1C-TRIPS
- Annex 2 -DSU/DSB
- Annex 3-Trade Policy Review Mechanism
- Annex 4- Plurilateral Agreements

# Annex IA: Trade in Goods

- Difference between GATT 1947 and 1994
- Agreement on Agriculture
- Agreement on Sanitary and Phytosanitary Measures
- Agreement on Trade-Related Investment Measures (TRIMs)
- Agreement on Anti-dumping (Article VI of GATT 1994)
- Agreement on Customs valuation (Article VII of GATT 1994)
- Agreement on Preshipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards
- Agreement on Trade facilitation

# Annex IB-GATS

- Why GATS? Growing Imp. of Services in the World Economy
  - Difference between GATS and GATT
  - Operation of GATS- Three Levels
- Framework agreement – 29 articles sets-out general principles and obligations like MFN, NT, Transparency, etc.,  
Annexes containing specific services  
Schedules lists Specific commitments and exemptions
- Scope of services (4 modes)
  - Cross-border, consumption abroad, commercial presence and movement of natural persons
  - Classification of GATS (162), based on UN Central Product Classification, this identified 11 basic service sector plus 12<sup>th</sup> category as miscellaneous

# Annex IC-TRIPs

- **Paris and Bern Regimes and IP Protection**
- **GATT & IPRs:** Though GATT not dealt with IPRs as such but there were some provisions like : Art IX on Marks of Origin, Art XX on Patent protection, Trade Marks, Copyrights and prevention of deceptive practices. Other articles include Articles I, III, XXII and XXIII
- By and large IP was considered as “acceptable obstacle” for free trade until the Tokyo Round.
- Why TRIPs?
- In Tokyo round trade in counterfeit (trademark) goods had started a serious issue and attempts were made but failed.
- Agreement on “Measures to discourage the importation of counterfeit goods” a draft was circulated in 1979 & 1984
- WIPO efforts were also failed to have an agreement
- The Group of Experts on trade in Counterfeit Goods met on six times in 1985 and some suggestions
- Objections were raised to include IPR in trade negotiations, however compromise was that every IPR is linked with trade and it became Trade Related IPRs

# Basic Principles of WTO:

- Most Favored Nation (MFN) Treatment
- National Treatment (NT)
- Transparency and Reciprocity
- Dismantling Trade Barriers and the Free Trade Principle
- Rule Based Trading System
- Special and Different Treatment for DCs and LDCs
- The Competition Principle
- Environment Protection and Improving Quality of life

# Structure of the WTO

- The Ministerial Conference: ---There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years.
- The General Council:--There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate--The General Council shall also carry out the functions assigned to it by this agreement. The Dispute settlement Body:
- The Trade Policy Review Body:-The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM.
- The Council for Trade in Goods, The Council for Trade in services and The Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS):
- Subsidiary Bodies:
- The Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required.

# Functions of WTO

- The WTO shall facilitate the implementation, administration and operation, and further the objectives of this agreement and of the Multilateral Trade Agreements and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
- The WTO shall provide the forum for negotiations among its members concerning their multilateral trade relations in matters dealt with under the agreements of GATT.
- The WTO may also provide a forum for further negotiations among its Members concerning their Multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.
- The WTO shall administer the understanding on Rules and Procedures Governing the Settlement of Disputes.
- The WTO shall administer the Trade Policy Review Mechanism (TPRM).



# Post- WTO Developments

The WTO Ministerial Conferences:

Singapore Ministerial Conference-1996

Geneva Ministerial Conference-1998

Seattle Ministerial Conference-1999

Doha Ministerial Conference-2001

Cancun Ministerial Conference-2003

Hong Kong Ministerial Conference-2005

Geneva, 30 November - 2 December 2009.

Geneva, 15-17 December 2011.

Bali, 3-6 December 2013.

Nairobi, 15-19 December 2015.

Buenos Aires, 10-13 December 2017.

Nur-Sultan, Kazakhstan, 8-11 June 2020.

# Why Implementation of IL and ITL?

- Difference between Domestic and Int. Legal Environment
- Changing Notions of State Sovereignty
- Globalization and its Impact on Society
- Independent States to Interdependent states
- Law Makers to Law Takers
- Role of States as Regulator to Facilitator
- Status of IL is changing from a weak (unenforceable) to strong (enforceable) Law
- Implementation not by coercion or compulsion but by consensus or cooperation

# How States Implement IL and ITL

Is IL and ML are same are different?

Difference of opinion among the scholars--1. Monist School 2. Dualist School 3. Transformation or Specific Adoption Theory 4. Delegation Theory 5. Harmonization Theory

- **Domestic Enforcement of I.L. in India**
- India followed the Dualism and Transformation and adoption
- Constitutional provisions relating to I.L.
- Pre-constitution: British practice
- Constitutional provisions (a) General art. 51 (b) Executive Provisions art. 53, 73, & 77 and Legislative Provisions art. 245, 253, etc

# Domestic Implementation of ITL in India

- Domestic Implementation of International Law in India
- Nature and Quantum of India's International Trade Relations
- India's Accession to Various International Trade Treaties
- India and GATT
- India's Accession to the WTO
- Implications of Various WTO Provisions on India
- New Issues and India's Response
- India and WTO Dispute Settlement

# INTERNATIONAL TRADE ORGANISATIONS AND INDIA

- IMF- India one of the founding Members; seeks help for correcting BoP
- WORLD BANK: India's relation with the world bank beginning with initial desistance and then in 90s in great dependence by India on IBRD for correcting its BOPs, has now reached at a basic mutual co-operation, and heading in the same direction.
- UNCTAD
- UNCITRAL
- UNDP
- UNIDO

# INDIA'S JOURNEY FROM GATT to WTO

- India was one of the Original members of the GATT 1947
- India in entire GATT regime i.e. from 1947 to 1986 raised many issues pertaining to LDCs Concerns.
- Aim to participate in WTO rule based system with greater stability, transparency and predictability in governance of international trade.
- India and other developing countries have argued that agriculture is way of life and employs large proportion of workforce while contributing significantly to GDP.
- **Problems facing India in WTO & its Implementation-**  
Resource and skill limitations of LDCs to negotiate various WTO Treaties
- Incompatibility of developed and developing countries resource sizes causing distortions in implementing various decisions

# INDIA'S JOURNEY FROM GATT to WTO

- Under TRIPS question of high cost of Technology transfer, Bio Diversity protection, protection of Traditional Knowledge and Folk arts, protection of Bio Diversities and geographical Indications of origin, for example Basmati, Mysore Dosa or Champagne.
- The protection has been given so far in wines and spirits that suit US and European countries.
- **What India should do?** --The most important things for India to address are speed up internal reforms and building up world-class infrastructure
- India should also focus on original knowledge generation in important fields like Pharmaceutical, textiles, IT high end products, to tap opportunities of globalization under WTO regime.
- infrastructure problems, poor governance, poor legal system and poor market access are Important Concerns for India
- India Should Strengthen in Services Sector primarily in IT sector, which should be tapped and further strengthened.
- India Protective Agricultural policy and Food security to capitalize on globalization of agriculture market

# Enforcement of IPRs in India

- In recent decisions, evidently, the courts have always leaned in favour of the IPR owner; New remedies are constantly innovated by courts;
- Part III of the TRIPS on “Enforcement of Intellectual Property Rights” contains a total of 21 Articles (Arts. 42-61). Divided into 5 parts-
  1. **General Obligations** (Art. 41)
  2. **Civil and Administrative Provisions** (arts. 42-49)
  3. **Provisional Measures** (Art. 50)
  4. **Border measures** (art. 51-60)
  5. **Procedure in Border Measures**

Provisions aimed at

- (i) providing judicial and administrative measures to be followed by the authorities;
- (ii) procedures by which such measures may be obtained.



# Legislative and Administrative Initiatives:

- Design Act in May 2001
- Trade Marks Act in 1999
- Geographical Indications of Goods Act, 1999
- The Patents (Amendments) Act, 2005 in conformance with TRIPS
- Modernization of the current infrastructure
- New administrative initiatives including establishing Offices for Patents and Trade Marks in all four metros
- Geographical Indications Registry set up at Chennai
- Release of a Draft Manual for Examination and Patent Procedure by the Indian Patent Office

# **DOMESTIC LEGISLATIONS REGULATING INDIA'S FOREIGN TRADE RELATIONS**

## **Customs Tariff:**

- The Customs Act, 1962 empowers the Indian Government to collect and administer the customs tariff.
- The first schedule of the Indian Customs Tariff Act, 1975, contains India's administered tariff rates.

## **Custom Valuation:**

- The Customs Act, 1962 and the Customs Valuation (Determination of Imported Goods) Rules, 1988
- Indian Customs Tariff Act, 1975

## **Import Regulation:**

- Section 11 of the Customs Act, 1962 empowers the Central Government to restrict or prohibit trade in any goods by official notification;
- The Foreign Trade (Development and Regulation) Act, 1992

# **DOMESTIC LEGISLATIONS REGULATING INDIA'S FOREIGN TRADE RELATIONS**

## **Export Regulation:**

- Section 11 of the Customs Act, 1962; The Foreign Trade (Development and Regulation) Act, 1992.
- Export Quality Control and Inspection Act, 1963

## **Foreign Exchange**

- Foreign Exchange Management Act, 1999; Foreign Exchange Regulation Act, 1973; Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976,
- Prevention of Money Laundering Act, 2002

## **Standards**

- Bureau of Standards Act, 1986; Prevention of Food Adulteration Act, 1954

# **DOMESTIC LEGISLATIONS REGULATING INDIA'S FOREIGN TRADE RELATIONS**

## **Marketing and Labeling**

- Standards of Weights and Measures Packaged Commodity Rules, 1977 (last amended on 26 October 1997)

**Anti-dumping, Countervailing, Safeguards** -The Indian Customs Tariff Act, 1975.

**Sanitary -Phytosanitary Measures--**Drugs and Cosmetics Act, 1940 (last amendment in 1988); Prevention of Food Adulteration Act, 1955; the Insecticides Act, 1968

## **Government Procurement**

- Governed by provisions of the Indian Sales of Goods Act, 1930 and the Indian Contracts Act, 1972; the Indian Arbitration and Conciliation Act, 1996.

## **Competition Policy**

- The Monopolies and Restrictive Trade Practices Act, 1969 (last amendment in 1991); Competition Act, 2002 (Only some of the Provisions came into force in March, 2003)

# **DOMESTIC LEGISLATIONS REGULATING INDIA'S FOREIGN TRADE RELATIONS**

## **Foreign Investment**

- No separate law for foreign investment. The Industries (Development and Regulation) Act of 1951 outlines licensing procedures for industries. Foreign investment policy was incorporated in this Act to target industries in which foreign technology and foreign exchange was desirable.

## **Shipping Law**

- Merchant Shipping Act, 1958, Shipping Trade Practices Act, 2006 (Draft);
- The Indian Carriage of Goods by Sea Act, 1925;
- The Indian Bills of Lading Act, 1856;
- Carriage by Air Act, 1972

## **International Commercial Arbitration**

- The Arbitration and Conciliation Act, 1996  
(Based on UNCITRAL Model Law)

# Conclusion

- “Globalize or Perish” is now the buzzword synonymous to “Do or Die” which conveys that there is no alternative to globalization and everybody should learn to live with it.
- India, being a signatory to the W.T.O, can no way step backwards. This is not the time to curse the darkness but to work for making India emerge as a global market leader.

Last but not least, it was considered that ignorance of law is no excuse. But now we can tell ignorance of WTO is no excuse in the interest of our nation

- Know the Rules to play the Game well

Thank You