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Dedication

**This book is dedicated to my Gurus
Shri B.E. Avhad Sir, Shri S.E. Avhad Sir,
Shri H.P. Deshmukh Sir and Shri Sharad Ghatpande Sir**

***“Sarve bhavantu sukhinah, Sarve santu niramayah,
Sarve bhadrani pashyantu, Ma kaschid dukhabhagbhaavet”***

**May all be happy; May all be healthy; May all see good things;
Let none beget sorrow.**

Sanskrit Subhashit

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Abbreviations:

ACP	: African Caribbean and Pacific Region Group.
ADNDRC	: Asian Domain Name Dispute Resolution Centre.
AIREA	: All India Rice Exporters Association.
AMTC	: Affordable Medicines and Treatment Campaign.
AOA	: Agreement On Agriculture.
APEDA	: Agricultural and Processed Food Products Export Development
ASEAN	: Association of South East Asian Nations.
ASSOCHAM	: Associated Chambers of Commerce.
ATC	: Agreement on Textile and Clothing.
BIRPI	: International Burex for the Protection of Intellectual Property Rights. (a French acronym)
BPO	: Business Process Outsourcing.
BSNL	: Bharat Sanchar Nigam Limited.
CDR	: Centre for Dispute Resolution.
CERDS	: Charter for Economic Rights and Duties for States.
CIF	: Cost Insurance Freight.
CPR	: Centre for Dispute Resolution.
CSIR	: Council for Scientific and Industrial Research.
DDA	: Doha Development Agenda.
DGAAD	: Directorate General of Antidumping and Allied Duties.
DN	: Domain Name.
DSB	: Dispute Settlement Body.
DSM	: Dispute Settlement Mechanism.
DSU	: Dispute Settlement Understanding.
EMR	: Exclusive Marketing Rights.
EPO	: European Patent Office.
EU	: European Union (European Community)
FDI	: Foreign Direct Investment.
FIAS	: Foreign Investment Adversary Services.
FIP	: Five Interesting Parties.
FTA	: Free Trade Agreement.
GATS	: General Agreement on Trade Services.
GATT	: General Agreement on Tariffs and Trade.
IBRD	: International Bank for Reconstruction And Development. (: World Bank)
ICANN :	:
ICAR	: Indian Council of Agricultural Research.
ICJ	: International Court of Justice.
ICSID	: International Centre for Settlement of Investment Disputes.
IDA	: International Development Association.
IFC	: International Finance Corporation.

IMF	: International Monetary Fund.
IP	: Internet Protocol / Intellectual Property.
ITES	: Information Technology Enabled Services.
ITO	: International Trade Organisation.
MC	: Ministerial Conference.
MDG	: Millennium Development Goals.
MFA	: Multi Fibre Arrangement.
MFN	: Most Favour Nation.
MNC	: Multi National Company.
MTNL	: Mahanagar Telephone Nigam Limited.
MTNR	: Multilateral Trade Negotiations Rounds.
NAF	: National Arbitration Forum.
NAFTA	: North American Free Trade Agreement.
NAMA	: Non Agricultural Market Access.
NGO	: Non Governmental Organisation.
NIEO	: New International Economic Law
NT	: National Treatment.
OECD	: Organisation for Economic Cooperation and Development.
PANAP	: Pesticide Action Network Asia and the Pacific.
PCT:	Patent Co operation Treaty.
SAFTA	: South Asian Free Trade Agreement.
TM	: Trade Mark.
TMB	: Textiles Monitoring Body.
TPRB	: Trade Policy Review Body.
TRIPS	: Trade Related aspect of Intellectual Property Rights.
UDRP	: Uniform Dispute Resolution Policy
UNCITRAL	: United Nations Commission on International Trade Law.
UNCTAD	: United Nations Conference on Trade and Development .
UNDD	: United Nations Development Decade.
UNIDROIT	: Principles of International Commercial Contract.
UNO	: United Nations Organisation.
USDA	: United States Department of Agriculture.
USPTO	: United States Patent and Trade Mark Office.
WIPO	: World Intellectual Property Organisation.
WTO	: World Trade Organisation.

INTERNATIONAL ECONOMIC LAW

Introduction:

International Economics Law is an international law concerning economics. This economics is not specific to any particular state's economics, but it is known as international economics. Therefore, in simple expression, the law, which is made for international economics, is an International Economic Law. To make it simpler the rules and regulations made in the form of organizations or agreements for international economics is an International Economic Law.

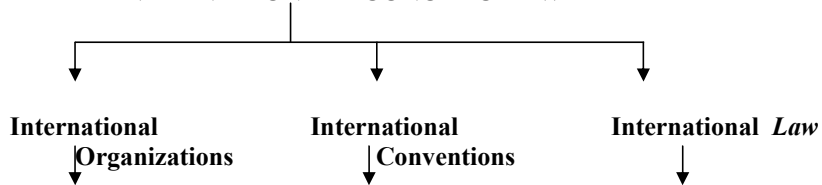
International Economic Law can be studied in three major segments such as-

1. International Law
2. International organizations, which are based on international economics
3. Conventions or agreements based on international economics.

Nowadays one of the youngest international organizations known as the 'World Trade Organization' governs maximum agreements relating to International Economics Law. Hence, this International Economics Law has significant bearing on the WTO.

(change in Para)

INTERNATIONAL ECONOMIC LAW



International Law	International Organizations	International Conventions/Treaties
Nature and scope of International Law	WTO	TRIPS
Comparison of Municipal Law and International Law	World Bank	AOA and ATC
Public International Law and Private International Law	IMF	GATS
ICJ	IDA	Vienna Convention of UNCITRAL
	IFC	Hamburg Rule under UNCITRAL
	NIEO	International Commercial Arbitration
	UNCITRAL	Berne Convention and Paris Convention
	UNCTAD	PCT
	UNO	

WORLD TRADE ORGANIZATION

SYNOPSIS

[1] HISTORY

[2] OBJECTIVEIVE

[3] SECRETARIAT

[4] STRUCTURE

[5] AGREEMENT

[//] HISTORY –

The WTO is said to be the youngest International Organization which was established on 1st of January 1995. In the real sense, the WTO was established through the Marrakesh Agreement establishing the WTO', which was signed on 15th of April 1994 at Morocco. The WTO is also known as a successor of the GATT, which was signed by 23 countries at Geneva in the year 1947. The history for the GATT is very amazing. After the First World War, the western countries suffered losses in various terms, such as human resource loss, monetary loss etc. The situation was critical after 1918, i.e. after the First World War. Due to this some countries started thinking of some international organization, which would help to foster trade and relation in the world. When the thought was in the process, another setback event took place known as the 'Great Depression'. This actually occurred in the year 1929 and continued for a decade, i.e. 1939. The thought of starting an International Organization generated after the First World War was executed at top priority by some countries. When this thought was in the process and still under discussion, the second crucial event happened known as the 'Second World War'.

The thought of creation of an International Organization reached its peak and finally, one conference gave birth to three International Organizations i.e. the 'World

Bank', the 'International Monetary Fund' and also to draft the Charter for the 'International Trade Organization'. This conference is known as "Brettonwood Conference"

The World Bank and the IMF were established through the Brettonwood Conference, and is also called as 'Brettonwood Twins'. These Brettonwood Twins immediately started working on their objectives. However, the third decision of Brettonwood conference was to draft a charter for the ITO (International Trade Organization). Four more conferences were to be conducted for it. The first two conferences were held only to complete the draft for the ITO. The third conference was held at Geneva for continuation of the drafting work. Actually, this conference was divided into two phases. In the second phase 23 countries came together and signed an agreement, which became the world-renowned agreement subsequently known as the GATT. This agreement was signed in the year 1947 and hence called as the GATT 1947. The main objective for this agreement was tariff reduction. Tariff was the major hurdle for International Trade, therefore, some countries decided that reduction in tariff would help to improve the International Trade situation. To fulfill the main objective of the GATT various rounds of trade negotiations were held, which are also known as the Multilateral Trade Negotiation Rounds (MTNRs). The first five MTNRs only focused on tariff reduction while the sixth and seventh added some more components in the form of agreements. e.g. ,: Agreement on Anti-dumping. The eighth round of multilateral negotiations was started in the year 1986 and concluded in the year 1994 with the Marrakesh Agreement Establishing the WTO. This last MTNR was also known as Uruguay Round, which gave birth to the WTO along with some additional agreements such as TRIPS (Trade Related aspect of Intellectual Property Rights), GATS (General Agreement on Trade Services). The Uruguay round was held for the GATT. Therefore the GATT is also called the predecessor to the WTO. The distinctive feature for the GATT was that it was created through the conference of the drafting of the charter for the ITO. The drafting work of the ITO was completed in the fourth conference known as the 'Havana Conference'. After the Havana conference, the ITO's draft was on the table of various countries for ratification. The United State's Congress did not ratify it and the

ITO failed. The GATT was that it was created through the ITO charter drafting conference and continued as a treaty even though the ITO failed.

(III) Objectives:

The main objective for the creation of the WTO is “to help free, fair and predictable trade flows”. This objective carries various functions of the WTO. The above mentioned objectives can be divided as follows—

- (i) To help Free Trade Flow
- (ii) To help Fair Trade Flow
- (iii) To help Predictable Trade Flow.

These objectives are elaborated. one by one as follows.

(i) To help Free Trade Flow

The word ‘Free’ is used with respect to free market or open market i.e. member countries should freely open their markets for the goods and services from other member countries. *In the WTO this open market policy is known as the concept “Market Access”.* Hence It can be said that the purpose of market access is to increase International Trade, in simply put if country ‘A’(india) opens its market for goods from country ‘B’(Pakistan) it means (that India) ‘A’ has removed restrictions in the form of tariffs or/and non tariff barriers for ‘B’ s goods to enter into its market. (try to give the original case name or country name)

Example, ‘A’ and ‘B’ are two different countries and they became members of the WTO in the year 1994. Before the inception of WTO --‘A’ was charging 100% import duty in the form of Tariff for --‘B’ s goods and the trade flow was on an average \$100 million .

However, after joining the WTO, --‘ A’ committed market access to-- ‘B’ and reduced the import duty from 100% to 50% for --‘B’ s goods, and it is noticed that the trade flow was increased from \$ 100m to \$200m. Market access or open market sounds good to some extent. Nevertheless some developed countries like the US and the EU

failed to open their market for agricultural products from developing countries. These developed countries give huge subsidy to their farmers, which creates competitiveness with agricultural products of developing countries. In other words, the agricultural products in the EU and the US become cheaper because of subsidy and closing of the entry of agricultural products of developing countries. The developing countries have demanded several times this 'Agriculture issue' of market access. The Fifth Ministerial Conference that was held at Cancun recently in September 2003, discussed this issue thoroughly. However it concluded without any agreement. After Cancun, 'Agriculture issue' with respect to market access was one of the main agendas for the discussion for the WTO. And on 30th of July 2004, it was tried to resolved satisfactorily. The General Council of the WTO met at the end of July 2004 at Geneva to discuss various issues under the WTO regime and concluded the Framework Agreement also known as 'July Package'.

As per this agreement, the developed countries firmly committed to reduction in the tariffs. It seems that the real implementation of Market Access objective of WTO has begun.

(ii) To help Fair Trade Flows: -

The concept of the word fair implies - not to have unfair trade between member countries. In other words, the WTO restricts the member countries from carrying any unfair trade activities, e.g. dumping the goods.

In the WTO, there is one agreement known as the agreement on anti-dumping. This was basically enacted to support domestic market. Anti-dumping is an action taken against the dumped goods.

e.g. : 'A' and 'B' are two countries, which have signed the agreements of the WTO. 'X' is a product manufactured in 'A' country and is for sale for three dollars. If 'A' sends this 'X' product to 'B' for two dollars i.e. lesser than the domestic cost, then this product X is said to be dumped goods- and the action sending goods from one 'A' to 'B' lesser than the domestic price is called as dumping. This dumping is treated as unfair

practice and the WTO has a provision for legal action against dumping action. This helps to increase the trade flow worldwide.

(iii) To help Predictable Trade flow: -

The concept 'predictable' means projected trade flows. In a simple term the trade should reach as per the target among the WTO's member countries. If some disturbance in the form of dispute arises it should be solved by a mechanism under the WTO known as the Dispute Settlement Mechanism.

E.g. The proposed trade flow of countries 'A' and 'B' is \$ 500m for the year 2004, and suddenly a dispute arises with the implementation of any agreement under the WTO regime, then the WTO provides the mechanism to solve the dispute between them known as the Dispute Settlement Mechanism. Once the dispute between 'A' and 'B' is solved then they could achieve the projected trade, otherwise they won't. Hence, it can be said that the WTO helps member countries to reach the expected goals for trade.

(III) Secretariat-

The head office of the WTO is situated at Geneva. This worked as the secretariat of the WTO in which the Director-General is working as a head of the WTO. The present Director General is Pascal Lamy before him **Dr. Supatchi Panichpakadi** followed by Mike Moore. There are Deputy Director Generals also working for the WTO Secretariat. At present more than 500 staff members from different geographical regions are contributing for the same. The office is actually divided into various departments, which include research, training, distance learning programmes etc.

(IV) Structure:

There is hierarchy in the WTO is like that of the Indian Judicial system. In India, the Supreme Court is the most superior court and the High Courts and the District Courts are inferior courts. Likewise, the Ministerial Conference is the topmost decision Authority under the WTO regime. Generally, Commerce Ministers and Foreign Trade ministers represent this conference along with their delegation team. The Ministerial Conference

should be held, at least once in two years. Till today, five different Ministerial Conferences are held for the WTO. Those are:

- Singapore Ministerial Conference.
- Geneva Ministerial Conference.
- Seattle Ministerial Conference.
- Doha Ministerial Conference.
- Cancun Ministerial Conference.

The next proposed Ministerial Conference would be held at Hong Kong in China. The first Ministerial Conference was held in the year 1995 at Singapore and it is known as the Geneva Ministerial Conference. Various new issues along with the existing issues of the implementation were discussed in this Ministerial Conference.

The Ministerial Conference was held in the year 1997 at Geneva. The distinctive features of this Conference were introduction of four issues in the form of proposed agreements. Those are:

- (i) Trade Facilitation,
- (ii) Government Procurements,
- (iii) Investment,
- (iv) Competition.

After this Conference, the third conference was held at Seattle in the year 1999. However, it did not discuss any issues and concluded without any agreement. Hence, this conference is also called the failure conference of the WTO. The reason could be demonstration by the NGO's (Non Governmental Organizations). The main reason behind the demonstrations was the believe that the developed countries like the United States and European Union may impose some restrictions on developing and least developed countries. So the NGOs demanded to participate in the conference they found they would not get a chance and they made aggressive demonstrations and the conference resulted in failure.

The fourth conference was held in Doha in the year 2001. This was held after 9/11 of United States. In the history of the WTO, this conference got a different status. This is

said to be the most successful conference of the WTO till now. This conference gave birth to “ Doha development Agenda” (DDA) which became a guideline for further negotiations and implementation issues for the WTO.

The fifth conference of the WTO was held at Cancun (Mexico) from 10th to 14th September 2003. This conference discussed various issues like –Agriculture, NAMA, Singapore, cotton, implementation and others. However, in the real sense, this conference discussed only two issues i.e. the Singapore issue and Agriculture. There have been few distinctive features attached to this conference:

- (1) Different groups of countries have been formed e.g. G20 Group of India, Brazil, China, South Africa. G18 which lead by Malasia, ACP (African Caribbean and Pacific Region Group)
- (2) Director General Dr. Supachi Panichpakadi himself worked for ‘the cotton issue’.

As mentioned earlier, this conference mainly focused on ‘Agriculture issue’ and the ‘Singapore issue’. There was a great demand by developing and least developed countries that Singapore issue and other issues mentioned should not be put on the agenda unless and until explicit consensus has been taken. Actually the concept of explicit consensus was first introduced strongly in the Doha MC by Murosolie Maran an Indian Minister of Commerce and Industry.

The demand for agriculture was to reduce or cut the huge subsidies given by the developed countries to their farmers. In other words demand was to focus on market access for agricultural goods of developing and least developed countries. The conference did not reach to any conclusion .

Under the ministerial conference, another body working in the WTO which is known as General Council. The Ambassadors or High Commissioners of the member countries represent the General Council. Recently, on 31st of July 2004, the General council meeting was held at Geneva. The distinctive features of this meet were: (I) Framework Agreement signed by the member countries, also known as “July Package” (II) India played a very important role, as a member of five interesting parties (FIP) Brazil, EU, AUSTRALIA and US are the other countries that worked for FIPs. This FIPs

actually was selected among the 147 countries to negotiate main issues like agriculture, NAMA (Non-Agricultural Market Access) and Singapore issues.

The General Council meets several times in a year. It's not only working as a council but also as a Dispute Settlement Body (DSB) and Trade Policy Review Body (TPRB). Under the General Council, there are some small councils also working for WTO. These are:-

- (i) Good's Council
- (ii) Service Council, and
- (iii) Intellectual Property Council.

(V) Agreements:

The WTO was established through the agreement known as 'MARRAKESH Agreement establishing the WTO'. The WTO itself is a successor of an agreement known as the GATT. At present, the WTO governs more than 60 agreements including the Agreement on Agriculture (AOA), Agreement on Textile and Clothing (ATC), Agreement on Trade Related aspect of Intellectual Property Rights (TRIPs), Anti-Dumping Agreement, Safeguard and Counter veiling Agreement, Sanitary and Phyto-sanitary Agreement (SPS), GATS

The 'Uruguay Round' was the main round not only for the WTO but also for some of its important agreements. The TRIPS and the GATS were first introduced strongly in the Uruguay round and became very important agreements for both rich and poor countries. After the Uruguay round immediately in the year 1997 sixty-nine countries agreed and reached an agreement on Telecommunication. Next year, more than forty member Countries gave assent to study on E-commerce (Information Technology) and complete the work for the same in the form of an agreement. The WTO's agreements are said to be legal rules for International Commerce. Essentially, they are contracts guaranteed by the member countries. They also bind governments to keep their trade policies within agreed limits to everyone's benefit. The main purpose for these agreements is to help the movement of goods and services; it helps exporters and importers to conduct business.

(VI) Functions:

The main objective of the WTO is to achieve fair, predictable and free trade flows. The following functions assist the WTO to fulfill its objectives:

- (i) Administering trade agreements,
- (ii) Acting as a forum for trade negotiations,
- (iii) Settling trade dispute,
- (iv) Reviewing national trade policies,
- (v) Assisting developing countries in trade Policyissues through technical assistance and training programme.

WTO Agreements

(i) GATT:

The General Agreement on Tariffs and Trade was originally signed in the year 1947 by 23 countries at Geneva. This is also known as the predecessor of the WTO. At presentWTO consists of various agreements including GATT. This GATT is not the GATT of 1947 but the amended version of GATT 1947, which is also known as GATT 1994. The distinctive features of the GATT is that the WTO was incorporated through the GATT 1947 and now the GATT 1994 is the principal agreement of the WTO.

Since 1995, the amended GATT has become an umbrella of agreement on goods under the WTO regime. It deals specifically with sectors such as agriculture and textiles and about specific issues such as state trading, product standard subsidy and action taken against dumping.

(ii) GATS :(General Agreement on Trade in Services)

The GATS is one of the WTO agreements which covers various services such as education, banking, finance, health services, legal services, accountancy etc. In the real sense, this agreement is also one of the by-products of the Uruguay round. Until the Uruguay round, services was not an issue for GATT and it was introduced in its last multinational trade negotiation round and became an agreement under the WTO regime.

As per this agreement services can be traded by four modes:

- (i) Cross border supply,
- (ii) Consumption abroad,
- (iii) Commercial presence, and
- (iv) Movement of natural person.

Cross border supply

Cross border Trade corresponds with the normal form of trade in goods and maintains a clear geographical separation between seller and buyer. As per this mode, services can be supplied from one country to another, e.g International Telephone Call.

Consumption abroad

This mode refers to firms or customers which move into another member country to obtain service. e.g. Tourism.

Commercial presence

In this mode foreign companies/firms can set up their subsidiary companies in another member country to providing services. e.g. International Banks. The advantage of this mode is that in this, a company or firm of one country is going to any other member country to supply services.

Movement of natural persons

An individual can travel to any country to offer his services. e.g. Software Engineer, Fashion Designer.

Structure of GATS:

The GATS applies in principle to all the sectors except, “Services provided in exercise of governmental authority”. These being services that are supplied neither on commercial basis nor in competition with other suppliers. GATS gives flexibility to each member country to decide the service sectors in which it will undertake and schedule commitments. It allows the member countries to indicate the measures that will be kept in place for that sector, which will act as a limitation to market access and national treatments.

Comment [g1]:

On 12th January 2004 India submitted its initial offer to WTO for its GATS agreements. In this, India excluded legal services and accountancy. However it included health services and education. But EU is demanding to include legal services under the purview of GATS.

In a real sense there Each member country is to submit its offer and request to WTO before the deadline This mandate was decided in the Doha Ministerial Conference though the negotiations for this agreement was started in 2000 and is continuing till date (proposed deadline is May 2005)

As mentioned above that there are various services covered under GATS ,however, some of them are discussed as follows.

(I) Legal services:

This covers legal advisory and representing services in different fields of law, legal advisory and representation services in statutory procedure of quasi-judicial tribunals / boards etc, and legal documentation and information services and other legal advisory and information services.

At present, there is no commitment made by India, However there are some requests made to India like:

(a) Allowing foreign lawyers to give consultancy on the law for which they are qualified.

- (b) Allowing foreign firms to provide legal services for foreign enterprises and individuals.
- (c) Abolishing nationality requirement for obtaining qualification.
- (d) Allowing foreign law firms to hire local lawyers.
- (e) Give the right of voluntary commercial associations between foreign and local lawyers and law firms and the use of own name.
- (f) Legal services provided by foreign firms could advice and provide assistance relating to litigation, preparation of document, tax and fiscal questions, legal analysis and opinions.
- (g) Allowing practice of home country, third country and institutional law by foreign practitioners without imposing the participating host country's law.
- (h) Adopting reference country to recover recognition of foreign lawyers and establishment of norms for supervision of foreign establishment.

After going through the above requests, it can be concluded that this service, through which the general public can enforce their rights in the court of law will be completely globalised and the general public may not get access to exercise this right if it is under control of foreign lawyers or firms.

(2) Health Services and Social Services:

This service covers medical and dental services and the services provided by nurses, psychotherapists, hospital services, social services and other human health services etc.

In this service India has made its offer with respect to direct investment. India has allowed 51% percent FDI in hospital services. However, there is request made by other countries to India with respect to these services like-

- (1) Allow joint ventures.
- (2) Permit a foreign doctor with a national Licence of the country he wishes to practice in.

In return India has also made a request to other countries to remove quantitative restrictions which are in place at present for specialists in ENT(Ear, Nose and Throat). This restriction is affecting the entry of such health professionals into foreign countries.

(3) Recognize the qualifications of Indian medical and dental professionals and nurses.

(4) Remove requirement of residency and nationality for licenses

(5) Distinguishing independent professionals from judicial persons.

(6) Create a reasonable system to ensure the access as per commitment made.

(3)Computer Related Services:

Computer related services cover data processing, consultancy services relating to installation of computer hardware, software implementation services and data base services and other services. Installation of computer hardware service has already started in India. e.g. HCL, an Indian company has got a licence for installation of computer hardware for Toshiba of Japan. In addition to this, the newly developed industry known ITeS (Information Technology enabled Services) which is also known as BPO industry (Business process outsourcing) is also becoming a part of computer related services. e.g. Medical transcription, call centers etc.

Offer made to India

Foreign countries have requested India to remove of FDI limit of 51% and allow full market access. In return India has made the following request to other member countries.

(i) Institute a flexible visa system for Indian nationals(There is a rigid system for getting a visa of a developed country)

(ii) Allow inter-firm mobility of professionals. (Indian IT companyMahindra British Telecom Ltd has been demanding this for a long time)

(iii) Dealings should be independent of commercial presence. (mode three of GATS)

(iv) Recognize the educational qualifications training and experience of Indian professionals (e.g. United Kingdom does not recognize LL.B degree from India for Bar-at-law Course)

(v) Exempt professionals of temporary services from contribution towards social security tax provided from host country, At present, Indian professionals who are going to US to provide temporary services are paying 20% of their salary towards social security taxes which amounts to USD \$ 600m per annum ,India has requested that those who are providing temporary services for a year or two should be exempted from such tax or that tax should be refunded while returning to their home country.

(vi) Permit majority shareholding of foreign companies with respect to commercial presence.

(4) Education and Trading Services:

Education is the backbone of any country. India has a very ancient tradition in education. In India education is not treated as a service as it is considered as God's gift – hence the underline behind education was that knowledge must be available to the masses and through this knowledge and information must be available to general public was the principle behind education. The GATS agreement includes education as service medium and can be traded by four modes. As per the GATS education services cover primary education, secondary education, higher education, adult and other educational services. India is in a dilemma whether to follow the traditional way or go for education trade services or in other words it can be said whether to follow the principle behind the establishment of Indian ancient universities i.e. Nalanda and Takshshila or follow the trend established by the UK or the US universities.

Request made to India

Some countries have requested India to provide market access to the educational services sector.. The main focus of the requests are full Market Access and National Treatment (non-discrimination treatment) commitment in higher education and training services under the higher education.

TRIPS

Intellectual property right was not part of the GATT till the Uruguay round. It was introduced in the Uruguay round and strongly pressurized by the developed countries (mainly USA) to make it a part of WTO agreement. which is presently known as Trade Related aspect of Intellectual Property Rights (TRIPS). Intellectual Property was opposed by some developing countries to be a part of the WTO. However, their opposition could not prevent IP from being part of WTO.. The TRIPS was finally signed at MARRAKESH on 15th April 1994 by 125 member countries.

TRIPS agreement is divided into 73 Articles and Article speaks about all forms of Intellectual Property and their protection. Intellectual Property is divided into two major parts known as Industrial Property and Copy Right and related Rights. TRIPS consists of patent, trademark, copyright, industrial design, geographical indication, undisclosed information etc. as a form of Intellectual Property.

Compulsory Licensing:

This provision is mostly discussed with respect to patent which is based on invention. The main aim is to protect invention in the form of a patent and to encourage research and development If someone, who has patented his invention and is not ready or willing to make it available easily and if it is found that the invented product is very essential for the general public then in such cases compulsory licensing provision can be invoked through which the inventor will be forced to grant licenses. TRIPS also explains compulsory licensing provisions.

Multinational corporations are not in favour of compulsory licensing provisions as they want to keep the monopoly of their inventions with them. The TRIPS agreement has become the most famous among all the agreements of the WTO in India. Due to the controversies with respect to their implication on product patent, term of patent, non-patentable invention etc on Indian food drug and agrochemical . As per the TRIPS agreement, patent should be granted to both process and product invention. However, the Indian Patent Act of 1970 protected only process invention. Secondly, the term of patent protection was 16 years while the TRIPS offers 20 years of protection to product patents. Thirdly, food and drug inventors enjoy monopoly in India through patent either

for 5 or 7 years, but as per the TRIPS foods and Drug inventors enjoy 20 years monopoly adjust

Transition Period:

As per the TRIPS agreement, transition period is granted to the developing countries. This period is 10 years from the date of establishment of the WTO. This period has been granted to the developing countries to amend their Intellectual Property laws as per the TRIPS agreement. The transition period for implementation of the TRIPS was 5 years from 1-1-1995 which was again extended by another 5 years for the developing countries to be TRIPS compliant by 1-1-2005. However Least developing countries (LDC) which do not have adequate intellectual property protection in their national laws as per the TRIPS will have 5 more years to amend their laws. Developing countries which do not have product patent protection have to make a provision for EMR in their national laws during the transition period. India accepted EMR as an option to product patent. However, before 31st of December 2004, India has to amend its patent law to give full-fledged protection to product patents. The most significant effect of TRIPS in India will be on the pharmaceutical industry.

since India is a signatory to the TRIPS agreement it has to make changes in the Indian Intellectual Property laws (either in the form of amendments or enactment of new laws). The following are the major changes in Indian IP laws which have taken place since 1995.

- (1) Indian Patent (Amendment) Act 2002 and Patent (Amendment) Act 2003
- (2) Trade Mark Act 1999.
- (3) Industrial Design Act 2000.
- (4) Copyright (Amendments) Act 1999
- (5) Protection of Plant Variety and Farmers Rights Act 2001.
- (6) Geographical Indication of Goods (Registration and Protection) Act 1999.
- (7) Semiconductor Integrated Circuits Layout Design Act 2000.

TRIPS Agreement broadly covers five issues:

- (i) How the basic principle of trading system and other international intellectual property agreements should be applied.

- (ii) How to give adequate protection to intellectual property rights.
- (iii) How countries should enforce those rights adequately in their own territories.
- (iv) How to settle disputes on intellectual property between the member countries of the WTO.
- (v) How to make special transitional arrangements during the period when the new system is being introduced.

In accordance with the preamble of the TRIPS Agreement, the main goal of this agreement is, “to reduce distortion and impediments to the International Trade”. According to J.H. Reidman, “ In advocating an even handed approach to the International Intellectual Relations, I argued that it would violate fundamental precepts of International Economic Law if the developed countries failed to differentiate between the developed and least developed countries while formulating minimum standards under the TRIPS agreement.”

India has played a very important role since the inception of TRIPS agreement,. India is the first developing country which fought a case based on traditional knowledge in the WTO under the preview of the TRIPS and won it. This case was known as “Neem Case”. Another famous case which was also decided in favour of India is the “Turmeric Case”. The highlight of this case was that two Indians, COhly and Das, who were working at the University of Mississippi, applied for the turmeric patent and the patent was granted to them. This patent was challenged by the CSIR (Council for Scientific and Industrial Research). They collated 32 findings from ancient scriptures in Sanskrit, Hindi and Urdu. India won it on the basis of traditional knowledge.

Turmeric Case

Turmeric (*Curcuma longa*) is a plant of the ginger family yielding saffron-coloured rhizomes used as a spice for flavouring Indian cooking. It also has properties that make it an effective ingredient in medicines, cosmetics and as a colour dye. As a medicine, it has been traditionally used to heal wounds and rashes since times immemorial.

- In 1995, two Indian nationals at the University of Mississippi Medical Centre were granted US patent no. 5,401,504 for "use of turmeric in wound healing".

- This patent claimed the administration of an effective amount of turmeric through local and oral route to enhance the wound healing process as a novel finding.
- CSIR could find 32 references in ancient Indian scriptures and argued that turmeric has been used for thousands of years for healing wounds and rashes and therefore its medicinal use was not novel.
- Their claim was supported by documentary evidence of traditional knowledge, including an ancient sanskrit text and a paper published in 1953 in the Journal of the Indian Medical Association.
- Final decision on the re-examination was issued by the USPTO on 28th March 1997, which rejected all the six claims based on the references submitted by the CSIR as being 'anticipated by the submitted references'.
- The inventors argued that the powder and paste had different physical properties but on 20th November 1997, the examiner rejected all claims once again as being anticipated and obvious. The proceedings were finally closed on 21 April 1998.

Observations: The turmeric case was a landmark case as it was the first time that a patent based on the traditional knowledge of a developing country had been successfully challenged, opening up the path for the creation of Traditional Knowledge Digital Library, Traditional Knowledge Resource Classification, and finally inclusion of traditional knowledge in the International Patent Classification System. The legal costs incurred by India in this case was about US \$ 10,000.

Amidst loud protests against 'Bio piracy' and 'Theft' of India's biodiversity and traditional knowledge by foreign multinationals, it is interesting to note here that the patentees in the turmeric case were Indians (Das and Cohly), the re-examination in USPTO was done by an Indian (Kumar) and the re-examination was sought by an Indian institution (CSIR).

The Basmati case

Basmati is a variety of rice from the Punjab provinces of India and Pakistan. This rice is a slender, aromatic long grain variety that originated in this region and is a major export crop for both countries. Annual basmati exports are worth about \$300m and represent the livelihood of thousands of farmers.

- The “Battle for Basmati” started in 1997 when US Rice breeding firm RiceTec Inc. was awarded a patent (US 5663484) relating to plants and seeds, seeking a monopoly over various rice lines including some having characteristics similar to Basmati lines. Concerned about the potential effect on exports, India requested a re-examination of this patent in 2000. The patentee in response to this request withdrew a number of claims including those covering basmati type lines. Further claims were also withdrawn following concerns raised by the USPTO. The dispute has however moved on from the patent to the misuse of the name “Basmati.”

- In some countries the term “Basmati” can be applied only to the long grain aromatic rice grown in India and Pakistan. RiceTec also applied for registration of the trademark ‘Texmati’ in the UK claiming that “Basmati” was a generic term. It was successfully opposed, and the UK has established a code of practice for marketing rice. Saudi Arabia (the world’s largest importer of Basmati rice) has similar regulations on the labelling of Basmati rice.

- The code states that “the belief in consumer, trade and scientific circles [is] that the distinctiveness of authentic Basmati rice can only be obtained from the northern regions of India and Pakistan due to the unique and complex combination of environment, soil, climate, agricultural practices and the genetics of the Basmati varieties.” collage

- But in 1998 the US Rice Federation submitted that the term “Basmati” is generic and refers to a type of aromatic rice. In response, a group of US and Indian civil society organizations filed a petition seeking to prevent US-grown rice from being advertised with the word “Basmati”. The US Department of Agriculture and the US Federal Trade Commission rejected it in May 2001 as neither considered the labeling of rice as ‘American-grown Basmati’ misleading, and deemed “Basmati” a generic term.

- The problem is not just limited to the US. Australia, Egypt, Thailand and France also grow basmati type rice and may take the lead from the US and officially deem “basmati” a generic term.

- The name "Basmati" (and the Indian and Pakistani export markets) can be protected by registering it as a Geographical Indication. However, India and Pakistan will have to explain why they did not take action against the gradual adoption of generic status of basmati over the last 20 years. e.g., India did not lodge a formal protest when the US Federal Trade Commission formally declared “basmati” generic.

Basmati case was decided in favor of India, since the Indian Supreme Court directed the Govt of India in response to a PIL seeking re examination of the Basmati patent by the US based RiceTec Inc.

SETTLEMENT OF DISPUTE

WTO has introduced a mechanism for settling the disputes between member countries known as a 'Dispute Settlement Mechanism' (DSM). This mechanism is the central pillar of WTO governance. Some experts articulate that DSM is the heart of the WTO.

WTO's settling dispute is divided into two parts:-

1. Consultation and Mediation
2. Panel Constitution

If a country feels that its rights under the WTO Agreements have been adversely affected by the action of another country, or if it feels that another country has not discharged its obligations under the WTO Agreements, it may take the recourse to the dispute settlement process of the WTO.¹ According to this process initially opportunity is given to the other country for consultation with a view to resolving the problem. If the problem is not solved, it can approach the Dispute Settlement Body (DSB) of the WTO for formation of a panel.² e.g. If dispute arises between India and United States with respect to implementation of Agreement on Agriculture then either party has to communicate with other party for consultations. If the dispute is not solved by way of consultation then any interested party (may be Canada, since it close to U.S. and having good relations with India) can mediate to solve it by way of Mediation. In the event of the dispute not being solved by way of Consultation and Mediation then the alternate way would be Panel appointment.

Appointment of Panel

Primarily the parties to the dispute will get the opportunity to appoint the panel, if they fail or do not agree on the same, then the Director General will appoint the Panel. The

¹ Das B.L., "WTO Agreements Deficiencies, Imbalances and Required Changes", 1st edition, 1998, Zed book ltd, London. Page no.9

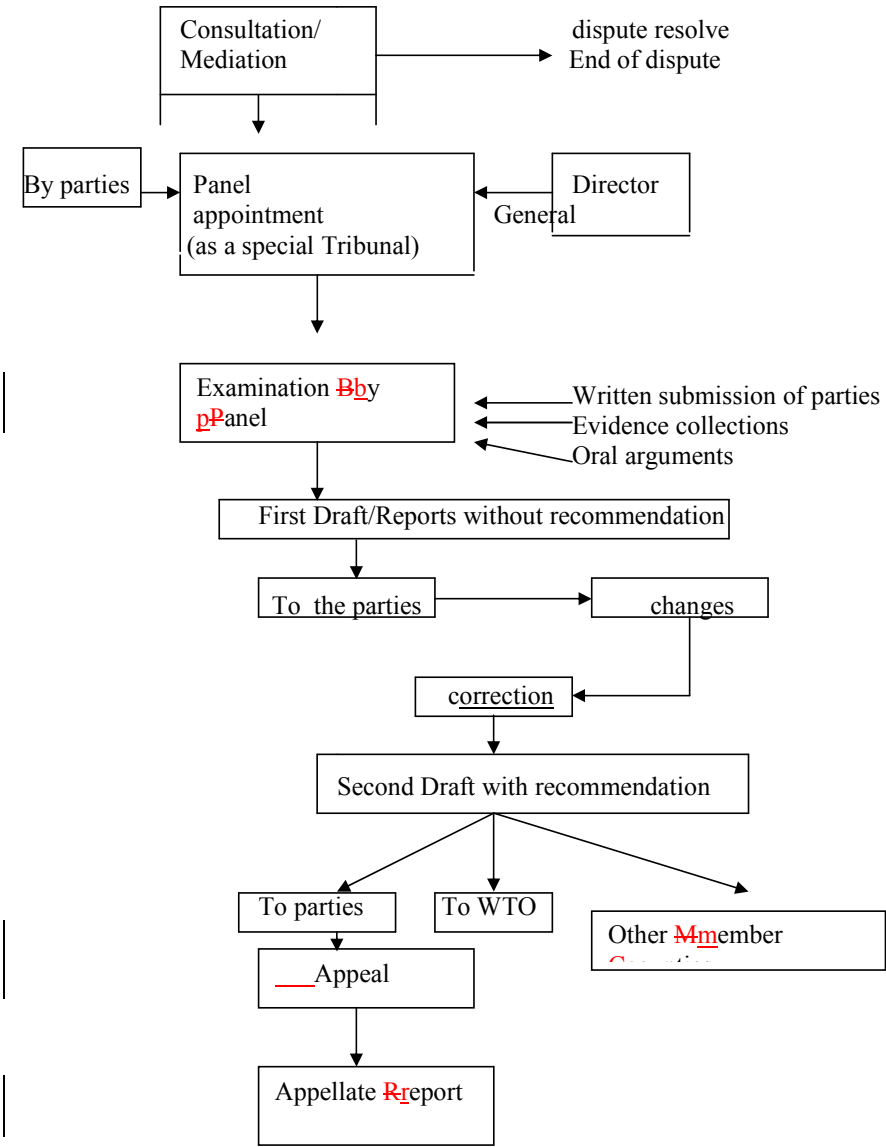
² *ibid.*

whole process is conducted under the observation/guidance of DSB. The panel generally consists of three to five experts.

The Panel appointed either by the parties or the Director General will be working as a special Tribunal and the members of the panel work at individual level. The Panel will conduct the procedure to resolve the issue. In this the panel will take the written submission by the parties on the disputed issue and will collect the evidence from parties. On the basis of submission, evidence and arguments, the panel will make a first report. It is also called as the First Draft. This draft will be communicated to the disputed parties. The distinctive feature of the Draft is, that it does not have any recommendations. It is the draft before recommendations. This draft is prepared to inform the parties concerned about the work done so far. If they have any request with respect to any submission which they have made earlier then they can communicate that request to the panel for changes. If there are no changes then the panel will come with the second draft/ report. This report will be carrying recommendations.

If any part of the dispute or if both are not satisfied with the report then the another recourse would be appeal. The Appellate tribunal will only consider the point of law. They will give the final appellate report. Generally the report created by the panel is adopted by the DSB. Based upon the report, DSB may issue recommendations to be adhered by the country at fault. If country of the fault refuses to follow the recommendation then the DSB can give the permission to affected country to take retaliatory action.

Dispute Settlement



DSB may reject the report by the consensus of the member countries.

There are suggestions to have a time frame for completion of the process of settling the dispute. Generally one year is the time given before appeal and the total period should be one year and three months including appellate report.

How long to settle a dispute?	
These approximate periods for each stage of a dispute settlement procedure are target figures – the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.	
60 days	Consultations, mediation etc.
45 days	Panel set up and panellists appointed.
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute settlement body adopts report(if no appeal)
Total = 1 year (without appeal)	
60-90 days	Appeals report
30 days	Dispute settlement body adopts appeals report.
Total = 1 year 3 Months (with appeal)	

Source WTO understanding; published by WTO headquarters Geneva,

USA v/s Venezuela

On 23 January 1995, Venezuela complained to the Dispute Settlement Body that the United States was applying rules that discriminated against gasoline imports, and formally requested consultations with the United States. Just over a year later (on 29 January 1996) the dispute panel completed its final report. (by then, Brazil too had joined the case by lodging its own complaint in April 1996. The same panel considered both complaints.) The United States appealed. The Appellate Body completed its report, and

the Dispute Settlement Body adopted the report on 20 May 1996, one year and four months after the complaint was first lodged.

The United States of America and Venezuela then took six and a half months to agree on what the United States should do. The agreed period for implementing the solution was 15 months from the date the appeal was concluded (20 May 1996 to 20 August 1997)

The case arose because the United States applied stricter rules on the chemical characteristics of imported gasoline than it did for domestically refined gasoline. Venezuela (and later Brazil) said this was unfair because US gasoline did not have to meet the same standards – it violated the “National Treatment” principle and could not be justified under exceptions to normal WTO rules for health and environmental conservation measures. The dispute body agreed with Venezuela and Brazil. The appeal report upheld the panel’s conclusions. (making some changes to the panel’s legal interpretation) The United States agreed with Venezuela that it would amend its regulations within 15 months and on 26 August 1997 it reported to the Dispute Settlement Body that a new regulation had been signed on 19 August.

More crime cases being filed in the courts of law should be treated as a good news for the Judicial system. It means that the public’s faith in the system has increased. Instead of taking unilateral action, aggrieved parties are going to the courts. In simple words it can be said that the deterrent theory which talks about eye to eye, blood for blood is really in the way of abolishment.

At the formal level it undoubtedly represents a significant step forward in imposing binding legal discipline on the settlement of disputes between members of the WTO. However there are still various loopholes, which are weakening the importance of this procedure. Most of the times the process has proved to be time consuming. Specific time frames have been fixed for various stages. e.g., for the decision of the DSB to form the panel, finalisation of the terms of reference and the membership of the panel, preparation of the report of the panel, adoption of the report by the DSB and implementation of the

recommendation of the panel by erring country. It generally takes 27 months for completion³, which is very detrimental to the aggrieved country and more so if it is a developing country, as it will already be economically and politically weak. Moreover on various occasions some member countries refuse to follow the recommendations. In the case of Nicaragua V/s USA, the panel gave its findings against the US and the council adopted the report, but the US refused to implement the recommendations on the ground that its vital interests would be affected.⁴ Another good example is the hormone dispute between EC and US. The EC had failed to implement the recommendations and rulings of the DSB with respect to its hormones measures by the given date.⁵ Refusal or failure to implement the recommendations and findings of DSB report causes injury to the aggrieved country and if it is a developing economy then the potential effect would be higher than the developed economies.

Additional trend with respect to this procedure is that it is extremely technical and hence requires a high degree of legal training. Most of the developing countries do not have such kind of technical knowledge, whilst law firms in developed countries are easily able to provide legal expertise for handling such disputes. The WTO should arrange special training sessions for the developing and least developed countries so that they get proper technical and legal training of the relevant procedures. The courses, which are currently run by the WTO seem to be a good step towards the solution to this problem, whilst as a

³ ibid. page 12.

⁴ Das B.L., "WTO Agreements Deficiencies, Imbalances and Required Changes", 1st edition, 1998, Zed book ltd, London page 13

⁵ see WTO document WT/DS26/19 as European communities - measures concerning meat and meat products (hormones)

permanent answer the WTO should not only increase the number of such courses but also the variety of courses offered.

Remedies under Dispute Resolution: changes required -

As per the guidelines, which have been given under the Dispute Settlement Understanding (DSU), a successful disputant may be entitled to any of the three remedies. The panel or appellate body could order the removal of the offending measure, mutually agreed compensation or, lastly, authorise retaliation by reciprocal suspension or withdrawal of concessions or obligation under GATT or other WTO Agreements.⁶ However none of these remedies are particularly suited to a dispute involving weak economies⁷. Both removals of the offending measures and compensation seek to balance out an uneven situation without overtly punishing the offender⁸. Moreover the retaliation provision is more likely to work against the developing countries. In their case it may be easy to establish that retaliation in the areas of services and intellectual property may not be effective, since it does not have much prospect in these areas. Hence a case can be easily made out that in their cases, retaliation in the goods sector will be effective, even if there is perceived lapse in the service or intellectual property areas. The reverse in the case of developed countries will not be valid, because in their cases it will be very difficult to provide for effective retaliation in any of these areas. Consequently the provision of retaliation or cross retaliation is likely to be used mainly against the developing countries⁹. Therefore it can be suggested that Articles XIX and XXII of the DSU should be amended to add the classical remedy of damages within the WTO

⁶ The final Act Annex 2 Understanding on Rules and Procedure Governing the Settlement Dispute, 1994, 33 ILM(1994) p.1226

⁷ Mosoti V, "Damages as an Antidote to the remedial deficiencies in the WTO dispute settlement process: A view from Sub-Saharan Africa", NILR 2001 319-355.

⁸ *ibid*

⁹ Das B.L., "WTO Agreements Deficiencies, Imbalances and Required Changes", 1st edition, 1998, Zed book ltd, London. Page no.18

Dispute Resolution Procedure, and this should be awarded to the successful disputant from the developing and least developed world¹⁰.

GATT

The GATT 1994 is a very important agreement for the WTO. As mentioned earlier, this is the principal agreement for the WTO governance. The most important feature of this agreement is the non-discriminatory measures in the form of ‘Most Favour Nation Treatment’ (MFN) and ‘National Treatment’.

Most Favor Nation Treatment

Article I of the GATT 1994 relates to the MFN. This treatment generally explained in two ways, i.e. negative and positive way. In negative term, it says that “No member country (WTO) is allowed to discriminate any other country on any ground”. Meaning that the member country should not allow discrimination on any ground. America cannot say that since Canada is close to it, it will treat Canada separately for its international trade than other countries.

The MFN in a positive way says, “All member countries should treat each other as most favoured nations”, It means America should treat Canada and India equally as most favoured by her.

MFN is always based on equality. This treatment is applicable to the member countries in import and export policies. As per this treatment, the rules regarding import duty should be the same for all other member countries. There should not be differences between the import duties of the two countries.

e.g.: ‘A’ is a country that imposes 10% import duty for steel product. After some time, they started imposing 6% custom duty for some countries. As per MFN ‘A’ is not allowed to do so. However if ‘A’ did it, then other countries can go to the WTO to stop

¹⁰ Mosoti V, “Damages as an Antidote to the remedial deficiencies in the WTO dispute settlement process: A view from Sub-Saharan Africa”, NILR 2001 319-355.

‘A’ from doing such an act. In other words, if ‘A’ charges 6% custom duty, then it should be applicable to all member countries and not a few.

MFN treatment is also applicable for export-oriented policies. This policy should apply equally to all the member countries. In other words, country ‘A’ cannot say that we will export product X to only some countries. ‘A’ should treat all member countries equally and product X must be made available to all member countries.

As far as imports and exports are concerned; various other factors are also involved. Those are customs duty, excise duty, import-export surcharge, tariff taxes, customs fee, quality inspection fee and other rules and regulations are also involved in the MFN treatment.

Case study No.1

- 1) In 1949, there occurred an event in Cuba. Cuba imposed 5% counseling charges in general, however, they started imposing 2% of the same charges for their contracting parties. This was the declaration by the President of Cuba with respect to counselling charges. It was found that counselling charges comes under the MFN treatment and it should be applied equally .

MFN for product:

Generally, the MFN treatment is applicable only to the same products and not to different products under the same category i.e. if tea and coffee are charged differently, then it would not consider as discrimination, because tea and coffee are two different products even though both are under the category of beverages. Therefore the MFN does not bind discriminating country.

Case study No: 2

Once Australia had declared different duty structure for two different chemicals namely Ammonium Sulfate and Sodium Nitrate fertilizers. Chile opposed this discrimination in April 1950 and a committee was established to resolve the dispute. The committee observed the issues and concluded that in Australia those two

chemicals are already treated separately and also some other countries consider these chemicals as being distinct in nature. Lastly the committee said that those two chemicals are not the same product for the MFN even though they come under the category of chemicals.

while inspecting the committee observed that some countries imposed different taxes for the same product, which is not according to the MFN.

Case Study No: 3

Once Spain declared a different duty structure (Import-Export and others) for the same product, i.e. coffee. Spain explained the reason behind this different structure saying that coffee is produced in different parts of Spain. In other words, Spain made distinction on the basis of geographic region. The coffee producers in a particular region were imposing heavy duty while some other geographic region, which produces coffee enjoyed less duty. Likewise, Spain divided duty structure at five different levels. Brazil took issue to this structure. In this case Brazil's stand was that the MFN does not permit the different duty structure for the same product. In June 1981, the appointed committee for this dispute gave its recommendation that the same product should carry the same duty policy for all the countries and their regional parts.

The MFN agreement does not allow any member country to make changes on the basis of economic status. The economic policy is to be the same for all member countries. e.g. If country 'A' is 'A' offering particular duty may be bound duty or unbound duty to some countries, then this is not allowed by the MFN. As per the MFN no country shall be allowed to follow "unbalancing treatment system". It means that if a particular country shows closeness to some countries (on the basis of economic status or any other reason) and keeps away from some other countries, then it is said that that particular country may have taken a stand of unbalancing treatment. The MFN says that this is discriminatory treatment and member countries are not allowed to follow it. In a simple sentence, all member countries should treat each other equally.

Exception to MFN: 19-04-05

There is rule of law that every general rule is carrying some exceptions. The MFN also carries some exceptions. The reason for this exception could be the different economic structures in different places of the world. It can be said that the whole world is divided into three major classes of countries :-

- (1) Developed Countries (Rich and Industrialized Countries) e.g. U.S. and U.K.
- (2) Developing Countries e.g. India, Brazil.
- (3) Least Developed Countries e.g. Vietnam etc., and countries of the African continent.

The MFN implementation varies according to the classification of countries. The developed countries have already reached a certain level in infrastructure, technology and economic development. But majority of the , the developing and least developed countries are still not well established in various aspects of development like infrastructure, and technology

Considering this criterion, the developing and least developed countries were exempted from the timely implementation of the WTO agreements and provisions. In a simple sentence, the important provision of GATT, MFN is essential to implement by all the member countries. However poor countries can enjoy some extra period for implementation. In a real sense, MFN is nondiscriminatory treatment. However, special status to poor countries is not considered as discrimination but as an exception to the MFN. These exceptions come under a clause known as “ Heading Clause” which is also known as “ Enabling Clause” and the exception treatment as per the MFN is called as “Differential and most favourable treatment”.

The MFN also gives some more exception like the MFN’s principle is not applicable to the products which are imported for government use. However, government should not manufacture, produce and sell the same product in the market.

As per Art.20 of GATT 1994, to some extent with special reason, the restriction on import and export can be imposed (General Rule is that no member country is allowed to discriminate each other with reference to import and export duties).

Art 21 of the GATT 1994 is also considered exception to the MFN. This Article is actually made with the intention to safeguard or defend. This Article also allows some restrictions to be imposed on imports and exports.

National Treatment

National Treatment is another non-discriminatory treatment under the purview of WTO Article III of the GATT 1994 speaks about this non-discriminatory treatment. (National Treatment is also considered the main pillar of the WTO. The main aim of this treatment is that imported goods / products should get equal opportunity in the member countries domestic market.)

The main difference between the MFN and the NT is that the MFN is applicable to countries which discriminate on various grounds, while NT is for goods or products. In other words, the MFN says all member countries should treat each other equally and the NT speaks that all products or goods should be treated equally, i.e. foreign product = domestic product.

As per National Treatment, any imported product should be treated as their domestic product by the member country. In the other words, the member countries cannot be allowed to give different or secondary treatment in their market. National Treatment is also considered the main pillar of WTO. The main aim of this treatment is that the foreign goods/products or imported goods/products should get equal opportunity in the member countries domestic market.

Article III of the GATT 1994 gives some rules regarding 'National Treatment'.

(1) Imported products should not be subjected to any internal tax, means, imported products should not attract extra tax in any member countries' domestic market. e.g. If a particular product is carrying 10% taxes in the WTO member country then country A is not allowed to impose additional duty on product originating from country B (an another member country of the WTO) product i.e. 10+ (plus). If 'A' imposes extra taxes on B's product, then this amount violates the principle National Treatment. In a simple sentence, tax structure of any member country should be the same for local product or imported product.

(2) Imported product should not be the subject of secondary treatment, means no member countries can sell, purchase or use the foreign products differently. In the

other words, product should not be kept outside any local market for sale or purchase purpose.

As per National Treatment, imported goods should not be subjected to any kind of discriminatory restrictions.

e. g. Imported goods should not be kept away from the main market place or there should not be a discriminatory transport system for imported goods.

A member country needs to take the measures that all imported goods will have to be given equal treatment. The GATT 1994 made some rules that no member country could impose such any of the discriminatory restriction.

(3) Article 3 of the GATT 1994, which also explains that the member countries cannot take a stand on safeguard provision for their domestic market.

e.g. 'A' is a WTO member country which takes an action against other countries goods to protect its domestic industry by putting indirect restriction. Like 'A' imposed some additional taxes on the goods imported from another member nation with the intention that such goods should not be easily made available at a cheap price in its local market. So, the general public will purchase only low cost goods, which are manufactured in the local area and are not subjected to any additional taxes. This treatment violates the Principles of national treatment and can be challenged under the WTO's dispute resolution mechanism.

Case Studies:

Once a contracting party of the GATT imposed a huge internal tax on oranges for both imported as well as local ones. In reality oranges were not produced as a food in that country means that imposed tax was indirectly put on only imported oranges, that country actually produces apple in a huge quantity and imposed additional taxes was only for oranges and not for apples. Hence, apples used to be sold in large quantities as a cheap fruit while oranges were not. It can be seen that if particular goods which are not produced by a country and that goods may be a part of particular group (in the above mentioned case apples and oranges are under the category of fruits) and protected by imposing extra taxes or tariffs indirectly on imported goods. Article III

of the GATT 1994 does not allow such kind of discrimination to protect and promote domestic industry by providing some taxes and indirect safeguard measure the Art. III especially speaks about the rules for direct and indirect taxes. As per this rule domestic products and imported products (vary specific and similar, in the above mentioned case oranges or apples) should have equal taxes system which may direct or indirect tax provisions.

National Treatment is also applicable only to the same products. We have already discussed the concept of the same product / like product in detail in the MFN discussion. However, Article 3 of the GATT speaks widely on like product. The product under Art 3 is based on comparative analysis, while Art. 1 is based on special differential principles.

The products included u/art 1 are the parts of negotiation of the member countries, while restrictions under Art.3 are dependent on the interpretation and analysis. Various examples of the like products u/art 3 are as follows.

(1) In November 1987 one commission was appointed for Japan's tax system. This commission was specifically appointed to check custom duty and other taxes imposed on wine and other alcoholic products. It was observed that duty and taxes were based on discriminatory principle. As per this, the imported goods become the subject of special restriction. The restrictions specially focused on raw materials. The raw materials required for wine or alcohol manufactured in Japan were not subject of any additional taxes or duties, because lesser use of raw materials. However, the raw material that was used for alcohol / wine manufactured outside Japan was more than used in Japan. Hence, Japan imposed separate tax system for (alcohol / wine manufactured out) imported alcoholic products.

The appointed commission of 1987 , concluded that this discrimination is wrong and the tax system should be equal for locally manufactured and imported alcoholic products. The main outcome of their recommendation was that Both domestic as well as imported alcoholic products should be treated equally .

Article III of the GATT also directs that imported products should not be subject to any restriction, which is based on the protecting of domestic market. In simple

terms discrimination based on safeguard measures for local market is not allowed. Example 1: In Italy, it was observed in 1958 that the Italian Government gave special credit facility to the machinery or instruments sold for agriculture, but this facility was not available to imported machinery for agriculture. At the end, it was recommended that both imported and local machineries for agriculture should get equal status. They should be treated as a like product.

Example 2: In United States the same kind of question arose in June 1992. US excluded their alcoholic and related products from the excise duty. However, this facility was not available for the similar imported products, i.e. wine / beer or similar alcoholic products.

The appointed panel recommended this policy of the US is discriminatory for the like products.

Example 3: In the United Kingdom a system was in force known as “Utility System”. As per this system, some discount was given on the basis of quality and price. However, this discount was not available for imported products. Netherland took objection to the U.K.’s, “Utility System” and registered their opposition then the U.K. also agreed that their system is discriminatory and was protecting domestic products. Hence, later on the U.K. made amendments in their system.

Article III also says that the imported products should not be subject to any special process. Once in the U.K. the Government made some rules for poultry industries that the imported poultry products should be refrigerated in a particular method (spin-chill method). However this restriction was not for local manufactured products. America registered their objection in this regard, and the dispute was solved amicably. Like the MFN, National Treatment is also allowing balancing treatment.

Regional Arrangements / Free Trade Agreements.

The GATT treaty was signed at Geneva in 1947. It was introduced with some important principles like Most Favoured Nation and National Treatment, these treatment/principles were not absolute as there were some exceptions.

As per these treatment/principles, all contracting parties should treat each other without discrimination or as Most Favoured Nation. It was introduced when there were lots of differences between North and South, (developed and developing countries). It was found that the main goal of GATT i.e. encouraging global trade was not an easy task and it needed some support in the form of exceptions to the nondiscriminatory treatment of GATT. Therefore special exceptions were introduced in the form of regional arrangements. Since the import tariffs could not be reduced immediately. It was decided to encourage regional trade agreements to slowly reduce the overall barriers of trade i.e: tariffs. The whole world cannot immediately reduce their tariffs or other restrictions for other countries products. However, if they allow regionally reducing restrictions then this could be a great help to achieve the ultimate goal. regional arrangement was firstly introduced in a big manner in Europe and the European Union was formed. The EU is considered the best example of the regional arrangement where restrictions of different forms have had reduced. Thereafter individual countries moved on to bilateral free trade agreements and later on became a group of free trade agreement countries. e.g. NAFTA(North American Free Trade Agreement), SAFTA (South Asian Free Trade Agreement), etc.

Presently, the trend of bilateral free trade agreements and multilateral free trade agreements has reached a very high level. India has also become very active in this regard. India has signed various bilateral and multilateral free trade agreements. India's bilateral agreements include Indo-Sri Lanka free trade agreement; Indo-Thai FTA etc. and multilateral / regional agreement include the SAFTA, the ASEAN etc. (Please refer to the MFN)

Some worldwide RTAs¹¹

African Caribbean Pacific (AC P)

African Union.

Arab Maghreb Union. (AMU)

Asia Pacific Economic Cooperation. (APEC)

Association of Southeast Asian Nations. (ASEAN)

Australia – New Zealand Closer Economic Relations.

Bangkok Agreement.

Caribbean Community. (CARICOM)

Central European Free Trade Agreement. (CEFTA)

Common Market for Eastern and Southern Africa. (COMESA)

Communaute Economique des Etats de l’Afrique de l’Ouest. (CEDEAO) Economic

Community of West African States (ECOWAS)

Comunidad Andina / Andean Community.

ECO (Economic Cooperation Organisation)

European Free Trade Association. (EFTA)

European Union. (EU)

Free Trade Area of the Americas. (FTAA)

Gulf Cooperation Council. (GCC)

India - Sri Lanka Free Trade Agreement.

Indian Ocean Commission. (IOC)

Latin American Integration Association. (ALADI)

Mercado Comun del Cono Sur. (MERCOSUR)

Organisation of American States. (OAS)

South Asian Association for Regional Cooperation. (SAARC)

South Pacific Forum. (SPF)

Southern African Development Community. (SADC)

¹¹ [Source:WTO website](#)

Anti-Dumping Measures

, The main objective is to help fair trade flow. In other words, the WTO restricts unfair trade between member countries. There are various ways through which unfair trade can be controlled. In the WTO, an agreement on anti-dumping was introduced to curb unfair trade in the form of dumping. Dumping means a country exports an Article at a price less than its domestic price thus dumping its excessive goods into other member countries. This would affect the domestic market of the dumped country. In other words, no country can dump their excessive goods manufactured to other member countries.

As per Article VI of the GATT 1994, anti-dumping duties can be imposed on dumped goods. This measure is also known as safeguard measure for domestic market of any member country. Sometimes there can be an equation made to impose anti-dumping duty.

Anti-Dumping Duty = Domestic price of the goods at exporting country - real export price.

e.g. If the total market for fountain pens in China is 10 million units (selling in the local market at USD 5) and the manufacturers make 20 million units and export the excessive 10 million pens to other countries at a price lesser than its domestic price (export at USD 3), then the Chinese pens would attract anti-dumping duty (duty of approximately USD 2)..

Countervailing Measures

WTO has an agreement known as "Agreement on subsidies and countervailing measures" as per which, member countries can take action in the form of countervailing duties. An open market policy is the mainstay of the WTO regime. and no member nation is allowed to take action which would go against this policy. This policy is basically dependent on exports and imports. In simple terms, exports and imports should be carried out freely without affecting the domestic market of any

other member nation . Sometimes This agreement comes to affect when a country supports its domestic market by giving subsidies (mainly export subsidies). If any member country gives export subsidies to increase their exports, then this action is considered to be in violation of the WTO agreement. e.g. If America produces food products, and the cost of production is \$10 per unit and selling price is \$12 per unit. If the American food producer wanted to export the same products, and gets help in the form of government subsidies, then this support is against countervailing agreement and it becomes a subject of countervailing duties. Export subsidies are not permitted to help the domestic market of any WTO member nation.

Anti-dumping and India

India is a member of GATT since its inception and subsequently it became a member of the WTO. Among the various agreements and their obligations and commitments, India has conveyed its firm commitment to the principle of free and fair trade among the nations, which is the very foundation of multilateral trade order established by the WTO. To fulfill these obligations India has taken a giant step to phase out the quantitative restriction on imports.

Anti-dumping is a reactive trade remedy which protects the domestic manufacturers subject to the fulfillment of certain conditions under the law. Antidumping is considered to be an effective trade measure for domestic industry to protect themselves from dumped goods. Nevertheless, it cannot be taken as an action based on presumption and vague complaint. The requirement must be fulfilled to prove the case of anti-dumping. The general requisites are in the form of evidence. The investigator has to follow the evidence in generally as follows:

- 1) There is dumping .
- 2) There is injury to the domestic industry.
- 3) There is a causal link between dumping and injury, i.e. to say that the dumped imports have caused the alleged injury.

The Customs authority collects anti-dumping duty. However it differs from custom duty. There are certain differences in anti-dumping duties and custom duties. The following are the main differences:

1) Conceptually, anti-dumping and the like measures in their essence are linked to the notion of fair trade. The objective of these duties is to guard against a situation arising out of unfair trade practices but custom duties are means of raising revenue and for development of economy.

2) Anti-dumping and anti-subsidy measures are there as trade remedial measures, while custom duties are fall in the realm of trade and fiscal policies of the government.

3) The objective of the anti-dumping and allied duties is to offset the injurious effect of international price discrimination while custom duties are part of government revenue.

4) Anti-dumping duties are not necessarily in the nature of a tax measure in as much as the authority is empowered to suspend these duties in case of an exporter offering a price undertaking. Thus, such measures are not always in the form of duties/ taxes.

5) Anti-dumping and anti-subsidy duties are levied against exporter/country in as much as they are country specific and exporter specific as against the custom duties which are generally and universally applicable to all imports irrespective of the country of origin and the exporter.

Dumping Margin

Dumping margin is the difference between normal value and export price. This is generally calculated in the terms of percentage. e.g.. If the normal value of a good 'X' in china is \$110 and China exports the same goods for the price \$100 then the dumping margin is calculated as follows:

$$\begin{array}{rcl} \text{Normal value} - (-) \text{Export price} & = & \text{Dumping Margin} \\ 110 & -- & 100 & = & 10 \text{ (percentage)} \end{array}$$

Normal value is the comparative price at which the goods under the complaint are sold, in the ordinary course of trade, in the domestic market of exporting country (in the above mentioned of example China). Normal value cannot be determined by means of

domestic sales. The following are the two alternative methods which may be employed to determine the normal value:

1. Comparable representative export price to an appropriate third country .
2. Constructed normal value, i.e. the cost of the production in the country of origin with a reasonable addition of administrative, selling and general cost and reasonable profit.

Export Price: -

The export price of the alleged goods dumped into India means the price at which it is exported to India.

It is generally the CIF (Cost Insurance Freight) value minus the adjustment on account of ocean freight, insurance, commission etc. so as to arrive at the correct value of the dumped good.

Anti-dumping and anti-subsidies and Countervailing measures in India are administered by the Directorate General of Anti-dumping and Allied duties (DGAAD) functioning in the Ministry of Commerce, Department of Commerce and, Industry, and headed a designated authority who conducts anti-dumping, anti-subsidy and countervailing duty investigations and makes recommendations to the Government for the imposition of appropriate anti-dumping or anti-subsidy duties/measures. Such duty is finally imposed by a notification of the Finance Ministry. Thus, while the Ministry of Commerce recommends the anti-dumping duty, it is the Finance Ministry, which levies such a duty.

Anti-dumping is an effective a trade remedy for unfair trade practices. However, this differs from illegal trade like smuggling. There may be some common features like sending the cheap goods from one country to another. Whilst the difference is the means, the purpose and the most important thing is the way. Smuggling is sending goods by illegal means, while in anti-dumping, goods are sent legally but unfairly.

Agreement on Agriculture :

Agriculture is one of the important activities in most of the developing countries like India and is considered as a backbone of our economy. Agriculture still forms a major part of the total economic activity of many developing countries. The Uruguay round based on the Agreement on Agriculture has incorporated three broad areas of commitments from member states, namely **market access, domestic support and export subsidies**. The underlying objective is to correct and prevent restrictions and distortions in the world agricultural markets.¹² The need for liberalisation in the world trade in agriculture was felt due to heavy subsidisation by the developed countries, which led to distortion in the prices of agricultural commodities. As a result, the poor and developing countries like India were finding it difficult to have access to the markets of agricultural products in the developed countries¹³. In June 2002, the sharp increase in the US farm subsidies was widely condemned as a form of unfair price competition against agricultural exporters of the developing world.¹⁴ In this, the United States lawmakers have approved a package of agricultural subsidies, which could increase global tensions over trade.¹⁵ The bill proposes increasing state payouts to the US farmers by 70% and authorizes the spending of \$180bn (£123bn) in farm subsidies over the next 10 years.¹⁶ The proposal would result in \$4.8bn in annual subsidies to the US farmers. The Managing Director of the International Monetary Fund (IMF), Mr. Horst Koehler expressed disappointment and criticised the US actions, He told "*I am appealing to the rich countries - open your markets,*" He further said, "*At the end, it will pay off for the American people.*"¹⁷

¹² Sharma D. 'Indian Farmers Not Benefiting From W.T.O. Agreement', October 2000, third world network, available at <http://www.twinside.org.sg/title/2099.htm>

¹³ 'Q&A: Trade in Agriculture -- Uruguay Round and after: A brief glimpse' Press information Bureau, Government of India, available at <http://pib.nic.in/focus/foyr2001/foapr2001/aoa1.html>

¹⁴ BBC news, 'WTO launches US steel tariff probe', Monday, 3 June, 2002, available at: http://news.bbc.co.uk/hi/english/business/newsid_2022000/2022849.stm

¹⁵ BBC news, 'US farm aid threatens new trade row', Friday, 3 May, 2002, available at: http://news.bbc.co.uk/hi/english/business/newsid_1966000/1966047.stm

¹⁶ *ibid.*

¹⁷ BBC news, 'US farm bill raises trade tensions', Monday, 29 April, 2002

According to a study conducted by Pesticide Action Network Asia and the Pacific (PANAP) and its NGO partners across seven countries including India. The conclusion was that ‘several years after the Agreement on Agriculture (AOA), one of the World Trade Organisation (WTO) trade and investment pacts governing the global economy, small farmers are not experiencing the prosperity promised by the agreement's proponents’.¹⁸ On this conclusion, the PANAP Executive

Director, Ms. Sarojeni Rengam told, "*These were empty promises, and for millions of small farmers and peasants, especially women, the result has been the entrenchment of poverty, destruction of livelihoods, increased burdens, and for many it has literally meant empty stomachs.*"¹⁹

The problem related to agriculture has been one of the core issues since the Uruguay Round and still not properly resolved. As one of the objectives of the WTO, reducing poverty in the world through smooth trade relations seems to have failed during the implementation of Agreement on Agriculture. There are no export subsidies available to the Indian farmers unlike the one available to US farmers.. India is one of the leading producers of the agricultural commodities in the world.. India is the largest producer of pulses, tea and milk, it is the second largest producer of fruits, vegetables, wheat, rice, groundnut and sugarcane.²⁰ The export subsidies by industrialised countries restrict India from exporting its agriculture products to their markets, while India’s market has already been opened for their industrial products. The story is almost the same when it comes to trade between developing and developed countries. , and it is straining the relation between them. The WTO needs to ask the developed economies to change their policies regarding the agriculture sector, which seem to be against free trade .

available at; http://news.bbc.co.uk/hi/english/business/newsid_1958000/1958660.stm

¹⁸ ‘WTO Agreement on Agriculture (AoA) Harms Small Farmers’, Press Release, ‘Pesticide Action Network Asia and the Pacific, March 7, 2002, available at; <http://www.organicconsumers.org/corp/wto041702.cfm>.

¹⁹ *ibid.*

²⁰ Presentation to the IPC seminar, challenges facing the Doha development Round trade negotiation on Agriculture’ by MR. Devi Dayal, former secretary, Dept of Banking, Ministry of Finance , Government of India; available at; <http://www.agritrade.org/Ottawa%20Presentations/Dayal.ppt>

Agreement on Textile and Clothing

In relation to textile industry from 1974 to 1994, the Multi Fibre Arrangement (MFA)²¹ was in operation among the various countries including India. It was in the form of multilateral agreements. This had provided the framework for industrial countries to use quota to restrict imports of textiles and clothing from more competitive developing countries.²² During the 1986-94 Uruguay Round negotiations, India protested that, “in our country the textile sector provides sustenance to millions of people, many times more than in the developed countries. Restrictions on access to textiles and clothing deny us access to markets in precisely the product areas in which we have become the most efficient producers.”²³ This Round brought the Multi Fibre Arrangement to an end. The new Agreement on Textiles and Clothing (ATC) inherited the quota and committed the WTO members to remove them in four steps over 10 years (1995-2005).²⁴ But even though after more than half of the committed period has elapsed, there is no satisfactory implementation of this agreement by the developed nations. Rather most of the time these countries put unnecessary import duties on textiles from the developing countries. In the case of bed linen from India, the WTO ruled that the EU broke the trade body's rules when it imposed import duties on Indian bed linen in December 1997.²⁵

The schedule for freeing textiles and garments products from import quotas (and returning them to GATT rules), and how fast remaining quotas should expand.

²¹ The MFA system was a departure from two fundamental principles of the General Agreement on Tariffs & Trade (GATT): it allowed restrictions on quantities of imports (i.e. quotas instead of tariffs); and it allowed these restrictions to be targeted at individual countries (normally GATT requires countries to treat all their trading partners equally)

²² Trade and development case study, A joint venture of the world Bank and world Trade Organisation, country studies India, part 4 textile available at <http://www.itd.org/issues/india4.htm>

²³ *ibid.*

²⁴ *ibid.*

²⁵ BBC news, ‘EU suspends Indian linen duty’, Wednesday, 15 August, 2001, available at, http://news.bbc.co.uk/1/hi/english/business/newsid_1491000/1491826.stm (the WTO document/ reference no. for this case is WT/DS/141/14)

The example is based on the commonly - used 6% annual expansion rate of the old Multi Fibre Arrangement. In practice, the rates used under the MFA varied from product to product.

Four steps over 10 years

Step	Percentage of products to be brought under GATT(including removal of any quotas)	How fast remaining quotas should open up, if 1994 rate was 6%
Step 1 : Jan 1995 (to 31 Dec 1997)	16% (minimum, taking 1990 imports as base)	6.96% Per year
Step 2 : 1 Jan 1998 (to 31 Dec 2001)	17%	8.7% Per year
Step 3 : 1 Jan 2002 (to 31 Dec 2004)	18%	11.05% Per year
Step 4 : 1 Jan 2005 Full integration into GATT(and final elimination of quotas .) Agreement on Textiles and clothing terminates.	49% (maximum)	No quotas left

The actual formula for import growth under quotas is: 0.1 x pre-1995 growth rate in the first step; 0.25x step 1 growth rate in the second step;and 0.27 x step 2 growth rate in the third step.

Textiles Monitoring Body .

The TMB supervises the implementation of the agreement. It consists of a Chairman and 10 members acting in their personal capacity. It monitors actions taken under the

agreement to ensure that they are consistent, and it reports to the council on trade in goods which reviews the operation of the agreement before each new step of the integration process. The Textiles Monitoring Body also deals with disputes under the Agreement on Textiles and Clothing. If they remain unresolved, the disputes can be brought to the notice of the Dispute Settlement Body of the WTO.

India and ATC

India has already phased out the maximum import restrictions on textiles, while some countries still misuse this facility by unfair trade practices. The news released on the website Bharattextile.com dated 18th July 2002, said that the Indian Commerce Ministry has initiated anti-dumping investigations into import of mulberry raw silk originating in or exported from China.²⁶ In this petition the authority from India claims that it has sufficient evidence that the normal value of the product under consideration in China is significantly higher than the price at which it has been exported to India indicating that the exporters from China are dumping the subject goods.²⁷ This unfair trade practice by countries like China affects the competitiveness of the Indian textile industry. Moreover the delay shown by the developed countries on implementation of the WTO Textile and Clothing Agreement and imposing unnecessary import duties on Indian textiles heavily affects the Indian textile industry. This sort of practice by developed nations directs in a roundabout way continuation of the MFA, which puts quotas on the Indian textile and clothing exports. Hence, the stand of India in this matter in the Doha ministerial meeting was that there is the possibility of continuation of the Multi-Fibre Agreement (MFA) in one form or another when it lapses in 2005.²⁸ Therefore, it seems that if the WTO makes strict compliance against the unfair trade practice and directs to stop the use of the MFA, then the Indian textile industry would survive and thrive strongly and could become an engine of economic growth in future.

²⁶ The news on 'India: Anti-dumping probe on Chinese Silk Import', 18th July 2002, available at <http://www.bharattextile.com/newsitems/1978226>

²⁷ *ibid.*

²⁸ see 'The Public Affairs Magazine', publications available at: <http://www.indiareacts.com/archivedebates/nat2.asp?recno=238&andctg=business>

WIPO

Synopsis

- 1) History
- 2) Objective
- 3) Agreements
- 4) Secretariat
- 5) Structure

WIPO is a specialized agency of the United Nations. The WIPO came into force in the year 1970. The main objective for this organization is to protect Intellectual Property (IP) worldwide. Intellectual property is divided into two parts namely 'Industrial Property' and 'Copyright and related rights'. Industrial Property includes Patents, Trade Marks, Designs, Geographical Indication etc. Copyright and the related rights consist of artistic work, musical recordings, and all works of art and literature. WIPO is considered as the umbrella organization for protection of both copyright and industrial property.

(i) HISTORY –

WIPO can be traced back to the year 1873, when in this year an international exhibition for inventions was held at Vienna. However, some countries refused to participate in this exhibition, fearing that their inventions might be copied by other countries. In other words, they indirectly protected their intellectual property in the form of the invention. In short, the indirect protection for IP internationally started from the Vienna exhibition, and for the first time, direct protection was granted through a convention known as Paris Convention. This was the first convention which was adopted to protect Industrial Property internationally. This Convention was accepted in the year 1883.

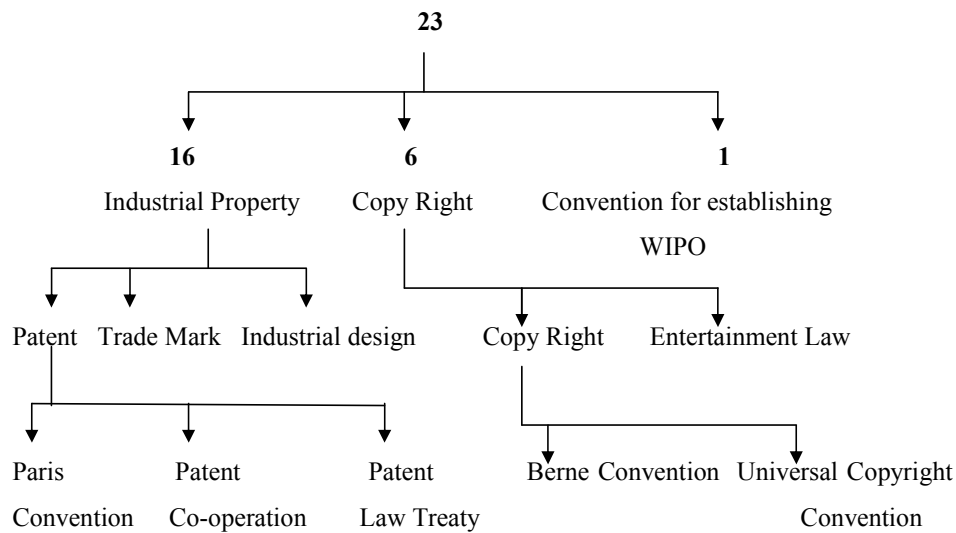
Three years after the Paris convention, another Convention was adopted to protect literary and artistic work, which is known as the Berne Convention. Both the Paris Convention and the Berne Convention independently set up a bureau to administer them.

In the year 1893, both the Bureaus came together and formed an “International Burex for the protection of Intellectual Property Rights”. This Burex was also known as BIRPI (a French acronym).

This BIRPI was shifted to Geneva in the year 1960. After seven years work, BIRPI gave birth to a convention known as convention for establishing the WIPO. Though the Convention for the WIPO was adopted in the year 1967, it really came into force from the year 1970.

(iii)Agreements:

The WIPO consists of 23 agreements out of which 16 deal with industrial property, 6 for copyright and 1 for convention establishing the WIPO. Out of these 23 conventions, 2 are jointly administered by other two organizations.



Now, the founder conventions, i.e. Paris Convention and Berne Convention for BIRPI became important treaties for the WIPO. In a real sense, the WIPO is called as a successor of BIRPI or BIRPI is called as the Predecessor to the WIPO.

Paris Convention

As mentioned earlier, the Paris Convention was the first treaty adopted in the year 1883 to protect Industrial property as a form of Intellectual Property. This convention was revised and amended several times as per requirements. The first revision was held at Brussels on 14 December, 1900. Second at Washington on 2 June, 1911. Third at The Hague on 6 November, 1925. Fourth at London on 2 June, 1934. Fifth at Lisbon on 31 October, 1958, second lastly at Stockholm on 14 July, 1967 and the present version in operation was amended for adaptation on 28 September 1979.

When the Paris Convention was first adopted, it was dealing only with three major forms of Industrial Property- inventions, Trade marks and Designs but the present PARIS CONVENTION covers various additional IP forms such as utility models, service marks, trade names, geographical indication source or appellations of origin and the repression of unfair competition.

The Paris Convention consists of 30 thirty Articles. As per Article I of this ‘the countries to which this convention applies constitute a Union for the protection of Industrial Property’. This Union is also called as a Paris Union. The Article I of Paris Convention further speaks about the various forms of Industrial Property which includes Patent, Trade mark, Trade name, Utility models, Service mark and Industrial Design etc. Article II of Paris Convention deals with ‘National Treatment for Nationals of Countries of the Union’, as per this Article a national of any country of the Union will enjoy the protection of Industrial Property in all other countries of the Union.

Article III speaks about the Treatment of Foreign Nationals. This Article explains that the National of countries outside the Union who are a domiciled or who have real

and effective industrial or commercial establishment in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Article IV deals with the rights of priority in respect of Industrial Property. This Article provides the right of priority for fixed period to the successor of a person who has filed an application for Patent or Registration of Utility Model or Trade Mark or of an Industrial Design in one of the countries of the Union.

Article V is for Patent and especially failure to work or insufficient working. This Article also explains the concept of Compulsory Licensing for various forms of Industrial Property.

Article VI along with its various amendments and Article VII deals with Trade Marks Article while Articles VIII and IX are restricted to Trade Names.

Article X is for goods bearing false indication as to the source of identify of the producer. This Article further comments about unfair competition.

Articles XI and XII are actually created from the lessons learnt from history. These Articles called for temporary protection at international exhibitions and special national industrial property services. As mentioned earlier the roots of WIPO can be traced to the Vienna International Exhibition on Inventions in 1873. Some foreign countries refused to participate in the exhibition with the fear that their inventions would be stolen and hence the Paris convention introduced Article XI to grant protection to prior publication in International Exhibition.

Articles XIII to XXX deal with the organization and its administration. Paris Convention and India

In a true sense, India refused to accede to the Paris Convention because all the specifics under this convention do not have direct or indirect protection in India. India will have to enact its law if it accedes. e.g., Utility Models do not have direct protection in India, so India will have to amend either the present law to protect Utility Models or enact new laws which could be against its own interests. Hence, India refused to accede to the Paris Convention. However, India has started implementing the Paris Convention because

India is a member of the WTO and WTO has a special agreement with WIPO to protect Intellectual Property among its member nations. Therefore India is bound by , TRIPS agreement of the WTO and has hence enacted and amended its laws in accordance with TRIPS. Through this India has indirectly implemented provisions of the Paris Convention and the common provisions of TRIPS.

Patent Cooperation Treaty

The Patent Cooperation Treaty is another important treaty introduced by WIPO. This treaty was adopted on 19-June-1970 at Washington and amended on 28 September 1979, modified on 3 February 1984 and 3 October 2001 (as in force from 01 April 2003).

This Treaty consists of 69 Articles, which are divided into eight chapters. The treaty starts with a preamble and introductory provisions. This treaty is the easiest and cheapest way to get an international patent. India became a member of this treaty in 1998 and since then it has become the second developing country for filing maximum number of international patents after South Korea. The three organizations(CSIR, Ranbaxy and Dr. Reddy's Labs from India that have got special status among the top twenty from developing countries for filing international patents through this treaty. Those are CSIR, Ranbaxy and Dr. Reddy's Labs.

The treaty makes it possible to seek patent protection for an invention simultaneously in each of the member countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a contracting State. It may generally be filed with the national patent office of the contracting State of which the applicant is a national or resident or, at the applicant's option, with the International Bureau of WIPO in Geneva.

(iv) Secretariat:

The headquarters for the WIPO is located at Geneva, Switzerland. The WIPO has the status of a Specialized Agency of the United Nations. Hence it adopted the strategy of the Head of the Secretariat's name with the same name of the UN head i.e. Secretary General. There are Deputy Secretary Generals working for the WIPO. The staff, at present, is more than 900 in number. Their selection is generally based on intellectual level and capacity.

(v) Structure:

There are systems under the WIPO to solve the dispute among the member countries or parties to the Conventions. This includes Coordination Committees, Conferences and General Assembly, which means in other words, if the member countries have any disputes, then they can solve their disputes through the suggested method under the WIPO.

Recently, some more methods have been added to the dispute resolution regimes of the WIPO. The disputes regarding the Domain Names and Trade Marks got a special treatment among them. A uniform policy for the domain name dispute is the best method.

What is a domain Name?

Every website on the internet has an assigned numeric Internet Protocol (IP) address. This allotted numeric address or number is like a telephone number for a particular website. However, it becomes extremely difficult to remember each and every website by the number allotted to it. Thus a system was developed by which the allotted number had a corresponding alphanumeric name known as the Internet Domain Name.²⁹

There are, at present, seven existing gTDLs, four of which are restricted and the other three open. The open gTDLs are:

- .com (for business or firms of a commercial nature).

²⁹ I CFAI journal on IPR, May 2004

- .net (for entities emphasizing data networking activities, especially with respect to the internet).
- .org (for non-profit organisations).

The restricted gTLDs are:

- .edu (for educational organizations).
- .gov (for government institutions and bodies).
- .int (for international treaty organization).
- .mil (for military).

WIPO domain name

Dispute Resolution under the DNS

ICANN adopted the Uniform Domain Name Dispute Resolution Policy (UDRP) on 26 August 1999, with the implementation documents being approved on 24 October 1999. All registrars in the .com., .net, and .org TLD follow the UDRP. The purpose of the UDRP is to set out procedures for the resolution of dispute between the DN customer and any third party (usually a TM owner) other than the registrar of the DN. Disputes that are TM based or DN based are resolved either by court action, agreement or arbitration before a registrar decides cancel, suspend or transfer a DN. The UDRP is implemented through several dispute resolution service providers approved by ICANN. To date 4819 proceedings have commenced under the policy involving 8262 Domain Names. Of these proceedings till now 4441 have been resolved.

Recently, ICANN has announced the addition of a new dispute resolution provider that will offer a regionally accessible capability for the Asian community. The Asian Domain Name Dispute Resolution Center (ADNDRC) has been authorised under ICANN's UDRP. ADNDRC will begin accepting disputes from 28 February 2002 through the offices of its centers in Beijing and Hong Kong. It is the belief of the CEO of ICANN that dispute resolution would be 'easier for people and institutions from Asian countries' with the addition of ADNDRC.

ADNDRC joins three other dispute resolution providers that have been designated by ICANN: The New Yorkbased Center for Dispute Resolution (CDR); Minneapolisbased National Arbitration Forum (NAF); and Genevabased World Intellectual Property Organization (WIPO). North Americabased provider, eresolution, ceased operations in December 2001 due to economic reasons.

The WIPO is the first dispute-resolution service provider and one of the most widely used. It has resolved numerous DN/TM disputes. On 30 April 1999 WIPO submitted the 'Internet Domain Name Process: Final Report, "The management of the Internet Names and Address: Intellectual Property Issues" to ICANN.

Under the uniform Domain Name Dispute Resolution policy, have the Indian companies had any success?

Under the said policy, Indian companies are also beginning to get back their legitimate domain names. The domain name www.theeconomictimes.com and www.timesofindia.com have been won back under the said policy. Two recent successes for Indian companies under the said policy include winning back the domain names www.tata.org and www.philipsindia.com by TATA and Philips India respectively.

Mandatory administration proceedings

- (1) Your domain is identical or confusingly similar to a TradeMark or Service Mark in which the complainant has rights; and
- (2) You have no rights or legitimate interest in respect of the domain name; and
- (3) Your domain name has been registered and is being used in bad faith.

Case:

Microsoft Corporation v/s N. R. Vinod.

Facts:

On 28 April 2004 Microsoft Corporation filed a case against Mr. N.R.Vinod, of M/s Vinsoft, Nanattil Kuzhikkattussery, Thrissur, Kerala, India, for attempts to flinch the domain name 'Microsoft' under the Uniform Dispute Policy formulated by the World Intellectual Property Organization (WIPO) with the Arbitration and Mediation Centre of WIPO.

On the same day the Center transmitted by email to M/s Direct Information Pvt. Ltd. (Database Administrator) Directi.com a request for registrar verification in connection with the domain name at issue. On the 6 May 6 2004, M/sDirect Information Pvt.Ltd. (DBA) Directi.com transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing and technical contact.

The A and M Center verified that all the formal requirements regarding registration of the domain name was satisfied.

Under this policy, a domain name is transferred to the complainant (Microsoft in this case) only if all three conditions are proved.

1. The domain name is identical or similar to the trademark of the complainant,
2. The current holder of the domain name has no rights or legitimate interest in such name,
3. The domain name is registered and used in bad faith.

Factual Background of the complainant and respondent

Complainant manufactures, markets and sells computer software and related products and services, including products and services designed for use on the Internet, under its trademark MICROSOFT. Complainant has registered the trademark MICROSOFT for a wide range of products and services throughout the world, including registration in India.

In connection with the Microsoft mark, complainant has established Internet website located at domain comprised of the Microsoft mark, including <Microsoft.com>and <Microsoft. net>.

Respondent has registered the disputed domain name, <microsoftindia.net>.

Justification of the three conditions:

1. Identical or confusingly similar

The disputed domain name is not identical to complainant's trademark and the question is therefore whether there is a confusing similarity between the two. Panels have recognised that consumers expect to find a trademark owner on the Internet at a domain name address comprised of the company's name or mark.

Complainant's trademark *MICROSOFT* is undoubtedly famous and it is further more clear that it has become distinctive. The panel finds it evident that most users of the internet worldwide will know of the complainant's trademark.

The disputed domain name incorporates in its entirety complainant's famous and distinctive trademark MICROSOFT and the mark is clearly the most distinctive part of the domain name at issue. The addition of a geographical suffix to a trademark, such as the addition of 'India' to MICROSOFT, is a common way of indicating subdivisions of global enterprises or the geographical area that goods are offered under a trademark.

On this background the panel finds that a majority of the users of the internet will immediately recognise a complainant's trademark and assume that the domain name is connected to an internet website owned, controlled or endorsed by complainant.

5-5-5

The risk of such confusion has also been increased by respondents use of the "Microsoft Windows" and "Microsoft Office" figurative marks on his website. The Panel therefore finds that the disputed domain name is confusingly similar to complainant's trademark.

2 Rights or Legitimate Interests

The Respondent has no connection or affiliation with Microsoft and has not received any licence or consent, express or implied to use the MICROSOFT mark in a domain name or in any other manner. The Respondent's use is little more than the use of a famous trademark to divert traffic to competitors and to himself.

In accordance with the above mentioned the complainant has established *prima-facie* that the respondent has no right or legitimate interest in the domain name.

The page is headed 'microsoftindia' without more and of course the domain name is <microsoftindia.net>. The name and page heading do to not truthfully or fairly describe the contents of the page and thus cannot constitute a legitimate use of the domain name.

The complainant has provided evidence that the respondent has directed the disputed domain name at issue to an internet website advertising for products that are in direct competition with complainant's products. The Panel finds it inconceivable that the respondent would have any rights or legitimate interest in the use of a domain name that is confusingly similar to such a famous trademark in connection to the marketing of such competing products.

The panel agrees that the criticism of the complainant posted on the website corresponding to the disputed domain name cannot be deemed as legitimate non-commercial criticism, as it is simply competitive

3.Registered and Used in Bad Faith

Microsoft is a famous and distinctive trademark and the respondent was fully aware of this at the time of registering the disputed domain name.

Moreover, according to previous panel decisions the addition of a generic descriptive term such as INDIA and the generic term ".net" to the protected previous panel decisions have also found that the addition of a generic word and hyphen does not detract from a finding of confusing similarity and that the addition of the generic top-level domain name ".com" is irrelevant when determining whether a disputed domain name is confusingly similar to a protected mark.

Because respondent's domain name entirely incorporates Microsoft's recognized mark with the mere, generic addition of "INDIA" it is confusingly similar in appearance, sound and commercial impression to the Microsoft mark.

The panel accepts the complainant's assertion that the respondent's registration of the domain name incorporating in its entirety the trade mark of the complainant is an attempt to intentionally divert customers to its Internet website for financial gain.

After the respondent had been contacted by the complainant and informed that the complainant demanded transfer of the disputed domain name, the respondent alerted the content of the website corresponding to the disputed domain name so that it now only displays the word "welcome" together with respondent's email address. In his response, the respondent has held that he is only using the website for personal purposes, despite complainant's evidence that the website has been used for the marketing of products in competition with the complainant. In the view of the panel this is a further indication of bad faith.

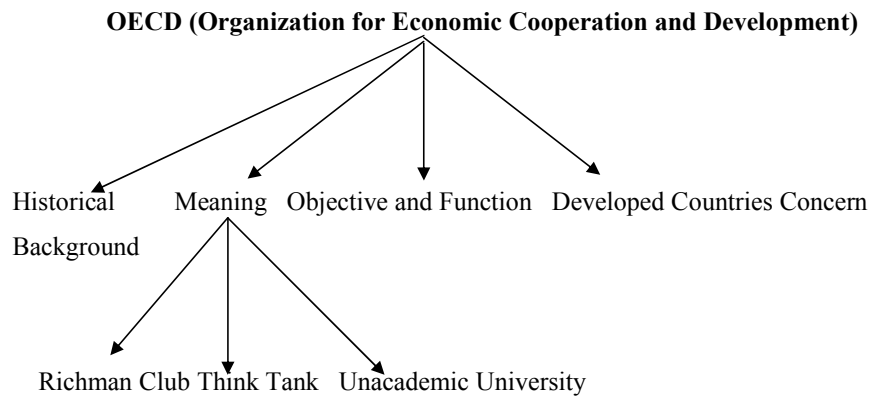
The panel thus finds that the respondent has registered and used the disputed domain name in bad faith.

OECD (Organization for Economic Cooperation and Development)

Historical Background³⁰

The OECD grew out of the Organisation for European Economic Co-operation (OEEC), which was formed to administer American and Canadian aid under the Marshall Plan for the reconstruction of Europe after World War II. Since it took over from the OEEC in 1961, the OECD's vocation has been to build strong economies in its member countries, improve efficiency, hone market systems, expand free trade and contribute to development in industrialized as well as developing countries.

In recent years the OECD has moved beyond a focus on its member countries to offer its analytical expertise and accumulated experience to developing and emerging market economies.



³⁰ The whole information in this Chapter has been taken by the OECD Web Site

The OECD: What is it?

The Organisation for Economic Co-operation and Development has been called a think tank, a monitoring agency, a rich man's club and an unacademic university. It has elements of all, but none of these descriptions captures the essence of the OECD.

The OECD consists of a group of 30 member countries in a unique forum to discuss, develop and refine economic and social policies. They compare experiences, seek answers to common problems and work to coordinate domestic and international policies to help members and non-members deal with an increasingly globalised world. Their exchanges may lead to agreements to act in a formal way-- by establishing legally binding agreements to crack down on bribery, or codes for free flow of capital and services. The OECD is also known for 'soft law' -- non-binding instruments on difficult issues such as its guidelines for multinational enterprises. Beyond agreements, the discussions at the OECD makes for better-informed work within member countries' own governments across the broad spectrum of public policy and help clarify the impact of national policies on the international community.

The OECD is a group of like-minded countries. Essentially membership is limited only by a country's commitment to a market economy and a pluralistic democracy. It is rich, in that its 30 members produce two thirds of the world's goods and services, but it is by no means exclusive. The core of original European and North American members has expanded to include Japan, Australia, New Zealand, Finland, Mexico, Korea and four former communist states in Europe: the Czech Republic, Hungary, Poland and the Slovak Republic. Non-members are invited to subscribe to OECD agreements and treaties, and the organisation now involves in its work some 70 non-member countries from Brazil, China and Russia to least developed countries in Africa and elsewhere.

The OECD is at the forefront of efforts to understand and help governments respond to new challenges such as sustainable development, electronic commerce and biotechnology. This work underpins discussion by member countries when they meet in

specialised committees of the OECD. Much of the research and analysis is published either on paper or online

Who does what?

Committees

The secretariat in Paris carries out research and analysis at the request of the member nations of the OECD. The members meet and exchange information in the committees devoted to key issues with the decision-making power vested with the OECD Council.

The Council is made up of one representative for each member country plus a representative of the European Commission, who takes part in the working of the OECD. Each member country has a permanent representative to the OECD who meets regularly in the Council. The Council meets at ministerial level once a year to discuss important issues and set priorities for OECD work. The committees discuss ideas and review progress in particular areas of policy. There are in all about 200 committees, working groups and expert groups.

The committees are: Economic Policy Committee; Economic and Development Review Committee; Committee for Monetary and Foreign Exchange Matters; Environment Policy Committee; etc. The 2,300 staff of the OECD Secretariat in Paris work directly or indirectly to support the activities of committees. Some 700 economists, lawyers, scientists and other professional staff, mainly based in a dozen substantive directorates, provide research and analysis.

The Secretariat is directed by a Secretary-General, assisted by four Deputy Secretaries-General. The Secretary-General also chairs the Council, providing the crucial link between national delegations and the Secretariat.

The OECD works in two official languages: English and French. Staff members are citizens of OECD member countries but serve as international civil servants with no national affiliation during their OECD posting. There is no quota system for national representation; there is simply an equal opportunity policy of employing highly qualified men and women with a cross-section of experience and nationalities.

Funding.

The OECD is funded by the member countries. National contributions to the annual budget are based on a formula related to the size of each member's economy. The largest contributor is the United States, which provides 25% of the budget, followed by Japan. With the approval of the Council, countries may also make separate contributions to particular programmes or projects.

The work of the OECD

The OECD provides a setting for reflection and discussion, based on policy research and analysis that helps governments shape policy that may lead to a formal agreement among member governments or be acted on in domestic or other international fora. Unlike the World Bank or the International Monetary Fund, the OECD **does not dispense money**.

ICSID (International Center for Settlement of Investment Disputes)

Historical Background³¹

On a number of occasions in the past, the World Bank as an institution and the President of the Bank in his personal capacity have assisted in mediation or conciliation of investment disputes between governments and private foreign investors. The creation of the International Center for Settlement of Investment Disputes (ICSID) in 1966 was in part intended to relieve the President and the staff of the burden of becoming involved in such disputes. But the Bank's overriding consideration in creating ICSID was the belief that an institution specially designed to facilitate the settlement of investment disputes between governments and foreign investors could help to promote increased flows of international investment.

The ICSID was established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which came into force on October 14, 1966. The ICSID has Administrative Council and a Secretariat. The Administrative Council is chaired by the President of the World Bank and consists of one representative of each State, which has ratified the Convention. Annual meetings of the Council are held in conjunction with the joint Bank/Fund annual meetings.

ICSID is an autonomous international organization. However, it has close links with the World Bank. All of ICSID's members are also members of the Bank. Unless a government makes a contrary designation, its Governor for the Bank sits *ex officio* on Administrative Council of ICSID. The expenses of the ICSID Secretariat are financed out of the Bank's budget, although the costs of individual proceedings are borne by the parties involved.

³¹ The whole information in this Chapter has been taken by the ICSID and World Bank Web Sites

Pursuant to the Convention, ICSID provides facilities for the conciliation and arbitration of disputes between member countries and investors who qualify as nationals of other member countries. Recourse to ICSID conciliation and arbitration is entirely voluntary. However, once the parties have consented to arbitration under the ICSID Convention, neither can unilaterally withdraw its consent. Moreover, all ICSID Contracting States, whether or not parties to the dispute, are required by the Convention to recognize and enforce ICSID arbitral awards.

Besides providing facilities for conciliation and arbitration under the ICSID Convention, the Centre has since 1978 had a set of Additional Facility Rules authorizing the ICSID Secretariat to administer certain types of proceedings between States and foreign nationals, which fall outside the scope of the Convention. These include conciliation and arbitration proceedings where either the State party or the home State of the foreign national is not a member of ICSID. Additional Facility conciliation and arbitration are also available for cases where the dispute is not an investment dispute provided it relates to a transaction, which has "features that distinguishes it from an ordinary commercial transaction." The Additional Facility Rules further allow ICSID to administer a type of proceedings not provided for in the Convention, namely fact-finding proceedings to which any State and foreign national may have recourse if they wish to institute an inquiry "to examine and report on facts."

A third activity of ICSID in the field of the settlement of disputes has consisted in the Secretary-General of ICSID accepting to act as the appointing authority of arbitrators for ad hoc (i.e., non-institutional) arbitration proceedings. This is most commonly done in the context of arrangements for arbitration under the Arbitration Rules of the **United Nations Commission on International Trade Law (UNCITRAL)**, which are specially designed for ad hoc proceedings.

Provisions on the ICSID arbitration are commonly found in investment contracts between governments of member countries and investors from other member countries. Advance consents by governments to submit investment disputes to the ICSID arbitration can also be found in about twenty investment laws and in over 900 bilateral investment treaties.

Under the ICSID Convention, ICSID proceedings need not be held at the Centre's headquarters in Washington, D.C. The parties to an ICSID proceeding are free to agree to conduct their proceeding at any other place.

In addition to its dispute settlement activities, ICSID carries out advisory and research activities relevant to its objectiveives and has a number of publications. The Centre collaborates with other World Bank Group units in meeting requests by governments for advice on investment and arbitration law. The publications of the Centre include multi-volume collections of Investment Laws of the World and of Investment Treaties, which are periodically updated by ICSID staff. Since April 1986, the Centre has published a semi-annual law journal entitled ICSID Review-Foreign Investment Law Journal. The journal was recently rated as one of the top 20 international and comparative law journals in the United States.

UNCITRAL

(United Nations Commission on International Trade Law)

SYNOPSIS:

- (a) Why UNCITRAL
- (b) History
- (c) Composition
- (d) Conventions under UNCITRAL
- (e) India's Concern.

UNCITRAL was established to promote International Trade. It was observed and concluded that trade is the best weapon to improve the economic status of any state. However, there was a big problem for the International Trade, as international trade has been suffering the problem of different legal systems. At global level there are various legal systems at work. Common legal system (based on Commonwealth Countries) and Civil Legal system (based on Roman principles) are the best examples. There are some basic differences in these systems. The UNCITRAL tries to harmonize the different legal systems in the form of Convention to promote international trade. The UNCITRAL is the core legal body within the United Nation system in the field of International Trade Law. UNCITRAL is also called as a legal body with universal membership specializing in commercial law reforms worldwide for over thirty years. Its main objective is to modernize and harmonise rules relating to international business. It has been accepted widely that trade means faster growth, higher living standards and new opportunities through commerce. In order to increase these opportunities worldwide UNCITRAL is formulating modern, fair and harmonised rules on commercial transactions. These include:

- Conventions, model laws and rules which are acceptable worldwide
- Legal and legislative guides and recommendations of practical value.

- Updated information on case laws and enactments of uniform commercial law.
- Technical assistance in law reform projects
- Regional and National seminars on uniform commercial law.

(a) History:

The UNCTAD conference passed a resolution called UNDD (United Nations Development Decade) in 1961 in the General Assembly of the United Nations. Subsequently the Cairo Conference was held in the year 1962 and in this conference International Trade was considered as a main weapon to improve the economic status of any nation and on this basis UNCITRAL was established in the year 1966 but it came into force from the year 1967.

(b) Composition:

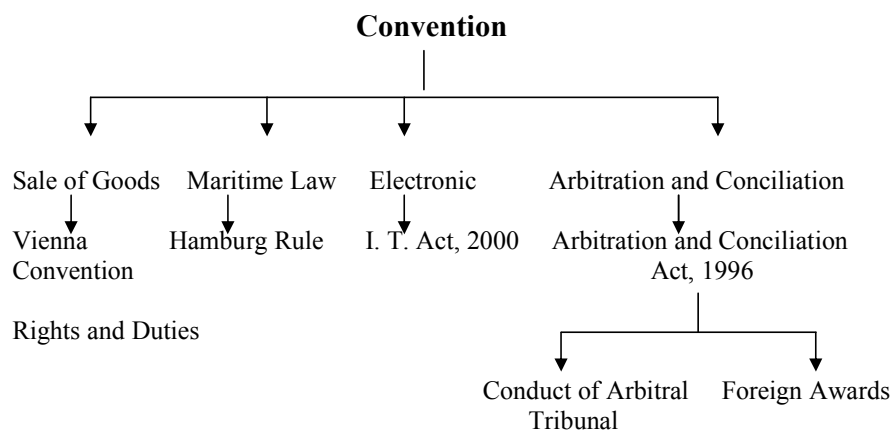
The commission is presently composed of 36 member states elected by the General Assembly. (The General Assembly has recently voted to expand the membership to a total of 60 nations) Membership is structured so as to be representative of the different geographic regions and its principal economic and legal systems. Members of the commission are elected for a term of 6 years with the term of half of the members expiring every 3 years.

(c) Conventions:

There are various Conventions held to harmonize the different legal systems. The Vienna Convention was held to unify the various legal systems regarding Sale of Goods Act. Especially the Rights and Duties of seller are discussed in the Vienna Convention and a model law was made. India is one of the member countries to the Vienna Convention. Therefore, the Indian Parliament passed the Special law for Sale of Goods Act, in accordance with the Vienna convention.

Under the UNCITRAL, Hamburg rule regarding Maritime law was also introduced. After this a convention was held for the electronic model. India is member country to this convention and the Indian parliament passed the Information Technology Act 2000 as per UNCITRAL model.

The UNCITRAL also introduced the Convention on Arbitration and Conciliation and model law for International Arbitration and Conciliation made in this Convention. All the member countries of UN are directed to adopt the law for International Arbitration and Conciliation. Therefore Indian Parliament has passed the Arbitration and Conciliation Act 1996. There is special provision made in the new act for Foreign Award.



Secretariate:

The Secretariate of the UNCITRAL is the International Trade Law branch of the United Nations office of Legal Affairs. It is located at Vienna .

Foreign Investment

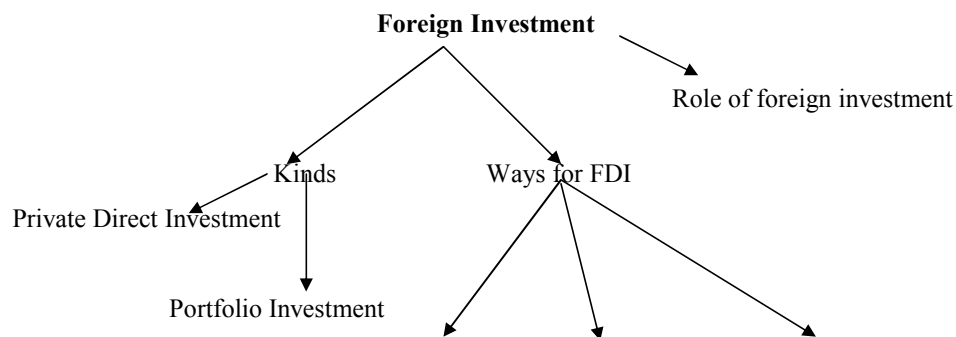
Nowadays foreign investments have become important issue for many countries. This has direct relation to economic growth of any country. There have been two views with respect to foreign investment. Some people believe that this may raise the capital and will help to increase the industry or will improve the existing industry. However some consider that foreign investment is a tool used by developed countries to recolonise the developing countries.

There are generally two kinds of foreign investments :

1. Direct Investment
2. Portfolio Investment

In the direct investment, foreign investor generally an MNC(MultiNational Corporation) is allowed to invest in foreign countries. Sometime this is called as Private Direct Investment or FDI. In this investment the investor is holding full control on his investments. However, the portfolio investment is for only some sort of property invested in foreign countries means investor do not have absolute control under portfolio investment. Portfolio investment is generally in the forms of investment in shares, bonds and depositing money in the banks.

Trans National Corporations are playing very important role in foreign investment. Today 75% of world's production is control by 300 multinational.



Joint Venture Merger and Acquisition Transplant

There are three major ways are for Foreign Investment:

- 1) Joint Venture: - as per JV, a minimum of two companies or firms can come together for common business purpose, in such cases foreign companies are investing heavily with local industries e.g. TVS Suzuki
- 2) Merger and Acquisition: - as per this, two or more companies can merge and acquire each others assets and become one, e.g. BSNL is in process of MandA with MTNL. At the international level Japan and AChina are in lead in terms of number of mergers and acquisitions. Transplant: - Transplant means setting up plant of a particular company from one country to another country. Internationally Japanese companies are going to European countries for this purposes, e.g. Indian automobile company, Bajaj Auto Limited has decided to set up a plant in Italy

Role of Foreign Investment

Foreign investment plays a very important role in the economy of any country. As mentioned earlier there is a direct relation between Foreign Investment and the economic growth of a country. It has been observed that through Foreign Investment, some countries have utilised that capital and used it for economic growth like investing in building infrastructure and generating more employment and more revenue etc. However, sometimes it has been found in analysis that through FI most of the developed countries are trying to enter in the developing countries market and willing to take benefit of their weaknesses.

In the Indian budget of 2004-5 the Finance Minister of India proposed FI increase in three special areas i.e. Telecom Sector, the range was increased from 49% to 74%, Civil Aviation up to 49 % and also FDI limit with respect to Insurance is proposed to be enhanced. There may be good or bad impact on this sector in India.

Limitations of problems of FDI: - Foreign investment carries some limitations, which are as follows 21-5-5

1. Most of the times Foreign Investors and especially the MNC are focusing only high profit area and not essential socio economic zone of particular country.
2. Maximum times the countries in which FI is coming will have to subject of some conditions/restrictions and in that the most dangerous condition is the participation in the framing of economic policy. In this foreign investor are twisting the policy as per their wishes. (see the news by statesman in the last part of this book)
3. Foreign investment is also affecting the Balance of Payment of a particular country.

Control on foreign investment: - There have been various ways in which foreign investment can be controlled. If it is found not in the interest of a particular nation then that country might put restrictions on the foreign investor like up to certain limits it will allow or any other ways as that country thinks fit in its national interest.

UNIDROIT

‘UNIDROIT’ is the Principle of International Commercial Contract. This is the great achievement of the International Institute for Unification of Private Law. Actually this achievement is the biggest outcome of the intensive research conducted since 1980, with the notable contribution of a large number of eminent lawyers from all the five continents of the world³².

These principles have been useful to the different law systems existing throughout the world for commercial transactions. Some law systems have developed by traditional or customary manner, while some have developed by Judicial decisions. The Civil Law system and Common Law system are also not an exception to this analysis. There are various similar aspects and distinguishing features between these two systems in respect of Contract.

A contract is an agreement with undertakings (promises or obligations) on both sides; and is an agreement that is intended to have legal consequences.³³ Therefore generally an agreement is the basic requirement for the formation of contract in both Civil Law as well as Common Law system. The dictionary meaning of the word agreement is an arrangement between two or more persons as to a course of action; a mutual understanding; a covenant, or treaty³⁴. The main pillars for agreement are Offer and Acceptance. Generally accepting the offeror’s offer concludes the contract by offeree.21-5-5

Civil Law system—The name of this system originally came from the Roman term *Jus Civile* had meant, at its widest, the law of a particular state, or, more narrowly, the law of Rome itself.³⁵The main and important characteristic of the Civil Law system is codification or this system is said to be a codified law system and the first achievement of this movement for codification of Roman element was the enactment of Napoleon’s

³² ‘Principles of International Commercial Contracts’, ‘UNIDROIT’, 1994, International Institute for the Unification of Private Law’

³³ Koffman L., Macdonald E., ‘Law of Contract’. Fourth edition, 2001, Tolly Croydon. page no.7

³⁴ <http://dictionary.oed.com/cgi/entry/00004658>

³⁵ Nicholas B. “French law of contract”, second edition, 1982, Butterworths, page no.1

Comment [JCS2]: Instant of dictionary meaning I have to give general meaning

Civil Code in 1804³⁶. French laws and German Laws belong to the Civil Law system and their law is called the civil law. They belong to civil law because their method of thought, their attitude towards law and its sources, are derived from the centuries in which the *Jus commune*, Romanistic but not Roman, was created out of the materials in the *Corpus Iuribus*³⁷

Common Law System--Common law, which developed in Britain after the Norman invasion, is based on precedents. Each decision of a judge is a precedent that may be used to guide other judges in making subsequent decisions. Thus, the common law is constantly evolving. Traditionally, it has not been written down anywhere as a body of law, but there are now compilations of the common law. Especially English Law, Australian Law and Indian Law are belonging to Common Law system.

Comparison of Common Law system and Civil Law system-- Common law has been referred to as the "common sense of the community, crystallized and formulated by our ancestors."³⁸ It exists and applies to a group on the basis of historical legal precedents developed over hundreds of years. Because it is not written by elected politicians, but rather by judges, it is also referred to as "unwritten" law. Judges seek these principles out when trying a case and apply the precedents to the facts to come up with a judgement. Common law is often in contrast with civil law systems, which require all laws to be written in a code or written collection. Civil law deals with rights and duties between individuals. It is inspired by Roman law, the primary feature of which was that laws were written into a collection; codified, and not determined, as is common law, by judges. The principle of civil law is to provide all citizens with an accessible and written collection of the laws that apply to them and that judges must follow. Unlike common law courts, courts in a civil law system look first to the code, then to previous decisions, for guidance.

³⁶ *ibid*, page no.2

³⁷ *ibid*,

³⁸ <http://www.worldbank.org/html/prddr/trans/novdec99/WDIComLaw.htm>

Common law countries: - English Law

The English law is the basic law and belongs to the common law system. The English legal system has a much more complicated journey to make before getting to the law of contract.³⁹ And agreement in English Contract law is not the mental state but an act, and, as an act, is a matter of inference from conduct. The parties are to be judged, not by what is in their minds, but what they have said or written or done.⁴⁰

German legal system. Germany also follows the Civil law system. There is German civil code(*Das Bürgerliches Gesetzbuch: DGB*)----- in Germany, which is a unified and codified civil law and also the most important source of private law.⁴¹ In German legal system the English word ‘contract’ is translated as ‘*Vertrag*’ and an agreement is translated as ‘*Verereinbarung*’.⁴² The DGB is divided into five books.

French Legal system: -

The French legal system also belongs to the Civil law system. This system has also developed through the Roman law principle like the German legal system. The French law system is a codified law system, which creates an expectation that all law will be presented in a systematic form, and a good deal of the additional legislation has itself been reduced to the form of subordinate codes.⁴³ The French Civil Code is actually divided into three books, and the provision related to contracts is given in the book three⁴⁴. In legal French the English word “contract” is translated as “*contrat*” and “*Convention*”, the difference between the two being that whereas contracts create

³⁹ Owsia P. ‘Formation of Contract’, A comparative study under English, French, Islamic And Iranic law.1994, Graham and Trotman Limited, London. Page no. 124.

⁴⁰ Cheshire, Fifoot and Furmston’s, ‘Law of Cotract’ , 2001,Butterworths,London. Page no.32(this is the **objectobjective**ive approach of common law)

⁴¹ Foster N, ‘German legal system **&and**laws’, 2nd edition, 1993,Blackston Press Limited.page no.229

⁴² Draetta U **&and**Lake R B, ‘ Letters of intent and other precontractual documents’ second edition,1994, Butterworth Legal Publishers.page no.52.

⁴³ Supra Fn 4. Page no. 7

⁴⁴ as per CRABB JOHN H ‘The French Civil Code’ , as amended to July !, 1976,Fred B. Rothman **&and** Co, New Jersey.

obligation, *convention* may either create obligation or have some other legal consequence, such as the transfer or extinction of an obligation.⁴⁵

The comparison of the elements of Agreement between Civil law system and Common law system along with the UNIDROIT provisions. The comparison have been given one by one such as follows; (Spacing)

1. Subjective or Objective approach,

Civil law system has been developed through the influence of Romanistic approach, while Common law system has developed through the Judicial decision.

The development of these laws has an effect on their approaches also. The English law is the main law or rather the basic law of the Common law system, and this law is usually in the favour of Objective approach, the test for the existence of an agreement is objective rather than subject.⁴⁶ The French Law and German law are the leading examples of Civil law system, and the approach of these laws is subjective rather than objective. According to Nicholas Barry in his French law of contract (1992), 'Agreement is understood: as a subjective approach of two minds or as an objective appearance of agreement. English law is in favour of latter approach⁴⁷. The common law's objective approach looks to the external appearance of Consent, the reason behind this approach is the interest of commercial convenience and the security of transactions while French law is more concerned for justice in the individual case than for commercial expediency.⁴⁸

2. **Offer:**

There is similarity in the view of offer in both the systems that the offer is making for the acceptance. And this view is also accepted by UNIDROIT. According to Article 2.1 of UNIDROIT 'A contract may be concluded either by the acceptance of an offer or by conduct of the parties'. Which indicate that offer is the starting point of contract. While the Article 2.2 says about the definition of offer such as 'A proposal for concluding a

⁴⁵ Supra Fn4. Page no.38.

⁴⁶ Mckendrick E, 'Contract law', Fourth edition, 2000, MACMILLAN PRESS LTD. Page no.29

⁴⁷ Nicholas B. "French law of contract", 1982, Butterworths, page no.35.

⁴⁸ *ibid* pg 48

contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance'. This Article of UNIDROIT is actually covering the requirement of both common and civil law system. As mention earlier, the common law requires that the offer must be firm and definite⁴⁹while intention is very important in civil law⁵⁰. Both definiteness and intention are important for creating a contract and an already existing requirement of both the systems is perfectly covered under UNIDROIT.

3. Offer and invitation to treat: -

There is a different approach of the common law and civil law systems in relation to offer and invitation to treat. In English law advertisement, catalogues, and displays of goods for sale are not an offer but mere invitation to offer while this is not the case in French law. French law treats advertisement, catalogues, and displays of goods for sales as public offer.⁵¹In German law if a proposal by its terms excludes the binding effect of an offer, it is generally considered to be an invitation to treat and not an offer.⁵² There is no concept of invitation to treat in the UNIDROIT.

Comment [JCCS3]:

4. Effectiveness of offer and withdrawal of offer.

In common law the knowledge or notice is essential to the offeree then it becomes an effective offer.⁵³ In civil law the offer is effective when it received to offeree. The same concept adopted by UNIDROIT in the Article 2.3 (1), *which says that 'an offer becomes effective when it reaches the offeree.'* *The second part of the same Article speaks about the withdrawal of offer*. An offer, even if it is irrevocable, may be withdrawn if the withdrawn reaches the offeree before or at the same times as the offer.' The provision of withdrawn also exists in both the system as same manner as given in UNIDROIT.

Comment [JCCS4]: check the case of nephew

5. Revocation of offer

⁴⁹ see the page no 5 of this essay , in English law section.

⁵⁰ In German law 'declaration of intent' is good example because this declaration is based of German law

⁵¹ Supra 4, page no 62

⁵² Draetta U & Lake R B, ' Letters of intent and other pre-contractual documents' second edition,1994, Butterworth Legal Publishers.page no.53 declaration of intent' is good example because this declaration is based of German law

⁵² Supra 4, page no 62

⁵³ the case decided of the nephe

In French law offers may not be freely revoked⁵⁴ and in the German law has the effect of binding nature of the offer i.e. the offeror cannot revoke the offer after it has been received by the offeree.⁵⁵ The opposite provision in English law and Indian Contract law is exactly opposite, the offeror can revoke his offer any time before it is accepted by the offeree. In short the common law approach is freely revocable towards offeror while this is not so in case of civil law system. Due to the extreme opposite situation, the UNIDROIT suggested in its Article 2.4 “... *Only possibility is that of selecting one approach as the main rule, and the other as a exception*”⁵⁶

6. Lapse of time.

Both English law and French law accept that an offer will lapse with the passage of time, but this principle is more prominent in French law and period is perhaps shorter.⁵⁷

7. ‘Mail Box’ rule

There is a ‘mail box’ rule in common law system⁵⁸, which is not seen in civil law system. As per this rule the contract is formed when the offeree despatches his acceptance, that is, puts it in mailbox or otherwise entrusts it to the post office. German law believes in the concept that the absence of ‘mailbox rule’ accelerates contract formation.⁵⁹

Comment [JCCS5]: check the english case law for mail box rule.

8. Acceptance: - “Mirror image rule” and silence acceptance.

English law as well as French law are also in favour of ‘mirror image’ rule. According to this rule the acceptance must correspond exactly to the offer. The similarity in civil law and common law is that the acceptance is effective when it reaches the offeror.⁶⁰ An acceptance that does not confirm to the offer is considered a counter-offer. The trend

⁵⁴ Nicholas B. “French law of contract”, 1982, Butterworths, page no.64.

⁵⁵ Draetta U & Lake R B, ‘ Letters of intent and other pre-contractual documents’ second edition, 1994, Butterworth Legal Publishers. page no.54.

⁵⁶ Supra Fn1

⁵⁷ Nicholas B. “French law of contract”, 1982, Butterworths, page no.69

⁵⁸ ‘Adams V Lindsell’ (1818) 1 B & Ald 681;106 is the famous leading case in respect of this rule, see the page 10 of this essay.

⁵⁹ Draetta U & Lake R B, ‘ Letters of intent and other pre-contractual documents’ second edition, 1994, Butterworth Legal Publishers. page no.54.

⁶⁰ even there is mailbox rule in common law , which say contract is conclude when the acceptance is sent off, but the offer in this system is effective when it communicate to the offeror.

accepted by UNIDROIT in relation to acceptance is in Article 2.6 (1) such as; ‘*A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.*’⁶¹The second sentence of this Article is speaks about the general rule of silence with respect to acceptance that “silence or inactivity does not in itself amount to acceptance”. Both French law and English law in respect of silence in acceptance have given the same treatment.⁶² Only the slight difference in French law as per the *Cour de Cassation* has allowed the lower courts to interpret silence as acceptance where the offer was made creating an ‘exclusive interest’.⁶³

9. Time for acceptance

There are similarities in both common law and civil law system for the period of acceptance. i.e. the acceptance must be given within the specified time. If there is no specific time then it must be given within reasonable period. In addition to this the UNIDROIT accepted the civil law trend i.e. ‘...An oral offer must be accepted immediately unless the circumstances indicate otherwise’.⁶⁴ The similar approach in both common and civil law systems is also notable one that the acceptance must be unconditional and qualifying. Furthermore Article 2.10 gives the guideline about the withdrawal of acceptance that ‘*Acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.*’ Actually there is little dissimilarity in respect of withdrawal of acceptance provision in the common law, rather than civil law and UNIDROIT, because of mailbox rule.⁶⁵

10. Consideration or *Causa*

⁶¹ Supra Fn1

⁶² Nicholas B. “French law of contract”, 1982, Butterworths, page no.74.

⁶³ http://www.ilexjournal.com/legal_briefings/articleArticle.asp?theid=398&andthemode=2

⁶⁴ Supra Fn1 ,[articleArticle](#) 2.7.

⁶⁵ see the comparison no 7 related to mailbox. Because of this rule in common law , when acceptance is despatch then it indicate the concluding the contract by accepting the offer.

As mentioned earlier, consideration is very important in common law, and particular the reference has been given to the Indian Contract Act. Section 25 says that ‘agreement without consideration is null and void’. There is no concept about consideration in civil law. But in the French law having the concept *causa*. The concept of cause, according to Bell et al., (1998) is the most difficult for a common lawyer to grasp. The Civil Codes of Italy and Spain follow the French Code in making the validity of a contract dependent upon the existence of an underlying theme described as *causa* or cause.⁶⁶ Article 3.2 in UNIDROIT is very important creation, which speaks about the ‘validity of mere agreement’. This Article excludes the concept of consideration of common law and *causa* of French law as the prerequisite condition for agreement. The Article very nicely explains the reason for exclusion is that ‘*in commercial dealing this requirement is of minimal practical importance since in that context obligation is almost always undertaken by both parties*’.⁶⁷

11. Others

There is no direct concept in English law that corresponds with objective. While in French law the Article 1108 relates to the objective of a contract as being the content of what the party undertakes, in other words, the obligation to perform the contract.

UNIDROIT was published in the year of 1994. The main objective behind the UNIDROIT is to establish a balanced set of rules designed for use throughout the world, irrespective of legal and the economical and the political conditions of countries in which they were to be applied. In the contracts of the agreement provision, the UNIDROIT principles were successful in covering basic rules in different system, more particularly those relating to the essential requirement for International Commercial Contract and hence this UNIDROIT is known as Principles of International Commercial Contracts.

⁶⁶

http://www.ilexjournal.com/legal_briefings/articleArticle.asp?theid=398&andthemode=2, in addition to this in [ArticleArticle](#) 1131 of the French Civil Code states that an obligation without a cause can have no effect

⁶⁷ Supra Fn1, [articleArticle](#) 3.2 comment 1 and 2

The provisions relating to agreements are broadly given in the 2nd chapter of UNIDROIT principles known as formation. This chapter is divided into 22 Articles. Article 2.1 deals with the manner of formation. Article 2.2 and 2.5 is about the concept of offer, withdrawal and the revocation provisions of an offer. The Articles 2.6- 2.11 speak about acceptance and cover the mode of acceptance, time of acceptance, delay in acceptance, withdrawal of acceptance, late acceptance and modified acceptance. In this chapter Article 2.2 is one of the most notable approach of UNIDROIT principles. According to this Article where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms of any standard terms, which are common in substance, unless one party clearly indicates in advance or later and without undue delay, informs the other party that it does not intend to be bound by such contract. Another important Art. is in chapter 3 of the UNIDROIT principle which relates to an agreement. Article 3.2 states that a contract is concluded, modified or terminated by mere agreement of the parties without any requirements. The specialty of this Art. is that there is no need of important doctrine of common law or need for *Causa* the important requisites in French law for valid agreement of International Commercial Contract. According to this Art., mere agreement of the parties is sufficient for the valid conclusion, modification or termination by agreement of contract. Most of the Articles of the UNIDROIT are related to the agreement rules.

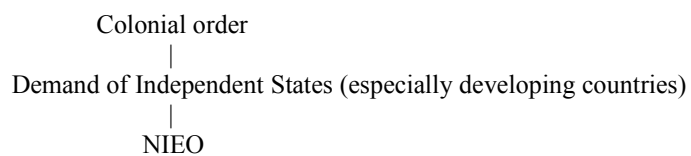
NIEO (New International Economic Order)

Synopsis:

1. History.
2. NIEO – Meaning.
3. 1974- NIEO documents
4. CERDS of NIEO.

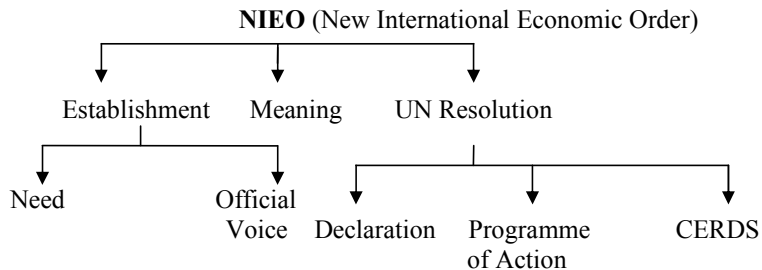
History:

For the NIEO the name itself is explanatory that this is an order, which was really in the form of demands by developing countries. Till late middle of the last century major part of the world was colonized by a few countries (e.g. India was Colony to British). The economic order was different during colonial period. However most of countries became independent after 1950.. They found that the colonial order is not good for them and hence they demanded ‘New International Economic Orders’. This demand was officially voiced in the year 1972 at UNCTAD’s third conference in Chile. The UN accepted this demand in the year 1974 and NIEO came into force.



NIEO –meaning

According to Mr. Cox studied the meaning of NIEO by various literatures available and he concluded NIEO is nothing but series of demands, debate (between north and south) and also the negotiations process among the Developing and developed world.



1974- NIEO documents After official voice for NIEO in third UNCTAD conference on 1st May 1974, the General Assembly of the UN passed the resolution for establishment of NIEO. This resolution gave birth to three documents namely –

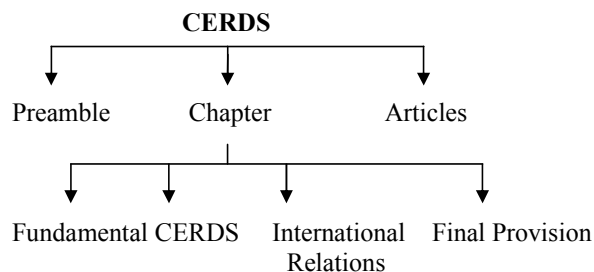
1. Declaration for establishing NIEO of general Assembly resolution No. 3201 of 1st May 1974
2. Programme of action of NIEO, General Assembly resolution No. 3202 of May 1974
3. The Charter of Economic Rights and Duties of the States (CERDS) of the General Assembly resolution No. 32 of Dec 12 1974.

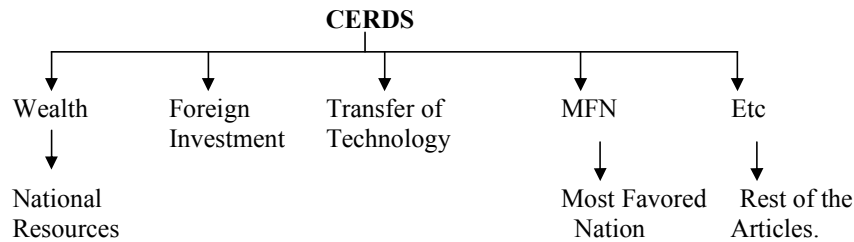
CERDS

Charter for Economic Rights and Duties for States:

The NIEO was established with three documents among which the most important is CERDS. The CERDS covers various important areas such as

- Foreign investment
- Natural resources
- Transfer of technology
- MFN (Most Favored Nation treatment)





Foreign investment – Every state has the right to make policies related to foreign investment .No other state shall interfere or force for change in foreign investment policy.

Transfer of Technology: - Developing countries have the right to transfer of technology to them and simultaneously it is the duty of developed countries to make it available to developing countries

Most Favored Nation Treatment – This treatment is based on non discrimination. No country can discriminate any other country unequally.

Natural Resources: - Every country has all the right with respect to its wealth of a nation or natural resources. In simple term all states has sovereignty over its natural resources.

CERDS comprises of 34 Articles and a Preamble. It is divided into 4 parts

1. Fundamental law
2. International Economic Relation (Article 1)
Economic rights and duties (Articles 2 to 22)
3. Common responsibility towards international relations
(Articles 29 and30)
4. Final provisions (Article 31 to 34)

along with the foreign investment permanent sovereignty over natural wealth of nation other important factor and areas are also covered by CERDS such as;

- Transnational cooperation.
- Nationalization and expropriation of foreign property.
- Organizations of primary commodity procedures.
- Transfer of technology.
- Promotion expansion and liberlisation of world trade.
- Utilization of resources freed by effective disarmament measures.

- Elimination of colonization, racial discrimination, restitution and full compensation for exploitation of the national and other resources of a territory of trade.
- Extension of tariff references.
- Indexation of prices common responsibilities.
- Article 29 –30, Chapter 4, entitle final provision emphasize the interdependence of developed and developing countries for balanced expansion of the world economy.

It is significant to note that many provisions of charter are common with the declaration and programme of action.

UNCTAD (UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT)

SYNOPSIS:

- (a) History**
- (b) Conferences**
- (c) Reasons**
- (d) Trade and Development Body (TDB)**

History

The UNDD was declared in the year 1961 at United Nation's Conference. After one year of the establishment of UNDD Cairo Conference took place i.e. in the year 1962 and it was concluded in this Conference that International Trade is a good weapon for the development of the State. In the same year ECOSOC Council Conference took place and UNCTAD come out from this Conference . However UNCTAD came into force in the year 1964.

Conferences:

11 Conferences have been held under UNCTAD as explained below

- (1) The first Conference* was held in 1964 at Geneva. In this conference, trade was the main issue discussed.
- (2) The second conference for UNCTAD was held after 4 year at New Delhi in the year 1968.
- (3) The third conference was held at Santiago, Chile in the year 1972 . For the first time developing countries demanded for a new international economic order
- (4) 1976 Nairobi

- (5) 1980 New York
- (6) 1983 Belgrade
- (7) 1987 Geneva
- (8) 1992 Colombia
- (9) 1996 Madrid
- (10) 2000 Bangkok
- (11) 2004-

Reason

UNCTAD was established as an option for ITO (International Trade Organization) The ITO came through the famous conference known as BrettonWoods conference. This conference asked the participants to prepare a charter for the ITO and to draft charter to the ITO four different conferences were held. The last conference was Havana Conference, which concluded the work for ITO. However in the year 1950 the US did not ratified the ITO and it thus failed. The whole world was looking for any international organisation which could be an alternative for the ITO and UNCTAD was formed as the substitute for ITO.

Trade and Development Body:

UNCTAD is a permanent organ of the UN and the body working for it is known as Trade and Development Body (TDB) which is a permanent organ of UNCTAD. TDB consists of 68 members from various geographic regions. This body administers the functions of the UNCTAD i.e., organizing the conferences, framing the issues for the conference which may have been passed by any previous conference held for it. The implementation of the outcome of conferences held for the UNCTAD is the major part governed by the TDB. This body also frames the guidelines and issues for the next conference Secretary General is head of this conference.

International Law

Nature and scope of International Law: -

-Whether international law is true law or not ?

The controversy whether international law is true or not depends on the definition of the word “law” as defined by Prof. Williams, “the largest of jurisprudential controversy that as to word law is verbal dispute and nothing else”.

If we subscribe to the view of Hobbes , Austin and Pufendorf , law is is command of sovereign enforced by superior political authority, then international law cannot be included in the category of law on the other hand if we subscribe to the view that the term law cannot be limited to the rules enacted by the superior political authority then international law can be included in the category of law .

According to Austin, law is given by detremental superior authority to political inferior and backed by coercive enforcement agency. Thus according to Austin “sanctions occupies an important place in the enforcement of law.”

In the view of Hobbes,“Man is by nature nasty, brutish, and violent and fears for sanctions which is inherent in the law and is necessary to maintain order in society.”

Holland, Benthen, Tethro, Brown, etc., are the other jurists who defined legal character of International law. According to these jurists International law lacks an effective legislative machinery, an executive machinery and patent judiciary and above all the sanctions which is necessary for the enforcement of law.

In the words of Prof. Oppenheim and Prof. Hart, the definition given by Austin is not correct. According to Prof. Oppenheim the existence of law presupposes the existence of the three pre requisites:

- 1) Community.
- 2) Body of rules.
- 3) Common consent of community.

Most of the jurists also tried to view that International Law is the law. It has been pointed out that sanction is not an essential element of law even if it is regarded as an essential element it would be wrong to say that International law has no sanction behind it.

International comity means practices which the states observe as a matter of courtesy or convenience. They are not binding upon them. On the other hand rules of International law are regarded as binding on the states. It is therefore wrong to say that International law comprises of the rules of International comity.

Weakness of International Law

1. It lacks effective authority to enforce its rules.
2. It lacks effective legislative machinery.
3. The International Court of Justice has no compulsory jurisdiction in true terms.
4. The sanctions behind International law are very weak.
5. It cannot intervene in the matters which are within the domestic jurisdiction of the states.
6. Many rules of the International law are uncertain and vague.
7. International law has failed to maintain order and peace in the world.

Suggestion for International Law

1. International Court of Justice should be given compulsory jurisdiction in the true sense of the term.
2. An International criminal court should be established to decide cases of international crimes.
3. International law should be properly codified and scientifically revised from time to time.
4. The machinery to enforce the decisions of the world court should be strengthened.
5. The powers and scope of the activities of the international law commission should be expanded.
6. The doctrine of judicial precedents should be applied in the field of international law.
7. In order to strengthen the legislative machinery of international law, more law making treaties and conventions should be made and there should be provisions for their revision from time to time.

8. The legislative activities of the general assembly should be further enlarged.
9. Such activities of the United Nations should be encouraged as it develop the feeling of international brotherhood so as to ensure the encouragement of the development of international community in the true sense of the term.
10. The United Nations charter should be amended so as to authorize the United Nations to intervene in such matters within the domestic jurisdiction of states as one of international concern.

Public International Law and Private International Law

Distinction between Public International Law and Private International law

Public International Law	Private International Law
Major part of International law is deals with states and to lesser extent with the individuals.	Private International Law deals only with the individuals.
Public International law is not always part of Municipal law.	Private International law is a part of Municipal law.
Public International law is same for all the states.	Private International law may be different in different states.
There is no such problem in the field of Public International law.	Private International aw determines as to which law will apply in a case having foreign element.
ICJ has the jurisdiction to decide on the issue in question.	Private International Law also determines the court which will have the jurisdiction to decide the issue in question.
Rights arising out of Public International law are absolute.	Private International law does not confer absolute rights.
Public International law comprises mainly of the rules recognized by the states in under relation with each other	Private International law is framed by the legislature of a state and recognized and developed by the state courts.

and mostly arises out of International Theories and Conventions.	
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SETTLEMENT OF INTERNATIONAL DISPUTES

1. INTRODUCTION

2. DEFINITION OF DISPUTE AND ITS MEANING

3. REASONS FOR OCCURANCE OF DISPUTE

4. IMPORTANCE OF SETTLEMENT OF INTERNATIONAL DISPUTES

5. VARIOUS METHODS OF SETTLEMENT OF INTERNATIONAL DISPUTES

1. INTRODUCTION:

International law is for an individual to some extent and for international organizations etc. the term “international” itself suggests that it must be dealing with relationships between two states. Thus state is main subject on international law.

International law regulates relationship between two states. There are transactions between two states and, thus there is the possibility of occurrence of international disputes. Thus international law talks about various methods for settling of international disputes.

2. DEFINITION OF DISPUTE, MEANING:

Basically a “dispute” means a disagreement or conflict of views. The term “dispute” is defined as follows-

“A disagreement on a point of law/fact or as a conflict of legal views/interests between two persons. In international law, dispute must be between two states in order to be an international dispute. Besides this, such dispute between two states must be related to subject matter of international law.

A distinction is made as to the legal dispute and political. However in practice, it is difficult to make such type of distinction. Because sometimes the situation and influences on Governments are so complicated that legal dispute may involve a political element.

3. REASONS FOR OCCURANCE OF INTERNATIONAL DISPUTE:

There may be various reasons for the occurrence of international disputes. Some of them are as follows-

- A) Clash of interest.
- B) Violation of rights and breach of duties.

C) Difference in interpretation.

4. IMPORTANCE OF SETTLEMENT OF AN INTERNATIONAL DISPUTE:

A dispute has inherent characteristics to result into armed conflict and such armed conflict may result into war and such war between two states leads to the disturbance of international peace and order.

Since the end of second world war the dimensions of war has undergone a drastic change. New methods and new techniques of warfare have multiplied the fear about 3rd world war. If 3rd world war arises and if all weapons are to be used then there would be uncontrollable consequences. The existence of human race and very existence of earth would be in danger.

Thus 3rd world war should be avoided at any cost. A dispute between two states may give raise to armed conflict and it may be the cause of a world war.. Thus international disputes should be prevented and if at all any dispute arises it should be settled amicably. If it is not settled amicably then it should be resolved forcibly.

Thus settlement of disputes has great importance in international law. It has always been the objective of international law to develop means and methods through which the disputes among the nations may be resolved through peaceful means.

5. Methods of settlement of International disputes:

There are two principal methods of settlement of international disputes-

A) Peaceful and amicable means of settlement of a dispute

B) Coercive and forcible means of settlement of a dispute

A) Peaceful and amicable means of settlement of dispute

- i) Negotiation**
- ii) Good offices**

- iii) **Mediation**
- iv) **Conciliation**
- v) **International Arbitration.**
- vi) **International Commissions of enquiry**
- vii) **International Court of Justice**
- viii) **Various organs of United Nations Organization**

28-5-5

International Court of Justice:

International Court of Justice is one of the principal organs of United Nations. This is also known as Chief Judicial Organ of UN. The ICJ was incorporated to settle the International disputes through the judicial process.

History: -

After the First World War, the 'League of Nations' was established to prevent any further war and also with the intention to spread the message of peace throughout the world. Along with 'League of Nations', the Permanent Court of International Justice was also established for settling disputes between members. However, the League of Nations failed to prevent the Second World War and it was dissolved along with the Permanent Court of International Justice and League of Nations. ICJ has succeeded the Permanent Court of Justice. Presently ICJ is based on the statute of "Permanent Court of International Justice." All members of the UN automatically become the members of statute. On recommendations of the Security Council, non-member states can become member of the ICJ. **Composition:**

The following are the highlights about the composition of the ICJ

1. ICJ consists of 15 Judges.
2. Judges to ICJ are elected by General Assembly and Security Council of the UN.
3. Five judges are appointed from five permanent members of the Security Council.
4. The duration for elected Judge is 9 years and he can also be re-elected.
5. The court is at The Hague, Netherlands.

Laws applied by ICJ:

According to Article 30 of UN, ICJ shall decide the dispute as per International law and as per sources of International Law, International Conventions, International custom and General Principles of law recognized by civilized nations.

Judicial decision.

A posting at the ICJ is considered as the highest post in Judiciary in the world and the judges appointed are of high integrity and character. No judge can be dismissed unless there is a unanimous decision opinion of all the members. They enjoy diplomatic privilege and immunity. They receive the annual salary in general but the President of the ICJ receives special annual salary. The salary is fixed by General Assembly. Justice Nagendra Singh from India has worked as Judge at the ICJ, he was subsequently re-elected as Judge and later on become the President of the ICJ.

The procedure is open to any state party of ICJ and not to the individuals. Judgement of the court is final with appeal. The majority of the Judges decides all the cases. When the votes are split then the President casts his vote.

Binding force:

The decision of the ICJ shall not have a binding effect except upon the parties to dispute. The previous judgments are not binding on court itself. In other words there is no precedent system in the ICJ as is generally followed in Common law countries.

Jurisdiction:

Consent of state is the basis of jurisdiction for ICJ

Jurisdictions.

1. Contentious jurisdiction: Only states may be parties to the court and not the individuals.
2. Voluntary Jurisdiction: According to Article 59, if the parties to the statute refer the dispute to court, then court get the jurisdiction.
3. Optional Jurisdiction: in the care of Sir

Relationships between International Law and Municipal Law

There are certain theories propounded to explain the relationships between the International law and Municipal law.

1) Monism:

Profs. Kelson, Duguit and Laturpacht are the supporters of this theory. According to them International law and Municipal law are the components of the same legal system. This theory gave more emphasis on the scientific analysis of the internal structure of law. According to them law is a unified branch of knowledge, no matter whether it applies to person or to other entities. According to this theory international obligation and municipal rules are facets of the same phenomenon, both deriving, ultimately, validity from one basic norm and belonging to the unitary order comprised by the concept of law.

Thus the followers of monism regard all laws as a single unity composed of binding legal rules whether those rules are obligatory on the states, on individual or on entities other than states. According to the supporters of monism theory International law and municipal law are ultimately connected with each other. International law and Municipal law are the two branches of unified knowledge of law which is applicable to human community in some way or the other. According to them, in ultimate analysis of law we find that man is the root of all laws. All laws made are for man and men only is ultimate analysis.

2) Dualism:

According to this theory, international law and municipal law and are two separate laws. Jurists Tripel, Anzilloti and Oppenheim are the chief exponents of this theory. According to them both these laws are different from each other because their subject and origin are different. International law and Municipal law are entirely different from each other regarding their sources, subjects, origin, nature, substance and primacy.

Sources: The source of Municipal law is the legislature or sovereign authority of the state, where as the source of International law lies in the agreements between two or more states.

Subject : The subject of Municipal law is the individual member of that state whereas the subject of International law are member states .

Origin: The Municipal law originates from the will of the subjects i.e. the people, while International law originates from the common will of the states.

Nature: Municipal law has a binding force because it is given by sovereign law making authority and there is a sanction behind it, whereas International law is not obligatory and there are no sanctions. **Question of primacy:** As per Monism theory in case of conflict International law shall prevail because the norm of International law is superior than the norm of Municipal law, whereas as per Dualism theory in case of conflict between the two, Municipal law shall prevail.

3) Transformation: According to the exponents of this theory, the rules of International law are incorporated in Municipal law and it is given effect to.

4) Specific adoption theory: According to the supporters of this theory International law cannot be directly enforced in the jurisdiction of state law, and hence it is necessary to make it as a specific adoption. This theory is based on the theory of positive morality. In short, international law can be applied in the areas of municipal law when it is either permitted by the sovereign legislature or it is adopted specifically. However this method is generally followed by the states in respect of international treaties which cannot be enforced in Municipal field.

5) Delegation theory: According to this theory the Constitutional rules of International law permit each state to determine as to how international treaties will be applied in the field of state law. The procedure and method to be adopted for this purpose by the states is a continuation of the process begun with the conclusion of the treaty or convention. There is no transformation, there is no fresh creation of rules of municipal law but merely a prolongation of one single act of creation. The Constitution

requirement of the state law is thus merely part of a unitary mechanism for the creation of law.

According to this, international Constitution law delegates power to the states to make their own Constitution.

STATE PRACTICES REGARDING RELATIONSHIP BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

INTRODUCTION: We have to ascertain in what manner and to what extent Municipal court can apply the rules of International law. Whether the rules of International law are applied automatically *aris* (Latin) theory specific municipal measure of statutory or judicial incorporation required before that rule can be recognised as binding within Tenant municipal sphere ? how far a rule of municipal law judge made or statutory role ? It could be observed that different practices have been adopted by different states regarding relationship between the International law and Municipal law

British practice: For the application of International law in Britain, distinction is maintained in regard of the customary rules of International law and the rules laid down by treaties. In short British practice draws a distinction between -

- i) Customary rules of International law
- ii) Rules laid down by treaties:

British practice regarding customary rules of International law: In Britain customary rules of International law are treated as part of their own laws subject to the following two conditions.

A) Rules of International law should be consistent with British statutes.

B) When the highest determine the scope of customary rules International law all the court in Britain are bound by it.

3-6-5 Influence of the above practice: The influence of the practice is that British courts generally interpret statutes in such a way that they should not go against international law

rules of construction. The British courts interpret the parliamentary statutes in such a way that they should not go against international law. The presumption is that parliament never intends to violate International law. In case the provision of the statute is clear and unambiguous, they prevail as the rules of International law.

rules of evidence. Interpretation of the rules of international law need not be proved through evidence. There are two exceptions of the British practice in regards to customary rules of International law.

- i) Acts of State: Does not come within the purview of British courts no matter whether they violate the rules of international law.
- ii) Prerogative powers of the crown: British courts are bound by prerogative powers of the crown.
- iii) British practice regarding treaty rules: In Britain the practice relating to treaties is based on the Constitutional principle governing the relation between the executive and parliament. The matters relating to negotiation, signature etc. come under the prerogative of the crown. In case of certain kinds of treaties, the parliamentary consent is necessary while in some cases no consent is necessary for their application the consent of the parliament is necessary for the following types of treaties:
 - a) Treaties affecting the rights of British citizens.
 - b) Treaties, which amend or modify, Common law or Statute law of Britain.
 - c) Treaties conferring additional power on crown; and
 - d) Treaties which impose additional financial burden on the government.

In addition to this, treaties which expressly provide that for their implementation consent of the parliament is required, then consent of parliament is necessary.

1) American practice: In America also the practice regarding customary rules and treaties rules of International law is different.

a) Practice regarding customary rules of International law: In America the customary rules of International law are treated as part of American law. The American practice regarding customary rules of International law is more or less same as the British practice. Justice Gray in a leading case 'Paquete Habana Salia', 1900, remarked that International law is a part of our law and must be ascertained and administered by the Court of justice of appropriate jurisdiction as often as question of right depending upon it are duely presented for determination. The American courts also interpret Statute of congress in such a way that they should not go against International law .

b) American practice regarding treaty rules of international law

In America the practice relating to treaty rules is based upon the provision of the Constitution. Article VI of the American Constitution providing that Constitution of United State, all laws made in persuance thereof an International treaty enter into under authority of United Nations shall be the supreme of the land. Thus it could be seen, in Latin America, international treaties have been placed in the same category as the state laws, however, it has been held by the Supreme Court of United States of America that in case of conflict between the Constitution and International treaty, the Constitution shall prevail decide this in case of conflict international treaty and state law shall prevail.

In America, treaties are divided into two categories: I) self executing treaties which become applicable in America without the consent of congress II) non self executing treaties which require consent of the Congress to become applicable in the field of state law.

3) **Indian practice:** Before independence and before adoption of the Indian Constitution the Indian practice was similar to British practice in respect of

relations between International law to Municipal law. After adoption of the Constitution of India, it was dependent upon provisions Constitution under Article 51 of the Indian Constitution which provides that 'the state shall endeavor to,

- (a) promote international peace and security
- (b) maintain just and honorable relations between nation
- (c) foster respect of international law and treaty and the obligation in the dialing of organize people with one another,
- (d) encourage settlement by arbitration.'

The expression 'International Law', in this paragraph denotes customary International law and that 'treaty obligation' stand for treaty. The above Article does not give any clear guidance or rule regarding the position of International law in India as well as the relationship of Municipal and International law and regional law because this Article is contained in part IV of the Constitution of India which deals with Directive Principles of State policies. Article 37 of Part IV clearly provide that provisions containing this part shall not be enforceable by any court. Therefore Article 51 is non justifiable. However, it is not correct to say that Article 51 is of no relevance and provides no guidance at all. Article 37 also provide that the Principle laid down in Part IV of the Indian Constitution nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply this principle in making laws. It may also be noted here that an analysis of judicial decisions shows that in India, dualism is followed. Article 372 of the Indian Constitution provides that the laws which were prevalent before the adoption of Indian Constitution shall continue to prevail if they have not been specifically repealed or they are not in consonance with the provisions of the Constitution. Article 253 of the Constitution provides that the Parliament has power to make a law for the whole or any part of territory of India for implementing any treaty, agreement or conventions with any country or countries or any decision made at an international conference or association or other body. The Parliament of India accordingly has to exercise this power to give effect to Vienna Convention on diplomatic relations of 1961 and Tokyo Convention Act of 1975 to give effect to the Tokyo Convention of 1963 on hijacking. In number of the cases rule

is laid down by the municipal court that Article 51 is not enforceable by any court if the Parliament does not enact any law for implementing the obligation under a treaty entered into by the Government of India with foreign country, court can not compel parliament to make such law.

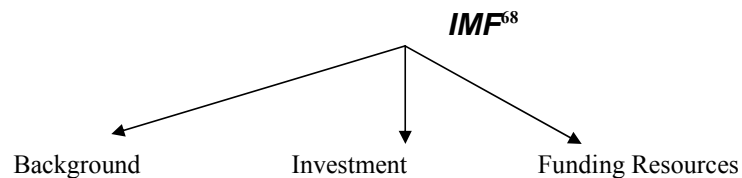
From the above discussion so far as Indian practice is concerned, the following conclusions may be drawn :- i) Customary rules of International law are treated to be part of domestic law in

a large number of states in case they do not conflict with the existing Municipal law there is no need of their specific adoption . ii) Customary rules of International law without specific adoption are applied by Municipal court even in case of conflict with municipal statute or judge made law only in few state.

iii) The practice of state is not uniform regarding practice relating to the application of the treaty within the municipal sphere.

vi) In large number of the state, municipal courts give priority to the application of municipal law.

International Monetary Fund (IMF)



Background

The International Monetary Fund was created in 1944 along with the World Bank with the intention to promote the health of the world economy. History for the IMF is same as the history of World Bank and both are also known as International Economic agencies and Brettonwood Twins. The Headquartered of the IMF is in Washington DC, it is governed by and accountable to the governments of the 184 countries that make up its near-global membership.

Main Responsibilities of IMF :- Article I of the Articles of Agreement for IMF set out its ' main responsibilities:

- Promoting international monetary cooperation;
- Facilitating the expansion and balanced growth of international trade;
- Promoting exchange stability;
- Assisting in the establishment of a multilateral system of payments; and
- Making its resources available (under adequate safeguards) to members experiencing balance of payments difficulties.

⁶⁸ The **maximum** information **for** this **topic** has been taken **from** the IMF **website**.

70-07-05

IMF activities

It is said that the IMF is more generally responsible for ensuring the stability of the international monetary and financial system—the system of international payments and exchange rates among national currencies that enables trade to take place between countries. The Fund seeks to promote economic stability and prevent crises; to help resolve crises when they do occur; and to promote growth and alleviate poverty. It employs three main functions—surveillance, technical assistance, and lending—to meet these objectives.

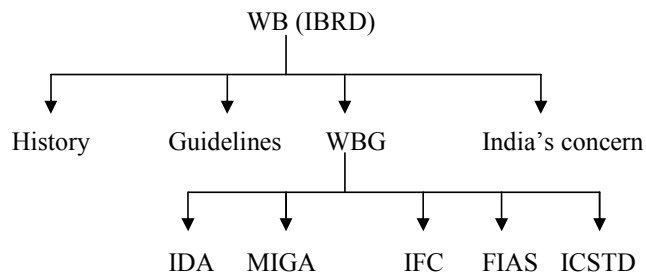
About the IMF, it has also been said that it works to promote global growth and economic stability and thereby prevent economic crisis—by encouraging countries to adopt sound economic policies. However, IMF's interference with the policy making of any state is not good for any country's national interest. (please find the attached news by Statesman for IMF's interference in the India's policy making)

IMF governance and organization

The IMF is accountable to the governments of its member countries. At the apex of its organizational structure is its Board of Governors, which consists of one Governor from each of the IMF's 184 member countries. All Governors meet once each year at the IMF-World Bank Annual Meetings; 24 of the Governors sit on the International Monetary and Finance Committee (IMFC) and meet twice each year. The day-to-day work of the IMF is conducted at its Washington DC headquarters by its 24-member Executive Board, this work is guided by the IMFC and supported by the IMF's professional staff. The Managing Director is Head of IMF staff and Chairman of the Executive Board, and is assisted by three Deputy Managing Directors.

The IMF's resources are provided by its member countries, primarily through payment of quotas, which broadly reflect each country's economic size. The total amount of quotas is the most important factor determining the IMF's lending capacity. The annual expenses

of running the Fund are met mainly by the difference between interest receipts (on outstanding loans) and interest payments (on quota “deposits”).



World Bank

History:

International Bank for Reconstruction and Development (IBRD) specially known as ‘World Bank’ was established through Breton-wood Conference. This conference was held in July 1944 and gave also birth to two organizations. Another organization was ‘International Monetary Fund’, since the IMF and IBRD are created through Breton-wood Conference they are called as Breton-wood Twins. These organizations also recognized as an International Financial Agencies. Though they are financial agencies but their functions are different with different objectives and goals. World Bank is also a specialized agency of The United Nations.

Guiding principle in lending operations⁶⁹

In its lending operation, the IBRD is guided by certain policies, which have been formulated on the basis of Articles of Agreement.

1. First, the Bank should properly assess the repayment prospects of the loans.
For this purpose, it should consider the availability of natural resources and

⁶⁹ S.R. Myneni, ‘International Economic Law’, 2002, page no. 74-75

existing productive plant capacity to exploit the resources, and operate the plant and the country's past debt record;

2. Secondly, the Bank should lend only for specific projects, which are economically and technically sound and of a high priority nature. As a matter of general policy it concentrates on lending for projects, which are designed to contribute directly to productive capacity, and normally does not finance projects, which are primarily of social character, such as education, housing etc. Most Bank loans have been made for basic utilities, such as power and and transport, which are pre-requirement for economic development. Besides, the Bank places considerable emphasis upon the proper management of the projects.
3. Thirdly, the Bank lends only to enable a country to meet the foreign exchange content of any project cost. It normally expects the borrowing country to mobilize its domestic resources.
4. Fourthly, the Bank does not expect the borrowing country to spend the loan in a particular country, in fact, it encourages the borrowers to procure machinery and goods for Bank financed projects in the cheapest possible market, consistent with satisfactory performance.
5. Fifthly, it is the Bank's Policy to maintain continuing relations with borrowers. With a view to check the progress of projects and keep in touch with financial and economic development in borrowing countries. This also helps in the solution of any problems which might arise in the technical and administrative fields.
6. Finally, the bank indirectly attaches special importance to the promotion of local private enterprise.

Importance of World Bank in India

World Bank is now become important organization for India. Present UPA Government's declared Common Minimum Programme (CMP) in which they have involved the World Bank at various stages. India is on top of the list for World Bank to get the help in the

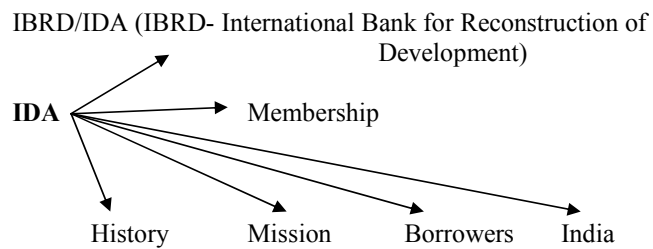
form of loans. Recently the World Bank approved the budget for next five year for India, they have doubled the amount of previous help. Maximum states in India are rushing towards the 'World Bank', however these states are becomes subjects of restrictions for .e.g Andra Pradesh, or Maharashtra state are in plan to give free electricity to their farmer while The World Bank interrupted in this matter and advised them not to do so. World Bank's objective is very good that to remove the poverty but it should not be remove the poor from the world.

World Bank now consists various other organization as a group its includes IDA,IFC, FIAS, ICSID and MIGA etc.

Funding for World Bank

The World Bank receiving funds from international finance markets in general and MNC's of developed countries in particular. In 2002, the World Bank got 23 billion funds from international finance market and it granted loan for 40 countries which is near about 11.5 billion dollar for 96 projects. At present there are 184 countries are members of the World Bank.

International Development Association (IDA)



IDA's History

The International Bank for Reconstruction and Development (IBRD), better known as the World Bank, was established in 1944 specifically to help Europe to recover from the devastation of World War II. The success of that enterprise led the Bank, within a few years, to turn its attention to the developing countries. By the 1950s, it became clear that the poorest developing countries needed softer terms than those that could be offered by the Bank, so they could afford to borrow the capital they needed to grow. With the United States taking the initiative, a group of the Bank's member countries decided to set up an agency that could lend to the poorest countries on the most favorable terms possible. They called the agency the "International Development Association." Its founders saw IDA as a way for the "haves" of the world to help the "have-nots." But they also wanted IDA to be run with the discipline of a bank. For this reason, US President Dwight D. Eisenhower proposed, and other countries agreed, that IDA should be part of the World Bank (IBRD).

IDA's Articles of Agreement became effective in 1960. The first IDA loans, known as credits, were approved in 1961 to Chile, Honduras, **India** and Sudan.

IBRD and IDA are run on the same lines. They share the same staff and headquarters, report to the same president and evaluate projects with the same rigorous standards. But IDA and IBRD draw on different resources for their lending, and because IDA's loans are deeply concessional, IDA's resources must be periodically replenished (see "IDA Funding" below). A country must be a member of IBRD before it can join IDA; 164 countries are IDA members.

IDA's Mission

The International Development Association (IDA) is the part of the World Bank. It carries intention to help the earth's poorest countries to reduce their poverty by providing interest-free loans and grants for programs aimed at boosting economic growth and improving living conditions.

The IDA generally granting the long-term or no-interest loans to pay for programs that build the policies, institutions, infrastructure and human capital needed for equitable and environmentally sustainable development. And therefore it has also been said that IDA's goal is to reduce inequalities both across and within countries by allowing more people to participate in the mainstream economy, reducing poverty and promoting more equal access to the opportunities created by economic growth.

IDA's Borrowers

IDA lends to those countries that had an income in 2002 of less than \$865 per person and lack the financial ability to borrow from IBRD. Some "blend borrower" countries like India and Indonesia are eligible for IDA loans because of their low per person incomes but are also eligible for IBRD loans because they are financially creditworthy. Eighty-one countries are currently eligible to borrow from IDA. Together these countries are home to 2.5 billion people, half of the total population of the developing world. Most of these people, an estimated 1.5 billion, survive on incomes of \$2 or less a day.

IDA Lending

IDA credits have maturities of 20, 35 or 40 years with a 10-year grace period before repayments of principal begins. IDA funds are allocated to the borrowing countries in relation to their income levels and record of success in managing their economies and their ongoing IDA projects. There is no interest charge, but credits do carry a service charge, currently 0.75 percent on funds paid out.

Since 1960, IDA has lent \$142 billion to 108 countries. Annual lending figures have increased steadily and averaged about \$7.4 billion over the last three years. Most loans address basic needs, such as primary education, basic health services, and clean water and sanitation. IDA also funds projects that safeguard the environment, improve conditions for private business, build infrastructure, and support reforms to liberalize countries' economies and strengthen their institutions. All these projects pave the way toward economic growth, job creation, higher incomes and better living conditions.

Table FY03 Top Ten IDA Borrowers

\$ million

India	686.6
Bangladesh	554.4
Congo Democratic Republic	454.0
Uganda	406.5
Ethiopia	404.0
Vietnam	368.1
Pakistan	297.2
Tanzania	250.5
Sri Lanka	232.7
Nigeria	229.7
IDA Funding	

While the IBRD raises most of its funds on the world's financial markets, IDA is funded largely by contributions from the governments of the richer member countries. Their

cumulative contributions since IDA's beginning up to the end of June 2003 totaled US\$118.9 billion equivalent. Additional funds come from IBRD's income and from borrowers' repayments of earlier IDA credits.

IDA AT WORK

In **India**, the National AIDS Control project supported training of 52,500 physicians and 60 percent of nursing staff in HIV/AIDS management topics.

IDA emphasizes broad-based growth, including:

- Sound economic policies, rural development, private business and sustainable environmental practices
- Investment in people, in education and health, especially in the struggle against HIV/AIDS, malaria and TB
- Expansion of borrower capacity to provide basic services and ensure accountability for public resources
- Recovery from civil strife, armed conflict and natural disaster, and
- Promotion of trade and regional integration

It has been said that the IDA is now the single largest source of donor funds for basic social services in the poorest countries. However, there are maximum chances for developed countries to conquer the poor countries market through IDA, as the new concept Globalization – the increasing integration of world markets and societies – has allowed China, India and many other developing countries to achieve faster growth through expanded foreign direct investments and access to export markets. The foreign investment is not always good for any countries national interest.

International Finance Corporation⁷⁰

History

⁷⁰ The information in this topic has been taken from IFC and World Bank web sites

The International Finance Corporation was born in 1956. For several years officials of the World Bank had been supporting the creation of a new and different entity to complement their own. The World Bank had been founded to finance post-World War II reconstruction and development projects by lending money to member governments, and had been doing so effectively. Yet in its initial years, some senior staff had seen the need for creating a related institution to spur greater private sector investment in poor countries. Later on the US proposed to create the IFC on this basis World Bank released the further proposal for IFC and the US supported the same and then Articles of Agreement was drafted and IFC was launched with 31 members in 1956.

The chronological History of IFC is as follows;

- **1949-The World Bank suggests a private sector investment arm.**
- **1951-The United States proposes creation of an international finance corporation.**
- **1952-The World Bank releases proposal for IFC**
- **1954- The US supports launch of IFC**
- **1955 -IFC Articles of Agreement drafted.**
- **1956-IFC launched with 31 members.**

The IFC specifically incorporated to promote sustainable private sector investment in developing countries as a way to reduce poverty and improve people's lives. However, the major funding for the IFC is from developed countries and more specifically by their MNC's and they are making policies as per their will for the IFC and borrower countries. This kind of trend is not good for any country as foreign investment plays very important role in particular countries economy.

To join IFC, a country must first be a member of the IBRD. IFC's corporate powers are vested in its Board of Governors, to which member countries appoint representatives. IFC's share capital, which is paid in, is provided by its member countries, and voting is in proportion to the number of shares held. IFC's authorized capital is \$2.45 billion. Statement of Capital Stock and Voting Power.

The Board of Governors delegates many of its powers to the Board of Directors, which is composed of the Executive Directors of the IBRD, and which represents IFC's member

countries. The Board of Directors reviews all projects.

The President of the World Bank Group , James D. Wolfensohn, also serves as IFC's president. IFC's Executive Vice President, Peter Woicke, is responsible for the overall management of day-to-day operations.

IFC is a member of the World Bank Group and is headquartered in Washington, DC. It shares the primary objective of all World Bank Group institutions: to improve the quality of the lives of people in its developing member countries. IFC Mission Statement. IFC is the largest multilateral source of loan and equity financing for private sector projects in the developing world. It promotes sustainable private sector development primarily by:

- Financing private sector projects located in the developing world.
- Helping private companies in the developing world mobilize financing in international financial markets.
- Providing advice and technical assistance to businesses and governments

Dr. APJ Abdul Kalam's Speech in Hyderabad

Quote:

I have three visions for India. In 3000 years of our history people from all over the world have come and invaded us, captured our lands, conquered our minds. From Alexander onwards. The Greeks, the Turks, the Moguls, the Portuguese, the British, the French, the Dutch, all of them came and looted us, took over what was ours.

Yet we have not done this to any other nation. We have not conquered anyone. We have not grabbed their land, their culture, their history and tried to enforce our way of life on them. Why? Because we respect the freedom of others. That is why my first vision is that of FREEDOM.

I believe that India got its first vision of this in 1857, when we started the war of independence. It is this freedom that we must protect and nurture and build on. If we are not free, no one will respect us.

My second vision for India is DEVELOPMENT. For fifty years we have been a developing nation. It is time we see ourselves as a developed nation. We are among top 5 nations of the world in terms of GDP. We have 10 percent growth rate in most areas. Our poverty levels are falling. Our achievements are being globally recognized today.

Yet we lack the self-confidence to see ourselves as a developed nation, self-reliant and self-assured. Isn't this incorrect?

I have a THIRD vision.

India must stand up to the world. Because I believe that unless India stands up to the world, no one will respect us. Only strength respects strength. We must be strong not only as a military power but also as an economic power. Both must go hand-in-hand.

My good fortune was to have worked with three great minds. Dr. Vikram Sarabhai of the Dept. of space, Professor Satish Dhawan, who succeeded him and Dr. Brahm Prakash, father of nuclear material. I was lucky to have worked with all three of them closely and consider this the great opportunity of my life. I see four milestones in my career: ONE: Twenty years I spent in ISRO. I was given the opportunity to be the project director for India's first satellite launch vehicle, SLV3 - The one that launched Rohini. These years played a very important role in my

life of Scientist. TWO: After my ISRO years, I joined DRDO and got a chance to be the part of India's guided missile program. It was my second bliss when Agni met its mission requirements in 1994. THREE: The Dept. of Atomic Energy and DRDO had this tremendous partnership in the recent nuclear tests, on May 11 and 13. This was the third bliss. The joy of participating with my team in these nuclear tests and proving to the world that India can make it, that we are no longer a developing nation but one of them. It made me feel very proud as an Indian. The fact that we have now developed for Agni a re-entry structure, for which we have developed this new material. A Very light material called carbon-carbon. FOUR: One day an orthopedic surgeon from Nizam Institute of Medical Sciences visited my laboratory. He lifted the material and found it so light that he took me to his hospital and showed me his patients. There were these little girls and boys with heavy metallic callipers weighing over three Kg. each, dragging their feet around. He said to me: "Please remove the pain of my patients". In three weeks, we made these Floor reaction Orthosis 300-gram callipers and took them to the orthopedic center. The children didn't believe their eyes. From dragging around a three kg. Load on their legs, they could now move around! Their parents had tears in their eyes. That was my fourth bliss! Why is the media here so negative? Why are we in India so embarrassed to recognize our own strengths, our achievements? We are such a great nation. We have so many amazing success stories but we refuse to acknowledge them. Why? We are the first in milk production. We are number one in Remote sensing satellites. We are the second largest producer of wheat. We are the second largest producer of rice. Look at Dr.Sudarshan, he has transferred the tribal village into a self-sustaining, self-driving unit. There are millions of such achievements but our media is only obsessed in the bad news and failures and disasters. I was in Tel Aviv once and I was reading the Israeli newspaper. It was the day after a lot of attacks and bombardments and deaths had taken place. The Hamas had struck. But the front page of the newspaper had the picture of a Jewish gentleman who in five years had transformed his desert land into an orchid and a granary. It was this inspiring picture that everyone woke up to. The gory details of killings, bombardments, deaths, were inside in the newspaper, buried among other news. In India we only read about death, sickness, terrorism, crime. Why are we so NEGATIVE?

Another question: Why are we, as a nation so obsessed with foreign things? We want foreign TVs, we want foreign shirts. We want foreign technology. Why this obsession with everything imported. Do we not realize that self-respect comes with self-reliance? I was in Hyderabad giving this lecture, when a 14 year old girl asked me for my autograph. I asked her what her goal in life is: She replied: I want to live in a developed India. For her, you and I will have to build this developed India. You must proclaim. India is not an under-developed nation; it is highly developed nation. Do you have 10 minutes? Allow me to come back with vengeance. Got 10 minutes for your country? If yes, then read; otherwise, choice is yours. you say that our government is inefficient. YOU say that our laws are too old. YOU say that the municipality does not pick up the garbage. YOU say that the phones don't work, the railways are a joke, the airline is the worst in the world, and mails never reach their destination. YOU say that our country has been fed to he dogs and is the absolute pits. YOU say, say and say..... What do YOU do about it? Take a person on his way to Singapore. Give him a name - OURS. Give him a face - YOURS. YOU walk out of the airport and you are at your International best. In Singapore you don't throw cigarette butts on the roads or eat in the stores. YOU are as proud of their underground Links as they are. You pay \$5 (approx. Rs.60) to drive through Orchard Road (equivalent of Mahim Causeway or Pedder Road) between 5 PM and 8 PM. YOU comeback to the parking lot to punch your parking ticket if you have over stayed in a restaurant or a shopping all irrespective of your status identity. In Singapore you don't say anything, DO YOU? YOU wouldn't dare to eat in public during Ramadan, in Dubai. YOU would not dare to go out without your head covered in Jeddah. YOU would not dare to buy an employee of the telephone exchange in London at 10 pounds (Rs.650) a month to, "see to it that my STD and ISD calls are billed to someone else." YOU would not dare to speed beyond 55 mph (88 km/h) in Washington and then tell the traffic cop, Jaanta hai sala main kaun hoon (Do you know who I am?). I am so and so's son. Take your two bucks and get lost." YOU wouldn't chuck an empty coconut shell anywhere other than the garbage pail on the beaches in Australia and New Zealand. Why don't YOU spit Paan on the streets of Tokyo? Why don't YOU use examination jockeys or buy fake certificates in Boston? We are still talking of the same YOU. YOU who can respect

and conform to a foreign system in other countries but cannot in your own. You who will throw papers and cigarettes on the road the moment you touch Indian ground. If you can be an involved and appreciative citizen in an alien country why cannot you be the same here in India. Once in an interview, the famous Ex-municipal commissioner of Bombay, Mr. Tinaikar had a point to make: "Rich people's dogs are walked on the treats to leave their affluent droppings all over the place," he said. "And then the same people turn around to criticize and blame the authorities for inefficiency and dirty pavements. What do they expect he officers to do? Go down with a broom everytime their dog feels the ressure in his bowels? In America every dog owner has to clean up after is pet has done the job. Same in Japan. Will the Indian citizen do that here?" He's right. We go to the polls to choose a government and after hat forfeit all responsibility. We sit back wanting to be pampered and expect the government to do everything for us whilst our contribution is totally negative. We expect the government to clean up but we are not going to stop chucking garbage all over the place nor are we going to top to pick a up a stray piece of paper and throw it in the bin. We expect the railways to provide clean bathrooms but we are not going to earn the proper use of bathrooms. We want Indian Airlines and Air India to provide the best of food and toiletries but we are not going to stop pilfering at the least opportunity. This applies even to the staff who is known not to pass on the service to the public. When it comes to burning social issues like those related to women, dowry, girl child and others, we make loud drawing room protestations and continue to do he reverse at home. Our excuse? "It's the whole system, which has to change, how will it matter if I alone forego my sons' rights to a dowry." So who's going to change the system? What does a system consist of? Very conveniently for us it consists of our neighbours, other households, other cities, other communities and the government. But definitely not me and YOU. When it comes to us actually making a positive contribution to the system we lock ourselves along with our families into a safe cocoon and look into the distance at countries far away and wait for a Mr. Clean to come along and work miracles for us with majestic sweep of his hand. Or we leave the country and run away. Like lazy cowards hounded by our fears we run to America to bask in their glory and praise their system. When New York becomes insecure we

run to England. When England experiences unemployment, we take the next flight out to the Gulf. When the Gulf is war struck, we demand to be rescued and brought home by the Indian government. Everybody is out to abuse and rape the country. Nobody thinks of feeding the system. Our conscience is mortgaged to money. Dear Indians, The Article is highly thought inductive, calls for a great deal of introspection and pricks one's conscience too....I am echoing J.F.Kennedy's words to his fellow Americans to relate to Indians..... "ASK WHAT WE CAN DO FOR INDIA AND DO WHAT HAS TO BE DONE TO MAKE INDIA WHAT AMERICA AND OTHER WESTERN COUNTRIES ARE TODAY" Let us do what India needs from us. Forward this ail to each Indian for a change instead of sending Jokes or junk mails. Thank you. _____ "If you are going through hell, keep going." - Sir Winston Churchill (1874-1965) "I have not failed. I've just found 10,000 ways that won't work." Thomas Alva Edison (1847-1931) Thanks and Regards

Appendix I

The general overview of all the trade rounds including Uruguay Round is as follows⁷¹

GATT Rounds

Name	Dates	Objectiveive/results
Geneva	1947	<ul style="list-style-type: none"> • adoption of GATT
Annecey, France	1949	<ul style="list-style-type: none"> • tariff reduction
Torquay, England	1951	<ul style="list-style-type: none"> • tariff reduction
Geneva	1956	<ul style="list-style-type: none"> • tariff reduction
Geneva ("Dillon")	1960-62	<ul style="list-style-type: none"> • tariff reduction
Geneva ("Kennedy")	1962-67	<ul style="list-style-type: none"> • tariff reduction • GATT negotiation rules
Tokyo	1973-79	<ul style="list-style-type: none"> • overall reduction of tariffs to an average level of 35% and 5-8% among developed nations • non-tariff barrier codes • government procurement • customs valuation • subsidies and countervailing measures • antidumping • standards • import licensing
Uruguay	1986-94	<ul style="list-style-type: none"> • broadening of GATT • limit agricultural subsidies • include services trade • include intellectual property • establishment of the WTO (World Trade Organization)

⁷¹ . "A Brief History of The General Agreement On Tariffs And Trade" , This chart was created by July 1, 1995. Last updated February 21, 1996, available at; <http://pacific.commerce.ubc.ca/trade/GATT-rounds.html>

Relevant News

World bank lending to India may up to \$3b

Business line, The Hindu Group, New Delhi , Aug. 27, 2004

THE World Bank Group Country Strategy for India for 2005-08 provides for an increased lending programme of up to \$3 billion a year in order to substantially scale up the impact of development efforts on some of the world's poorest people, being undertaken by the Government of India.

The board of directors of the Bank in Washington on Thursday discussed the new strategy involving its soft-lending window International Development Association (IDA) as also its private sector lending arm the International Finance Corporation (IFC).

Even as the Bank's resources are modest in relation to the size of India's economy and the scale of its economic and social development needs, the challenge for the Country Strategy is to leverage the Bank's diverse resources, including both knowledge and lending to help improve the quality of life of poor people in India and to help the country move closer to achieving the Millennium Development Goals (MDGs).

A Bank release said India with its one billion people is still home to over one quarter of the world's poor people. Their average incomes remain low and there has been little improvement on some critical social indicators. There also exists a substantial disparity of opportunity, particularly in the education, health and economic prospects of women and other vulnerable groups.

"Looking at these disparities, what emerges is a picture of India occupying two worlds simultaneously. In the first, economic reform and social changes have begun to take hold and growth has had an impact on people's lives, opportunities have opened up. In the other, citizens appear almost completely left behind by public services, employment opportunities and brighter prospects. Bridging the gap between these two is perhaps the greatest challenge", the World Bank's Country Director for India, Mr Michael F. Carter, said.

As the strategy document commits the Bank Group's work in India to an increased focus on results, the strategy has identified three programme priorities covering improved Government effectiveness, support investments in people and empowering communities and to promote private sector-led growth.

In line with these priorities, the Bank's programme and lending would be expanded in such sectors as infrastructure (roads, transport, power, water supply and sanitation), irrigation and urban development (to support both accelerated growth and improved service delivery), human development (education, health, social protection) and rural livelihoods with an emphasis on community-driven approaches.

The Bank said an important shift is the greater recourse to co-financing with other development partners under common arrangements for national programmes in the areas most critical to meeting MDGs. It also proposes some important shifts in the approach to India's States.

Since 1977, it has included a focus on States undertaking comprehensive reforms.

For instance, during the last period, the focus was on Andhra Pradesh, Karnataka and Uttar Pradesh. With the widening gulf between India's faster and slower growing States, some shifts in this approach are warranted, it said.

Accordingly, in consultation with the Government of India and other partners, the Bank would seek to ensure that all of the largest and poorest States that so wish are engaged in a dialogue on crosscutting reforms.

Second, the Bank would work proactively to try to build a productive development relationship with four States where poverty is increasingly concentrated in India: Bihar, Jharkhand, Orissa and Uttar Pradesh.

Third, State-level adjustment lending operations aimed at supporting the achievement of the MDGs are also expected to remain a key part of the Bank's programme.

Fourth, instead of confining to "focus states", investment lending will be channelled more broadly to states on the basis of guidelines for each sector, where they set out the sector-specific conditions that experience has demonstrated to be necessary for project success.

<http://www.thehindubusinessline.com/2004/08/28/stories/2004082801030500.htm>

Trade group OKs sanctions against U.S. exports
Dispute stems from subsidies to companies found to violate law
By PAUL MELLER and ELIZABETH BECKER
New York Times
Posted: Aug. 31, 2004

Brussels, Belgium - The World Trade Organization on Tuesday authorized the European Union and seven other major American trading partners to impose more than \$150 million in retaliatory sanctions on exports from the United States.

The ruling comes after Congress failed for two years to repeal a subsidy for U.S. companies that the WTO found to be in violation of global trade laws.

The decision by the trade agency, which is based in Geneva, is only the latest example of several cases in which the United States has been found to be in breach of internationally agreed trade rules. Washington has lost a complaint from Brazil and other developing countries over \$3 billion in cotton subsidies and has repeatedly failed to rewrite legislation that provided what the WTO found to be an unfair tax give-away to U.S. companies conducting business abroad.

Adding to the problems for U.S. companies, the WTO also just ruled this week against the United States and in favor of Canada in cases involving Canadian wheat and lumber.

The measure found to be illegal under global trade rules, known as the Byrd Amendment, allows U.S. companies rather than the government to receive the taxes Washington imposed on foreign companies deemed to be unfairly dumping cheap products in the United States.

The decision gives the 25-nation European Union, along with Canada, Japan, Brazil, Chile, India, South Korea and Mexico, the right to impose higher taxes on their choice of products worth slightly more than 70% of the value of the money received by U.S. companies.

But it was not clear how soon the countries would move to implement any counter-measures against the United States.

"The aim is to get the United States to comply with the rules," said Arancha Gonzalez, a spokeswoman for Pascal Lamy, the EU trade commissioner, "not to impose sanctions."

In Wisconsin, the WTO ruling stirred a bit of worry, but some also said its effects likely would be mild.

"Exporting's really important to us, so I think our concern with this decision is that there's the possibility that . . . we just get caught in the retaliatory cross fire," said Gary Wegner, vice president of sales at Orion Corp.

The Grafton-based firm makes bearings, and generates about 30% of its revenue with exports.

"Business is very good, so we're hoping this doesn't catch us in some political turmoil," Wegner said.

Bemis Manufacturing Co., a maker of toilet seats in Sheboygan Falls, also viewed Tuesday's ruling a little warily.

"Any time that there's a potential sanction against products, it's a concern," said Michael Lauenstein, Bemis' area manager for Latin America.

With higher production costs than Third World manufacturers, it's difficult enough for U.S. firms to compete in the global market, and sanctions just make things worse, Lauenstein said.

At the same time, he said, countries often raise the specter of tariffs but then work things out.

"They'll threaten each other for a bit, and then one will back off, and they'll realign the rules until everybody is happy again," Lauenstein said.

Syed Akhter, a marketing professor at Marquette University, viewed things much the same. He saw little threat to U.S. exporters from the WTO action.

In the complicated dance of global trade negotiations, such moves usually work out "as a bargaining chip rather than those countries taking actual actions to restrict the flow of imports," he said.

Protectionism in general has been declining for 10-20 years, and that trend likely will continue, Akhter said.

Rick Romell of the Journal Sentinel staff contributed to this report.

<http://www.jsonline.com/bym/news/aug04/255457.asp>

India enters product patent regime Saturday

By Indo-Asian News Service <http://in.news.yahoo.com/041231/43/2irll.html>

New Delhi, Dec 31 (IANS) India Saturday enters a major milestone of recognising product patents with Commerce Minister Kamal Nath assuring complete safeguards for public health concerns.

"The law effectively balances and calibrates intellectual property protection with public health concerns and national security," the commerce minister said in a statement Friday.

An ordinance issued by the government on Dec 26 paved the way for introducing product patent protection - instead of recognising only process patents - for inventions in the fields of food, chemicals and pharmaceuticals.

It has provisions to ensure availability of products at reasonable price through compulsory license, revoke patents in public interest, use inventions for public good and import products for their availability at cheapest price.

Kamal Nath said the requirements of the public in regard to the availability and affordability were taken care of and public interest, particularly public health and nutrition, was fully protected.

As a signatory to a pact in 1994 establishing the World Trade Organization and the agreement on trade-related intellectual property rights, India's patent regime required amendment after a 10-year transition period.

The ordinance on Patent (Third) Amendment promulgated on Dec 26 also provides for deleting provisions relating to exclusive marketing rights and streamlines the system by having both pre-grant and post-grant opposition to patents.

Meanwhile, V.S. Ramamurthy, secretary in the Department of Science and Technology, said India's patent offices were being modernised to ensure that the system becomes efficient enough to identify and extend protections.

"The government has already taken steps to modernise the patent offices with automatic databases across the wall so that the patent examiner can immediately know what has been patented elsewhere and what has not been patented," he said.

The government, he said, has also been making efforts to let people know about what needs to be done once a new patent regime comes into force.

"Today, an average scientist knows that if his or her research is leading to some patent, he must go ahead and patent it and protect the intellectual property rights," he told IANS.

Another aspect of the new patent regime, he said, was for a mechanism to prevent violations.

"In case of violations, is our legal process adequate enough to handle it in a reasonable timeframe? In case there is a violation and a case is filed and it is going to take 20 years to settle then it will not work," he said.

"The last but not the least, there must be a large number of people - attorneys as well as scientists - with the domain knowledge who understand patenting, who know how to analyse and can advise the scientific and the business community," Kamal Nath added.

The Patent (Amendment) Ordinance 2004

Ordinance. No 7 of 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India. An Ordinance further to amend the Patents Act, 1970.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action; NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Patents (Amendment) Ordinance, 2004.(2) Sub-clause (ii) of clause (a), and clause (b), of section 37, sections 41, 42, 47, 58 to 62 (both inclusive) and 73 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and the remaining provisions shall come into force on the 1st day of January, 2005. Short title and commencement. 2 Amendment of Section 2
2. In section 2 of the Patents Act, 1970 (hereinafter referred to as the principal Act), in sub-section (1),—(a) after clause (ab), the following clause shall be inserted, namely:—“(aba) Budapest reaty” means the Budapest Treaty on the International Recognition of the Deposit of Micro-rganisms for the Purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;’; (b) in clause (d), for the words, brackets and figure “notified as such under sub-section (1) of section 133”, the words and figures “referred to as a convention country in section 133” shall be substituted; (c) clause (g) shall be omitted;(d) in clause (h),— (i) in sub-clause (iii), after the words and figures “the Companies Act, 1956”, the word “; or” shall be inserted; (ii) after sub-clause (iii), the following sub-clause shall be inserted, namely:—“(iv) by an institution wholly or substantially financed by the Government;”;(iii) the words “and includes the Council of Scientific and Industrial Research and any other institution which is financed wholly or for the major part by the said Council;” shall be omitted;(e) for clause (i), the following clause shall be substituted, namely:—“(i) “High Court”, in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;’;(f) for clauses (l) and (m), the following clauses shall be substituted, namely:—“(l) Opposition Board” means an Opposition Board constituted under sub-section (4) of section 25;(m) “patent” means a patent for any invention granted under this Act;’.39 of 1970.1 of 1956.Amendment of section 3.
3. In section 3 of the principal Act,— (a) in clause (d), for the words “new use”, the words “mere new use” shall be substituted; (b) for clause (k), the following clauses shall be substituted, namely:—“(k) a computer programmed *per se* other than its technical application to industry or a combination with hardware;(ka) a mathematical method or a business method or algorithms;’.
4. Section 5 of the principal Act shall be omitted. Omission of section 5.
5. In section 7 of the principal Act,—(a) after sub-section (1A), the following sub-section shall be inserted, namely:—“(1B) The filing date of an application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty.”; (b) in sub-section (3), for the word “owner”, the word “person” shall be substituted; (c) for sub-section (4), the following sub-section shall be substituted, namely:—“(4) Every such application (not being a convention application or an pplication filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification.”. Amendment of section 7.

6. In section 8 of the principal Act,—(a) in sub-section (1),—(i) for the words “within such period as the Controller may, for good and sufficient reasons, allow”, the words “within the prescribed period as the Controller may allow” shall be substituted;(ii) in clause (b), for the words “up to the date of the acceptance of his complete specification filed in India”, the words “up to the date of grant of patent in India” shall be substituted;(b) for sub-section (2), the following sub-section shall be substituted, namely:—“(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed.”. Amendment of section 8.
7. In section 9 of the principal Act,—(a) for sub-section (1), the following sub-section shall be substituted, namely:—“(1) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.”; (b) in sub-section (2), the following proviso shall be inserted at the end, namely:—“Provided that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.”; Amendment of section 9.4(c) or sub-sections (3), the following sub-section shall be substituted, namely:—“(3) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.”; (d) in sub-section (4), for the words “the acceptance of the complete specification”, the words “grant of patent” shall be substituted. Amendment of section 10.
8. In section 10 of the principal Act,—(a) in sub-section (3), for the words “before the acceptance of the application”, the words “before the application is found in order for grant of a patent” shall be substituted;(b) in sub-section (4), in the proviso,—(i) in clause (ii), for the words “the material to an authorised depository institution as may be notified by the Central Government in the Official Gazette”, the words “the material to an International depository authority under the Budapest Treaty” shall be substituted; (ii) for sub-clause (A), the following sub-clause shall be substituted, namely:—“(A) the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period.”; (c) for sub-section (4A), the following sub-section shall be substituted, namely:—“(4A) In case of an international application designating India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act.”. Amendment of section 11.
9. In section 11 of the principal Act,—(a) after sub-section (3), the following sub-section shall be inserted, namely:—“(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.”;(b) in sub-section (6), after the brackets and figure “(3)”, the brackets, figure and letter “(3A)”, shall be inserted. Amendment of section 11A.
10. In section 11A of the principal Act,—(a) for sub-sections (1) to (3), the following sub-sections shall be substituted, namely:—“(1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.5(2) he applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.(3) Every application for a patent

shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application—(a) in which secrecy direction is imposed under section 35; or (b) has been abandoned under sub-section (1) of section 9; or (c) has been withdrawn three months prior to the period specified under sub-section (1).”; (b) in sub-section (4), for the words “of eighteen months”, the words, brackets and figure “prescribed under sub-section (1)” shall be substituted; (c) after sub-section (6), the following sub-section shall be inserted, namely:—“(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application: Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted: Provided further that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before the 1st day of January, 2005 shall accrue from the date of grant of the patent.”. Amendment of section 11B.

11. In section 11B of the principal Act,—(a) for sub-section (1), the following sub-section shall be substituted, namely:—“(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.”; (b) sub-section (2) shall be omitted; (c) for sub-section (3), the following sub-section shall be substituted, namely:—“(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.”; (d) in sub-section (4),—(i) the words, brackets and figure “or sub-section (2)” shall be omitted; (ii) for the proviso, the following proviso shall be substituted, namely:—“Provided that—(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and (ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.”. Amendment of section 12.
12. In section 12 of the principal Act,—(a) in sub-section (1), for the words, brackets, figures and letter “under subsection(1) or sub-section (2) or sub-section (3) of section 11B, the application and specification and other documents shall be referred to by the Controller”, the words, brackets, figures and letter “under sub-section (1) or sub-section (3) of section 11B, the application and specification and other documents related thereto shall be referred at the earliest by the Controller” shall be substituted; (b) in sub-section (2), for the words “a period of eighteen months from the date of such reference”, the words “such period as may be prescribed” shall be substituted. Amendment of section 13.
13. In section 13 of the principal Act, in sub-section (3), for the words “it has been accepted”, the words “the grant of a patent” shall be substituted. Substitution of new sections for sections 14 and 15.
14. For sections 14 and 15 of the principal Act, the following sections shall be substituted, namely:—
 Consideration of the report of examiner by Controller.—14. Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made there under, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard. Power of Controller to refuse or require amended applications, etc., in certain cases.
15. Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made there under, the Controller may refuse the application or may require the application, specification

or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.”Amendment of section 16.

16. In section 16 of the principal Act,—(a) in sub-section (1), for the words “before the acceptance of the complete specification”, the words “before the grant of the patent” shall be substituted;(b) for the *Explanation*, the following *Explanation* shall be substituted, namely:—“*Explanation*.— For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period.” Amendment of section 17.
17. In section 17 of the principal Act, in sub-section (1), for the words “before acceptance of the complete specification”, the words “before the grant of the patent” shall be substituted.
18. In section 18 of the principal Act,—(a) in sub-section (1), for the words “to accept the complete specification”, the words “the application” shall be substituted;(b) sub-section (4) shall be omitted. Amendment of section 18.
19. In section 19 of the principal Act, in sub-section (1), the words and figures “by the foregoing provisions of this Act or of proceedings under section 25”, the words “under this Act” shall be substituted. Amendment of section 19.
20. For section 21 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 21. “21. (1) An application for a patent shall be deemed to have been abandoned unless, within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller. *Explanation*.—Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed.(2) If at the expiration of the period as prescribed under sub-section (1),—(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.(3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine: Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court.”. Time for putting application in order for grant.
21. Sections 22 to 24 of the principal Act shall be omitted. Omission of sections 22 to 24.
22. Chapter IVA of the principal Act shall be omitted. Omission of Chapter IVA.
23. In Chapter V of the principal Act, for the Chapter heading “OPPOSITION TO GRANT OF PATENT”, the Chapter heading “REPRESENTATION AND OPPOSITION PROCEEDINGS”

shall be substituted. Substitution of heading of Chapter V.8 Substitution of new sections for sections 25 and 26.

24. For sections 25 and 26 of the principal Act, the following sections shall be substituted, namely:—
- Opposition to the patent.—25. (1) Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground of—(a) patentability including novelty, inventive step and industrial applicability, or (b) non-disclosure or wrongful mentioning in complete specification, source and geographical origin of biological material used in the invention and anticipation of invention by the knowledge, oral or otherwise available within any local or indigenous community in India or elsewhere, and the Controller shall consider and dispose of such representation in such manner and within such period as may be prescribed.(2) Notwithstanding anything contained in sub-section (1), the person making a representation referred to in that sub-section shall not become a party to any proceedings under this Act only for the reason that he has made such representation. (3) At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:—(a) that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims; (b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or (ii) in India or elsewhere, in any other document: Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29; (c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the claim of the patentee and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the claim of the patentee; (d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim. *Explanation.*—For the purposes of this clause, an invention relating to a process for which a patent is granted shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the claim; (f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act; (g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed; (h) that the patentee has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;(i) that in the case of a patent granted on convention application, the application for patent was not made within twelve months from the date of the first application for protection for the invention made in a convention country or in India by the patentee or a person from whom he derives title; (j) that the complete specification does not disclose or wrongly mentions the source and geographical origin of biological material used for the invention;(k) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere, but on no other ground. (4) (a) Where any such notice of opposition is duly given under sub-section (3), the Controller shall notify the patentee. (b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting of such officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its recommendations to the Controller. (c) Every Opposition Board constituted under clause (b) shall conduct the examination in accordance with such procedure as

may be prescribed. (5) On receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, the Controller shall order either to maintain or to amend or to revoke the patent. (6) While passing an order under sub-section (5) in respect of the ground mentioned in clause (d) or clause (e) of sub-section (3), the Controller shall not take into account any personal document or secret trial or secret use. (7) In case the Controller issues an order under sub-section (5) that the patent shall be maintained subject to amendment of the specification or any other document, the patent shall stand amended accordingly. 10 In cases of "obtaining" Controller may treat the patent as the patent of opponent. 26. (1) Where in any opposition proceeding under this Act the Controller finds that— (a) the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of sub-section (3) of section 25 and revokes the patent on that ground, he may, on request by such opponent made in the prescribed manner, direct that the patent shall stand amended in the name of the opponent; (b) a part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention. (2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which included the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.". Omission of section 27.

25. Section 27 of the principal Act shall be omitted. Amendment of section 28.
26. In section 28 of the principal Act,—(a) for sub-section (4), the following sub-section shall be substituted, namely:—“(4) A request or claim under the foregoing provisions of this section shall be made before the grant of patent.”; (b) sub-section (5) shall be omitted; (c) in sub-section (6), for the words, brackets and figure “Subject to the provisions of sub-section (5), where”, the word “Where” shall be substituted. Amendment of section 31.
27. In section 31 of the principal Act, for the words “not later than six months”, the words “not later than twelve months” shall be substituted. Amendment of section 34.
28. In section 34 of the principal Act, the words “to accept complete specification for a patent or ” shall be omitted. Amendment of section 35.
29. In section 35 of the principal Act, in sub-section (3), for the words “acceptance of complete specification”, the words “grant of patent” shall be substituted. Amendment of section 36.
30. In section 36 of the principal Act, in sub-section (1), for the words “twelve months”, the words “six months” shall be substituted. Amendment of section 37.
31. In section 37 of the principal Act,—(a) in sub-section (1),—(i) in clause (a), for the words “to accept”, the words “to grant” shall be substituted; 11 (ii) for the proviso, the following proviso shall be substituted, namely:— “Provided that the application may, subject to the directions, proceed up to the stage of grant of the patent, but the application and the specification found to be in order for grant of the patent shall not be published, and no patent shall be granted in pursuance of that application.”; (b) in sub-section (2), for the words “is accepted”, the words “is found to be in order for grant of the patent” shall be substituted.
32. For section 39 of the principal Act, the following section shall be substituted, namely:—
Substitution of new section for section 39. “39. (1) No person resident in India shall, except under

the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless— (a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and (b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked. (2) The Controller shall dispose of every such application within such period as may be prescribed: Provided that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government. (3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.”. Residents not to apply for patents outside India without prior permission.

33. In Chapter VIII of the principal Act, for the Chapter heading “GRANT AND SEALING OF PATENTS AND RIGHTS CONFERRED THEREBY”, the Chapter heading “GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY” shall be substituted. Substitution of heading of Chapter VIII.
34. For section 43 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 43. “43. (1) Where an application for a patent has been found to be in order for grant of the patent and either— (a) the application has not been refused by the Controller by virtue of any power vested in him by this Act; or (b) the application has not been found to be in contravention of any of the provisions of this Act, the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register. (2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.”. Grant of patents. 12 Amendment of section 44.
35. In section 44 of the principal Act, for the word “sealed”, at both the places where it occurs, the word “granted” shall be substituted. Amendment of section 45.
36. In section 45 of the principal Act, in sub-section (3), for the words “the date of advertisement of the acceptance of the complete specification”, the words “the date of publication of the application” shall be substituted. Amendment of section 48.
37. In section 48 of the principal Act, the proviso shall be omitted. Amendment of section 52.
38. In section 52 of the principal Act,— (a) in sub-section (1),— (i) for the opening words “Where a patent has been revoked”, the words and figures “Where the patent has been revoked under section 64” shall be substituted; (ii) for the word, court”, wherever it occurs, the words “Appellate Board or court” shall be substituted; (b) in sub-section (2), for the word “court”, occurring at both the places, the words “Appellate Board or court” shall be substituted. Amendment of section 53.
39. In section 53 of the principal Act,— (a) after sub-section (1), the following *Explanation* shall be inserted, namely:— “*Explanation.*—For the purposes of this sub-section, the term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.”; (b) in sub-section (2), for the words “or within that period as extended under this section”, the words “or within such extended period as may be prescribed” shall be substituted; (c) sub-section (3) shall be omitted. Amendment of section 54.
40. In section 54 of the principal Act,— (a) in sub-section (3), for the words “complete specification”, occurring at both the places, the word “application” shall be substituted; (b) for sub-section (4), the following sub-section shall be substituted, namely:— “(4) A patent of addition shall not be granted before grant of the patent for the main invention.”. Amendment of section 57.

41. In section 57 of the principal Act,– (a) for sub-section (3), the following sub- section shall be substituted, namely:– “(3) Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the grant of patent and the nature of the proposed amendment may be published.”; 13 (b) in sub-section (4),– (i) for the word “advertised”, the word “published” shall be substituted; (ii) for the word “advertisement”, the word “publication” shall be substituted; (c) for sub-section (6), the following sub-section shall be substituted, namely:– “(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification or any other document related thereto to comply with the directions of the Controller issued before the grant of a patent.”.
42. For section 58 of the principal Act, the following section shall be substituted, namely:– Substitution of new section for section 58. “58. (1) In any proceeding before the Appellate Board or the High Court for the revocation of a patent, the Appellate Board or the High Court, as the case may be, may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the Appellate Board or the High Court may think fit, and if, in any proceedings for revocation, the Appellate Board or the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent. (2) Where an application for an order under this section is made to the Appellate Board or the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the Appellate Board or the High Court. (3) Copies of all orders of the Appellate Board or the High Court allowing the patentee to amend the specification shall be transmitted by the Appellate Board or the High Court to the Controller who shall, on receipt thereof, cause an entry thereof and reference thereto to be made in the register.”. Amendment of specification before Appellate Board or High Court.
43. In section 59 of the principal Act, for sub-section (2), the following subsection shall be substituted, namely:– “(2) Where after the date of grant of patent any amendment of the specification or any other documents related thereto is allowed by the Controller or by the Appellate Board or the High Court, as the case may be,– (a) the amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto; (b) the fact that the specification or any other documents related thereto has been amended shall be published as expeditiously as possible; and (c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.”. Amendment of section 59.
44. In section 60 of the principal Act, in sub-section (1), for the words, brackets and figures “prescribed period or within that period as extended under sub-section (3) of section 53”, the words, figures and brackets “period prescribed under section 53 or within such period as may be allowed under sub-section (4) of section 142” shall be substituted. Amendment of section 60. 14 Amendment of section 61.
45. In section 61 of the principal Act, in sub-section (1), for the words “advertise the application”, the words “publish the application” shall be substituted. Amendment of section 62.
46. In section 62 of the principal Act,– (a) in sub-section (1), for the word “advertisement”, the word “publication” shall be substituted; (b) in sub-section (2), for the words “date of the advertisement”, the words “date of publication” shall be substituted. Amendment of section 63.
47. In section 63 of the principal Act,– (a) in sub-section (2), for the word “advertise”, the word “publish” shall be substituted; (b) in sub-section (3), for the words “such advertisement”, the words “such publication” shall be substituted. Amendment of section 64.
48. In section 64 of the principal Act, in sub-section (1), for the words “on the petition of any person interested or of the Central Government or on a counterclaim in a suit for infringement of the

patent, be revoked by the High Court”, the words “be revoked on a petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court” shall be substituted. Substitution of new section for section 65.

49. For section 65 of the principal Act, the following section shall be substituted, namely:–
Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy. “65. (1) Where at any time after grant of a patent, the Central Government is satisfied that a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962, it may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent. (2) In any proceedings under sub-section (1), the Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent.”. 33 of 1962. Substitution of new section for section 68.
50. For section 68 of the principal Act, the following section shall be substituted, namely:–
Assignments, etc., not to be valid unless in writing and duly executed. “68. An assignment of a patent or of a share in a patent, a mortgage, license or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed.”. Amendment of section 74.
51. In section 74 of the principal Act, for sub-section (2), the following subsection shall be substituted, namely:– “(2) The Central Government may, by notification in the Official Gazette, specify the name of the Patent Office.”. 15
52. In section 78 of the principal Act,– (a) in sub-section (4), for the word “advertised”, the word “published” shall be substituted; (b) in sub-section (5), for the words “such advertisement”, the words “such publication” shall be substituted. Amendment of section 78.
53. In section 87 of the principal Act, in sub-section (1), for the words “shall advertise the application in the Official Gazette”, the words “shall publish the application in the official journal” shall be substituted. Amendment of section 87.
54. In section 90 of the principal Act, in sub-section (1), for clause (vii), the following shall be substituted, namely: – “(vii) that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive; (viii) that the licence is granted with a predominant purpose of supplying in the Indian market: Provided that the licensee may also export the patented product in accordance with section 92A: Provided further that in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product.”. Amendment of section 90.
55. After section 92 of the principal Act, the following section shall be inserted, namely:– Insertion of new section 92A. “92A. (1) Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country. (2) The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him. (3) The provisions of sub-sections (1) and (2) shall be without prejudice to the extent to which pharmaceutical products produced under

a compulsory license can be exported under any other provision of this Act. *Explanation.*—For the purposes of this section, ‘pharmaceutical products’ means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use.’. Compulsory licence for export of patented pharmaceutical products in certain exceptional circumstances.

56. In section 100 of the principal Act, in sub-section (3), for the words “the acceptance of the complete specification in respect of the patent”, the words “grant of the patent” shall be substituted. Amendment of section 100.
57. In section 105 of the principal Act, in sub-section (4), for the words “after the date of advertisement of acceptance of the complete specification of a patent”, the words “after the publication of grant of a patent” shall be substituted. Amendment of section 105. 16 Amendment of section 107A.
58. In section 107A of the principal Act,— (a) in clause (a),— (i) for the words “using or selling”, the words “using, selling or importing” shall be substituted; (ii) for the words “use or sale,” the words “use, sale or import” shall be substituted; (b) in clause (b), for the words “who is duly authorised by the patentee to sell or distribute the product”, the words “who is duly authorised under the law to produce and sell or distribute the product” shall be substituted. Amendment of section 113.
59. In section 113 of the principal Act,— (a) for sub-section (1), the following sub-section shall be substituted, namely:— “(1) If in any proceedings before the Appellate Board or a High Court for the revocation of a patent under section 64 and section 104, as the case may be, the validity of any claim of a specification is contested and that claim is found by the Appellate Board or the High Court to be valid, the Appellate Board or the High Court may certify that the validity of that claim was contested in those proceedings and was upheld.”; (b) for sub-section (3), the following sub-section shall be substituted, namely:— “(3) Nothing contained in this section shall be construed as authorizing the courts or the Appellate Board hearing appeals from decrees or orders in suits for infringement or petitions for revocation, as the case may be, to pass orders for costs on the scale referred to therein.”. Amendment of section 116.
60. In section 116 of the principal Act [as substituted by section 47 of the Patents (Amendment) Act, 2002], in sub-section (2), clause (c) shall be omitted. 38 of 2002. Amendment of section 117A.
61. In section 117A of the principal Act [as inserted by section 47 of the Patents (Amendment) Act, 2002], in sub-section (2), for the words and figures “section 20, section 25, section 27, section 28”, the words, figures and brackets “section 20, sub-sections (5) of section 25, section 28” shall be substituted. 38 of 2002. Amendment of section 117D.
62. In section 117D of the principal Act [as inserted by section 47 of the Patents (Amendment) Act, 2002], in sub-section (1), for the words, “for rectification of the register”, the words and figures “for revocation of a patent before the Appellate Board under section 64 and an application for rectification of the register” shall be substituted.”. Substitution of new section for section 117G.
63. For section 117G of the principal Act [as inserted by the Patents (Amendment) Act, 2002], the following section shall be substituted, namely:— 38 of 2002. Transfer of pending proceedings to Appellate Board. “117G. All cases of appeals against any order or decision of the Controller and all cases pertaining to revocation of patent other than on a counter-claim in a suit for infringement and rectification of register pending before any High Court, shall be transferred to the Appellate Board from such date as may be notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.”. 17

64. In section 120 of the principal Act, for the words, “ten thousand rupees”, the words “one lakh rupees” shall be substituted. Amendment of section 120.
65. In section 122 of the principal Act, in sub-section (1), for the words, “twenty thousand rupees”, the words “ten lakh rupees” shall be substituted. Amendment of section 122.
66. In section 123 of the principal Act, for the words, “ten thousand rupees in the case of a first offence and forty thousand rupees”, the words “one lakh rupees in the case of a first offence and five lakh rupees” shall be substituted. Amendment of section 123. 38 of 2002.
67. In section 126 of the principal Act,— (a) in sub-section (1), in clause (c), sub-clause (i) shall be omitted; (b) in sub-section (2), for the words, brackets and figures “the Patents (Amendment) Act, 2002”, the words, “the Patents (Amendment) Ordinance, 2004” shall be substituted. Amendment of section 126.
68. For section 133 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 133. “133. Any country, which is a signatory or party or a group of countries, union of countries or intergovernmental organizations which are signatories or parties to an international, regional or bi-lateral treaty, convention or arrangement to which India is also a signatory or party and which affords to the applicants for patents in India or to citizens of India similar privileges as are granted to their own citizens or citizens to their member countries in respect of the grant of patents and protection of patent rights shall be a convention country or convention countries for the purposes of this Act.”. Convention countries.
69. In section 135 of the principal Act, after sub-section (2), the following subsection shall be inserted, namely:— “(3) In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application: Provided that a request for examination under section 11B shall be made only for one of the applications filed in India.”. Amendment of section 135.
70. In section 138 of the principal Act, for sub-section (1), the following subsection shall be substituted, namely:— “(1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, when required by the Controller, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country as referred to in section 133 verified to the satisfaction of the Controller, within the prescribed period from the date of communication by the Controller.”. Amendment of section 138.
71. In section 142 of the principal Act, in sub-section (4), for the words, “the complete specification”, the words, “the application” shall be substituted. Amendment of section 142. 18 Substitution of new section for section 143.
72. For section 143 of the principal Act, the following section shall substituted, namely:— Restrictions upon publication of specification. “143. Subject to the provisions of Chapter VII, an application for a patent, and any specification filed in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller before the expiration of the period prescribed under sub-section (1) of section 11A or before the same is open to public inspection in pursuance of sub-section (3) of section 11A or section 43.”. Substitution of new section for section 145.
73. For section 145 of the principal Act, the following section shall substituted, namely:— Publication of official journal. “145. The Controller shall publish periodically an official journal which shall contain such information as may be required to be published by or under the provisions of this Act or any rule made thereunder.”. Amendment of section 151.

74. In section 151 of the principal Act,— (a) in sub-section (1), for the words, “the High Court”, occurring at the places, the words “the High Court or the Appellate Board” shall be substituted; (b) in sub-section (3), for the word “courts”, the words “Appellate Board or the courts, as the case may be,” shall be substituted. Omission of section 152.
75. Section 152 of the principal Act shall be omitted. Amendment of section 159.
76. In section 159 of the principal Act,— (i) in sub-section (2),— (a) for clauses (ia) and (ib), the following clauses shall be substituted, namely:— “(ia) the period which the Controller may allow for filing of statement and undertaking for in respect of applications under sub-section (1), the period within which the details relating to processing of applications may be filed before the Controller and the details to be furnished by the applicant to the Controller under sub-section (2) of section 8; (ib) the period within which a reference to the deposit of materials shall be made in the specification under sub-clause (A) of clause (ii) of the proviso to sub-section (4) of section 10; (ic) the period for which application for patent shall not be open to the public under sub-section (1) and the manner in which the applicant may make a request to the Controller to publish his application under subsection (2) of section 11A; (id) the manner of making the request for examination for an application for patent and the period within which such examination shall be made under sub-sections (1) and (3) of section 11B; (ie) the manner in which an application for withdrawal of an application for grant of a patent shall be made and the period within which a request for examination from the date of revocation of secrecy directions shall be made under the proviso to sub-section (4) of section 11B.”; (b) in clause (ii), for the word “advertised”, the words “published” shall be substituted; 19 (c) for clause (v), the following clauses shall be substituted, namely:— “(v) the manner in which and the period within which the Controller shall consider and dispose off a representation under sub-section (1) of section 25; (va) the period within which the Controller is required to dispose off an application under section 39;”; (ii) in sub-section (3), the following proviso shall be added at the end, namely:— “Provided that the Central Government may, if it is satisfied that circumstances exist which render it practically not possible to comply with such condition of previous publication, dispense with such compliance.”.
77. Section 163 of the principal Act shall be omitted. Omission of section 163.
78. (1) Notwithstanding the omission of Chapter IVA of the principal Act by section 21 of this Ordinance, every application for the grant of exclusive marketing rights filed under that Chapter before the 1st day of January, 2005, in respect of a claim for a patent covered under sub-section (2) of section 5 of the principal Act, such application shall be deemed to be treated as a request for examination for grant of patent under sub-section (3) of section 11B the principal Act, as amended by this Ordinance. (2) Every exclusive right to sell or distribute any Article or substance in India granted before the 1st day of January, 2005 shall continue to be effective with the same terms and conditions on which it was granted. (3) Without prejudice to any of the provisions of the principal Act, the applications in respect of which exclusive rights have been granted before the 1st day of January, 2005 shall be examined for the grant of patent immediately on the commencement of this Ordinance. (4) All suits relating to infringement of the exclusive right granted before 1st day of January, 2005 shall be dealt with in the same manner as if they were suits concerning infringement of patents under Chapter XVIII of the principal Act. (5) The examination and investigation required as carried out for the grant of exclusive right shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon. Transitional provision.

A.P.J.ABDUL KALAM,
President.

T.K. VISWANATHAN,
Secy. To the Govt. of India.

IMF TEAM TO MEET ‘ECONOMIC BUREAUCRACY’.

Statesmen

Oct – 24 days before the Indian government begins work on the budget for the next financial year, a high level delegation from the International Monetary Fund has begun meeting the cream of the Indian Economic Bureaucracy for “consultations”.

This happens as part of the Art. IV consultations as India still owes the IMF, some, but not a large amount of money. The discussions are all on issues that relate the very basics of the budget. As a finance ministry document said, the people the IMF officials will meet from 28th October :

Finally they will meet the Finance Secretary, as a part of the wrap up meeting. A large No. of officials will be present, including some secretary level officials.

A finance ministry paper said the IMF delegation, led by deputy director, Asia and Pacific Department, is interested in four major issues. These are the developments in revenue collections, including corporate and income tax, excise and customs, factors explaining improved revenue collection, tax administration developments, refunds and non tax revenue, the forecast for 2002 – 03 revenue outcome , including the impact on post budget changes, the reduction of excise on fuel, impact of the drought on revenue collection and disinvestment receipts. It is also keen to know about other issues including the size of arrears in tax payment, the use and classification of disinvestment receipts, handling of service taxes, the fiscal responsibility bill, centre-state revenue allocation when value added tax is introduced and the mandate of the Kelkar Committee, the tax working group.

The consultations began on Monday, but will resume on 28 th October. The delegation is meeting about 20 senior officials from the finance, disinvestment and petroleum ministries and also, officials from the Planning Commission.

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- b) www.wto.org
- c) www.wipo.org
- d) www.uncitral.org
- e) www.wolrdbank.org
- f) www.imf.com

About the Author:

Prof. Ganesh S Hingmire is from traditional Maharashtrian family. After completing his primary and secondary education in Pune, he opted for his Bachelors Degree of Science from A. G. College, Pune. He then pursued his career in Law from ILS law college, Pune. He did his masters degree from Cardiff University, U.K. with flying colors. His Master's thesis was "Implementing GATT and Its effect on Indian Industries" for which he has made a thorough researched. Notable feature being this master thesis was the face-to-face interviews of top Indian Industrialists viz. Mr. N.R.Narayana Murthy, Infosys; Mr. J. Irani, TATA Group; Mr. Sunil Kant Munjal, M.D. Hero Honda; Mr. N. Srinivasan, Deputy Director General of C.I.I.

Presently, He is working for 'Venkateshwra Hatcheries'. He is also working as Visiting Lecturer at 'Symbiosis Law College' and 'Symbiosis Institute of International Business', Pune, 'International Institute of Information Technology', Hinjawadi, 'New Law College' of Bharathee Vidyapeeth, pune 'International Education Society', Mumbai.. He had been to Cancun, Mexico to attend the WTO's fifth Ministerial Conference as a representative of 'Shram Seva Nyas'.

He Published various Articles in local periodicals includes 'Arth-Manthan' ' and 'Vikalpved'. He also contributed in annual Journals on Intellectual Property Rights and Journal on Political Sciences. He has delivered the speeches in Thane College, Thane, Nahsik and Garware Collge, Pune on Cancun Ministerial Conference.