CTIL MAGAZINE

Fourth Anniversary Issue

July 2021

Creating Ideas for Better Trade Policy

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Highlights

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What's Inside

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About CTIL

The Centre for Trade and Investment Law (CTIL, or Centre) was created in 2016 by the Ministry of Commerce and Industry, Government of India, in pursuit of its objective of developing international trade and investment law capacity in India. The Centre is a part of the Centre for Research in International Trade (CRIT) at the Indian Institute of Foreign Trade. Its primary objective is to provide sound and rigorous analysis of legal issues pertaining to international trade and investment law to the Government of India and other governmental agencies. The Centre functions as a repository of information on trade and investment law, with a wide range of resources at its disposal. It also serves as a leading Indian platform for engaging in and influencing the evolving discourse on global economic law issues.

The Centre has been consistently providing technical inputs to the Government of India on the issues of international trade and investment law. In fact, since its inception, more than 700 advisory opinions have been provided by the Centre to the Department of Commerce on vital trade issues including the planning and implementation of trade promotion schemes under India's Foreign Trade Policy, interpretation and analysis of multilateral and bilateral trade agreements, providing research and inputs to assist India in its ongoing trade negotiations, on issues related to E-Commerce policy and the Personal Data Protection Bill, matters of international and domestic taxation, digital service taxes (DST), and the development of domestic laws that affect India's trade commitments.

CTIL meets the Department of Commerce's objective of having a dedicated pool of legal experts who provide technical inputs for enhancing India's participation in international trade and investment negotiations and dispute settlement. The Centre has also established itself as a thought leader in the various domains of international economic law such as WTO law, international investment law and legal issues relating to economic integration, by publishing a variety of books, articles and papers, and by holding and participating in conferences, stakeholder consultations, seminars and training programmes.

From the Editor's Desk

On June 14 this year, CTIL turned four years old. It looks like a reasonably long time for many of us, although more than an insignificant part of this period was devoured by the COVID-19 pandemic. It was a difficult period for many of us, as we had to wrestle with the challenges of the pandemic including home isolation, self-quarantines, extended stay away from home and missing loved ones. However, our productivity remained high and we learned the benefits of remote working and experimenting with different communication platforms. Importantly, we adapted to the 'new normal'. But there is nothing like restoring our full functioning including holding of physical meetings, lectures, consultations, training and capacity-building programmes.

In the last four years, CTIL has been at the forefront in helping the Department of Commerce (DOC) and other government agencies in designing and implementing proactive trade policies, regulatory frameworks and legislations. Trade policy making has become remarkably complex and sophisticated in recent times with the arrival of new technologies and platforms, the emergence of novel challenges including health, security and geopolitical concerns, and the fast-changing nature of global business. Providing legal opinions and strategies involve a critical thinking beyond the textual interpretation of trade agreements. Sound legal advice should be grounded in 'realism' that should reflect the political realities, business challenges, commercial considerations and the possibility of broad-based acceptance and rationality. Importantly, in areas such as trade policy, given its indeterminacy and the hard lessons of the past, there is an increasing risk of falling into the trap of subjective assessments and availability heuristics.

The CTIL magazine seeks to provide a snapshot of what we do, what we have accomplished and the intellectual reflections of our faculty and staff. At CTIL, it is our endeavour to contribute to innovative research, serious academic writing and intellectual exploration in the field of international trade and investment law. This magazine also presents some short, yet analytical articles on some of the topical trade law issues and our outlook for the future. We have also conducted interviews with a number of trade policy officials, whose perspectives and first-hand experiences on some of the current issues provide invaluable insights.

The fourth anniversary is also an occasion for us to express our gratitude to the people who envisioned CTIL and continue to provide it with much-needed support. We are truly grateful to Hon'ble Minister of Commerce and Industry Shri. Piyush Goyal for the faith that he has reposed in our Centre for expert opinions and comments, to current Commerce Secretary Shri. B.V.R. Subrahmanyam, former Commerce Secretaries: Dr. Anup Wadhawan, Smt. Rita Teotia and Shri. Rajeev Kher. We are also grateful to Shri. Sudhanshu Pandey (Secretary, Food and Public Distribution) who was pivotal during his time at the DOC in laying the groundwork for setting up CTIL and nurturing the Centre in its early days. We sincerely acknowledge the continuing support of Prof. Manoj Pant, Director IIFT, Shri. Amit Yadav (Additional Secretary & DGFT), Shri. Shyamal Misra (Joint Secretary), Shri. Darpan Jain (Joint Secretary) and Ms. Jyoti Yadav (Deputy Secretary) at the Trade Policy Division, DOC. Finally, no words of appreciation are sufficient to adequately express my gratitude to the young research team at CTIL who toiled hard to meet the demanding deadlines.

Finally, a huge word of thanks to Smrithi Bhaskar and Ridhish Rajvanshi, who took the pains to compile this magazine at a relatively quick time and for making it aesthetically beautiful.

We hope to continue the stimulating and rigorous research work at CTIL and contribute to India's leadership role in trade policymaking. In the meantime, we welcome your feedback, comments and suggestions.

Dr. James J. Nedumpara
Professor and Head
Centre for Trade and Investment Law

CTIL welcomes Hon'ble Minister Smt. Anupriya Patel, *who took over the charge as the Minister of State in the Ministry of Commerce and Industry, Government of India.*

CTIL welcomes Shri. B. V. R. Subrahmanyam, *who took over charge as the Secretary, Department of Commerce, Ministry of Commerce and Industry.*


HARVARD LAW SCHOOL
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India in the Internation

SNAPSHOTS


JANUARY
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DEA – CTIL Executive Training Programme on Investment Treaties and Investor-State Dispute Settlement System for Government Officials

CTIL, along with the Department of Economic Affairs, Ministry of Finance, conducted this Executive Training Programme. It saw a variety of expert practitioners, academicians and government officials take sessions on the standards of treatment under investment treaties, mitigating investment disputes, calculation and award of damages, the role of arbitral institutions, etc.

DoC - CRIT - CTIL Training and Capacity Building Programme on International Trade Negotiation

CTIL, along with the Department of Commerce, and the Centre for Research in International Trade conducted a series of sessions for government officials on trade negotiation, and treaty law.

Capacity Building Programme for FTA Negotiations

CTIL, along with the Department of Commerce, and the Centre for Research in International Trade organised a capacity building programme for DGFT and DGTR officials, in order to discuss legal issues that may arise during FTA negotiations, and their resolution.

March '21

Sep '20

Aug '20

The Future of Subsidy Regulation at the WTO

The Geneva Trade Week is a conference that brings together policy makers, academics, experts and the private sector to discuss trade related issues. CTIL organised a virtual Panel Discussion on the future of subsidy regulation at the WTO, which saw discussions on the legal, trade and geopolitical implications of the new subsidy-related proposals.

Training Workshop on Capacity Building in Export Promotion

CTIL, along with the Uttar Pradesh Export Promotion Council and the Policy Times, organised a capacity building workshop for exporters, in order to encourage export promotion.

Training Programme on Subsidies and Local Content Requirements

CTIL conducted a virtual training programme for government officials on local content requirements under the GATT, SCM and TRIMs Agreements.

Discussion Session on Future of Trade Dispute Settlement

CTIL, along with the South Asia International Economic Law Network (SAIELN), and the University of Wollongong, Australia, organised a talk by Prof. Markus Wanger, Associate Professor, University of Wollongong, on the future of trade dispute settlement, WTO panels and new plurilateralism.

April '20 — Feb '20 — Jan '20

Masterclass on International Investment Arbitration

CTIL, along with the MCIA, organised a masterclass on international investment arbitration. This was taught by Mr. Gaetan Verhoosel, and Mr. Manish Aggarwal, Partners, Three Crowns and Visiting Faculty, King's College, London

Conference on International Investment Arbitration

CTIL, along with the Mumbai Centre for International Arbitration, conducted a conference on International Investment Arbitration: Setting the Stage. The conference concluded with the release of CTIL's study on investor perceptions of Indian investment treaties.

(L-R) Ms. Neeti Sachdeva, Secretary General, MCIA; Mr. Sudhanshu Pandey, Secretary, Department of Food and Public Distribution; Hon'ble Justice Indu Malhotra, Former Judge, Supreme Court of India; Hon'ble Justice A K Sikri, former Judge, Supreme Court of India; Mr. K. Rajaraman, Additional Secretary (Investment & IER), Department of Economic Affairs and Prof. James J. Nedumpara.

CTIL Events

CTIL Collaborations

CTIL – CII Webinar on Free Trade Agreements and Export Opportunities

The Confederation of Indian Industry (Southern Region), along with CTIL, hosted a webinar on FTAs and export opportunities, to explain the scope and importance of FTAs for export-oriented businesses, in August 2020. The webinar also touched upon matters of special interest for Indian industry, such as certificates of origin, market access issues, the use of trade remedies, etc.

CTIL-ILI Training Programme

The CTIL, in partnership with the International Law Institute, Washington D.C., organised a three-day intensive training and capacity-building programme for Indian government officials on international trade and investment law from 10-12 January 2019. Over forty government officials participated in the programme. The then Additional Secretary, Department of Commerce, Ministry of Commerce and Industry, Government of India, Mr. Sudhanshu Pandey gave the keynote address, and emphasised on the importance of developing trade-related capacity in India. The programme focused on equipping the participants with specialised technical and legal expertise in international trade and investment law with a view to adequately securing the interests of India at international fora.

INBA 9th Annual Virtual International Conference for 71st Constitutional Day

CTIL, along with the Indian National Bar Association, organised a virtual conference on the occasion of the 71st Constitutional Day, on 26-27 November 2020. This conference saw discussions on various issues, such as data protection and privacy post COVID-19, self-regulation of television, websites, theatres and OTT service providers / websites, the effects of Covid on contractual obligations, cyber crime, etc.

CTIL Events with our Academic Partners

12th GNLU International Moot Court Competition, 2020

Gujarat National Law University, Gandhinagar, partnered with the CTIL to organise the 12th GNLU International Moot Court Competition (GIMC), where the moot problem posed issues of international trade law. The moot simulates a WTO Panel Proceeding, and aims to expose law students to current issues of trade law. Members of the CTIL team were also invited to judge the competition, with Prof. James J. Nedumpara being a part of the Panel adjudicating the final round.

CTIL-NUJS Panel Discussion on five Years of Make in India: Financial Implications and the Road Ahead

The CTIL along with the National University of Juridical Sciences, West Bengal, organised a panel discussion on the financial implications of the Make in India scheme, and the road ahead. This Panel Discussion was moderated by Mr. Anshuman Panigrahi, and had Dr. Animesh Das, Assistant Professor, St. Xavier's University, Kolkata, Mr. Satwik Shekhar, Legal Consultant (Assistant Professor), CTIL, Ms. Akshaya Venkataraman, Senior Research Fellow, CTIL and Ms. Anwesha Pal, Faculty of Investment Arbitration, NUJS, on the panel.

RMLNLU-CTIL Conference on International Trade Law

The CTIL along with Dr. Ram Manohar Lohiya National Law University, organised a conference on International Trade Law. This conference saw discussions on policy proposals for export-led growth in compliance with WTO law, as well as on legal dimensions of agrarian distress and international economic law.

Developing domestic legislations and policies

Revision of Logistics Laws in India

CTIL is currently working in close consultation with the Logistics Division, Department of Commerce, to fulfil the goals of the Indian Logistics Policy. The CTIL team has extensively studied domestic and foreign logistics related laws, including laws relating to liability, registration, dispute settlement, facilitation and so on, in order to suggest the best way forward for India to revamp and update its existing logistics legislations. In pursuance of this objective, CTIL was also invited to join the UNESCAP 2nd Virtual Expert Meeting on Legal Frameworks for Multimodal Transport Operations in Asia and the Pacific, held in March, 2021. The CTIL team has also been working closely with the Division in order to prepare a draft law to further the goals presented in the National Logistics Policy.

Shri. Pawan Kumar Agarwal , Special Secretary, Logistics Ministry of Commerce & Industry, Government of India

Omnibus Chemical Regulations

CTIL, in consultation with the Department of Chemicals and Petrochemicals, Ministry of Chemicals and Petrochemicals, undertook the exercise of drafting the Chemical Safety and Management Rules for India. CTIL was appointed as the Secretariat for the Technical Committee constituted towards this end, and the CTIL team conducted an extensive study on these rules, drawing insights from the European Union's REACH and other chemical regulations in the US, Australia, China, Canada and South Korea. Two CTIL staff members were nominated to join the Indian delegation that met with the European Chemical Agency at Helsinki, Finland in January 2020. This team also met with Finnish national regulators, the Finnish chemical industry and Finnish customs authorities, and presented the draft Indian regulation to them in order to receive their feedback and incorporate their learnings.

E-Commerce

CTIL actively worked with the Department for Promotion of Industry and Internal Trade (DPIIT) to develop the Draft National E-Commerce Policy, released on 23 February 2019. A CTIL representative was deputed to DPIIT for a short term, during which he was directly involved in stakeholder consultations, inter-departmental consultations, meetings with the domestic regulators and drafting the text of the Policy. The CTIL Team undertook legal research on issues ranging from data privacy, anti-trust, consumer welfare, IPR, etc., in order to assist in the development of the policy.

IL's Areas

Studying domestic regulations and internal policies

International Assistance

CTIL analysed international best practices and international trends (implementation of different types of safeguards by EU and their relevance to India, Study on Trade Remedies Regimes and International Best Practices in Industry Regulations). CTIL also assists in India's interactions with its trade partners, in WTO disputes, in India's FTA negotiations and in preparing scoping paper for proposed Indian FTAs. CTIL works closely with the DGTR and played a key role in preparing the Manual of Standard Operating Procedures.

Analysis of United States' Worst Form of Child Labor Report, 2019 and List of Goods Produced from Child and Forced Labor, 2020

CTIL prepared a comprehensive report analysing the Worst Form of Child Labour Report and the List issued by the US Department of Labour. CTIL provided inputs on how to mitigate India's high ranking in both the lists, participated in stakeholders' consultations and assisted the Department of Commerce in determining probable ways forward.

Noida Special Economic Zone

CTIL undertook a comprehensive study highlighting the issues and operational concerns as well as the potential areas of diversification in Noida Special Economic Zone. The study was conducted by taking into consideration the export performances of different units, stakeholder consultations, examining the existing policy framework, and recent schemes rolled out by the Government of India.

Domestic Regulations (Services)

As part of the WTO discussions on developing disciplines in the field of domestic regulations, CTIL conducted studies examining the compliance of India's domestic regime with good internationally regulatory practices. CTIL submitted about seven major reports to the Department of Commerce, checking the compliance of India's domestic laws and regulations for critical service sectors such as accountancy and audit, architecture, audio-visual services, telecommunications, tourism and banking and finance.

Moradabad Special Economic Zone

CTIL undertook a comprehensive study on the possible areas of diversification in the Moradabad Special Economic Zone as well as the infrastructural and administrative deficiencies. It was conducted through site visits, stakeholder consultations, examination of the existing policy framework, and recent schemes rolled-out by the Government of India.

Commodity Boards

CTIL was tasked to review the functioning of four commodity boards: Coffee Board, Tea Board, Spices Board and Rubber Board, by the Department of Commerce. The ultimate objective of the study was to revamp the commodity boards. As part of the study, the CTIL team undertook a detailed review and assessment of the principal legislations and rules applicable to the commodity boards, and additionally conducted a series of consultations with various stakeholders including planters' and exporters' associations, processors, Board officials, scientists, etc.


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Research Outputs

CTIL carries out a variety of research activities in addition to its work on queries raised by governmental agencies. These studies are conducted on a variety of issues germane to domestic and international trade and investment law, and seeks to answer questions that are currently under-explored in scholarship. Below is a snapshot of recent CTIL studies.

Regulatory Barriers and Trade in Services: A Global Perspective

CTIL has been assisting the Indian Institute of Foreign Trade (IIFT) in its work on developing the Services Trade Restrictiveness Index (STRI). The Ministry of Commerce and Industry, Government of India, commissioned a study on the restrictiveness of services in India and other countries, and the quantification of services trade restrictions. The past two decades have seen a transformation in the pattern of trade, with services trade contributing to around 60% of export value added. The OECD has developed and released a STRI, to quantify services restrictions and indicate areas for reform The STRI study in this regard, is aimed at analysing the OECD index, and developing an alternative index that is theoretically and empirically advanced. CTIL assisted in this study by holding a series of workshops and roundtable discussions, along with IIFT, in order to discuss the nature and importance of various barriers to trade in services such as restrictions on foreign entry, movement of people, lack of regulatory transparency, barriers to competition etc., in various service sectors.

Study on Reforms in the Non-Litigious Service Sector: A Roadmap for Growth

CTIL team comprising James J. Nedumpara, Prakhar Bhardwaj, Shruti Ramakrishnan and Sunanda Tewari examined the gaps in Indian regulations governing non-litigious services. The

Shri. Darpan Jain, Joint Secretary, Department of Commerce

report provides a comprehensive analysis of the existing regulatory models for non-litigious services, mainly in-house counsel, law firms and legal process outsourcing firms. It also details judicial developments in this sector, and identifies best practices used in other jurisdictions to effectively govern these services. The report also studies how India can serve as an international Arbitration Hub, including the regulatory changes that are required to make India an attractive seat and venue for domestic and commercial arbitrations.

Contextualising Development in International Trade

This study provides an in-depth history of the development agenda in multilateral and regional trade, and presents the correlation between international trade, development and Special and Differential Treatment (S&DT). Authored by Pooja Sahni, Satwik Shekhar, and James J. Nedumpara, this study explores how S&DT has helped developing countries integrate into the multilateral trading system. It explores how the principle of S&DT at the WTO has evolved, from the creation of GATT to the end of the Uruguay Round and till date. It distinguishes four phases of development, and analyses certain WTO Members' perceptions towards this principle.

This study, conducted and authored by Dr. Rishab Gupta, Partner, Shardul Amarchand Mangaldas, assisted by Arjun Doshi, Shruti Shah, and Ipsiata Gupta, along with Rishabha Meena and Smrithi Bhaskar from CTIL, aims to determine how investment treaties affect investment flows in practice. The findings of this study were released in a report during the MCIA CTIL Conference on International Investment Arbitration in January 2020.

States enter into bilateral investment treaties (BITs) in order to encourage investment flows. These BITs serve as an insurer of risk for investors, since they provide for specific investor protection mechanisms, including a specialised form of dispute settlement. Since the proliferation of these instruments, there have been many attempts to investigate their actual impact on investment flows. Quantitative studies on this subject correlate the number of BITs signed by a State, with the amount of investment received. However, these studies have been inconclusive, as they have shown varied results. The CTIL study uses a qualitative approach based upon interviews with an elite group of respondents' - investors, international lawyers, in-house counsels and decision makers through direct interview and survey analysis, as to their understanding of BITs.

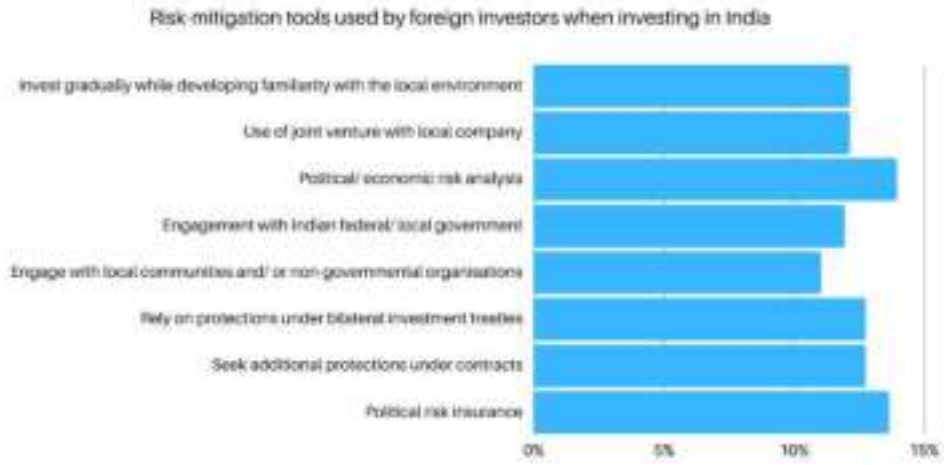
These surveys found that political risk was a key constraint to investment flows, including the risks of unexpected regulatory changes and changes to transfer restrictions. (*see Table 1 below*) Though BITs are among the top three most commonly cited methods of mitigation of political risks, many respondents of the survey were not aware of BITs, with 80% of respondents stating that they do not check BITs prior to investment decisions. Rather, potential investors cited other issues of domestic investment policy, such as a lack of transparent policies, as hindering investments more than the existence or absence of a BIT.

After analysing these responses, the study concludes with suggestions on how to ensure increased FDI flows to India, and stresses on the need to improve domestic investment administrative procedures, as well as the need for a stakeholder consensus. The results of the study show that though investors consider BITs an important risk mitigation tool, they are often not crucial in determining FDI decisions, or critical in investor's minds when choosing to make an investment or the investment destination. Therefore, BITs by themselves cannot spur investment flows, since investment decision makers are influenced by several factors, including non-legal factors as well. This is in line with India's present strategy of not focusing solely on the signing of BITs, but rather focusing on the development of the domestic investment landscape in order to attract investment flows.

Table 1 - Ranking of political risks faced by foreign and Indian investors

Rank	Foreign Investors	Indian Investors
1.	Risk of expropriation without adequate compensation	Discriminatory treatment by federal/local government
2.	Unexpected and/or retrospective regulatory changes	Unexpected and/or retrospective regulatory changes
3.	Lack of an independent/impartial judiciary	Transfer and convertibility restrictions
4.	Breach of contract by government/government owned agencies	Risk of expropriation without adequate compensation
5.	Transfer and convertibility restrictions	Breach of contract by government/government owned agencies
6.	Discriminatory treatment by federal/local government	Lack of an independent/impartial judiciary
7.	Risk of physical security for personnel posted in India	Lack of enforcement of contractual rights
8.	Lack of enforcement of contractual rights	Risk of physical security for personnel posted outside India

Research Outputs



Apart from long-term studies, CTIL routinely publishes discussion papers on various contemporary issues. A few discussion papers published in the past year are:

Director General of the WTO: The Past, Present and Future, by James J. Nedumpara, Rishabha Meena and Siddharth S. Aatreya

FDI in India: A Bird's Eye View, by James J. Nedumpara and Akshaya Venkataraman

Domestic Regulation and Visa Regimes: An unsustainable interaction by Shiny Pradeep and Sunanda Tewari

The Crisis in the WTO Appellate Body: Implications for India and the Multilateral Trading System by James J. Nedumpara and Prakhar Bhardwaj

The Proposed Investment Facilitation Agreement at the WTO by James J. Nedumpara and Sandeep Thomas Chandy

Government Procurement: A Multilateral Perspective in Goods and Services Trade by Sandeep Thomas Chandy and Anupal Dasgupta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Academic Partnerships

CTIL maintains partnerships with leading law schools in India and abroad, in order to cultivate a knowledge for international trade and investment law within law students. The Centre co-organises a series of conferences, symposia, essay writing competitions and trade law moots with national law schools in India. Apart from this, the Centre regularly hosts interns from various law schools, as well as coordinates the Department of Commerce flagship internship programme.

Research Fellows in the Centre are also extensively involved with undergraduate and postgraduate students, mentoring them during internships, participating as judges and coaches for a variety of trade and investment law related moot court competitions, and by encouraging the participation of students in the Centre's events. An important standalone academic collaboration in this regard, is CTIL's TradeLabs Project.

With the objective of imparting clinical legal education in India, specifically in the field of international trade law, CTIL conducts the TradeLab law clinic at National Law University, Jodhpur. In a hub-and-spoke model, CTIL acts as an intermediary and coordinates with the beneficiary (i.e. an entity seeking legal assistance concerning issues of international trade on one hand) and the students of NLU Jodhpur selected to work at the CTIL-TradeLab clinics during the course of the semester. CTIL has conducted two law clinics with NLU Jodhpur – during the Autumn 2020 semester and the Spring 2021 semester, the latter of which is currently underway.

Autumn 2020: The TradeLab project during the Autumn 2020 semester was conducted for the Indian Steel Association (ISA), a body which addresses issues, concerns and challenges pertaining to the steel sector, and liaises with the Government of India and other stakeholders. In light of an increase in India's trade deficit, specifically due to increased imports on preferential basis from India's FTAs partners such as Japan, Korea and ASEAN, and particularly, the difficulties faced by Indian steel exporters in these countries, ISA sought a legal analysis of these FTAs and proposals for structural, operational and/or textual changes, if needed, to ensure beneficial arrangements for Indian steel exporters. The report prepared by the students of the NLU Jodhpur highlighted the difficulties arising out of the following non-tariff barriers, along with the below-mentioned policy recommendations:

Non-Tariff Barriers	Recommendations
Technical Barriers	Mutual Recognition Agreements are recommended to reduce the cost of compliances with product standards in India's FTA partners.
Import licensing procedure	Indonesia, Malaysia and Vietnam have import licensing system for statistical data collection and monitoring purposes which imposes an additional economic burden on the Indian exporters and hence tightened import licensing rules have been suggested in these FTAs as a replacement to reduce the economic burden.
Trade facilitation and customs procedures	Cumbersome data and documentation requirements along with complex border procedures impede India's exports to these countries. The report recommends (i) inclusion of hard obligation through mandatory obligation; (ii) creation of a sub-committee; (iii) designation of contact points; and (iv) publication of information.
Rules of Origin	The report recommends harmonisation of product-specific rules of origin and strengthen India's risk assessment systems, record-keeping systems and improve the communication channels.

Additionally, by highlighting issues with the exit clauses in these FTAs, the report analysed possibilities of termination of the FTAs without an exit clause under the Vienna Convention on the Law of Treaties (VCLT) i.e., termination with mutual consent, unilateral termination, and modifications, and hence proposes a model exit clause. Further, the students also submitted a video showcasing the presentation of their report which was presented at the 2021 Student showcase.

Objective: To broaden the pool of individuals and stakeholders that have access to the benefits of trade and investment treaties, and to build lasting legal capacity and knowledge of international economic law.

Spring 2021: CTIL is conducting a TradeLab law clinic at NLU Jodhpur during the Spring Semester of the 2020-2021 session. The Beneficiary for the present legal research is Services Export Promotion Council (SEPC), an advisory body established by the Ministry of Commerce and Industry, which actively contributes to the formulation of policies of Government of India and acts as an interface between the services industry and the Government. This project is centered around liberalisation of India's domestic legal services sector. The research question proposed by SEPC notes that the interaction of foreign legal services suppliers with their Indian counterparts becomes indispensable in transactions involving multiple jurisdictions (cross-border mergers and acquisitions, corporate restructuring, foreign investment, etc.). Considering this expansion and the importance of the legal services in India, the TradeLab project includes assessing the implications and outcomes of liberalisation of India's legal services sector, specifically from the perspective of India's WTO commitments under the General Agreement on Trade in Services (GATS) and India's services obligations under its FTAs. Broadly, SEPC seeks legal analysis on, firstly, the regulatory framework of the legal services sector in India; secondly, the liberalisation of legal services in India at the bilateral as well as multilateral levels; and lastly, the conditions of granting market access and possible changes in India's GATS schedule of commitments, if any.

Though the project has not been concluded, substantial progress has been made. The preliminary report focuses on various categories of the legal services such as in-house counsels, law firms, Business Process Outsourcing units, etc. It also examines the Advocates Act, 1961 and Indian Bar Council Act, 1926 (and Rules framed thereunder) to determine the eligibility criteria for foreign legal service professionals.

The preliminary report highlights the various positions taken by stakeholders in the legal services sectors – advocates, academicians, law firm representatives etc. – on foreign legal service providers. The project attempts to identify possible tools of liberalisation at the bilateral level (through the Memoranda of Understanding or through the principle of reciprocity) as well as on an MFN basis (through modification in India's GATS schedule of commitments). The students have referred to the Memorandum of Understanding concluded by the Institute of Chartered Accountants of India (ICAI) to determine the possible implications of a similar approach by the BCI in the legal services sector. The report adopts comparative research methodology by assessing the regulation of foreign legal services in the jurisdictions such as Singapore, United Kingdom, Malaysia and France. Through the CTIL-TradeLab law clinic, the students got a chance to interact with Mr. Lalit Bhasin, the President of the Society of Indian Law Firms, who provided direct insight into the expectations and apprehensions of the Indian legal industry on the entry of foreign legal services professionals. It is expected that the recommendations under this project will provide substantial research to SEPC to adopt an informed approach towards liberalisation of the legal services sector in India.

Satwik Shekhar
Legal Consultant
(Assistant Professor),
CTIL

Rishabha Meena
Research Fellow, CTIL

Interview with Dr. Anup Wadhawan
Former Commerce Secretary, Government of India

Dr. Anup Wadhawan served as the Commerce Secretary of India from July 2018 to June 2021. Prior to becoming the Commerce Secretary, Dr. Wadhawan had served in the department as the Director General of Foreign Trade and Additional Secretary looking after trade policy matters. In a career spanning nearly 36 years in the Indian Administrative Service, Dr. Wadhawan has handled important assignments including stints at the Prime Minister's Office, Departments of Economic Affairs and Financial Services, and in various postings in his home cadre of UP / Uttarakhand. In a conversation with CTIL, Dr. Wadhawan reflected on some of the challenges facing the global economic order and the need for deepening trade related capacities in India. Importantly, it was during Dr. Wadhawan's term as Additional Secretary in-charge of Trade Policy, that CTIL was established.

Dr. Anup Wadhawan superannuated on 30 June 2021 after a distinguished career in public service.

These are uncertain times for the world economy. According to the UNCTAD, the number of trade restrictions increased steadily in the last one and a half years. What should be the aim of trade policy during these testing times?

In recent times, unilateralism and protectionism have surged across the globe. In a sense, these tendencies have been heighted by the Covid-19 pandemic. There is a misbelief that restrictive measures will help improve the economic situation in the countries adopting them. This is a misinformed belief. We should recall that protectionist policies fueled by the spiral of retaliatory actions, led to accentuation of the Great Depression of the 1930s by restricting markets and undermining the key underlying efficiency and consumer welfare objectives of economic policy.

One difficult issue in international trade is the treatment of different types of economic models. The GATT sought to encourage a neo-liberal capitalist model. How should other types of economies, especially the non-market-oriented economies be dealt with in the evolving economic order?

Regardless of the economic system, there must be adherence to basic principles of free and fair trade laid down in international trade rules. While it is in the economic interest of all countries to encourage and benefit from economic efficiency in manufacturing, both domestic and global, to benefit by way of enhanced consumer welfare and downstream efficiencies and competitiveness that can be realised through further processing of efficiently supplied inputs, there is a need to guard against practices like below cost dumping and subsidy derived competitiveness, which do not reflect any underlying efficiency that can be the source of constructive competitive pressure on domestic manufacturers to emulate, but is unsustainable and essentially a predatory pricing strategy. There may also be a case for temporary protection of the infant industry argument to achieve efficiencies in nascent industries having the potential. Beyond that, protectionism will create a closed inefficient economic eco-system that will be unsustainable in the medium to long term, as the experience of many countries, including our own, has shown in the past. Thus, we need to draw the line between true competitiveness in trade and unfair advantage gained through anti-competitive practices or other policy induced advantages.

While the role and nature of the State is important in this debate, we need to realise that virtually all States, regardless of the economic system, play a role in enhancing the competitiveness of the manufacturing sector by devoting budgetary resources to create a low cost and efficient business environment, and a conducive climate for investment.

Governments traditionally support infrastructure, ease of doing business through de-regulation of processes and compliances, and by providing WTO compatible incentivisation. The key issue is the need for complete transparency and openness in providing this support, rather than the modality for doing so or the economic system under which it is provided. To the extent some major global trading economies have been less then then transparent in this aspect, we need to use global rules for remedial actions, without punishing any country for their underlying efficiency and fair comparative advantage.

A number of key initiatives were taken during your time. Signing the Mauritius Agreement was a notable achievement. Other examples include the RoDTEP, the PLI Schemes, pursuing the TRIPS waiver at the WTO, and so on. What are the focus areas for India's trade policy?

The focus of some of the schemes including RoDTEP, drawbacks and advance authorisations is on facilitating duty free and domestic taxes / levy free access to imported and domestic inputs for producing export products. RoDTEP provides reimbursement of incidence of un-rebated domestic duties and taxes on exported products, which is based on the destination principle and the accepted belief that taxes and duties are not exported. Some of the incentives such as MEIS have expired, consistent with our changing international obligations. The PLI scheme seeks to address inefficiencies in the manufacturing eco-system. The various PLI schemes support manufacturing in some key sectors, in keeping with the ingredients behind the success stories of various economies across the globe, which have provided such support and created an efficient plug and play facility for industries and global investors. The success stories of Singapore, Vietnam, Taiwan and others provide a good a model. Looking at Vietnam, it is remarkable that it has forged free trade agreements with various groupings and has duty free access for virtually all lines of interest across the bulk of the global GDP, which makes them very attractive for global investment. Some of these schemes outlined above seek to similarly place India as an attractive destination for investment in manufacturing.

India's SEZ policy was one among the most comprehensive in the world and second only to China. What critical reforms are needed to make this policy a greater success?

The SEZ vehicle can potentially be a big success as a land-based plug and play platform, with various in-built incentives and a locally available, decentralised single window for approvals and operational oversight. It has led to over Rs 700,000 Crore of annual exports centered around certain industries such as petroleum products, gems and jewellery, and pharmaceuticals, and IT / software services. If we can overcome certain policy constraints, in particular related to the provision of fair access to SEZ units to the domestic tariff area without any unfair advantage over DTA units, the SEZ platform can be a major instrument for attracting manufacturing investment of a broad-based nature in key emerging sectors.

Ambassador Sun Weidong, Chinese Ambassador to India meets with Dr. Anup Wadhawan, Commerce Secretary of India on 10 February 2020.

Concerning international dispute settlement, the stalemate at the Appellate Body is continuing. What are your views on the multi -party interim arbitration mechanism?

The two-tier adjudication process is a fair process. The outcomes were broadly principles-based and fairly distributed across contesting entities. The process was also quite transparent, notwithstanding the concerns, at times, of judicial overreach. The proposed MPIA mechanism by virtue of its structure, seems less transparent and less objective. Given its procedures and modalities, and perhaps the venues and nature of legal resources relied upon, the arbitration mechanism is generally not seen as being entirely fair or transparent based on the past experience, especially by legal resource deficient developing countries, as compared with other models. This has been the experience of most developing countries.

While referring to the CRIT centres, CTIL was established while you were the Additional Secretary. This model of government itself establishing think tanks is not very common. Why was this type of model considered important in India's case?

Legal capacity was not traditionally built institutionally across the board into Indian government services and functioning in a sufficiently comprehensive manner. Legal services were typically available on a consultative basis within government and secured from outside on a case-by-case basis. In government, recruitment for specialised fields is guided by existing policies related to various specialised services. As governance has become more complex and sophisticated, access to legal resources on a regular concurrent basis is often not adequately available. The CRIT centres working under the government, have bridged this gap remarkably for the department of commerce in the trade area, while retaining necessary flexibility required for academic work and provision of complex quality driven inputs in real time. The centres have provided the Department, state of the art resources in relation to trade policy making and pursuing trade interests globally. On the whole, the centres have done a wonderful job. The government should increasingly create and use such institutional structures.

His Excellency Mr. Cao Quoc Hung, Deputy Minister of Industry and Trade, Viet Nam and Dr. Anup Wadhawan, Commerce Secretary of India at the 4th meeting of the India-Vietnam Joint Sub-Commission on Trade on 23 January 2019 in Ha Noi, Viet Nam.

What can we do in order to create institutional history within the government and outside?

Government services-based assignment of personnel, by its very nature makes it difficult to establish continuity on account of periodic movement of personnel. The Centres, on the other hand, can provide continuity and create institutional memory. Although the engagement is contractual, there can be continuity within the Centres. The Centres can be the place for creating institutional memory, while suitably protecting sensitive documents and knowledge.

You had a colourful career in public services and academia earning your PhD from Duke, serving two States, working in the PMO, serving in economic Ministries. How do you sum up your long stint in public service?

I had a chance to explore diverse career options, including the private sector and international / academic institutions. The Government provided the most meaningful opportunity. Serving in this service provided me possibly the best platform to engage with different stakeholders and derive work satisfaction. I *ab initio* received a serious hearing on all matters from the widest and most critical array of stakeholders, ranging from the highest echelons of government to the grass-roots of our diverse country, which I would not have received in any other occupation. The trust, openness and respect with which all stakeholders looked up to you and gave you a fair hearing and opportunity, was a humbling and moving privilege, which was its own reward, unparalleled in any other walk of life. It is important that official functionaries never betray this trust.

We wish you all the best in your future endeavours. Thank you.

James J. Nedumpara
Head, CTIL

The Different Futures of International Economic Law: Some Reflections

Introduction

The rapidly changing landscape of international economic law ('IEL') has inspired scholarship analysing the current predicament of the multilateral trading system.[1] We seek to build on the existing scholarship on the future of IEL and focus on one of its most tragic casualties – the dispute settlement system. To summarise the various predictions of the multilateral trading system, in the short to medium term, we are looking at a future where the rule of law in IEL will be *de-legalised, decentralised and will be much more vulnerable to political constraints*. What does this mean for domestic and international stakeholders of the multilateral trading system? In answering this question, we will emphasise how different states will be affected differently by these events. In a manner of speaking, we are not looking at one future of IEL, but multiple futures.

A De-legalised IEL Regime - But to what Extent?

Roberts, Moraes and Ferguson have theorised that the US-China trade war has led to a geo-economic world order characterised by 'securitisation of economic policy and economisation of strategic policy'.[2] One of the key consequences for global economic governance relevant to the future of dispute settlement, is the 'de-legalisation' or the movement 'toward politicisation and away from entrusting an impartial umpire to settle disputes'. [3] These scholars[4] argue that as economic relations become more politicised, the 'obligation, precision and delegation' associated with the international economic regime will decline, thereby reducing the 'legalisation' of international economic relations.

While it is difficult to refute these observations, a few nuances are necessary from the perspective of dispute settlement. *First*, while the option to appeal WTO Panel Reports into the void definitely reduces the ability of states to delegate the interpretation of IEL rules to an impartial tribunal, it does not follow that the precision of these rules also stands reduced. In other words, the precise and highly elaborated rules of IEL will not transform into vague principles. For instance, the rich WTO jurisprudence regarding national treatment, due process and transparency ensures that these obligations, when replicated in regional trade agreements, will also be interpreted with similarly corresponding levels of precision. Perhaps only those IEL rules which have not been invoked frequently until now (for example, meaning of "substantially all trade" relating to RTAs or the "process and product method" debate in climate mitigation measures) or those whose interpretation is ambiguous due to technological changes (such as free flow of data obligations) may undergo a period of obfuscation as different States may try to exploit this institutional weakness to implement policy measures which cater to domestic interests.

As for the obligatory character of IEL rules, as per Pauwelyn's analysis,[5] just because States have the option to appeal Panel Reports into the void does not mean that they will choose to do so in every instance. Appealing a Panel Report into the void has substantial costs, such as reputational costs and the risk of other countries emulating such conduct.[6] The most important factor constraining appeals into the void, however, is the risk of retaliation by claimants.[7] The United States has made the use of retaliatory tariffs a cornerstone of its 'America-First' trade policy and the European Union has also proposed amendments to its Enforcement Regulations to allow for retaliatory tariffs in response to Panel Reports being appealed into the void.[8] Therefore, for a country whose exporter's rely on access to American or European markets, appealing a Panel Report can have much harsher consequences than foregoing the adoption of the Panel report in a specific dispute. Even in a dispute settlement system with a defunct Appellate Body, not every Panel Report would be appealed into the void. This prediction is also corroborated by the GATT dispute settlement experience, where even though parties had the option to block panel adoption, 96 out of 136 GATT Panel Reports (71%) were adopted by positive consensus. [9]

Second, while the absence of binding dispute resolution does dilute the obligatory character of IEL rules, the underlying

assumption appears to be that states obey IEL to avoid the reputational and material costs of losing a dispute. Contesting this assertion turns us to the hotly debated issue as to why states obey IEL. Harold Koh, through his influential theory of international law as transnational legal process, argues that States comply with international law, not out of a fear of sanction but because these norms have been *internalised* by States.[10] Seen from this perspective, evaluating the extent of internalisation of IEL adds nuance to Roberts et al's observation. Many areas of WTO law have been codified into domestic law – the most prominent example of internalisation of IEL norms is trade remedy legislation. Internalisation is also encouraged by institutional features of the WTO, such as the Trade Policy Review Mechanism as well as regular meetings of the Committees under different WTO Agreements which perform important monitoring and oversight functions. However, internalisation of IEL norms is also resisted by influential industrial groups which lobby for protectionist measures. It is widely claimed that the US government's imposition of tariffs on steel imports was influenced by the power of the steel lobby on the US Government.[11] A similar story can be told for protectionist measures implemented by each State.[12] Accordingly, the obligatory character of IEL norms will be mediated by the forces of internalisation such as domestic law and institutional pressure and domestic constituencies lobbying for protectionist measures.

Third, the impact of the breakdown of WTO's dispute settlement on the obligatory character of IEL norms is also linked to the membership in regional trade alliances, the institutional strength of these alliances and the extent to which trading norms have been incorporated in its domestic law. For instance, states which are part of robust regional pacts have the same incentives and disincentives to abide by WTO law, to the extent that it stands incorporated into the RTA. In evaluating the impact of RTAs on the obligatory nature of IEL norms, the quality of the institutional structures is also extremely important. Regular meeting of the representatives of the trading partners, detailed procedures of the dispute settlement chapter and discipline-specific committees would go a long way in ensuring obligatory character of IEL norms even in the absence of initiation of disputes by encouraging the internalisation of trading norms.

In conclusion, while the possibility of appealing Panel Reports into the void reduces the degree of legalisation of the IEL regime, the extent of such 'delegalisation' will be tempered by factors such as the costs of appealing Panel Reports, the precision that WTO jurisprudence has imparted to IEL norms, the internalisation of IEL rules and the membership in various RTAs.

Decentralisation of International Judicial Law-Making in IEL

Geraldo Vidigal has opined that the rise of RTAs and the institutional collapse of the AB will lead to the erstwhile hegemonic authority of the AB giving way to a fragmented legal framework of international trade and a decline in the security and predictability of trade relations.[13] Vidigal suggests that 'coherence clauses' in RTAs, existing WTO jurisprudence and the effect of an 'interpretative community' on trade issues can address the fragmentation of international trade.[14]

While the 'network effect' of an interpretative community does act as a discursive constraint on international tribunals, we are cynical of its ability to be used as a counter-strategy to fragmentation. Anthea Roberts, through her path-breaking thesis in *Is International Law International?* has already shown that states at the 'core' of international law-making such as the United States, United Kingdom and France act as a center for the export of legal ideas and conceptions to the states at the 'periphery'.[15] The influence of alumni of elite institutions in international investment tribunals is already well-documented.[16] If an ad-hoc appellate mechanism replaces the Appellate Body, it is probable that international trade jurisprudence will be written and re-written by an elite club of arbitrators from the developed world. In such a case, the conceptions of the developed world and the bias towards a deep-integration agenda are likely to dominate the fragmented landscape of IEL. Countering this fragmentation and potential bias against protectionist states will require coordination amongst civil society organisations, states and academia. India, as a leader of the development agenda at the WTO has tried to do this in the build-up to Ministerial Conferences and other decisive events at the WTO, such as through the Mini-Ministerial amongst like-minded developing countries.[17]

These examples represent a conscious effort by the Government to shape the narrative of IEL at home and abroad. Efforts of this kind may be required now more than ever. Such mini-ministerial events and conferences need to be organised regularly and should focus on influential institutions to shape the agenda of these organisations. UNCTAD, FAO and Oxfam have played the role of legitimising concerns of developing countries in the past and similar efforts would be required from such institutions. It is important to bear in mind that the WTO, as a multilateral forum, will be missed most by developing countries and its future remains in the hands of countries that remained in the periphery of trade. It also provides an opportunity for developing countries to use the strength of their numbers.

Conclusion

In our short piece, we have tried to bring forth certain nuances about the changes that the IEL regime is undergoing. In our assessment, these changes will not be as drastic as some commentators have estimated them to be. The IEL could see some fragmentation, but its core will remain strong based on the progress the multilateral system has already made so far. In particular, the role of lawyers in IEL and policy will definitely see a drastic change. A rule-based and compulsory dispute settlement system has led to the rise of a 'socio-professional' group of professional trade litigators or dispute settlement lawyers[18] working within specialist law firms, the secretariat and within governments. The IEL regime, in the short to medium term, will require lawyers to be more dynamic and to align themselves with the gradual shift from a rule-based system to a system with a growing influence of power politics. The lawyers can play their part in ensuring that the weakening of the dispute settlement institutions does not in itself lead to the weakening of law.

By providing brief comments on the de-legalisation of IEL and de-centralisation of international judicial law-making in IEL, we

have sought to show how we need to think in terms of futures of IEL rather than a single future. In one sense, the existence of multiple and simultaneous futures is a natural consequence of the breakdown of multilateralism in IEL. States which have invested capital in its legal capacity will reap the richest rewards whereas states which have succumbed to influential domestic constituents and avoided regional alliances will now have to formulate new ways of engaging with the IEL community.

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[1] See generally Markus Wagner, The Impending Demise of the WTO Appellate Body: From Centrepiece to Historical Relic?, in The Appellate Body of the WTO And Its Reform, at 67-90 (Changfa Luo, Junji Nakagawa & Tsai-fang Chen eds., Springer 2019).

[2] Anthea Roberts, Henrique Choer Moraes &Victor Ferguson, Toward a Geoeconomic Order in International Trade and Investment, 22 J. Int'l. Eco. L. 655-676 (2019).

[3] Id. at 670.

[4] Kenneth W Abbott, Robert O Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal, The Concept of Legalisation, https://www.princeton.edu/~amoravcs/library/concept.pdf.

[5] Joost Pauwelyn, WTO Dispute Settlement Post 2019: What to Expect?, 22 J. Int'l. Eco. L. 297-321 (2019) [Hereinafter 'Pauwelyn'].

[6] Pauwelyn, Id. at 306.

[7] Id.

[8] Proposal for a Regulation of The European Parliament and of The Council amending Regulation (EU) No 654/2014 of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules, as available at https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576230220103&uri=COM:2019:623:FIN

[9] Pauwelyn, Id. at 305.

[10] Harold Hongju Koh, The Trump Administration and International Law, https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=6215&context=fss_papers.

[11] Ana Swanson, The Little-Known Trade Adviser Who Wields Enormous Power in Washington, N.Y. Times, Mar. 9, 2018, https://www.nytimes.com/2018/03/09/us/politics/robert-lighthizer-trade.html.

[12] Anne Van Aaken and Jurgen Kurtz, Beyond Rational Choice: International Trade Law and the Behavioral Political Economy of Protectionism, 22 J. Int'l. Eco. L. 601-628, 605 (2019).

[13] Geraldo Vidigal, Living Without the Appellate Body: Hegemonic, Fragmented and Network Authority in International Trade, Amsterdam Law School Legal Studies Research Paper No. 2019-15, SSRN Electronic Journal (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3343327.

[14] Id. at 24.

[15] See generally Anthea Roberts, Is International Law International? (2017).

[16] Michael Waibel & Yanhui Wu, Are Arbitrators Political?, 27 –41 (Dec. 2011) as cited in Susan D. Franck, The Diversity Challenge: Exploring the "Invisible College" of International Arbitration, 53 Colum. J. Transnat'l. L. 429, 439 (2015).

[17] WTO, DG Azevêdo at India's mini-ministerial meeting: 'Make your voices heard' on reform issues, WTO Org as available on https://www.wto.org/english/news_e/news19_e/dgra_14may19_e.htm

[18] Tommaso Soave, Who controls WTO dispute settlement? Reflection on the Appellate Body's crisis from a socio-professional perspective, EJIL:Talk! (Jan. 13, 2020) https://www.ejiltalk.org/who-controls-wto-dispute-settlement-reflections-on-the-appellate-bodys-crisis-from-a-socio-professional-perspective/#more-17815

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In conversation with Ms. Gitanjali Brandon on Appellate Body Crisis and India's Negotiations

Ms. Gitanjali Brandon, is currently Deputy Secretary (Pakistan), Ministry of External Affairs. She was at the Permanent Mission of India to the WTO in Geneva from January 2018 to January 2021, where she dealt with issues related to dispute settlement (DS), agriculture, SPS, and STE negotiations.

Thank you for taking the time out to speak with us, ma'am! We wanted to start with your experience surrounding the Appellate Body (AB) crisis at the WTO, and the Walker process. Can you walk us through the issue, and discussions on possible resolutions?

I joined the Indian Mission to the WTO in January 2018. The block on filling the vacancies to the AB was already in place, with three of the seven AB seats lying vacant. However, the WTO Membership was still optimistic that Members will be able to find a solution to the concerns raised by the United States (US), and the block will be lifted. That being said, there was already talk of a Plan B – with Sidley Austin coming out with a concept of DSU Article 25 Arbitration acting as an alternative to a fully functioning AB.

In December 2018, the General Council Chair initiated a dedicated, informal process called The Walker process. In the last General Council (GC) meeting for the year 2018, the Chair noted that a lot of members felt that there was an active nullification and impairment of their rights because the AB was likely to get defunct, which would mean that one of the major takeaways of the Uruguay Round, a binding DS at the WTO, would no longer exist as we as we had known it. As a result, there seemed to be an urgency to start a dedicated process to discuss the five concerns raised by the US. After informal consultations with all the major DS users including India, the Chair decided to appoint Mr. David Walker, Ambassador of New Zealand to the WTO to head this dedicated process.

The mandate for this process was to not just to discuss, but to find a resolution by the time the remaining three AB members retired, so as to prevent a potential stalemate. The Walker Process was conducted from January to December 2019, ending when the AB eventually became defunct. There were several technical meetings prior to this process as well as various groups meeting in several configurations to discuss proposals in detail. These meetings were held at least bi-monthly, with representatives discussing every element of every new proposal.

A primary statement from the US was that they had not envisioned a WTO dispute settlement system that followed a system of precedent, or jurisprudence (referred to by some Members as a 'World Trade Court'). In consonance with this, Chinese Taipei, Australia, and Canada, came forward with AB crisis resolution proposals that outlined a DS process that was more quasi-diplomatic than judicial. The proposals outlined Members' view that the AB was overstepping its brief. On the other hand, Members such as the EU, India and China have always been votaries of an independent AB. As a result, there were significant discussions on the scope of AB reviews. DSU Article 17.6 makes it clear that the scope of review is only in terms of questions of law. However, it is difficult to classify certain questions as such, since they may be mixed questions of law as well. Members also had diverging opinions on whether the objective assessment of facts by a Panel under DSU Article 11 was a question of fact or law. Despite these detailed discussions, by the end of 2019, it became increasingly clear that the AB would go defunct, and we saw suggestions such as the multi-party interim appeal arrangement surface.

India had a principled position in this regard. We believe that there is a need to have a two-stage independent DS mechanism, of which the AB forms an important part. Alternate mechanisms that do not include all Members are stop-gap arrangements; instead India would prefer Members work to

General Council Meeting at the WTO on 23 July 2019.

reinstate the AB Members. Mechanisms that do not have all Members, especially large trade players, do not serve the point of having a DS mechanism.

However, reinstating the AB was a fairly difficult process. Though the US did join the Walker Process meetings, representatives did not engage constructively on the various proposals on the table, so as to unblock the impasse. There was an understanding that the US was using the AB crisis in order to gain concessions in other pillars, such as rules on e-commerce or fisheries. As a result, despite a dedicated process to resolve procedural issues that arose, there was no headway.

Ambassador Walker, as part of this process had even come out with a draft decision which stated that Members would strictly abide by DSU timelines, and acknowledged that the AB had erred in its functioning, which India did not entirely agree with. Every Member apart from the US was willing to support this decision at the GC in December 2019. Unfortunately, this refusal by the US meant that the decision was not adopted, and the appeals already in the pipeline were not listed. This also created an incentive for several Members to delay, and to appeal into the void to buy time to bring their domestic policies in compliance with WTO obligations.

As things stand, the question is moot. Do we really need to have continuing disputes via binding DS at the WTO, because members can agree amongst themselves to not appeal a panel report and just accept it? There have been few such disputes, but the preponderance of disputes are ones which have been appealed into the void. As we move towards the 12th Ministerial Conference (MC 12) of the WTO, there does not seem to be any immediate solution on the horizon. DG Azevedo in January 2020 had started a green room process in which he called handful of countries, as I remember in so many words, he said members need to show more openness and willingness given that that the dispute settlement system so far has evidently not worked for everyone. Perhaps, while rethinking of the entire system and its functioning is required, some Members have indicated that they are not in favour of a complete overhaul of a system that has worked so far.

On the US front, the new administration has stated that they are willing to work with other Members to discuss their concerns. However, no proposals have been tabled so far regarding how their concerns are to be addressed. Rather, there is significant negotiations on fisheries and the TRIPS waiver proposal than the AB issue, as we move towards MC 12. Therefore, it remains to be seen how this will be resolved.

Given the recent resurgence of multilateralism, do you see deadlocks at the WTO untangling? What role does India have to play in this?

That's a question that a lot of us have been grappling with, since it appears that the WTO has been unable to produce results for a while. To understand why there are deadlocks at the WTO, there is a need to view it from a more geopolitical lens. The WTO is not a homogenous group of Members with aligned interests. Earlier, developing countries did not have the political or economic heft to block agreements, which were inimical to their interests. For instance, when you see the results of the Uruguay Round

several developing countries including India had reservations about the TRIPS agreement, and the way the Agreement on Agriculture was being drafted.

The former WTO DG Pascal Lamy, once said in a speech that, in the old days, it was just a question of getting the US and the EU on board and then getting on the next flight home! Now, when you have newer power centers with the accession of China, Russia, and with the growing prominence of India, Brazil, South Africa, the growth of the LDC group and the African group, there is a realisation that there is strength in having a coalition for negotiating positions.

In the short term, at the MC12, there may be an outcome on fisheries subsidies and the TRIPS Waiver proposal. But the deadlock in the AB and on horizontal issues such as S&DT, NMEs, multilateralism vs plurilateralism (JSIs) is likely to continue.

Do you think India has emerged as a kind of figurehead for developing countries? And has it utilised this role to influence its international relations?

The general position that India takes at the WTO is always issue based and interest based, i.e., whatever helps further our national interest in terms of our trade policies, and in terms of being able to grow our exports and protect our domestic policy space.

Akshaya Venkataraman
Senior Research Fellow, CTIL

I think it is kind of *sui generis*, the way that we engage with countries at the WTO. Instead of looking at it from our larger diplomatic or geopolitical point of view, we keep it about our interests in terms of trade at the WTO. So, it doesn't necessarily converge in that manner.

You were part of negotiating the International Solar Alliance (ISA). Can you tell us about your experience in negotiating this unique climate agreement?

The negotiations in the run-up to the launch of the ISA during COP 21 in Paris in November 2015 involved stakeholders from the government as well as industry and the private sector. Working with different stakeholders across the public and private sector to negotiate the mechanism and the terms of the ISA was a unique experience. The ISA is the first international organisation based in India, and is an important initiative that aligns with India's own efforts in diversifying our energy mix.

Working with France and the other founding members of the ISA, I discovered that it is sometimes much easier to get things done in a smaller group format where all members have a convergence of interests. This is in contrast to the difficulty of finding consensus on most issues in a heterogeneous, multilateral setting like the WTO.

As a diplomat, you bring unique experience from your time in the private sector. Has this helped you gain a better understanding of stakeholder requirements?

Most definitely. My experience of working as a capital markets lawyer at one of India's leading corporate law firms prior to joining the IFS, helped inculcate a sense of professionalism, attention to detail, and an outcome-oriented approach in me. The work ethic that I picked up during my days as a corporate lawyer has stood me in good stead.

You mentioned your work on SPS and agriculture issues as well. We see that this is a critical issue, especially for developing countries. Second, we see a number of private standards, especially related to pesticides or labour conditions, which may have affected India's agricultural and pharmaceutical exports. What is India's stance on this issue?

The use of technical standards that are more trade restrictive than necessary is a challenge that affects developing countries disproportionately. Most developed countries have rationalised their applied tariffs over the years and instead use very strict technical standards to protect their domestic industry. Some WTO Members are working on an SPS Declaration and Work Programme for adoption at the MC12. India must engage actively with the text of this declaration and Work Programme to ensure that our red-lines are respected and that issues of our interest are taken on board.

Are there any other avenues for students or young graduates who wish to be a part of India's external affairs, apart from joining the IFS?

The avenues for contributing to the foreign policy and trade policy discourse, without being a part of the bureaucracy, have been expanding. Centres such as CTIL, CWS and CRT contribute to the framing of India's trade policy and practice by providing inputs on on-going negotiations to policy makers and practitioners. The MEA also has a system of hiring consultants who work closely with our Policy Planning and Research Division. This trend is likely to continue.

Image from Pixabay

Clinical and Experiential Learning: Developing Trade Law Capacity in Indian Law Schools

Clinical education is emerging as a tool to impart education by combining theory and practice. The concept of 'learning by doing' is at the heart of clinical education and more so in clinical legal education (CLE). The factor which differentiates a good lawyer from a great lawyer is the ability to provide problem solving skills. The more, and higher quality of cases, issues, disputes, etc. that a lawyer works on and experiences, the better will be their skillset. This skillset includes proficiency in areas such as negotiating, counselling, getting by procedural roadblocks, investigating facts and establishing a nexus with applicable law and most importantly, interpreting the law according to the merits of the case. These skills are as important for a lawyer as a theoretical understanding of law.

Clinical legal education would mean different things to different people. However, the most cited definition of CLE was given by Richard Grimes. He defined CLE as "a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced…It almost inevitably means that the student takes on some aspect of a case and conducts this as it would…be conducted in the real world."[1] The elementary aim of CLE is the formation of competent and committed lawyers. With this aim in mind, it is recommended that in addition to the teaching of legal doctrines and analysis, law students must also be introduced to aspects of legal practice leading to them acting responsibly for clients and the formation of values consistent with the fundamental purposes of legal profession.[2] This imbibes in young lawyers a professional identity and purpose, that they can draw from once they graduate from law school. It is CTIL's goal to prepare fresh graduates from India's law schools into lawyers with a personality, identity, skills and experience in the fields of international trade law and international investment law at par with the best young global lawyers.

It is CTIL's mission to engage with India's national law schools and other eminent institutions rendering legal education in international economic law. CTIL consistently collaborates with national law schools for conducting joint events such as conferences, seminars, discussions and also cooperation aimed at enhancing students' substantive legal knowledge of international economic law. At CTIL, we recognise the importance of clinical legal education and hence, CTIL has introduced the TradeLab clinics in various national law schools in India.

TradeLab is a Geneva-based initiative which brings together students, academics, and legal practitioners with the aim of empowering stakeholders to avail the benefits of research in international trade law and international investment law. Through pro bono Legal Clinics and Practica, ***TradeLab connects students and experienced legal professionals to research organisations, SMEs and civil society to build lasting legal capacity.*** TradeLab is the brainchild of Professors of International Law, Prof. Joost Pauwelyn and Prof. Sergio Puig and has attained a global presence since 2013 with renowned practitioners and academicians like Ms. Jennifer Hillman, Prof. Debra Steger and Prof. Valerie Hughes joining the initiative. At present, the TradeLab clinics are run at prestigious universities like Georgetown University (Washington D.C.), The Graduate Institute (Geneva), IELPO (Barcelona), University of Ottawa, and National University of Singapore, to name a few.

The Legal Clinics and Practica are composed of small groups of ***highly qualified and carefully selected law students who work on specific legal questions posed by beneficiaries*** (SMEs, NGOs, industry bodies, etc.). The students work over the course of a semester and conduct detailed legal research and work on several drafts shared with Academic Supervisors (faculties at CTIL and their respective law schools), mentors and beneficiaries for comments and feedback. The output ranges from a legal memorandum to a research project, report, draft law or other output tailored to the beneficiary's needs. At the end of the semester, the groups submit their written output and orally present their project in the presence of the beneficiaries and other invited guests.

Hub-and-spoke model

The TradeLab-India operations are conducted in a hub-and-spoke model with CTIL acting as an anchor establishment between the universities and the beneficiaries in order to ensure seamless coordination and communication among all the parties. Clinics are a win-win exercise for everyone involved: beneficiaries receive expert work done for free and build capacity; students learn by doing and expand their networks; academic supervisors and mentors share their knowledge on cutting-edge issues and increase their ability to attract and engage top students with proven skills.

Through the TradeLab legal clinics, students learn, not through traditional in-class teaching, but by working "hands-on" together in a team on a specific legal project, of real practical importance. The law clinics at India's national law schools aim to achieve an important goal in addition to imparting clinical legal education – the goal of providing legal aid to beneficiaries who do not have access to quality legal research and advice. Once the final report is submitted each semester, CTIL lays special emphasis on conducting discussions on the research topics through seminars, trade talks and panel discussions involving experts from academia, industry and professionals from the field of international economic laws.

The CTIL-TradeLab law clinic began in the Autumn/Fall of 2020 at the National Law University, Jodhpur (NLUJ), which is one of the premier law schools in India providing an academic specialisation in International Trade Laws. The Law Clinic was conducted at NLUJ under the supervision of Dr. Rosmy Joan, Assistant Professor of Law, who is the faculty in-charge for the International Trade Law specialisation and acted as the Academic Supervisor for the Clinic. The clinic was limited to one project and four students. The students were selected through an application process involving the submission of CVs and Letters of Intent or Statement of Purpose. In addition to academic exposure, all the applicants were required to show research background in the field of international trade law or international investment law.

For their project, the selected students were asked to analyse India's FTAs with its trade partners and the various non-tariff measures maintained by these countries on import of India's steel products. The research question was prepared by the beneficiary (India Steel Association) in consultation with CTIL. The research included an analysis of the compatibility of such measures with the provisions of the FTAs. The study was centred around the perception that India has not been able to avail the benefits of the FTAs and the students made suggestions regarding India's approach towards its trading partners – whether to renegotiate under the review mechanism of the FTAs or to exit these agreements. The students successfully concluded the research and submitted their final manuscript to the beneficiary in February 2021. The report has been uploaded on the official website of TradeLab (www.tradelab.org). In addition, TradeLab conducts a Student Showcase every semester to provide a platform to the students to present their reports in a public event. The CTIL-TradeLab clinic students had also prepared a video highlighting their findings which was presented during the July 2021 Student Showcase.

Despite the difficulties faced due to the COVID-19 pandemic, CTIL continued to provide all possible assistance to the students as well as the beneficiaries to ensure timely conclusion of its clinics in India.

CTIL is presently running its Spring semester law clinic, once again with NLUJ, with three students working on a research question proposed by the Services Export Promotion Council (SEPC), the beneficiary, on the liberalisation of India's legal services sector. The research is centred around India's GATS obligations as well as India's services obligations under its FTAs. The aim of the study is to understand the best practices in other jurisdictions and identify the most viable options available to India to liberalise its legal services sector in a phased manner.

In addition to NLUJ, CTIL has also obtained confirmation from National Law Institute University (Bhopal), Gujarat National Law University (Gandhinagar), Gujarat Maritime University (Gandhinagar) and Jindal Global Law School (Sonipat) to organise TradeLab clinics in their respective campuses. The unique hub-and-spoke model enables CTIL to run multiple clinics at different law schools. This presents CTIL with a wide pool of students every semester and through multiple clinics, impart clinical legal education on one hand, and provide more beneficiaries with quality legal research on issues of their immediate interest.

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[1] R. Grimes, "The Theory And Practice Of Clinical Legal Education" in J. Webb and C. Maugham (eds.) Teaching Lawyers' Skills (1996) at p 138.

[2] William M. Sullivan et. al., Educating Lawyers: Preparation for the Profession of Law (2007) at p 87-161.

Satwik Shekhar
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Interview with Dr. Srikar Reddy, Joint Secretary, Department of Commerce on the successful conclusion of the India-Mauritius Comprehensive Economic Cooperation & Partnership Agreement

Greetings, Dr. Srikar. Thank you for taking time out to interview with us regarding the success of the India-Mauritius CECPA. After the ASEAN-India agreement of 2011, the India-Mauritius CECPA is the first free trade agreement to be successfully concluded by India in a relatively long time, and is a remarkable achievement.

The India-Mauritius CECPA is indeed the first free trade agreement to be concluded by India with any country after eleven odd years. In between, we have expanded certain other Preferential Trade Agreements like the India-Chile agreement. However, the CECPA is an important accomplishment.

Thinking of the CECPA, it is natural to recall India's historic ties with the Mauritius region. When did these negotiations start and what was the rationale for having an agreement with a small island nation? What was the economic motivation behind it? Also, how much time did it take to conclude this agreement?

India and Mauritius have a very special relationship. Even though Mauritius is a small country with a population of 12.5 lakhs, and a GDP of about 14 billion USD as of 2019, two-thirds of the population of Mauritius is of Indian origin. And so, the two countries share an excellent relationship, with good people-to-people linkages, and exchange of visits at the highest level. Also, the development cooperation, strategic and defence partnership of the two countries has been strong. Further, on the investment front, Mauritius is an important country for India, with about 28% of FDI inflow into India.

Regarding the negotiations, initially, an agreement was thought of in 2003, during the meeting of the two Prime Ministers. Thereafter, pursuant to a report by the Joint Study Group, the negotiations were formally launched in 2005. However, in 2009, India decided to put the negotiations on hold due to certain issues with the Double Tax Avoidance Agreement (DTAA). However, in 2016, Mauritius signed the protocol of amendment to the DTAA. Subsequently, in September, 2016, the negotiations were relaunched, and were concluded substantively on goods and services coverage by August, 2020.

Largely, the credit of concluding this agreement also goes to my illustrious predecessors, Mr. Keshav Chandra and Mr. Manoj Dwivedi, who were part of the negotiations since the re-launch in 2016. I was fortunate to be a part of the final phase of the negotiations. Also, I would like to place my appreciations on record to Prof. James J. Nedumpara and his team, for your suggestions and prompt help in assisting and resolving the queries raised by line Ministries during the CECPA negotiations.

Thank you, sir. India-Mauritius CECPA is a very unique agreement, and has been signed during a phase when other trade policy issues (such as data security, e-commerce, etc.) have also become prominent (but not typically for an agreement of the nature of India-Mauritius CECPA). How significant is the CECPA in this evolutionary phase of India's trade policy?

Although limited in ambition, the CECPA is a significant agreement for the two sides. India has offered concessions on 615 tariff lines, and Mauritius has committed to about 310 tariff lines. Mauritius already provides duty free access on close to 94% of the tariff lines. With the additional five per cent coverage under the CECPA, India gets an improved access on 99% of tariff lines. As for Mauritius, in 2019-2020, in 615 lines committed by India, Mauritian exports to India

were valued at 9 million USD, which may be contrasted with India's imports from the rest of the world amounting to about 15 billion USD in these tariff lines. So, this would amount to a significant market access for Mauritius – with one third of products of exports interest for Mauritius being covered. Further, there are other areas where we have agreed to negotiate market access in the next two years, after entry into force of the Agreement.

Also, Mauritius is an important country for India, in defence and strategic partnership, and this trade agreement furthers that relationship. Further, Mauritius is a member of many important African regional economic organisations and trade agreements, and we consider Mauritius as a hub for strengthening trading ties with the African region, and acknowledging our intent of negotiating trade agreements with other African countries in near future.

There had been concerns among the Indian industry of a possibility of considerable trade diversion resulting from the CECPA. Do you think the CECPA has mechanisms to address such concerns?

Under the CECPA, the provisions on Product Specific Rules are strong. The possibility of trade diversion is remote considering the rules of origin, with all imports from Mauritius being subject to the wholly obtained criteria or the value addition criteria. However, to assuage such concerns of the industry, both countries agreed to negotiate the Automatic Safeguard Trigger Mechanism (ASTM). Already, the CECPA provides for a bilateral safeguard mechanism where safeguards can be imposed after a proper investigation. But the two sides agreed to put into place the ASTM, within two years of the entry into force of the Agreement. If the protection is sought for a longer duration of time, the parties may still resort to the standard bilateral safeguard measures. However, the trigger mechanism is not subject to any investigation, and may be applied whenever the imports cross a certain threshold value causing serious concerns to the domestic industry.

Are there any specific tariff lines sought to be covered under the ASTM?

The parties have agreed to exclude the products that are subject to the tariff rate quota. However, on other technicalities, the negotiations on the ASTM are still underway, and the mechanism is still being considered.

What is the significance of the India-Mauritius CECPA with respect to trade in services, given that both the economies are heavily services oriented?

The CECPA is a very ambitious agreement in terms of trade liberalisation in services. Mauritius has offered 115 sub-sectors to India (among the 11 broad sectors), and India has offered 95 sub-sectors to Mauritius. Services remain important with Mauritius' close to 75% GDP dependent upon services. Even otherwise, Mauritius being a bilingual country, with French as the second language, may be instrumental in furthering Indian trade and investment interests in other Francophone African countries, specifically for the Indian IT sector.

One highlight of the CECPA appears to be facilitating movement of skilled and semi-skilled workers between the two countries. Are there any mechanisms being considered in this context?

As Mauritius is growing economically, there is a rising demand for skilled and semi-skilled workforce. As regards facilitation of movement of professionals, aside from the provisions of the CECPA, a standalone agreement between India and Mauritius on this front may be underway between the relevant departments/Ministries (by the Ministry of External Affairs, Government of India), although the details are not available yet.

Are the parties considering any Mutual Recognition Agreements in specific service sectors, as the CECPA has identified certain professional and business services for such negotiations?

While no formal negotiations are underway currently, they are likely to happen in near future, based on stakeholder consultations. In fact, the

CECPA opens the possibility of the professional agencies in sectors to engage mutually.

The Chapter on General Economic Cooperation is still being negotiated, what have the parties considered for these later -stage negotiations?

The Chapter on General Economic Cooperation would open the possibility of providing technical assistance from India to Mauritius, including imparting skills to service suppliers and businessmen. Many a time, such issues are embodied in separate standalone framework agreements. The parties, in this case, decided to include such issues within the India-Mauritius CECPA itself.

Given that India has already initiated agreements with the EU, the UK and possibly the UAE, what learning outcomes can be drawn by India from the CECPA negotiations?

A lot in the process of negotiations revolves around the distinct interests of the parties. Nevertheless, one important objective in any trade agreement is to keep all the stakeholders, line ministries and relevant agencies closely engaged for a win-win outcome. This remains critical for India's upcoming negotiations as well – where India may need to consider many other crucial issues. Also, the CECPA may provide guidance in India's services negotiations, as it is an ambitious agreement, particularly with respect to trade in services.

CTIL was closely engaged in the CECPA negotiations, and is nearing its four years' anniversary. On this occasion, what according to you, should be our role moving forward – as India seeks to proactively engage in trade negotiations with many other larger trading economies?

CTIL is already doing tremendous work under the leadership of Prof. James J. Nedumpara by providing sound analysis on trade and investment issues. CTIL's engagement in CECPA was very helpful. The negotiating teams at DoC are dependent to a great extent on the assistance of the Centres including CTIL. As we have already started negotiations with many major economies, such as the EU, the UK, UAE, SACU and Canada, CTIL can look towards having dedicated teams and expanded capacity for these, moving forward.

Thanks a lot, Dr. Reddy. I believe that your previous experience at the Permanent Mission of India, Geneva, also proved significant in successfully concluding this agreement.

Yes, indeed. The experience of bilateral as well as multilateral engagements helped me significantly, and we were able to conclude the agreement within six months, after I joined.

Thank you, you have already brought one of India's trading partner very close. The GCC and the UAE will be the next, among many more. We wish you all the best.

Shiny Pradeep
Assistant Professor, CTIL

Rules of Origin: Recent Trends and Developments

In recent years, an increase in the number of Free, Regional and Preferential Trade Agreements (FTAs, RTAs and PTAs as they are referred colloquially), has resulted in increased weightage to the Rules of Origin (ROO) provisions in these agreements. The ROO are broadly categorised as preferential ROO and non-preferential ROO. The preferential ROO is applied based on the provisions of a bilateral or multilateral trade agreement. On the other hand, non-preferential ROO refer to each country applying its own rules (that are not related to the grant of tariff preferences) and include "different types of trade measures such as anti-dumping duties (ADD), quantitative restrictions (QRs), tariff quotas, origin marking, government procurement",[1] etc. Preferential ROO provisions help determine the originating status of an imported good, either to avoid dumping of goods or mislabelling of goods as originating from a different country or to prevent circumvention or abuse of FTA benefits by third parties. For instance, India-Chile PTA includes a chapter on ROO. This chapter helps to determine whether a good imported from Chile in India is originating in Chile, and not from any other third country, say, Peru. In other words, the ROO provisions help a country (in this case India) reject goods that have originated in third-countries, or goods produced in third-countries from being dumped in India, and block these goods from availing preferential tariffs provided under the relevant PTA. This is a form of preferential ROO.

Before discussing the trends in preferential ROO, we highlight the trends in non-preferential ROO. One such trend is the increased use or acceptance of electronic certificates of origin (COO). The electronic COO reduce the chances of forged certifications and limit the physical interaction between the exporter and the issuing authority, and between the importer and customs authorities. This also shifts the focus from verifying the authenticity of the proof of origin to verifying if the goods are actually originating as indicated. In the case of non-preferential ROO, a COO is needed "only when necessary" for the application of measures, such as ADD, QRs, etc. For instance, a COO is necessary in situations where, during the imposition of an ADD, certain respondents are excluded from imposition of ADD on the product concerned in the Anti-Dumping (AD) investigation. Most countries do not require non-preferential proof of origin/COO.

In regard to preferential ROO, we see that out of 334 RTAs notified at the WTO, 174 RTAs include a chapter or provision related to ROO.[2] In general, these chapters broadly consist of:

a) conditions for origin determination (general provisions on origin status determination, such as *de minimis*,[3] wholly obtained goods,[4] value-content determination,[5] sets,[6] minimal operations,[7] cumulation, etc.);

b) territorial and consignment requirements (packaging, shipping, direct consignment, etc.);

c) procedural aspects (such as rules dealing with origin certification and verification requirements); and

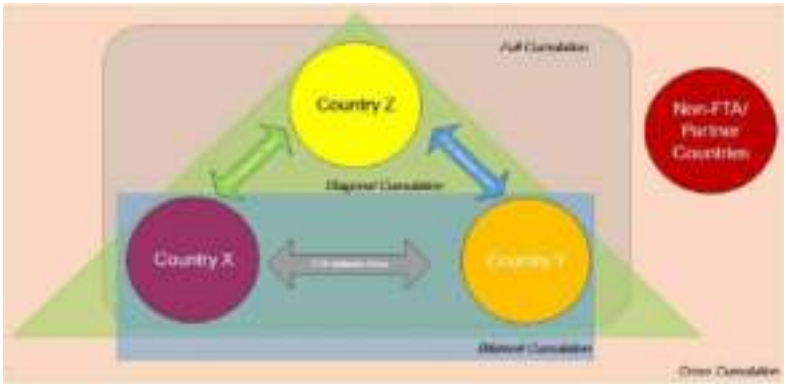
d) other provisions (such as penalties, confidentiality or information, international cooperation and mutual assistance or dispute settlement etc).

Preferential ROO apply between the countries that have entered into the FTAs. A good is originating under preferential ROO when it is either wholly obtained or produced in the partner FTA country, has gone through substantial transformation i.e., change in tariff classification (CTC) or meets the value-added criterion. There are instances when these may be disregarded, for example, when there is minimal operation performed on the good or it does not meet the threshold percentage under the *de minimis* provision. With this in mind, we now look at recent trends in preferential ROO starting with origin determination requirements, followed by COO.

A trend that we see becoming popular for inclusion into ROO provisions is the usage of net-cost method for Regional Value Content (RVC) determination of automotive goods and parts. Initially, introduced in the NAFTA, this provision sets out that the exporter or producer shall have the option to use the net-cost method instead of the general RVC method for regional content determination of non-originating materials in the exported good. Under the net cost method, the RVC is calculated on the basis of the formula: RVC = ((NC-VNM) / NC) × 100, where RVC is expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. The net cost of an automobile will be equivalent to the automobile's total cost less the costs of marketing, royalties, shipping, packing, and certain non-allowable interest costs. This is beneficial in instances where the domestic shipping costs, transportation and related costs, insurance premiums, export custom fee, merchant profit, etc. cannot be ascertained. However, this provision currently does not form part of any Indian FTAs.

Another trend is inclusion of chemical process rules for goods classified in Harmonised System (HS) Chapters 27 through 40 (mineral fuels, chemicals, plastics, and rubber resulting from combination of non-originating materials) to be classified as originating if they go through the chemical reaction process or RVC requirement under the relevant Product Specific Rules (PSRs).[8] The advantages associated with the inclusion of this rule is that it is simple to administer, easily understandable by the industry, results in a lower administrative burden, is predictable and stable (which means that it is not affected by price fluctuation, which creates an impediment in proving the RVC requirement); and is consistent (regardless of material costs, labour and other inputs, the process remains same and will always confer origin status). While India has not included similar provisions in its FTAs, the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR) provide for the chemical process rule as one of the criteria for goods that are produced using non-originating materials, in addition to CTC, and RVC.. Section I(4)(v) of the CAROTAR notes that under the Process Rule Method, "good which is being considered as originating, to be produced through specific chemical process in the originating country." Thus, while Indian FTAs do not include this rule, this section provides sufficient flexibility in case chemical process rules form a part of India's FTA obligations in the future.

Another trend gaining traction in the FTAs is the extension of bilateral cumulation / accumulation provision to diagonal, full or cross cumulation provision. These are explained through the flow chart below. Under bilateral cumulation, input for a good is exported to the second country (Y), where the good is processed and sold to the first country (X). In this case, the input is considered to be originating in the second country (Y). In the case of diagonal cumulation, the good from a third country is considered to be as if it originated from the second country. For instance, the second country (Y) also has an FTA with the third country (Z). But there is no FTA



between the first country (X) and the third country (Z). However, if there is provision of diagonal cumulation in the FTAs, a good originating in the third country (Z) will be considered as originating from the second country (Y) when imported into the first country (X). On the other hand, full cumulation allows partner countries to carry out working or processing of non-originating goods within the territory of any party, covered by the FTAs. It means that all the operations and processing performed in each of the FTA partner is considered in order to determine the originating status of a good. It simply demands that all the working or processing in requirements under the FTA must be carried out by the producer on the non -originating material for the final product to obtain an originating status. Lastly, under the cross cumulation provision in FTAs, the originating status of the goods is determined by a combination of any of the previous types of cumulation between countries which are not linked by a trade agreement or are linked by a trade agreement with different ROO provisions. The cross cumulation provision allows the use of inputs from a third-party/non-FTA country and these inputs are used in the manufacturing of the exporting good from the second country (Y) to the first country (X). The exporting good is considered as if it is originating in the second-party/FTA partner country, provided they meet the ROO criteria under the relevant FTA. India has only agreed to bilateral cumulation/ accumulation provisions in the CECAs and CEPAs.

Based on the customary practice and FTA texts, it is clear that a COO is required to obtain preferential treatment. A notable trend observed for COO concerns the self-COO requirement. In certain FTAs, the COO is issued by a competent authority or a dual system of self-certification as well as competent authority approval. In cases of self-COO, several procedures are followed, such as the approved exporter system;[9] or fully exporter-based certification,[10] or importer-based system[11] or approved exporter system coupled with authority issued certificates. When several options for self-COO are provided in the FTA, traders are permitted to choose one of the many procedures.

The 2020 World Customs Organisation comparative study on COO found that "[r]ecently-concluded inter-regional agreements appear to prefer [self-COO] particularly, the fully exporter-based certification system and the importer-based certification system with less or no involvement of the competent authority of the exporting country", while the "[i]ntra-African and intra-Asian agreements appear to prefer the certification of origin by competent authorities." The study also highlights the much-discussed use of blockchains in the origin determination process, eliminating the need for a competent authority. This technology involves the determination of origin directly at the border, based on the blockchain data (which includes data collected from the moment the good is produced / manufactured /processed to the time of arrival before the final stage of consumption, and includes all stages of processing in between). In India, the Central Board of Indirect Taxes and Customs is the designated competent authority, which approves the COOs. Further, Indian FTAs do not explicitly provide for e-certification of origin. However, the recently notified CAROTAR provide general guidance on requirements to be met for

Illustration by Productivity Commission, Government of Australia in the publication: Crook, W. and Gordon, J. 2017, *Rules of Origin: can the noodle bowl of trade agreements be untangled?*, Productivity Commission Staff Research Note, Canberra, May.

submission and getting the approval of the competent authority, which include information to be provided & submitted by the importer, verification request, etc.

To conclude, we see growing trends in ROO concerning new methodologies for origin determination based on industry preferences and needs, such as the net -cost method for automotive goods & parts and chemical process rule for minerals, plastic and the chemical industry. We also see that countries prefer cumulation provisions to provide originating status to goods from a third country/FTA partner country in the importing FTA country. This provision helps simplify the global value chains and make goods more easily accessible. Further, we see a move towards electronic and self-COO to help stakeholders avoid costs, and ensure ease of document filing, as well as ensures authenticity of certificates. Lastly, we see that the use of blockchain for custom clearance and certification is also gaining traction, in a few countries. Thus, various trends are gaining traction to ensure preferential treatment is granted only to the products originating from the FTA partner countries. While this is done to ensure there is no dumping or circumvention of third country goods, these have further complexed the already technical ROO.

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[1] 'World Customs Organization' (Wcoomd.org, 2021) <http://www.wcoomd.org/en/topics/origin/overview/challenges.aspx> accessed 24 June 2021.

[2] The number reflects the total number of notified RTAs as available in the WTO database at the time of writing this article.

[3] This provision allows those non-originating materials that do not satisfy an applicable rule may be disregarded, provided that the totality of such materials does not exceed specific percentages in value or weight of the good.

[4] This provision allows those goods which are produced or obtained without any non-originating input material incorporated.

[5] This provision prescribes methodology for a minimum percentage of value addition (value added/ad valorem criterion) in the manufacturing process, that will allow non-originating materials in a good to avail originating status.

[6] This provision provides origin criteria for goods which are put up in Sets, packaging materials and containers consisting of two or more separate components that are classified in one single heading.

[7] This provision specifically identifies manufacturing operations which are insufficient to confer originating status on a good (e.g., labelling, packaging, or assembly).

[8] The PSRs of origin (list of working or processing to be performed on a good) define the requirements which have to be fulfilled in order for the goods to be considered originating according to the FTA. There are three methods/criteria: (a) change in CTC; (b) prescribed % threshold of value-addition or RVC; and (c) description of specified manufacturing or processing operations.

[9] An exporter approved by the competent authority will be able to make out a declaration of origin on an invoice or other commercial document. See 'World Customs Organization' (Wcoomd.org, 2021) <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/key-issues/revenue-package/guidelines-on-certification.pdf?la=fr> accessed 24 June 2021.

[10] The exporter/producer issues proof of origin. Authorities are not at all involved in the issuance of proofs of origin under such a system, and therefore no authorities in the exporting country have supervision over proofs of origin issued. This is usually coupled with a verification system, where the importing country competent authority verifies the proof of origin. See ibid.

[11] Under this particular system, importers are allowed to make origin declarations or merely give an indication of the origin based on their own knowledge about the imported goods when claiming for a preferential tariff treatment. See ibid.

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Q&A with Mr. Bipin Menon

Development Commissioner, Noida Special Economic Zone

Mr Bipin Menon has played a key role in trade bodies of the Ministry of Commerce for the last two decades. He is currently the Development Commissioner of the Noida Special Economic Zone and has previously served as the First Secretary at the Permanent Mission of India to the WTO where he led various negotiations relating to trade in goods. He has also served as a Director at the Department of Commerce where he oversaw free trade agreement negotiations dealing with tariff modalities and rules of origin.

Thank you for joining us today, sir. Since you are currently the Development Commissioner of the Noida SEZ, we thought it is best to start the conversation with SEZ issues. In your opinion, what are the factors which make an SEZ successful and what are the key strengths that new SEZs should focus on from the beginning?

Each Special Economic Zone (SEZ) has different competencies according to their geographical locations. An example of this would be the Jaipur SEZ and that at Mumbai namely SEEPZ. Both of these SEZs specialise in the gems and jewellery sector. In Vishakhapatnam, it has been the pharmaceutical and software companies that have done well. It is basically taking off from competence of the companies in that particular area, prior to the SEZ coming in. SEZs have given them an avenue to build on these competencies. However, that does not preclude attracting other units due to the overall facilitatory environment of an SEZ.

As far as Noida SEZ is concerned, the regions adjacent to Noida always had a strong manufacturing base. Hence engineering and textile sector units came up in the SEZ. The region has always had a strong focus on the IT sector, therefore a lot of IT companies have come into the SEZ. Gurgaon has been the major hub for IT companies, so a lot of SEZs have been set up there in the IT/ITES and related services sector. In case of the Moradabad SEZ, it is the handicraft sector which has been its strength.

One can divide sectors within an SEZ in three broad areas: namely manufacturing, services and trading/warehousing. Trading and warehousing have been driven by logistics back up and this is how Arshiya SEZ has come up, based on the projections by the developer for the development of the integrated trade corridor and the possible coming up of the new airport in Jewar. The Noida SEZ has been relatively very strong in these three areas right now, a bulk of the revenue comes from the services sector because some of the major players in the zone are from this area.

Every country is trying to provide various kinds of incentives and now fiscal incentives are in a very tricky terrain, what other additional incentives can the government think about? Whether there is any proposal to come up with other categories of incentives which can be attractive for the future SEZ units?

The only thing which comes to my mind is the Production Linked Incentive Schemes, but they are not SEZ specific and are generally available across the board. The whole point is also about the budget. While one could look at what should be given, the budget constraints have to be kept into account.

It is important to dovetail the existing policies, the PLI as well as the state specific incentives. There are a lot of states providing these incentives, but most of these incentives are primarily focused on a minimum capital investment and excise exemption to that extent. Not many of these schemes are tailormade to the benefit SEZ units who already have a lot of fiscal exemptions. It is more about how an SEZ developer utilises these schemes. For example, in the case of captive developers where, if a large company is both the developer as well as the unit, state specific incentive schemes make more sense.

I don't think we should look at any significant additional funding but probably on how to use existing state schemes and central schemes for the benefit of the SEZs. All of us Development

Commissioners should think about how to attract our units based on that particular state's incentives as well as the central government incentives. Moreover, we would need to engage with states more by disseminating information on SEZs and to tailor make their specific schemes accordingly.

In terms of the number of SEZs, India is next to China having the second largest number of SEZs. China is in the process of using the 'One Belt One Road' strategy to push their SEZ policy within China but to even other countries. How can India compete in this paradigm?

China's strategy has been to make large investments in various markets but this also has the attendant risks of running up debts for these economies. This strategy has focused on infrastructure and industrial development through free trade zones in regions such as Africa.

For India, one of the counterweight strategies, is to look at different partners where there is a possibility of a collaboration or investment with them. An example of this is Bangladesh, where the Government of India invested in their textile SEZs.

As far as SEZ is concerned, we need to get the large players in. Get the top largest corporates in this country to either establish a captive SEZ or give them an environment to set up their units. One could then think of a hub and spoke model wherein the MSMEs become suppliers to them. MSMEs have their own disabilities in terms of high cost of capital, inadequate marketing expertise, issues related to transfer of technology. These can be overcome only through appropriate intervention and creating the right economic climate. On the SEZ front, one could look at reducing their transaction costs by simplifying compliances.

SEZs still remain a viable option despite the withdrawal of the income tax benefit, but we have to do a lot of marketing. The right infrastructure exists and one can leverage that to ensure market access.

With regard to expansion of the SEZs, there are a lot of external constraints now such as the WTO SCM Agreement, but what are the major constraints domestically, especially with regard to expansion of land, coordinating with the state government, etc.? Is it actually possible for the SEZs to find more land in the country?

On the land front, it is primarily the developers who eventually negotiate with the land owners and the state government comes in as one of the parties. State to state, there is a lot of difference depending on the availability of land and the exact place where the developer wants to establish the SEZ. One good model that some SEZ developers have used is to be a developer and have the state industrial agencies as a co-developer. Mahindra is one such case, specifically its Jaipur SEZ and the Chennai SEZ. This method helps them monitor all state government clearances and land acquisitions become much easier in this case as presence of state government aids the process because they have industrial clusters there. This is one method to overcome this issue but I have not come across any prickly issues with regard to land acquisition itself recently. Of course, when the SEZ scheme was started off, there were allegations in terms of how the land has been acquired, but that is history now, and developers have not noted this as an issue recently.

One impediment, I might say is that not all state government have given specific incentives like electricity duty exemption which they are encouraged to do so in the SEZ Act, because it is not mandatory in nature. This is where we have to really work with the state governments, especially the ones which do not have SEZs in their jurisdiction. Once there is an interest by a developer, then the next stage is to get into discussions with the state government on other related matters.

Now we have some large companies in India forming private SEZs and another option is to have a single product SEZ. When we compare among the various options we have, which in your opinion and experience is a better policy prescription for India?

Each type has its own challenges. For instance, if one compares Jaipur SEZ which is single product or even Moradabad SEZ with Noida SEZ, one finds that for the economic cyclical aspect, the multi product SEZ will make much more sense and it also gives the developer the flexibility to attract new units across the board. In terms of single product SEZ, the customs formation and the administrative authorities get competence to handle that particular sector but in the long run, that should not be one of the major criteria.

One would prefer to have a multiproduct SEZ because at the end of the day, it is about attracting units and you can always take a call as an administration, as to what types of sectors should join since it is up to the Approval Committee to process. Multi product SEZs will anyway be better than single product SEZs and that is the reason why we are trying to attract units beyond handicrafts in the Moradabad SEZ. It is a challenge, but it would be better

for the zone itself. If it is a captive SEZ, it will obviously be a single product SEZ. We are trying to get more of captive SEZs but if not a captive SEZs, I would much rather prefer the multiproduct SEZ.

You recently authored the book titled 'India's Opportunity for Enhancing Exports to the EU and the UK'. What was your thought process behind writing this book and what can readers expect from this book?

There are two compendiums that I have written, the other one is on GSP given by other countries. I was involved in the initial transition to the regulations for self-certification by Indian exporters to avail benefits under EU's Generalised System of Preferences (EU REX). It was a very tricky area because a lot of exporters had to be sensitised about EU REXs, because it now seems like a good thing on paper that there is self-certifying under EU REX, but that also means that the entire burden comes on to the individual who is the exporter and one cannot afford to be lax about it. EU and the other developed countries who follow this system namely Switzerland and Norway would be after the exporters if they have an iota of suspicion on the rules of origin. So, you have to be very circumspective when you are self-certifying.

When you have a third agency certifying, then the responsibility gets diffused and even if there is an issue, the third-party agents are pulled up for that. The exporters had to be educated more than the agencies, as the agencies' role was very limited. On EU's side, it has very good regulations and data available as well. Here the USP of the book was that, we were trying to put the rules of origin as well as the actual tariff lines, MFN duties and GSP duties in a single place, so that it is much easier for the exporters to look at, while giving links to other EU regulations.

The primary aim was to facilitate exporters' understanding about EU system and how they should know the exact products which are eligible to export and the duty preference.

I noticed most exporters knew that there was a GSP that had being given, but did not have an idea about the EU tariffs or the GSP tariffs. How much benefit is being passed on to the exporter is to be known. For example if the exporter is not aware of the duty of 10% and the actual GSP is 5%, then at least the exporter, should know that the 5% is benefit that he is getting out of the negotiation. That also solidifies the negotiating skills of the exporter with the buyer on the pricing part of the export.

The EU GSP was just one part of it. In the second compendium, I looked at the GSP offered by Australia and New Zealand. It is not much in terms of number of tariff lines but most of Australia and New Zealand's lines are at zero duty and have limited number of lines at 5% and 10%. So there is a need to be aware that the rules of origin are different. In the case of Kazakhstan and Russia, they also give the GSP benefit, and there are significant number of lines in both the countries, especially Russia. Russia is a major market for Indian exports, so may be existing players know about all these elements, but new exporters should be aware. UK on the other hand is also based on self-certification and has its own rules of origin. The GSP preferences are also quite significant.

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Tracing reforms in India's approach to Manufacturing Incentives post *India – Export Related Measures*

In 2018, the US challenged India's export-related incentives including Duty-Free Import Authorisation Scheme, Export Oriented Units (EOU)/Biotechnology Parks/Electronic Hardware Technology Parks (EHTP)/Software Technology Parks (STP) Scheme, Special Economic Zone (SEZ) Scheme, Export Promotion Capital Goods Scheme (EPCG), and Merchandise Exports from India Scheme (MEIS) before the World Trade Organisation (WTO). The Panel determined India's measures to be WTO-inconsistent and ruled them to be prohibited under Article 3.1 (a) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Furthermore, the Panel upheld India's graduation from Annex VII and Article 27 of the SCM Agreement, and rejected India's plea for an additional eight year period after graduation. Interestingly, this question has again come up for agricultural products before the Panel in India's ongoing dispute regarding its measures relating to sugar and sugarcane. Proactively, India started revamping its incentives regime to replace its challenged incentives with new incentives as well introduced several trade facilitation measures for the domestic industry under its 'Make in India' campaign. Most changes aim at developing India's capacity, generating employment, attracting investment and including India in the larger global value chains. These reforms are also reflected in several recent announcements and in India's Union Budget 2021-22. These changes in India's subsidy regime come at a crucial time when India is defending its "developing country" status along with China, South Africa and Brazil against the US at the WTO. Additionally, the recent Trilateral Statement by the US, EU and Japan talks about reforming the SCM Agreement to include more commonly used incentives in the list of prohibited subsidies and other areas like adequacy of notification of subsidies are crucial for India's interest. This article captures some significant developments in India's manufacturing incentives regime over the past couple of years for non-agricultural goods with a special focus on Remission of Duties and Taxes on Exported Products (RoDTEP) and the Manufacture and other Operations in Warehouse Regulations 2019 (MOOWR).

RoDTEP was introduced to replace the MEIS scheme, which was held as WTO inconsistent in the India—US dispute. RoDTEP is based on the destination-based principle of taxation which provides that taxes should not be exported with the goods, and instead, it should be remitted or rebated at the border. RoDTEP is structured to refund any unrefunded central and state-level taxes, prior stage cumulative indirect taxes and taxes or duties levied on the exported goods. For instance, it may cover taxes including goods which are excluded under the GST regime

such as certain taxes or surcharges on petroleum products, duty on electricity charges, Mandi tax, stamp duty on export documents, etc. MEIS was a scheme aimed at offsetting the infrastructural inefficiencies and associated costs of exporting products by providing incentives in the form of duty credit scrip to compensate an exporter for his loss on payment of duties. MEIS provide refund according to the fixed percentage (2%-5%) of export value without accounting for the actual level of incidence of taxes, while the RoDTEP only refunds the unrefunded amount after taking into account the level of actual incidence of taxation on an exported product. G.K. Pillai committee recently submitted its report to the Central Government, focusing on the determination of the actual incidence of taxes and ceiling refund rates. RoDTEP scheme forms a good example of the carve-out provided in Footnote 1 of the SCM Agreement. Footnote 1 of the SCM Agreement stipulates that the exemption or remission of duties and taxes on exported goods, which are otherwise levied on goods destined for domestic consumption is not deemed to be a subsidy, unless it is in excess of what would have accrued. The scheme is in accordance with Footnote 1 and it is not a subsidy. Comparing MEIS with RoDTEP, in the former, duty credit scrips were based on the previous export performances and there was no connection between the indirect taxes paid and the products that were exported whereas the RoDTEP rates are based on a closer nexus between taxes which are directly or indirectly borne by the exported product.

As far as schemes like SEZs/ EOU/EHTP/BTP are concerned, India already started phasing out some fiscal incentives in the zones, specifically the incentives in the nature of direct tax exemptions. Corporate Income Tax exemption on the income derived from the development of SEZs by the developers was phased out back in 2017, and similarly, the sunset clause for units to enjoy corporate tax incentives from their operations under Section 10AA of the Income Tax Act, 1961, is approaching its deadline which has been extended keeping in mind the pandemic situation. In order to ease the sales in the domestic tariff area (DTA), there are proposals to remove the import duties for sales made from SEZs to DTAs or the imposition of minimal FTA duties. Likewise, as an alternative policy, India has also introduced MOOWR in furtherance of its 'Make in India' initiative. Based on Chapter IX of the Customs Act, 1962 which deals with warehousing facilities. MOOWR provides for the deferment of duty on the imported capital and raw material based on certain conditions. When such imported goods are incorporated in the goods meant for export, the deferred duty is exempted from being paid. However, when the final goods are cleared for the domestic market, the manufacturer is required to pay that deferred duty. It also provides for interest-free storage of the imported goods till they could be utilised in manufacturing. The absence of export obligations, as opposed to programs like EPCG, EOU/BTP/STP/EHP, SEZs, Advance Authorisation, etc. makes MOOWR unique. Further, comparatively, SEZs have become less lucrative, due to the removal of various direct and indirect tax incentives, and more burdensome for setting up of units, due to the presence of export obligation to receive the leftover incentives. This new MOOWR initiative serves as a better alternative for export-oriented enterprises.

Notably, the manufacturing activities constitute around 15% share of India's GDP. Therefore, India's present incentive regime in manufacturing not only seeks to reduce India's import dependencies in critical sectors, but also furthers India's global competitiveness, boosts employment and enhances its overall manufacturing capacity including small industries. As opposed to earlier initiatives that brought India before the WTO, the currents initiatives are more focused on the development of the country, addressing domestic demand and creating manufacturing capabilities.

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Designing Effective Regulations: Lessons from the European Chemical Agency and the Finnish Government

The Department of Chemicals and Petro-chemicals (DCPC), Ministry of Chemicals, has been aiming to develop a comprehensive regulation on chemicals, focusing on their inventorying, management and safety. The Centre for Trade and Investment Law (CTIL) was appointed the Secretariat to the Technical Committee formulated for this purpose, with Mr. Satwik Shekhar, Ms. Apoorva Vishnoi, Ms. Akshaya Venkataraman and Ms. Smrithi Bhaskar working alongside Prof. James J. Nedumpara. The CTIL team was tasked with the responsibility of drafting this omnibus chemical regulation, incorporating inputs and suggestions from the Technical Committee and key stakeholders. Several drafts of the regulation were released for public comments in 2020.

There are numerous laws governing chemicals, be it manufacturing, procurement, use or disposal of chemicals. In India, chemical regulations, such as the 1989 Manufacture, Storage and Import of Hazardous Chemicals Rules and the 1996 Chemical Accidents (Emergency Planning, Preparedness and Response) Rules are not comprehensive, and do not cover the full life cycle of all chemicals. However, they generally ensure that hazardous chemicals do not pose a threat to human, plant or animal life. The list of hazardous chemicals under these rules is static, and does not accurately reflect the chemicals that are used in Indian industries, and the nature of risks they pose. The omnibus chemical regulation proposed to be adopted by India are a step towards covering these gaps in the current framework of chemical laws. The newly proposed Indian chemical regulations are modelled on laws implemented by the European Union (EU), and subsequently adopted by Korea, Japan, the United States (US), and so on. The EU regulation, which has served as a model for chemical regulations globally, is called REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals). REACH is based on dynamic and ongoing data collection from the users, manufacturers and importers of chemicals, to ensure that the risks posed by these chemicals are accurately analysed. This was conceptualised by the EU a decade ago, and is administered by the European Chemicals Agency (EHCA), headquartered in Helsinki, Finland.

In order to understand better the REACH, and to incorporate in the Indian regulation, ECHA's learnings from a decade of implementing REACH, a team from India visited ECHA's office in Helsinki. The team also met with several other European stakeholders in the chemical industry, as well as Finnish regulators and customs officials, to understand how the regulation applies during the entire lifecycle of the chemical. Akshaya Venkataraman and Smrithi Bhaskar from CTIL were part of this team, and accompanied Mr. Samir Kumar Biswas, Additional Secretary, DCPC, Ministry of Chemicals and Fertilizers and Mr. Raman Kant Sood, Director, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India. This article recounts our experience, as well as the key take-aways on good regulatory practices that were learnt during the visit.

The Indian delegation spent a week in Helsinki, in January 2020 and met with various experts, including the officials of ECHA, the Chemical Industry Federation on Finland, the Finnish Customs Lab, the Finnish Safety and Chemical Agency (a Finnish investment promotion and financing body) and officials of Finnish regional administrative bodies.

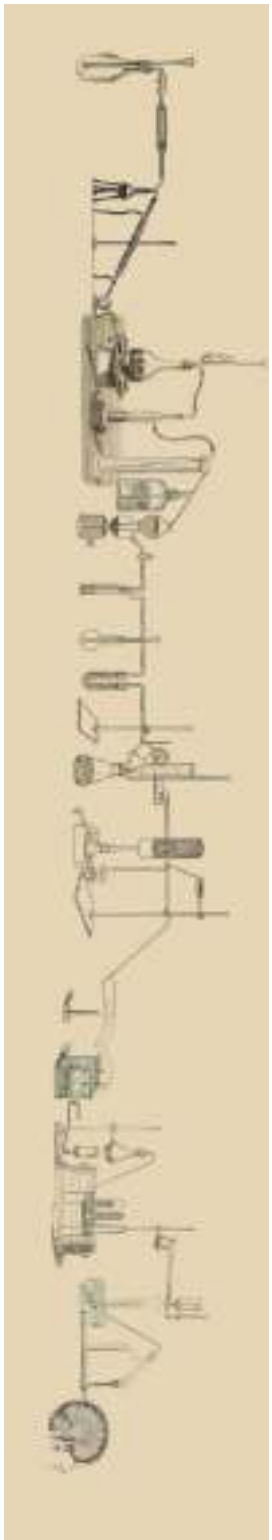
The meetings with the officials of ECHA, especially with Mr. Bjorn Hansen, its Executive Director, highlighted the importance of having a strong implementation structure in order to put in place a comprehensive chemical regulation. While the wording of a regulation and its core objectives is important, it is essential to not lose sight of how it will be implemented, keeping in mind the circumstances of the jurisdictions it will cover. Understanding the complex, tiered system that the ECHA follows made it evident that regulations of this nature require significant manpower.

Mr. Hansen emphasised that 85% of EHCA resources are dedicated towards REACH, while the remaining 15% for all the other regulations that EHCA is tasked with administration of. Understanding ECHA's financial and budgetary aspects also helped us recognise the resources required to implement a regulation of this scale. All EU Member States collectively fund the ECHA, and it receives approximately 99 million Euros annually to administer the REACH alone. This is independent of costs that EU. Member States undertake to enforce REACH domestically. This also brought into sharp focus the need to appropriately modify REACH and ECHA-inspired structures that were incorporated into the Indian chemical regulation, in order to make sure it did not exceed India's manpower and budgetary constraints.

ECHA officials spent significant time explaining the REACH, and detailed out a number of checks and balances built into REACH. These checks and balances ensure smooth functioning within ECHA, with clear demarcations of responsibility for various aspects of the REACH, as well as ensure fewer human errors. ECHA officials also demonstrated the software that is used as the basis for REACH, which is custom built for this purpose. This eliminated the need for a manual review of documents for completeness, and procedural defects, allowing ECHA officials to focus on the substantive content of documents. This was proposed to be used in India as well, so as to eliminate bottlenecks and delays in our proposed approval procedures.

The Indian delegation met with the Heads of each of the ECHA committees constituted for various activities to understand continuous development of REACH related provisions. The chemicals industry is fast-growing, with constant innovation of new chemicals, and new uses, that could result in new hazards. The ECHA committees are primarily tasked with ensuring that the regulation is focused on addressing current risks posed by chemicals, strengthening the regulatory requirements related to the particular chemical, for a set period of time, before moving on to a different chemical. Understanding these mechanisms was significantly useful to design a flexible system in the Indian law, which would allow for easy and swift additions and/or removal of requirements based on innovation in the industry.

The Indian delegation also met with the Finnish national regulator, as well as the Finnish customs authorities, to understand how REACH was implemented domestically. This was crucial for understanding the work done to enforce such legislations since ECHA is only involved in the registration and maintenance of databases and schedules of chemicals. Enforcement of REACH is the responsibility of individual EU Member States. The Finnish Safety and Chemicals Agency (Tukes) explained how REACH is enforced for such a large sector, where innumerable number of chemicals and industries are involved. The officials from Tukes explained that since there is a wide variety and scope of chemicals that require testing, and the wide market within which they operate, they choose a focus area annually, based on which they determine which products, articles or chemicals are to be tested in that year. This area is chosen strategically, based on latest developments, and reports of non-compliance from other States. This system presented us with a unique implementa-



tion model that effectively regulates, while also reducing governmental costs.

The meetings with the Finnish Chemical Industry Federation (Keiman Teollisus) were imperative to understand how REACH was welcomed without opposition, and the reasons for the success of the regulation with the industry. Understandably, when it was introduced, REACH was considered innovative, but it imposed a major compliance burden on the industry. The chemical industry found overlaps between domestic requirements and REACH requirements, doubling their regulatory burden. The costs associated with the REACH regulation for companies were also significant, even though REACH allows for a cost-sharing mechanism. The interaction with Keiman Teollisus particularly helped in seeking insights on how the compliance and cost burden on the industry could be evaluated, and consequently managed. Keiman Teollisus pointed out the need to ensure that the Indian chemical regulations do not unduly disrupt Indian industry, especially MSMEs, in terms of costs and procedures. In addition to the enforcement mechanism for REACH, Finland also maintains a National Product Register for hazardous chemicals that operates on a national level alone. This Register is used to assist other departments in Finland such as accident response units and poison control units. Studying this mechanism was valuable as the proposed Indian chemical regulation also encompasses accident management and mitigation related provisions.

Indian delegation with Ambassador Vani Rao, and Members of ECHA on 14 January 2020 at the ECHA Office in Helsinki, Finland.

The week-long experience, facilitated by the then Indian Ambassador to Finland & Estonia, Ambassador Vani Rao, provided critical and necessary perspectives on the formulation, implementation and enforcement of complex, technical and impactful regulations. The inputs from these meetings, especially on how to best reduce the impact on small and medium businesses, were ultimately incorporated into the draft Indian chemical regulation prior to its release for public comment. This exercise also proved fruitful in the future work of CTIL, in its work on assisting the Department of Commerce with the preparation of other domestic laws.

For the past year, CTIL has been in involved in drafting a national framework legislation for India governing the logistics sector across various modes of transport. Despite the sectors being vastly different, lessons learnt from the preparation of the chemical regulation proved invaluable in the performance of tasks given to CTIL by the Logistics Division of the Ministry of Commerce and Industry. The lessons on how to account for the impact of new laws and regulations on smaller Indian businesses that may be affected was helpful in preparing the novel cross-sector logistics law. The Finnish experiences on the enforcement of framework regulations was particularly insightful when thinking about the future Indian logistics law and how it could be enforced across such a vastly diverse and dynamic sector. Most importantly, the experience of listening to and learning the value of ensuring continuous consultation and accountability in the process of legislative drafting and enactment, a core tenet of the REACH model, was instrumental in developing a balanced and effective law for the logistics sector.

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Conversation with Prof. Mukesh Bhatnagar on the State of Play of Fisheries Subsidies at the WTO: An Indian Perspective

Prof. Mukesh Bhatnagar has been a Professor at the Centre for WTO Studies, Indian Institute of Foreign Trade, for the past 8 years. He has over 3 decades of experience in trade related issues, especially in relation to export promotion, trade remedies, and various multilateral negotiations at the WTO. During his time at the Centre for WTO Studies, he has been actively involved in the fisheries subsidies negotiations at the WTO.

Thank you for joining us today, Sir. Given your extensive background on fisheries subsidies, can you tell us in brief the current state of play of fisheries subsidies negotiations at the WTO?

The adoption of United Nations Sustainable Development Goals (UNSDG) in the year 2015, gave an impetus to the fisheries subsidies negotiations - which were launched under the WTO Doha Round in 2001, but had come to a standstill by 2011. World Leaders agreed under the UNSDG target 14.6 to eliminate subsidies that contributed to the illegal, unreported, and unregulated fishing (IUU) and to prohibit subsidies that contribute to overcapacity and over-fishing. Despite being affected by the COVID - 19 pandemic, the Members continued the negotiations virtually with an aim to achieving a consolidated text soon. The negotiations for the disciplines on Fisheries Subsidies are now in the decisive phase and moving towards conclusion.

An important aspect of these negotiations from India and other developing and least developed countries' perspective is the Special and Differential Treatment (S&DT) which is integral to these negotiations. In fact, in the last meeting, held on June 24, 2021, which touched upon various aspects of the negotiating text, there still existed several contentious issues, with S&DT being one of them. A meeting at the Ministers' level is going to be held on July 15, 2021 virtually with the aim to achieve maximum convergence on all the contentious issues. The Members are engaged in an intense phase of negotiations to achieve a consolidated text on fisheries subsidies with the least possible unresolved issues before this Ministerial meeting. The consolidated text will contain disciplines mainly on three pillars - IUU fishing, subsidies for stocks that are over-fished, and the subsidies that contribute to overcapacity and overfishing, with S&DT provisions.

One of the most important pillars is overcapacity and over-fishing, wherein adoption of cap-based subsidies was suggested. Where do you think this pillar is heading and what methodology can we expect in the final text? Can we expect to see the Green-Box style structure found under Agreement on Agriculture in Fisheries Subsidies?

The Overcapacity and Over-fishing (O&OF) discipline is the core of the fisheries negotiations, wherein Philippines, United States, China and Brazil (being the latest) brought forward capping proposals. While in the earlier versions of the Chair's text, capping was a placeholder, but since it did not find favour with many Members (including India), it was dropped in the Chair's revised text of May 2021. India had reservations that a cap on subsidies may constrain or limit its policy space to grant subsidies, since it is not a big subsidiser. Also, capping proposals require Members to take reduction commitments, where you must reduce your limit of subsidies gradually. India's development needs will require policy space to grant subsidies and it was not agreeable to such an approach.

Now what is emerging is an 'hybrid approach' for this pillar, as seen in Article 5 of the Chair's Text. Article 5.1 provides a list of prohibited subsidies, which is to be read with Article 5.1.1 which states 'A subsidy is not inconsistent with Article 5.1, if a subsidising member demonstrates that measures are implemented to maintain the

stocks in the relevant fisheries at a biologically sustainable level.' This essentially means that if a Member can demonstrate that fish stocks are at a sustainable level, they can continue to provide subsidies. This approach is also referred to as the sustainability approach.

The opposition to the sustainability approach stems from the fact that big subsidisers will continue to subsidise and the status-quo will continue. The possible solutions for plugging these loopholes are: (1) that subsidies for fishing in high seas are proposed to be prohibited under Art. 5.2(a), based on a US proposal; (2) to increase the role of regional fisheries management organisation (RFMOs) which have been set-up as inter-governmental bodies to manage common fisheries resources in the high seas and they may oversee areas beyond the national jurisdiction of the members to ensure conservation measures; and (3) EU and other distant water fishing Members, who fish under other countries' EEZ pursuant to excess rights arrangements, also want to secure the flexibility to grant subsidies if the stocks in those EEZs are maintained at a sustainable level. Regarding green box, yes, there is a possibility that green box-type elements or approach in some form may come within the sustainability approach. Negotiating for disciplines on fisheries subsidies involves a lot of compromises. These negotiations have been going on for 20 years; the list-based approach has not worked, capping has not found support, and therefore a compromise in the form of hybrid approach of combining list-based approach and sustainability measures is the only possible way forward. Now, in the name of sustainability, the big subsidisers, that have already implemented conservation and management measures may continue to grant subsidies. This is possible as they are only required to demonstrate their conservation measures, which will be before the WTO committees. So, to this extent there will be some sort of green box as seen in Agreement on Agriculture coming to fisheries as well.

It would be pertinent to mention that additional notification requirements for maintaining transparency are found in the Chair's text. The Members invoking Article 5.1.1 (sustainability clause) will be required to notify their subsides programme along with catch data, fisheries conservation management followed, fish stocks status for which subsidies are provided, etc. The idea behind this is to ensure that the Members invoking the sustainability clause do not go scot-free. These notification obligations will ensure those stocks remain at a sustainable level. However, this has a flipside: Fisheries Management is coming to WTO. We all know WTO is not a fisheries management organisation, which is a concern that has been raised by many Members. But once Members introduce sustainability clauses how do they ensure their compliance? By invoking WTO institutional mechanism, hence the fisheries management issue will be coming within the scope of the WTO.

The Special and Differential Treatment has been the focal point of contention for India, regarding the disciplines being negotiated for fisheries subsidies. Since the negotiations are drawing to a close, can you throw some light on to what extent India has been able to achieve its goal of obtaining S&DT under the draft text?

The extent of S&DT and how much wide in scope it will be, is one of the most contentious issues. The mandate states that

appropriate and effective special and differential treatment for developing and least developing countries must be an integral part of the negotiations.' India has been pursuing its proposal by keeping this mandate in mind. However, some developed countries along with the six Latin American Countries have suggested that the S&DT should be need based, limited to time periods and be minimal in nature. Their apprehension stems from the fact that among the largest marine capture producers are many developing countries and hence they should not be given broad carve-outs as S&DT.

In March 2020, under its proposal, India proposed four criteria for according the S&DT. This included share in global marine capture, Gross National Income per capita, developing countries not engaged in distant water fishing and lastly, where the developing country's share in the GDP from agriculture, fisheries and forestry was below 10 percent. Further, such S&D treatment was intended to be during a transition period as the developing country meeting all the four criteria will not be entitled to S&DT thereafter.

The flexibility proposed by India would have probably excluded China as a beneficiary. Surprisingly, this approach did not find favor among Members, as the developed countries felt that the four criteria were cumulative and will allow S&DT for most developing countries for a very long period. A more recent proposal by Africa, the Caribbean Group, and Pacific Group of Countries ('ACP Countries), provides for a di minimis threshold of 2.5% share in global marine capture as S&DT. This favours smaller islands, Pacific and Caribbean countries. For other developing countries S&DT is proposed for fishing up to their EEZs. Since, this proposal was recently introduced, it is yet to be seen, how it will play out. Nevertheless, S&DT is a very complex issue, and it will take some time before all Members can come to a consensus.

Besides S&DT, another contention issue is that of fuel subsidies provided to fishermen. Can you elaborate on the approach adopted by India in this regard?

This is also a hugely contentious issue, and I will try to address it briefly. In general, the Indian subsidies programme administered through State Governments are mostly in the nature of taxation refund on fuel, which may be the return of Value -Added Tax or Sales Tax on high -speed diesel or other fuel that fishermen may use. So, our fisheries subsidies are predominantly on fuel, with some other programmes covering capital costs of vessels, cost of modernisation or purchase of new vessels, or fitting of outboard motors. Our programmes are in the nature of specific subsidy, according to Article 2 of Subsides and Countervailing Measures Agreement (ASCM). The approach by Members under the fisheries subsidies negotiations suggests that the definition of subsidies will flow from Article 1 of ASCM, which India has also agreed to, and 'specificity' will be defined according to Article 2 of ASCM.

However, it is seen that certain developed Members maintain horizontal subsidy programmes related to energy which also include fuel used by their fishermen in distant water fishing. These horizontal programmes are providing broader tax exemptions or other form of subsidies which also benefits the fishery sector. It is also known that these horizontal

programmes are not subject to any transparency obligations under existing ASCM notification obligations and under Article 8 of the Chair's text, since the Article only requires specific subsidies to be notified. Also, the general approach by Members is to govern only specific subsidies under the fisheries subsidies disciplines.

Hence, for fuel, India made a point very early on in the negotiations that non-specific fuel subsidies should also be subject to the disciplines on fisheries subsidies. It is on India's insistence that the scope of the Chair's text, i.e., Article 1.2 (still being negotiated) states that "although specific subsidy will be subjected to the disciplines but when it comes to fuel, non-specific fuel subsidies should also be subjected to the disciplines". However, fuel subsidy again is a big issue, and is highly contentious, often being dubbed as a political issue. Hence, Members would need to find a solution and reach a common landing zone.

Among the developed countries, the apprehension is about extending the S&DT to China - which is the largest maritime capturer. During the negotiations has China been vocal about claiming the S&DT? And to what extent does India's position align with China's?

China had been pursuing a capping approach, where they wanted a green box in which certain subsidies were to be kept outside the purview of the disciplines being negotiated.

These would include government spending for research, income support or other evidently green box subsidies which were not harming fisheries and were generally good. However, capping did not find favour. Still, Members are gearing towards negotiating a list of non-harmful subsidies. China is also advocating for flexibilities in high seas. They suggest that an outright prohibition of subsidies for such fishing is not feasible, since not all the fishing conducted in high seas is contrary to sustainability concerns.

China has not been a big demandeur of S&DT. It is understood that the ACP proposal as (mentioned above) which is seeking wider S&DT will also benefit China. India's position is aligned with China's on the issue of non-specific fuel subsidies. Both India and China agree that these non-specific fuel subsidies should be governed by the disciplines on fisheries subsidies.

What is your opinion on the way forward? Do we see a positive impact on Indian fisheries industry because of this agreement at the WTO?

Our commitments at the WTO will not have a big impact as far as fisheries trade is concerned. Our capabilities to maintain our programmes will not be impacted as our campaign for S&DT will secure the policy space. We will also have to be innovative to reformulate our programmes in the sense that they become non-specific and are not targeted by the disciplines being negotiated. Moreover, we may have to design programmes under which subsidies are non-harmful in nature - similar to the ones adopted by many developed countries, who have been maintaining subsidies which are not contributing towards over capacity and overfishing. Additionally, the Indian Department of Fisheries, along with our National Fishing Policy advocates for sustainable fishing. India is a responsible nation and we do have very good indigenous fisheries management plans that contribute towards conservation of maritime resources. Therefore, we should not be too circumspect towards taking international obligations, while at the same time securing our interests through appropriate S&DT. Moreover, all the marine capture nations, including India, must contribute in the effort to sustainability of marine resources. In that sense we are ready to shoulder the responsibilities that arise from this. However, we must also be constructive in taking on international obligations. Lastly as a nation, we abide by multilaterism, and WTO should deliver on this matter.

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CTIL

Using IIAs to meet Sustainable Development Goals: the Indian Experience

Sustainable Development Goals (SDGs) are 17 global goals adopted by the United Nations in 2015, to be achieved over the span of 15 years, forming part of 2030 SDG Agenda. These goals range from eliminating poverty and hunger, ensuring: gender equality and education, clean water, clean energy, economic growth, and innovation; to climate action. The 2030 SDG Agenda specifically notes the importance of investment in achieving these goals, in particular the goals of reducing inequality within and among countries and those related to energy and food security.

It is hard to understate the importance of Foreign Direct Investment (FDI) in meeting SDGs. Investment is an important driver of economic and social change, and is crucial to push forward the development and adoption of new technologies, as well as for social development in Host States.[1] Investment is also usually an important source of foreign exchange inflows for States, leading it to take centre-stage in policy and regulatory development. However, foreign investment may equally lead to environmental degradation, rapid depletion of natural resources, and exploitation of labour, which States may be unable to adequately combat. This also presents a unique contradiction for developing and least-developed countries (LDCs), which use investment as a development tool, but are also at the greatest risk due to adverse effects of unethical investor conduct.

The legal regime for FDI is dual, being regulated through the domestic law of the host state and the obligations under international investment agreements (IIAs). These agreements provide investors with certain rights, such as a right for compensation for expropriation, fair and equitable treatment, national treatment and most favoured nation treatment, repatriation, and physical security of investments. These treaties also prescribe special dispute settlement mechanisms for investor-state dispute resolution. While Host State obligations are extensive under IIAs, States hope that these agreements incentivise investors.[2]

In contrast, investor's obligations are contained within the domestic laws of a Host State, potentially extending to obligations regarding sustainable investment. However, the Host State may prioritise investor interest over public policy or sustainability goals, in order to ensure a continuous investment flow. Additionally, Host States run the risk of facing investment arbitration claims from existing investors when they enact stringent environment and labour protection legislations.[3] This is because existing IIAs are not sufficiently sustainability oriented, causing tribunals to discount sustainable development related regulatory measures. Defending these claims can be expensive and time consuming, and the awards passed against States are often exorbitant. All these impede states from meeting their SDGs, and impact their ability and willingness to progress on this front.

In order to recalibrate investment in developing and LDCs towards sustainable development, a starting point is the rewriting of IIAs. This may be a herculean task, owing to the large number (approximately 2,300) of BITs currently in force. States may be unwilling, and in fact unable, to renegotiate or amend these agreements to include sustainability related provisions. The inclusion of environmental provisions is usually an indicator of sustainability concerns being addressed within IIAs, and have been included by a few developing countries such as Brazil. India as well has evolved an approach to including sustainable development provisions within its BITs. Since India's termination of its BITs in 2017, India now has eight BITs in force, and has signed only four new BITs since then. India signed BITs with Belarus and Chinese Taipei in 2018 and with Kyrgyzstan in 2019. India also signed an Investment Cooperation and Facilitation Treaty with Brazil in 2020 (ICFT). The void in India's BIT network presents it with the opportunity to negotiate sustainability focused IIAs, to ensure its entire BIT network is aligned. A sustainability focused agreement would not only protect India's regulatory space with respect to ensuring its SDG goals are met, but will also signal to an arbitral tribunal (in the event of any future claims), that one of

the primary intentions behind the IIA was sustainable investing.

The question then arises, of how to draft a sustainability focused IIA. Sustainable investments are characterised by sustainable operating standards and responsible business conduct. First, these IIAs should mandate businesses to respect a high standard of environmental, labour and human rights protections, with strict and heavy penalties for non-compliance. IIAs must be oriented towards sustainability rights from the preamble itself, and must acknowledge the importance of health, safety, labour, environment and sustainable development. This will aid in interpreting the entire IIA in this context. Second, sustainability focused IIAs must adequately preserve the Host State's regulatory space towards this objective. This can be achieved by the inclusion of general exceptions for actions taken to protect human, animal, plant life or health, safety or environmental standards, or the conservation of natural resources. Third, investors' corporate social responsibility (CSR) obligation may be made a part of the IIAs. Rather than making mandatory CSR obligations, States may instead go down the route of expressing their desire that investors voluntarily adopt CSR principles geared towards helping Host State achieve their SDGs.

India has already begun to move in this direction over the past six years, with the Indian Model BIT, 2015 reaffirming the promotion of sustainable development, as well as the state's regulatory rights in the preamble. The general exceptions recognise the non-applicability of the treaty to measures that are meant to protect human, animal or plant life or health, protect and/or conserve the environment, including all living and non-living natural resources. The Indian Model BIT also includes a CSR clause that requires investors to voluntarily incorporate CSR activities related to labour, environment, human rights, community relations and anti-corruption into their practices and policies.

These inclusions are in stark contrast to prior Indian BITs, which now stand terminated. For instance, the India-Australia BIT, 1999 (under which the White Industries dispute occurred) does not include sustainable development within its preamble, nor does it provide for general exceptions or CSR obligations. These provisions are similarly absent from other Indian BITs such as the India – Mauritius BIT, 1998 and the India – UK BIT, 1994.

The India – Belarus BIT, as well as the India – Kyrgyz Republic BIT both include the promotion of sustainable development as an important facet of investment between the states. They also include a CSR clause, that states that investors may voluntarily incorporate CSR principles. The general exception clause in both BITs also include the protection of plant and animal health, environment etc. These BITs are drafted similarly to the Indian Model BIT.

The India-Brazil ICFT, which is more recent, goes one step further, and has been heralded as an important starting point in the negotiation of sustainability focused IIAs.[4] Though not in force yet, ICFT includes the aims of sustainable development and poverty reduction within its preamble, as well as reaffirms the parties' right to regulate. It includes a modified CSR clause which specifies that investors shall strive to contribute to the sustainable

development of the Host State and its local community. It also lists 11 principles of responsible business conduct that the investor must adhere to. Though not mandatory, when read with the preamble, the detailed nature of this clause may persuade a future arbitration tribunal of the importance of sustainable development within the IIA.

Lastly, the treaty has a specific article (Article 22) on Provisions on Investment and Environment, Labour Affairs and Health, which expressly recognises the power of a party to enforce a measure that is aimed at ensuring an investment is undertaken in a manner according to labour, environmental and health laws. Article 22 also states that the parties recognise that it is "inappropriate to encourage investment by lowering the standards of their labour, environmental or health law," and as a result prohibits parties from amending or modifying these laws specifically in order to encourage investments. This is in addition to the general exceptions clause similar to what is included in the Indian Model BIT.

India has shown that negotiating new-age IIAs can focus on sustainable development and move away from the traditional concept of IIAs as investor-protection tool alone. This move towards sustainable IIAs is not new. The question of how to convert a primarily investor-protection focused instrument into one that can drive sustainable development has been asked many times over. India through its 2015 Model BIT and the India-Brazil IFCT provides blueprints for negotiating sustainable-intensive IIAs, and has shown that it will focus on sustainable development and move away from a traditional conception of IIAs as investor-protection tools alone.

Smrithi Bhaskar
Research Fellow, CTIL

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[1] For a brief overview of how investments are related to sustainable development, see Introduction: Sustainable Development, Investment, and Investment Treaties – What's the Connection? In Investment Treaties and Why they Matter to Sustainable Development: Questions and Answers, International Institute for Sustainable Development, available at https://www.iisd.org/system/files/publications/investment_treaties_why_they_matter_sd.pdf; see also Relevance of IIAs for Sustainable Development, in Sustainable Development Provisions in Investment Treaties, UNESCAP, available at https://www.unescap.org/sites/default/d8files/knowledge-products/Sustainable%20Development%20Provisions%20in%20Investment%20Treaties.pdf

[2] For a study on whether entering into IIAs actually results in an increase in investment flows, see Rishab Gupta, Study on Investor Perceptions Towards India's Investment Treaties, a CTIL Study. A summary of these findings can be found on page 18 of this magazine.

[3] For instance, *see* Tecmed v. Mexico, ICSID Case No. ARB (AF)/00/2, in which Tecmed filed a claim against the action of Mexico's environmental protection agency for not permitted Tecmed to operate its landfill. Ultimately, the dispute was decided in Tecmed's favor, and an award for 5.3 million Pesos was passed.

[4] *See* for instance, Martin Dietrich Brauch, The Best of Two Worlds? The Brazil-India Investment Cooperation and Facilitation Treaty, Investment Treaty News, Mar. 10, 2020, available at https://www.iisd.org/itn/en/2020/03/10/the-best-of-two-worlds-the-brazil-india-investment-cooperation-and-facilitation-treaty-martin-dietrich-brauch/#_ftn3


SUSTAINABLE DEVELOPMENT GOALS
1 NO POVERTY
2 ZERO HUNGER
3 GOOD HEALTH AND WELL-BEING
4 QUALITY EDUCATION
5 GENDER EQUALITY
6 CLEAN WATER AND SANITATION
7 AFFORDABLE AND CLEAN ENERGY
8 DECENT WORK AND ECONOMIC GROWTH
9 INDUSTRY, INNOVATION AND INFRASTRUCTURE
10 REDUCED INEQUALITIES
11 SUSTAINABLE CITIES AND COMMUNITIES
12 RESPONSIBLE CONSUMPTION AND PRODUCTION
13 CLIMATE ACTION
14 LIFE BELOW WATER
15 LIFE ON LAND
16 PEACE, JUSTICE AND STRONG INSTITUTIONS
17 PARTNERSHIPS FOR THE GOALS
SUSTAINABLE DEVELOPMENT GOALS

Conversations with CTIL Alumni: On Valuable Work Experiences and Mentorship

CTIL's alumni are all around the world today, doing diverse and impactful work in the field of international law. On CTIL's fourth anniversary, Trishna Menon catches up with five CTIL alumni: *Aditya Laddha, Archana Subramanian, Sandeep Thomas Chandy, Sparsha Janardhan, and Prakhar Bhardwaj* – as they reminiscence on their time at CTIL, talking about their career since, and what they are doing now.

Aditya Laddha, Judicial Fellow at the International Court of Justice

Aditya was a Research Fellow at CTIL from August 2017 until July 2019, following which he pursued the Master in International Dispute Settlement (MIDS), jointly organised by the University of Geneva and Graduate Institute of International and Development Studies, Geneva. He is presently a Judicial Fellow at the International Court of Justice, where he has been working since September 2020. On these experiences, he observes, "MIDS provided me a comprehensive and robust academic understanding of public international law and dispute settlement before the ICJ and other international tribunals like the ITLOS and the WTO. The ICJ Judicial Fellows Programme has allowed me to research on various cutting-edge questions of international law and obtain valuable insight into its practical application."

While at CTIL, Aditya had the opportunity to assist the Government of India in several trade and investment disputes, and he highlights the importance of this to his career, "Working on these disputes allowed me to gain a comprehensive understanding of, and strategic insight into the different stages of dispute settlement, from consultation to drafting written and oral submissions at international adjudication bodies like the WTO." He also assisted the Government during the negotiations of several regional and free trade agreements and advised on different trade and investment policy matters. He notes that these experiences enabled him to gain a working knowledge of various facets of international law, and provided him with first-hand exposure to a State's approach to international law and adjudication. This also gave him the unique opportunity to understand the social, political, and economic demands involved in a State's decision-making process.

Aditya Laddha
Judicial Fellow
International Court of Justice, The Hague

Archana Subramanian
Consultant
Fieldfisher, London

Sandeep Thomas Chandy
Legal Fellow
New Markets Lab, Washington D.C.

Sparsha Janardhan
Jagdish Bhagwati Fellow, Columbia Law School, New York

Prakhar Bhardwaj
Fulbright Scholar
Harvard Law School, Massachusetts

He fondly recalls his time at CTIL, "CTIL made practicing international law in India, a reality for me. Apart from work, I also had the pleasure to work with brilliant colleagues, who were always up for a debate on legal issues of international trade and investment law and brought different perspectives to the table."

Archana Subramanian, Consultant at Fieldfisher, London

Archana is a Consultant with the London office of Fieldfisher, a European law firm. After leaving CTIL in July 2018, she completed her LLM in International Legal Studies at Georgetown University as an awardee of the John H. Jackson Memorial Endowed Scholarship. She had been working with Prof. James J. Nedumpara at the Jindal Global Law School, when in August 2017, the opportunity to join him at CTIL presented itself. Archana says that she did not have to think twice.

She recalls that at the beginning, the team at CTIL was small, and often consulted each other on the more interesting questions of trade law. Consequently, she ended up working on a plethora of trade matters: disputes, negotiations as well as domestic trade policy. These experiences were instrumental in shaping her understanding of trade law and the challenges that governments (especially developing ones) face in synchronising their political, economic and developmental agendas with international trade rules.

On the influence of her time at CTIL on her career, she says, "My time at CTIL not only enriched my studies at Georgetown Law but also provided a solid base for my time at the Rules Division of the WTO. At CTIL, I was able to work with government officials and industry. This required us to not only contextualise legal advice in light of the larger goals of the government, but also simplify complex laws and communicate these effectively to policy makers." She also speaks of Prof. James J. Nedumpara encouraging the CTIL team to develop their research and writing skills by providing them with opportunities to publish in national and international journals. Archana had the opportunity to convert her article on non-market economies into a book, 'Non-market Economies in the Global Trading System: The Special Case of China' published by Springer, which included publications from well-known practitioners and academicians across the world.

Archana concludes, explaining the role that CTIL plays in the development of trade law in India, "My experience at CTIL is an important part of my journey as a trade lawyer. When undertaking my LL.B. at the National Law School of India University, I was unable to find any avenues for trade lawyers where one could develop their knowledge and skills by working on some of the most relevant issues of trade faced by the country. It is apparent now that CTIL has filled this gap."

Sandeep Thomas Chandy, Legal Fellow at New Markets Lab

Sandeep is a Legal Fellow at New Markets Lab, Washington D.C. Sandeep joined CTIL as a Department of Commerce intern and continued as a Research Fellow from December 2017 until June 2019. He recollects the first negotiation that CTIL had been part of, with the Eurasian Economic Union, "This came in as an assignment to create a framework for the future, comprehensive FTA, but later, we were also invited to be part of the negotiation. This was the first time I was witnessing how States negotiate rules. It was quite an exciting experience." He also highlights the opportunity he had to be part of the Indian delegation to the WTO for the ITA disputes against India.

Subsequently, Sandeep joined Georgetown University Law Centre for his Masters, where he

focused on international trade, as well as other related areas, such as economic and other sanctions, export controls and investment law. During this time, he was also a research assistant to Prof. Anupam Chander, and co-authored a paper with him titled 'Achieving Privacy: Costs of Compliance and Enforcement of Data Protection Regulation', for the World Bank's World Development Report 2021 ('Data for Better Lives'). Sandeep was awarded the second prize in the John D. Greenwald Writing Competition in March 2020, for his paper on the legality of imposing customs duty on digital products under the WTO framework.

Sandeep also highlights the reputation that precedes you as an alumnus of CTIL, "Even if you go abroad as a student, or even if you talk to people at conferences, since you were associated with one country's government, especially India's, people want to have conversations with you, and doors open much easily for you. You also get this unique developing country perspective, on how international trade law affects domestic trade policies and your international relations."

Prakhar Bhardwaj, Fulbright Scholar at Harvard Law School

Prakhar is currently a Fulbright scholar and LLM candidate belonging to the 2021 cohort at Harvard Law School, and a Senior Research Fellow at CTIL since August 2018. He joined CTIL with the desire to work with the Ministry of Commerce on international trade issues, and, in his words, his experience has "gone above and beyond that".

At CTIL, Prakhar has worked on advisory, WTO disputes, and FTA negotiations. The best part of his experience has been FTA negotiations, "Going to China and Vietnam for RCEP negotiations was definitely the highlight of my entire career. Sitting in a room with experienced negotiators from 15 other countries, looking at how issues are escalated, formulated, how deadlocks are resolved, and how our own positions are formulated; it was pretty much the best part and I always look forward to whenever that opportunity arises."

Prakhar believes that CTIL played a big role in him being awarded the Fulbright scholarship, and being admitted into the Harvard LLM class, "I think I got incredibly lucky because my Fulbright interview was a few weeks after my return from China. For Fulbright, it's very important that candidates are culturally aware, they have had good interactions with people from all over the world, and they can be ambassadors for India. My experience, being part of the negotiating team for RCEP, directly played into that. Because Fulbright is a government funded scholarship, partially-funded by the US as well as the Government of India, I think CTIL played a big role in that."

Because of his time at CTIL, and familiarity with the subjects, he was clear that at Harvard, he did not want to take doctrinal courses. Instead, he opted for courses that would help him build an interdisciplinary and critical outlook to issues of international economic law. Prakhar concludes by reiterating how much he benefited from Prof. James's mentorship.

Sparsha Janardhan, Jagdish Bhagwati Fellow at Columbia Law School

Sparsha is a Jagdish Bhagwati Fellow and LLM candidate at the Columbia Law School. The Jagdish Bhagwati Fellowship is underwritten by the Government of India and supports graduate students specialising in international trade. At Columbia, she is studying courses on the law, politics and history of US trade policy, international trade, and international investment law and arbitration.

Sparsha has worked at CTIL as a Research Fellow and subsequently a Senior Research Fellow between July 2018 and November 2020. She describes her experiences at CTIL as having provided her with a platform to develop her professional skills in a holistic manner. She explains, "Working in CTIL under the guidance of Prof. James J. Nedumpara has been an invaluable experience. The opportunities for the practical application of WTO norms, and frequent engagement with government officials on India's trade policies have been particularly enriching. I have had the opportunity to work on disputes involving India at the WTO, FTA negotiations and advising on domestic policies that affect international trade."

Trishna Menon
Senior Research Fellow, CTIL

Photo by Scott Graham on Unsplash

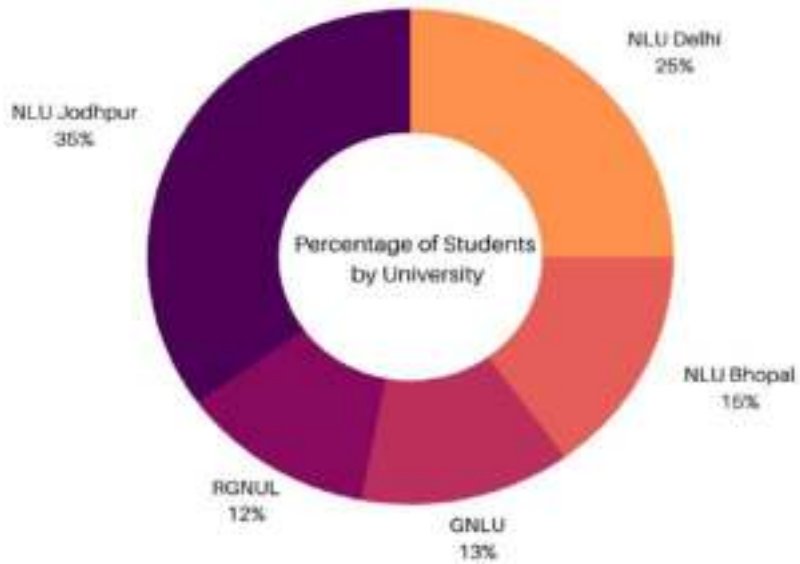
CTIL-DOC Internship

CTIL in association with the Department of Commerce (DoC), runs the Department of Commerce Flagship Internship program for law students from premier educational institutes in India. This programme began in 2017 and CTIL has offered internships to a number of students under this programme. The programme is open to LL.M students, fourth- and fifth-year students from five-year integrated law courses, and final year students from three-year LL.B. course. The selection process is competitive, with students who have experience working on issues of international trade & investment law being selected in order to hone their skills further.

The eligible students are placed with either CTIL or with government agencies such as the Directorate General of Trade Remedies (DGTR). The internship period varies, with most internships being between 1 and 6 months in duration. Students are also offered a monthly stipend, in order to compensate them for their hard work during the programme.

From the beginning of this programme, students from diverse backgrounds and studying at premier law schools in India have participated. The graph below gives a breakdown of the interns and their home institutions.

Interns usually have an understanding of the workings of the WTO, as well as of international trade law. Since March 2021, these internships have taken place virtually. The internship are research intensive, and the interns are exposed to not just international law, but Indian laws and policies as well as the municipal law of other nations. It is a wonderful option for anyone looking to gain insight into international trade law, or international law in general. The internship experience is also valuable to those interested in policy-making, legal research or in strengthening their internship record to apply for graduate studies.



Some of the interns have also become part of the CTIL research team upon graduating. Apoorva and Amandeep from CTIL sat down with two of their colleagues Aparna Bhattacharya, a Senior Research Fellow and Rishabha Meena, a Research Fellow, on their experiences in being a part of this programme.

Could you give us a brief background about yourself?

Aparna: I currently work as a Senior Research Fellow at CTIL. Before joining CTIL, I worked as an Associate at A&A Law Office, New Delhi. I completed my Masters in international trade and investment law from the Centre of Post Graduate Legal Studies (CPGLS), O.P. Jindal Global University, and my Bachelors from Amity Law School, Delhi (Guru Gobind Singh Indraprastha University).

Rishabha: I currently work as a Research Fellow at the CTIL. I graduated in law from National Law University, Jodhpur with a specialisation in international trade and investment law.

Aparna Bhattacharya
Senior Research Fellow, CTIL

Rishabha Meena
Research Fellow, CTIL

How did you find out about the DoC Internship Programme, and what initially attracted you to it?

Aparna: I was informed of this internship programme at the Department of Commerce, through the academic department at O.P. Jindal Global University during my LLM. The programme curriculum involved research in several interesting trade law issues such as services, agriculture, trade remedies, and offered a unique opportunity to see the workings of India's trade policy up-close.

Rishabha: I came to know of the DoC internship programme through the internship committee of my college. The experiences of my college seniors as to how this programme provided first-hand experience of working on legal issues in international trade through research and application of the law on India's ongoing WTO disputes, negotiation of India's FTAs, etc., and encouraged me to apply for this internship. One of the advantages of the DoC internship is that the interns have the option to intern either at the CTIL or DoC.

How did you apply to the DoC Internship Programme? What was the application process like?

Aparna: Application to the programme is facilitated by your law school. The CPGLS at my university informed all students about the DOC Internship Programme and invited interested students to submit applications with necessary information and samples of academic writing. Applications were submitted to the university, which forwarded its recommendations to CTIL. Information regarding final selection was received directly from CTIL. The process was fairly simple and quick.

Rishabha: I applied to the programme through my university recruitment committee. The application process was extremely smooth and only required me to send a cover letter along with my Curriculum Vitae and I got a reply from the CTIL within a month. The administrative staff of CTIL ensures the timely process of the internship programme.

What were the key highlights from your experience as an intern under the Programme and what was the nature of work you received?

Aparna: I was assigned to work at CTIL during my internship programme. This was an enriching experience as it gave me an opportunity to research on some of the topical and emerging issues in international trade landscape, including Brexit and its implications for UK's WTO obligations, India's international investment treaties and the shift in its policy towards investor-state dispute settlement system, India's approach in on-going FTA negotiations with Peru, etc. On these issues, I was primarily providing research assistance to the research staff at CTIL.

Rishabha: The internship at CTIL was an amazing experience. One of the best things about the internship was that based on the tasks assigned to me, I had daily interactions with Prof. James who provided me with constructive feedback. Further, I also got multiple opportunities to attend seminars and conferences. This enhanced my understanding of the complex issues that come up in trade law and allowed me to learn from experts in the field. Even after the end of my internship, I worked frequently with Prof. James on various issues. I was involved in research, drafting, and editing work. I worked on various issues such as trade and health, OECD Services Trade Restrictiveness Index, tariff-rate quota on non-agricultural goods, etc.

Did this internship equip you with a particular skill, or help you polish your skills?

Aparna: The DOC internship was my first experience in a research -based internship. It not only exposed me to international trade law, and how WTO instruments and obligations translate to practice, but significantly refined my research and academic writing skills.

Rishabha: One of the most important skills that I acquired from the programme is how to navigate and research on the WTO database which I am sure will help me in long run. Apart from that, I have also learned diligence, creativity, coordination and leadership.

Would you say that the internship helped you prepare for future roles, more specifically for your tenure with CTIL? Is the experience different?

Aparna: The internship certainly provided a glimpse into the nature of work that researchers at CTIL are engaged in on a day-to-day basis. It improved my understanding of WTO law and helped in fine-tuning the skills that I use extensively as part of my work profile at the center.

Rishabha: The internship gave me a good insights into the nature of work and expectations from a Research Fellow. I I find my work during my research fellowship at CTIL similar to my experience during my internship at the Centre. However, now I have certain additional responsibilities such as coordinating the CTIL's TradeLab project, whereas as an intern I was assisting other research fellows with their projects.

What is your advice to students interested in participating in the DoC Internship Programme and what they should keep in mind before applying?

Aparna: International trade law is partly challenging and partly interesting. An internship at CTIL offers students interested in exploring trade/WTO law, a learning opportunity like no other. Students are exposed to emerging issues in international trade law. However, like any internship, it also demands a lot of hard work and discipline. The DOC internship, being research-focused, requires a lot of reading, comprehension and academic writing.

Rishabha: I would recommend that everyone applies to this programme. However, before applying to this internship, one must have a basic understanding of all the covered agreements of the WTO.

Amandeep Kaur Bajwa
Research Fellow, CTIL

Apoorva Vishnoi
Research Fellow, CTIL

CTIL Internship

The Centre offers internship opportunities to undergraduate and postgraduate students of law to enable them to gain practical experience of working on international trade and investment law issues. This programme is open to students who are in advanced stages of either a 5-year or a 3-year law programme. Interns work with the CTIL research fellows and assist them in carrying out research regarding various aspects of India's trade policy, as well as on the WTO covered agreements, etc.

During the Covid-19 pandemic, CTIL has moved the internship programme online, and has had interns interact with the research team virtually. This internship serves as a perfect gateway for students keen on pursuing a career in this field.

INTERNSHIP
GOAL
SKILLS
KNOWLEDGE
MENTORING
PRACTICE
OPPORTUNITY
TRAINING

Meet the CTIL Team

The team at CTIL consists of accomplished lawyers, as well as administrative staff members who are integral to its smooth functioning.

CTIL Team:

- Prof. James J. Nedumpara, Professor and Head, CTIL
- Ms. Shiny Pradeep, Assistant Professor
- Mr. Satwik Shekhar, Consultant (Legal)/Assistant Professor
- Ms. Akshaya Venkataraman, Senior Research Fellow
- Ms. Aparna Bhattacharya, Senior Research Fellow
- Ms. Manya Gupta, Senior Research Fellow
- Mr. Prakhar Bhardwaj, Senior Research Fellow
- Ms. Sunanda Tewari, Senior Research Fellow
- Ms. Trishna Menon, Senior Research Fellow
- Mr. Achyuth Anil, Research Fellow
- Ms. Amandeep Kaur Bajwa, Research Fellow
- Ms. Apoorva Singh Vishnoi, Research Fellow
- Mr. Ridhish Rajvanshi, Research Fellow
- Mr. Rishabha Meena, Research Fellow
- Ms. Sathiabama S., Research Fellow
- Ms. Smrithi Bhaskar, Research Fellow
- Ms. Sreelakshmi S. Kurup, Research Fellow
- Mr. Jitender Das, Senior Administrative Executive
- Mr. Parmod Kumar, Senior Finance Executive
- Ms. Sita, Finance Executive
- Ms. Neha Singhal, Administrative Assistant
- Mr. Vijay Kumar Rai, Administrative Assistant
- Mr. Manas Sharma, Administrative Assistant
- Mr. Amitabh Kumar, MTS

Vision and Future

CTIL continues to strive towards influencing the national and international discourse on emerging issues of international economic law. In furtherance of its mission to create enhanced awareness and capacity in this field, CTIL is proactively collaborating with governmental agencies, industry stakeholders and prestigious academic institutions. In fact, CTIL has been training law students in the advanced years of their graduation courses under the Department of Commerce flagship internship programme, as well as under CTIL's own internship programme. CTIL also organises and co-organises seminars, moots, colloquia and conferences regularly with various law schools in India and abroad. Apart from this, CTIL conducts capacity building and training programmes for various government departments on trade law, investment law, and treaty negotiation.

In these rather challenging and complex environment in international trade and economic relations, the overall objective of CTIL is to further India's aims of sustained economic growth, with a strong reliance on multilateralism. Moving forward, CTIL hopes to continue to be a central repository of expertise, research and resources for all trade and investment issues. CTIL aspires to become a global thought leader, with a view to influencing the regional and global discourse on international economic law and policy.

To ensure this, CTIL has the following ongoing activities:

Training Programmes: CTIL continues to conduct its annual executive training programme on investment treaties and investor state dispute settlement systems, with the Department of Economic Affairs, as well as training programmes on FTAs, public international law, treaty law and treaty negotiation, dispute settlement, and related areas.

Disputes and WTO submissions: CTIL has played a role in aiding in the preparation of India's submissions for its WTO disputes, and is currently engaged in assisting India with respect to the ongoing disputes involving India, such as DS579, DS580, DS581, DS582, DS584, DS585, DS588. Additionally, CTIL continues to contribute in preparing India's submissions at the WTO and other fora.

Trade Negotiations: CTIL is engaged to assist India in its various ongoing negotiations and treaty reviews, on diverse issues such as trade remedies, SPS and TBT, sustainability, intellectual property rights and so on. As a part of this, CTIL also plays a role in developing the structure, contours and scope of Indian FTAs, as well as assists in preparing scoping agreements to this end.

Studies and Publications: CTIL conducts various studies on diverse themes, and is currently studying certain measures pertaining to carbon border adjustment expected to be imposed internationally, issues pertaining to digital taxes, and plans to conduct research and engage with the legal fraternity on the emerging issues and challenges in the wake of the COVID-19 pandemic.

Apart from the above, CTIL continues to implement the TradeLab law clinic in Indian law schools.

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