

## **17MBAPI401A MULTILATERAL TRADE AGREEMENTS AND REGULATIONS 4004**

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### **Scope:**

This course is an attempt to appreciate the conceptual and practical aspects of trade agreements. Acquaint the students with environmental, procedural, institutional and decisional aspects of trade.

### **Objective:**

To develop capabilities to understand the International Business Laws, Dispute settlement and issues related to Intellectual Property Regime.

### **Unit I**

Historical background of International Trade, Direction and Composition of International Trade. Terms of Trade, Trade as an engine of growth. Concept of Law - Types of law, Domestic and International and their jurisdiction. Regional Trade Agreements: Concept, Origin, Types - European Union, NAFTA, ASEAN, MERCOSUR – Their structure, Decision making, Funding, Implications on world trade.

### **Unit II**

Law of WTO: Introduction, Objectives, Functions, Structure, Principles, Agreements – implications for International business, Progress made by WTO in the last one decade - Tariff and Non-tariff barriers - Implications for WTO members.

### **Unit III**

International Business Law – International Sale of Goods, Laws governing International Sale of goods – Domestic laws, International Treaties, International Mercantile Customs and Usages – Inco terms, Rules on International Sale of Goods, International Commercial Dispute Settlement – Reconciliation, Arbitration etc.

### **Unit IV**

Intellectual Property: Historical Background, IPR Administration – WIPO, WTO, Indian Patent Office, Patents, Copyrights, Trademarks, Geographical Indications, Industrial Designs, Layout Designs, Trade secrets.

### **Unit V**

Selected Regional Blocks - NAFTA, EU, ASEAN, SAARC, SAPTA, Indo-Lanka Free trade, Indo-Singapore CECA Globalization vs. Regionalization

**Suggested Readings:****Text books:**

1. Richard E.Caves., Jeffery A. Frankel., & Ronald W.Jones. (2007). *World Trade and Payments* (10<sup>th</sup> edition). Pearson Education.
2. Cherunilam, Francis, *International Economics*. New Delhi: Tata McGraw Hill Publishing Company Ltd.

**References:**

1. Vinod V. Sople. (2006). *Managing Intellectual Property*. New Delhi: PHI Learning Private Limited
2. Palle Krishna Rao. (2008). *WTO Text and Cases*. New Delhi. Excel Books.



## KARPAGAM ACADEMY OF HIGHER EDUCATION

(Deemed to be University Established under section 3 of UGC Act 1956)

Coimbatore-641021

**Department of Management**

Name: **G HARIHARAN (Assistant Professor)**

Department: **Management**

Subject Code: **17MBAPI401A**

Semester: **IV**

Year: **2017-19 Batch**

Subject: **Multilateral Trade Agreements and Regulations- Lesson Plan**

UNIT 1			
Sl.No	Lecture Hours	Contents	References
1	1	Introduction to International trade	T <sub>2</sub> : Page No: 03
2	1	Historical background of International Trade, Direction and composition of International trade	T <sub>2</sub> : Page No: 03-07
3	1	Direction and composition of International trade	T <sub>2</sub> : Page No: 04-07
4	1	Terms of Trade- Trade as an Engine of growth	T <sub>2</sub> : Page No: 58-61;77-79
5	1	Concept of International Trade Law- Types	W <sub>1</sub>
6	1	International Trade Law- Types	W <sub>1</sub>
7	1	Domestic and International Trade law their jurisdiction	R <sub>3</sub> :Page No: 39-44
8	1	Overview of Regional Trade Agreement	T <sub>2</sub> : Page No: 147-148
9	1	European Union- Structure, Decision Making and Implication of world trade	T <sub>2</sub> : Page No: 159-161
10	1	NAFTA- Structure, Decision Making and Implication of world trade	T <sub>2</sub> : Page No: 162-163
11	1	ASEAN- Structure, Decision Making and Implication of world trade	T <sub>2</sub> : Page No: 184-187
12	1	MERCOSUR- Structure, Decision Making and Implication of world trade	W <sub>2</sub>
13	1	MERCOSUR- Implication of world trade	W <sub>2</sub>
14	1	Case Study- International Trade	T <sub>2</sub> : Page No: 155
15	1	Recapitulation and discussion of Important questions	
<b>Total Number of hours planned for Unit 1</b>			<b>15</b>

UNIT 2			
1	1	Law of WTO-Introduction	T <sub>2</sub> : Page No: 196-197
2		WTO Objectives	T <sub>2</sub> : Page No: 197
3	1	Functions of WTO	T <sub>2</sub> : Page No: 290
4	1	Principles of WTO	R <sub>2</sub> : Page No:05-07
5	1	WTO Structure	T <sub>2</sub> : Page No: 201-202
6	1	WTO Agreement	T <sub>2</sub> : Page No: 201-202
7		WTO Implication for International Business	T <sub>2</sub> : Page No: 202
8	1	Progress Made by WTO in the last one decade	W <sub>3</sub>
9	1	Difference between GATT and WTO	T <sub>2</sub> : Page No: 203
10	1	Tariff Barriers	W <sub>4</sub>
11		Non tariff barriers	W <sub>4</sub>
12	1	Implication for WTO Members	W <sub>5</sub>
13	1	How does WTO affect India?	W <sub>5</sub>
14	1	Case Study	T <sub>2</sub> : Page No: 206
15	1	Recapitulation and discussion of Important questions	
<b>Total Number of hours planned for Unit 2</b>			<b>15</b>
UNIT 3			
1	1	Introduction to International Business Law, Why do we need law	R <sub>3</sub> : Page No:339
2		Why do we need law- IB	R <sub>3</sub> : Page No:339
3	1	International Sale of Goods	T <sub>1</sub> : Page No: 339-352
4	1	International Sale Agreements	T <sub>1</sub> : Page No: 415
5	1	Legal framework International Sale of Goods, Domestic Laws	T <sub>1</sub> : Page No: 352
6		International Sale of Goods, Domestic Laws	T <sub>1</sub> : Page No: 352
7	1	International Treaties	R <sub>3</sub> : Page No:344
8	1	International Mercantile Customs and Usage	R <sub>3</sub> : Page No:346
9	1	International Mercantile Customs and Usage	R <sub>3</sub> : Page No:347
10	1	INCOTERMS	R <sub>3</sub> : Page No:349
11	1	Rules on International Sales of Goods	R <sub>3</sub> : Page No:415-442
12	1	International Commercial Dispute Settlement	R <sub>3</sub> : Page No:465
13	1	International Commercial Dispute Settlement- Reconciliation	R <sub>3</sub> : Page No:467
14	1	International Commercial Dispute Settlement- Arbitration	R <sub>3</sub> : Page No:490
15	1	Recapitulation and discussion of Important questions	
<b>Total Number of hours planned for Unit 3</b>			<b>15</b>

UNIT 4			
1	1	Overview to Intellectual Property (IP)-Meaning Historical background of Intellectual Property	R <sub>1</sub> : Page No: 03-08
2		Economic Value of Intellectual Property	R <sub>1</sub> : Page No: 03-08
3	1	Institutions for Administering the IP System, Indian Patent Office	R <sub>1</sub> : Page No: 17-18
4	1	WTO, WIPO	R <sub>1</sub> : Page No: 17-18
5	1	Patent- Meaning, History and Criteria	R <sub>1</sub> : Page No: 92-95
6		Types of Patent	R <sub>1</sub> : Page No: 97-98
7	1	Trade Mark, Role of Trade Mark	R <sub>1</sub> : Page No: 115-123
8	1	Trade Mark Rights Types of Protectable Marks	R <sub>1</sub> : Page No: 115-123
9	1	Trade Mark Registration in India	R <sub>1</sub> : Page No: 139-140
10	1	Copy Rights- Meaning, Copy Rights protection in India	R <sub>1</sub> : Page No: 150-163
11	1	IT and Copy Rights	R <sub>1</sub> : Page No: 150-163
12	1	Trade Secret- Meaning, types, trade secret Protection in India	R <sub>1</sub> : Page No: 175-180
13	1	Industrial Design- Meaning, Protection	R <sub>1</sub> : Page No: 190-192
14	1	Geographical Indications- Meaning	R <sub>1</sub> : Page No: 200-210
15	1	Recapitulation and discussion of Important questions	
<b>Total Number of hours planned for Unit 4</b>			<b>15</b>
UNIT 5			
1	1	Introduction to Economic Integration	T <sub>2</sub> : Page No: 147
2	1	NAFTA	T <sub>2</sub> : Page No: 162-163
3	1	European Union	T <sub>2</sub> : Page No: 159-160
4	1	ASEAN	T <sub>2</sub> : Page No: 184-187
5	1	ASEAN-Role of World Trade	T <sub>2</sub> : Page No: 184-187
6	1	SAARC	T <sub>2</sub> : Page No: 190-202
7	1	SAARC-India Role	T <sub>2</sub> : Page No: 190-202
8	1	SAPTA	T <sub>2</sub> : Page No: 508-511
9	1	Indo-Lanka Free Trade	T <sub>2</sub> : Page No: 510-511
10	1	Indo-Singapore CECA	T <sub>2</sub> : Page No: 510-511
11	1	Globalization Vs Regionalization	W <sub>6</sub>
12	1	Recapitulation and discussion of Important questions	
<b>Total Number of hours planned for Unit 5</b>			<b>15</b>
13	1	Discussion of previous year ESE Question papers	
14	1	Discussion of previous year ESE Question papers	
15	1	Discussion of previous year ESE Question papers	
<b>Total Number of hours planned for Unit 5 and discussion of previous year ESE Question papers</b>			<b>12+3=15</b>

**Suggested Readings:****Text books:**

1. Richard E.Caves., Jeffery A. Frankel., & Ronald W.Jones. (2007). *World Trade and Payments*. Pearson Education. 10<sup>th</sup> Edition.
2. Cherunilam, Francis, *International Economics*. (2017). Tata McGraw Hill Publishing Company Ltd. New Delhi. 5<sup>th</sup> Edition

**References:**

1. Vinod V. Sople. (2016). *Managing Intellectual Property*. PHI Learning Private Limited New Delhi. 5<sup>th</sup> Edition.
2. Pall Krishna Rao. (2008). *WTO Text and Cases*. New Delhi. Excel Books.
3. Surya, Subedi (2012), *Text book of International Trade and Business Law*, The People's Security Publishing House, Hanoi.

**Website:**

W<sub>1</sub>: [https://en.wikipedia.org/wiki/International\\_trade\\_law](https://en.wikipedia.org/wiki/International_trade_law)

W<sub>2</sub>: <https://courses.lumenlearning.com/boundless-marketing/chapter/important-international-bodies-and-agreements/>

W<sub>3</sub>: [https://www.wto.org/english/news\\_e/pres14\\_e/pr728\\_e.htm](https://www.wto.org/english/news_e/pres14_e/pr728_e.htm)

W<sub>4</sub>: [www.bbamantra.com/tariff-and-non-tariff-barriers/](http://www.bbamantra.com/tariff-and-non-tariff-barriers/)

W<sub>5</sub>: [http://www.indianmba.com/faculty\\_column/fc203/fc203.html](http://www.indianmba.com/faculty_column/fc203/fc203.html)

<http://mutrap.org.vn/index.php/en/library/finish/61/612>

W<sub>6</sub>: <https://www.slideshare.net/ananthaprabhu31/regionalization-vs-globalisation>

**UNIT-I**

**SYLLABUS**

**Introduction to International Trade:** Historical background of International Trade, Direction and Composition of International Trade. Terms of Trade, Trade as an engine of growth. Concept of Law - Types of law, Domestic and International and their jurisdiction. Regional Trade Agreements: Concept, Origin, Types - European Union, NAFTA, ASEAN, MERCOSUR – Their structure, Decision making, Funding, Implications on world trade.

**Trade**

Trade refers to buying and selling of goods and services for money or money's worth. It involves transfer or exchange of goods and services for money or money's worth. The manufacturers or producer produces the goods, then moves on to the wholesaler, then to retailer and finally to the ultimate consumer.

Trade is essential for satisfaction of human wants, Trade is conducted not only for the sake of earning profit; it also provides service to the consumers. Trade is an important social activity because the society needs uninterrupted supply of goods forever increasing and ever changing but never ending human wants. Trade has taken birth with the beginning of human life and shall continue as long as human life exists on the earth. It enhances the standard of living of consumers. Thus we can say that trade is a very important social activity.

**International Trade**

**What is international trade?**

International trade should be understood as international relations at the trade policy level, such as the tariff and non-tariff policy, offensive or defensive trade policy, or the economic integration policy, of a state. For example, there is a choice of global, regional, bilateral or unilateral approaches to trade cooperation (see Part One of the Textbook); the interface between international trade commitments and domestic law. Currently, the treatment of DCs is now one of the concerns of international trade. Thus, trade policy is certainly expressed in international trade treaties; and economic objectives remain at the centre of any international trade treaty.

**History of International Trade:**

International trade and business transactions and the law governing these are not a new phenomenon. According to historians, since humans first lived in tribal societies, they have known how to exchange goods. The prehistoric equivalent of fairs existed in the boundary areas between tribal territories. The first international trade network discovered by archaeologists appeared in approximately 3,500 BC in the ancient Mesopotamia (modern-day Iran and Iraq). Mention must also be made of the trade networks existing in China during 1,000-2,000 BC, the 'Silk Road'. Before Greek civilization, the Mediterranean Sea was an international trade centre very successfully organized by Phoenicia. Greek city-states started to compete with Phoenicia from 800 BC onwards in a growing trade network alongside their developing civilization. Alexander the Great's Conquest created trade paths extending to Asia and the Mediterranean Sea. Later, the Romans built a vast Empire with trade expanding to include what is nowadays the United Kingdom (hereinafter the 'UK') and Northern Europe.

International trade in Europe in the pre-medieval period experienced a depression arising from the collapse of the Roman Empire. Later, during the Middle Ages, Arabian merchants continued the tradition of international trade, creating broad trade networks around the Persian Gulf, Africa, India and South-east Asia. In that period, the international trade between China and India, Malaysia and South-east Asia also developed.

Seasonal fairs were created in the European cities in the Middle Ages. These were places where merchants brought goods from different countries for sale. Since then, emperors, such as the Emperor of Lombardy (Italy) in the eleventh century, had the policy of imposing a sales tax applicable in fairs and tariffs on goods transported to fairs.

During the late Middle Ages, the regional trade networks had developed considerably in Europe, such as the region along the coast of Mediterranean Sea, Venice, Florence, Genoa, and northern Africa. In northern Europe, in the mid-fourteenth century, approximately eighty trading cities and their merchants joined to create a flexible political union, the Hanseatic League; they had their own common commercial rules and enough military and political power to counter any invasions by emperors or other invaders. In that period, emperors and other heads of state began to conclude



treaties aimed at the protection of commercial interests, and the application of a tariff policy in favor of their merchants.

In the late fifteenth century, when Christopher Colombus discovered America, and science, technical progress and maritime development opened the era to the conquering of world trade by Europeans. Then the European states created a worldwide colonial network. The task of their respective colonies was the provision of the raw materials for their European cities and manufacturing bases. The cities produced the completed products then colonies imported the finished goods produced by European centres.

A new international economic order began to appear when the World War II was coming to an end. At the Bretton Woods Conference of 1944, the global economic organizations the International Monetary Fund (hereinafter the 'IMF') and the International Bank for Reconstruction and Development (hereinafter the 'IBRD') were born. A global trade organization also appeared in the Havana Conference of 1948, i.e., the International Trade Organization (hereinafter the 'ITO'). However, the ITO failed to survive; it was replaced by a 'provisional' mechanism governing international trade in goods, i.e., the General Agreement on Tariffs and Trade 1947 (hereinafter the 'GATT 1947'). This 'provisional' Agreement governed the global trade in goods for nearly 50 years, until the creation of the World Trade Organization (hereinafter the 'WTO') in 1995. Since the end of World War II, the global trade system, which has continuously developed over more than 65 years, is now standing in the multi-route crossroads. Where the WTO will head, together with global commitments to the liberalization of trade in goods; trade in services; protection and enforcement of intellectual property rights (hereinafter the 'IPRs'), and international investment issues, among other issues, remains to be concluded. To overcome the relative ineffectiveness of the commitments to the liberalization of global trade, regional economic integration is now becoming the most appropriate foreign trade policy planned by most states. The models of regional economic integration, such as the European Union (hereinafter the 'EU'), the North American Free Trade Area (hereinafter the 'NAFTA'), and ASEAN Free Trade Area (hereinafter the 'AFTA'), to name but a few, have become familiar topics in many basic textbooks and casebooks of international trade law. Bilateral trade agreements (hereinafter the 'BTAs') will also play an important role.

**Post-World War II**

- ❖ In 1946, the Bretton Woods system goes into effect; it had been planned since 1944 as an international economic structure to prevent further depressions and wars. It included institutions and rules intended to prevent national trade barriers being erected, as the lack of free trade was considered by many to have been a principal cause of war.
- ❖ In 1947, 23 countries agree to the General Agreement on Tariffs and Trade to rationalize trade among the nations.
- ❖ In Europe, six countries form the European Coal and Steel Community (ECSC) in 1951, the first international organisation to be based on the principles of supranationalism.
- ❖ The European Economic Community (EEC) is established by the Inner Six European countries with a common commercial policy in 1958.
- ❖ The European Free Trade Association (EFTA) is established in 1960 as a trade bloc-alternative by the Outer Seven European countries who did not join the EEC.
- ❖ Four important ISO (International Organization for Standardization) recommendations standardized containerization globally.
- ❖ January 1968: R-668 defined the terminology, dimensions and ratings
- ❖ July 1968: R-790 defined the identification markings
- ❖ January 1970: R-1161 made recommendations about corner fittings
- ❖ October 1970: R-1897 set out the minimum internal dimensions of general purpose freight containers
- ❖ The Zangger Committee is formed in 1971 to advise on the interpretation of nuclear goods in relation to international trade and the Nuclear Non-Proliferation Treaty (NPT).
- ❖ 16 October 1973: OPEC raises the Saudi light crude export price, and mandate an export cut the next day, plus an Embargo on oil exports to nations allied with Israel in the course of the Yom Kippur War.
- ❖ The Nuclear Suppliers Group (NSG) was created in 1974 to moderate international trade in nuclear related goods, after the explosion of a nuclear device by a non-nuclear weapon State.
- ❖ The breakdown of the Soviet Union leads to a reclassification of within-country trade to international trade, which has a small effect on the rise of international trade.

- ❖ After expanding its membership to 12 countries, the European Economic Community becomes the European Union (EU) on 1 November 1993.
- ❖ January 1994: The European Economic Area (EEA) is formed to provide for the free movement of persons, goods, services and capital within the internal market of the European Union as well as three of the four member states of the European Free Trade Association.
- ❖ January 1994: the North American Free Trade Agreement (NAFTA) takes effect.
- ❖ January 1995: World Trade Organization is created to facilitate free trade, by mandating mutual most favored nation trading status between all signatories.
- ❖ January 2002: Twelve countries of the European Union launch the Euro zone (euro in cash), which instantly becomes the second most used currency in the world.
- ❖ 2008-2009 : during the Great Trade Collapse, a drop of world GDP of 1% surprisingly caused a drop of international trade of 10%.

#### **COMPOSITION OF TRADE AND DIRECTION OF TRADE**

- ❖ Composition of trade means a study of the goods and services of imports and exports of a country. In other words, it tells about the commodities of imports and the commodities of exports of a country.
- ❖ Therefore it indicates the structure and level of economic development of a country. Developing countries export raw materials, agricultural products and intermediate goods; developed countries export finished goods, machines, equipments and technique.
- ❖ Direction of trade means a study of the countries to whom the exports are made and from whom the imports are made.

#### **COMPOSITION OF IMPORTS OF INDIA**

Imports of India may be divided into three parts namely capital goods, raw materials and consumer goods.

##### **-a- Imports of capital goods**

Capital goods include metals, machines and equipments, appliances and transport equipments, and means of communications. These goods are essential for industrial development of the country. Imports of these goods amounted to Rs.356 crore in 1960-61 which increased to Rs.26, 532 crore in 1997-98.

**-b- Imports of raw materials and intermediate goods**

It includes the imports of cotton, jute, fertilizer, chemicals, crude oil etc. A number of raw materials and intermediate goods have to be imported during the process of economic development. It amounted to Rs.527 crore in 1960-61 which increased to Rs.13, 966 crore in 1985-86. Petroleum products include crude oil, petrol and lubricating oil. Imports of these products have ever been increasing. In 1960-61, imports of these products amounted to Rs.69 crore which increased to Rs.30, 538 crore in 1997-98. Import of petroleum products constitutes about 23 percent of our total imports. Fertilizers are an important input for agriculture. Chemical products are an important input for industrial development. The import of these products is continuously increasing in India. In 1960-61 import of these items amounted to Rs.88 crore only which increased to Rs.3755 crore in 1997-98.

**-c- Imports of consumer goods**

It includes the import of food grains, electrical goods, medicines, paper etc., India faced an acute shortage of food grains till the end of Third Five Year Plan. As a result, India had to import food grains in large quantities. Import of food grains in 1960-61 was 3748 thousand tonnes (Rs.181 crore). In 1997-98 it was 1399 thousand tones. Now India has achieved self-reliance in food production.

**DIRECTION OR SOURCES OF IMPORTS OF INDIA**

Sources of imports of India have undergone several important changes during the planning period. Some important facts are as follows:

At the beginning of economic planning, we were importing from selected countries only. Now the picture has changed. We import different goods and services from different countries of the world. At present we get our imports from almost all the countries of the world. For the purchase of machines and equipments, we depend mainly on OECD (Organization for Economic Cooperation and Development) countries and East European countries. For the supply of food grains and petroleum products, we depend on OPEC (Oil Producing and Exporting Countries) countries. The OECD countries supply largest part of our imports. In 1997-98 out of the total imports of Rs.1,51,553 crore, the imports of Rs.75,593 crore were made (49.9%) from these countries. Other important suppliers of our imports are USA, Belgium, Germany, Japan and Britain.

## **COMPOSITION OF EXPORTS OF INDIA**

Exports of India may be divided into two parts I) Exports of traditional items and ii) Exports of non-traditional items.

### **Exports of traditional items**

It includes the exports of tea, coffee, jute, jute products, iron ore, species, animal skin, cotton, fish, fish products, mineral products etc. At the beginning of the planning era, their items contributed about 80 percent of out total exports. Gradually, the contribution of these items is declining and that of non-traditional items is increasing. At present the contribution of traditional items is about 18.8% in our total exports.

### **Non-traditional items**

- ❖ It includes the export of sugar, engineering goods, chemicals, iron and steel electrical goods, leather products, gems and jewellery. There is a significant change in the pattern of exports of India during recent years. India has started to export a number of non-traditional items to a number of countries of the world. Contribution of these items is gradually increasing in total exports of India and shows a declining trend during some years also. Some facts to illustrate the changes are given below:
- ❖ Agriculture and allied products which constituted 20.4 percent of total exports in 1996-97, decreased to 18.8 percent in 1999-2000. ii) Ores and minerals which constituted 3.5 percent of total exports in 1996-97, decreased to 3 percent in 1999-2000. iii) Manufactured good which contributed 73.4 percent of total exports in 1996-97, increased to 75.7 percent in 1999-2000. iv) Crude and petroleum products constituted 1.4 percent of total exports in 1996-97 but decreased to 1.0 percent in 1999-2000. v) With regard to other items of exports which constituted 1.2 percent in 1996-97 increased to 1.3 percent in 1999-2000

**DIRECTION OF EXPORTS OF INDIA**

- ❖ During the planning era, several important changes have taken place in the destination of exports of India. At present, we deal with about 180 countries including many developed countries. Our major exports are directed towards the following countries:
- ❖ OECD countries (Belgium, France Germany, U.K. North America, Canada, USA, Australia and Japan). Our exports which constituted percent of the total exports in 1990-91 increased to 55.7 percent in 1999-2000.
- ❖ OPEC countries (Iran, Iraq, Kuwait, Saudi Arabia etc.). Our exports which constituted 5.6 percent of the total exports in 1990-91 increased to 10.0 percent in 1999-2000.
- ❖ Eastern Europe (GDR, Romania, Russia etc.). Our exports which constituted 17.9 percent in 1990-91 decreased to 3.1 percent in 1999-2000.
- ❖ Other LDC's (Africa, Asia, Latin America). Our exports constitute 16.8 per cent in 1990-91, increased to 28.2 percent in 1999-2000.

To sum up, during the last five decades, significant changes have been observed in the volume, composition and direction of India's trade. Most of these changes have been in consonance with the development needs of the economy.

**TERMS OF TRADE (TOT)**

- ❖ The terms of trade measures the rate of exchange of one product for another when two countries trade.
- ❖ David Ricardo's theory of comparative advantage explains that if countries specialise in the production of the good/service in which they have a comparative advantage, then all countries can move outside their PPF and gain from trade. How the gains from trade are distributed depends on the terms of trade.
- ❖ Terms of trade as an index number using the following formula:
- ❖  $\text{Terms of Trade Index (ToT)} = 100 \times \frac{\text{Average export price index}}{\text{Average import price index}}$
- ❖ If a country can buy more imports with a given quantity of exports, its terms of trade have improved.



- ❖ For example, during the commodity price boom, many resource-exporting developing countries experienced increases in their terms of trade. In other words, for the same physical quantity of exports (copper, rubber, oil etc.) as before, they could buy more consumer and capital goods from abroad
- ❖ If import prices rise faster than export prices, the terms of trade have deteriorated. A greater volume of exports has to be sold to finance a given amount of imported goods and services. Typically this leads to a fall in the standard of living because imports of food and technologies are more costly
- ❖ The terms of trade fluctuate in line with changes in export and import prices. The exchange rate and the rate of inflation can both influence the direction of any change in the terms of trade
- ❖ A key variable for many developing countries is the world price received for primary commodity exports e.g. the world export price for Brazilian coffee, raw sugar cane, iron ore and soybeans.

### **Importance of Foreign Trade**

Following points explain the need and importance of foreign trade to a nation:

1. Division of labor and specialization – Foreign trade leads to division of labor and specialization at the world level. Some countries have abundant natural resources thus they should export raw materials and import finished goods from countries which are advanced in skilled manpower. Thus foreign trade gives benefits to all the countries and thereby leading to division of labor and specialization.
2. Optimum allocation and utilization of resources – Due to specialization, unproductive lines can be eliminated and wastage of resources can be minimized or avoided. In other words, resources are channelized for the production of only those goods which would give highest returns. Thus there is rational allocation and utilization of resources at the international level due to foreign trade.
3. Equality of prices – Prices can be stabilized by foreign trade. It helps to keep the demand and supply position stable, which in turn stabilizes the prices.

4. Availability of multiple choices – Foreign trade helps in providing a better choice to the consumers. It helps in making available new varieties to consumers all over the world, thus giving the consumers a wide variety of options to choose from.
5. Ensures quality and standard goods – Foreign trade is highly competitive in order to maintain and increase the demand for goods, the exporting countries have to keep up the quality of goods. Thus foreign trade ensures that the quality and standardized goods are produced
6. Raises Standard of Living of the people – Imports can facilitate standard of living of the people. This is because people can have a choice of new and better varieties of goods and services. By consuming new and better varieties of goods, people can improve their standard of living.
7. Generate employment opportunities – Foreign trade helps in generating employment opportunities, by increasing the mobility of labor and resources. It generates direct employment in import sector and indirect employment in other sector of the economy. Such as Industry, Service Sector (insurance, banking, transport, communication), etc.
8. Facilitate economic development – Imports facilitate economic development of a nation. This is because with the import of capital goods and technology, a country can generate growth in all sectors of the economy, i.e. agriculture, industry and service sector.
9. Assistance during natural calamities – During natural calamities such as earthquakes, floods, famines, etc., the affected countries face the problem of shortage of essential goods. Foreign trade enables a country to import food grains and medicines from other countries to help the affected people.
10. Maintains balance of payment position – Every country has to maintain its balance of payment position. Since every country has to import which results in outflow of foreign exchange, it also deals in export for the inflow of foreign exchange.
11. Brings reputation and helps earn goodwill – A country which is involved in exports earns goodwill in the international market. For e.g. Japan has earned a lot of goodwill in foreign markets due to its exports of quality electronic goods.



12. Promotes World Peace – Foreign trade brings countries closer. It facilitates transfer of technology and other assistance from developed countries to developing countries. It brings different countries closer due to economic relations arising out of trade agreements. Thus, foreign trade creates a friendly atmosphere for avoiding wars and conflicts. It promotes world peace as such countries try to maintain friendly relations among themselves.

Trade as an Engine of Growth – Indian Economy Perspective:

### **The Role of Trade in Economic Development:**

In discussing the role of trade in fostering economic development, we have to examine various different issues, viz, the static effects of trade, the dynamic effects of trade and export pessimism or secular deterioration of the terms of trade of LDCs. In this context, we have access to discuss trade policies of the developing countries.

#### **1. The Static Effect of Trade on Economic Development:**

International trade enables an LDC to get beyond its PPC and improve its welfare. It can consume more than what it is capable of producing through specialisation and exchange. An LDC can improve its well-being by specialising in and exporting the relatively less expensive domestic goods and importing goods which are relatively more expensive. Even if a country's production does not change at all, there are still gains from exchange if there is a difference between internal relative prices in autarky and those which can be obtained internationally.

In addition, the characteristics of the imported goods either in terms of quantity for customers or productivity in the case of capital and intermediate imports, may improve the economy's ability to meet consumer desires for better quality goods or larger volume of goods made available by improved technology. Imports may also help remove bottlenecks and enable the economy to operate closer to its PPC—that is to say, more efficiency on a consistent basis.

#### **i. Employment Generation:**

Due to specialisation there is a relative expansion of the sectors using relatively more intensively an LDCs abundant factor—which is labour. For most LDCs, specialisation according to comparative

advantage helps to expand labour-intensive production instead of more modern, capital-intensive production.

This means expanding traditional agriculture, primary products, and labour-intensive light manufactures. International trade thus stimulates employment and puts upward pressure on wages as has been suggested by the Heckscher-Ohlin (H-O) theorem. However, most LDCs are labour-surplus countries. So, an increased demand for labour is unlikely to raise the wage rate much.

### **ii. Export Instability:**

Moreover, the relative growth in the production of traditional goods may not be desirable if such growth is at the expense of modern manufacturing. Due to low income and price elasticities of demand for such goods and the instability of supply of agricultural and primary products due to natural (weather) conditions, greater specialisation in these goods can result in a greater instability of income even in the short run.

**iii. Adverse Terms of Trade:** In addition, since an LDC is a small country (in the sense that it cannot exert any influence on the prices of its exports and imports), expansion of export supply may lead to undesired terms of trade movements that will reduce the static gains from trade. This may lead to a distribution of gains from trade in favour of the industrially developed countries.

**iv. Greater Dependency:** Finally, expanding production of basic labour-intensive goods and relying on the industrialised countries for technology and skill-intensive manufactures and capital goods often leads to excessive economic dependency. It also links the economic health of the developing country to that of the industrialised country.

**v. Vent for Surplus:** Both the classical (Ricardian) and the modern (H-O) theories of international trade are based on the assumption that production in each trading country takes place under conditions of full employment. But full employment does not prevail in LDCs. So, trade theories cannot be applied in such countries to predict the impact of trade on production, consumption, distribution and social welfare.

Yet, there is another potential gain from trade, as has been pointed out by HlaMyint (1958). According to Myint, due to unemployment on LDCs, actual output is less than its potential output. By utilising its manpower fully an LDC can produce more products and its supply may exceed domestic demand.

This excess supply can be disposed of in the form of export. In this sense a 'vent for surplus', i.e., a larger market that will permit a labour surplus country to increase its employment and output, as is shown by a movement from a point such as I (inefficient point), inside the PPC to a point E (efficient point) on the PPC in Fig. 1.

Myint suggests that vent for surplus convincingly explains why countries start to trade, while the theory of comparative cost helps to understand the types of commodities countries ultimately export and import. No doubt the gains in income, employment and needed imports can render considerable help to the whole process of development.

In short, the static gains from trade for an LDC originates from the traditional gains from exchange and specialisation as will follow from a vent for surplus. However, due to the lack of sufficient flexibility in traditional (largely subsistence) economies and the nature of the traditional labour-intensive exports, the relative gains from trade may be less than those from more flexible and progressive industrial economies and may be further reduced by the undesirable effects of increased economic instability and secular deterioration of the terms of trade. No doubt in the process of economic development we find changes in the economic structure and sectoral distribution of income.

This occurs in response to changes in relative prices brought about by international trade. However, the economic systems of the LDCs tend to be somewhat unresponsive to changing price incentives, at least in the short run.

So, factors of production may not move easily to the expanding low-cost sectors from the contracting higher-cost sectors. In such a situation the process of adjustment assumes the characteristics of the specific-factors model. Consequently, the gains from specialisation are reduced correspondingly.

## 2. The Dynamic Effects of Trade on Economic Development:

Perhaps the maximum potential impact of trade on development lies in its dynamic effects. As D. Salvatore has put it- “While the need for a truly dynamic theory cannot be denied, comparative statics can carry us a long way forward incorporating dynamic changes in the economy into traditional trade theory. As a result, traditional trade theory, with certain qualifications, is of relevance even for developing nations and the development process.” On the positive side, the expansion of output made possible by access to the wider international markets enables the LDC to exploit economies of scale that would not be possible with a narrow domestic market.

This means that industries which are not internationally competitive in an isolated market may achieve competitiveness by way of international trade if there are potential economies of scale. If LDCs can take advantage of economies of scale, they can reduce costs of production and sell their products at low prices in international market.

Promotion of Infant Industries: Moreover, comparative advantage is a dynamic concept. In the real world, we find changing pattern of comparative advantage over time. As a developing nation accumulates capital and improves its technology, its comparative advantage shifts away from primary products to simple manufactured goods first and then to more sophisticated ones.

Thus, with economic development, international trade can foster the development of infant industries and make them internationally competitive by providing the market size and exposure to products and processes that is unlikely to happen in closed (isolated) economy. This is why the most important argument for protection in LDCs is the infant industry argument. It is essentially an argument in favour of protection to gain comparative advantage.

This is why for protecting infant industries trade policy restraints in most LDCs are used, at least in the early stages to restrict imports or promote exports. To some extent, this has already happened in Brazil, Korea, Taiwan, Mexico and some other developing countries. However, there are various problems with using the policy in practice. Infants never grow adult in some high protected environments and there is need for continuation of protection for ever.

Other Dynamic Influences: Perhaps the maximum possible impact of trade on development depends on its dynamic effects. Prima facie, the expansion of output brought along by access to the larger

international markets permits the LDC to take advantage of economies of scale that do not arise in the limited domestic market.

Thus, industries which are not internationally competitive in a narrow and isolated domestic market may well gain competitiveness as a wider market created by international trade. Trade creates an opportunity to exploit potential economies of scale. Furthermore, comparative advantage keeps on changing over time.

Thus, as economic development takes place, international trade promotes the growth and ensures the maturity of infant industries which become internationally competitive by being able to exploit the wider market created by trade. A wider market also exposes an LDCs products and processes in international market and creates pressure on the industries of LDCs to improve product quality and reduce product price so that these are accepted in the rest of the world. In short, international trade makes protected domestic industries internationally competitive. Other dynamic influences of trade on economic development arise from the positive competitive effects of trade, increased investment resulting from changes in the economic environment; the increased dissemination of technology into the LDC (as has been suggested by the product life cycle model), exposure to new and improved products and changes in institutions accompany the increased exposure to different countries, cultures and products. Trade fosters domestic competition and acts as an instrument of controlling monopoly.

Openness to trade can affect the technology that a country can use. We may now discuss the mechanism in detail. Trade policies give of country access to new and improved products. No doubt capital goods are an important type of input into production that is largely imported by LDCs at lower stages of development. Trade allows a country to import new and improved capital goods, which “embody” better technology that can be used in production to raise total factor productivity.

The foreign exporters can also enhance the process, for instance, by advising the importing firms on the best ways to use the new capital goods. Some empirical studies show that the gains from being able to import unique foreign imports that embody new technology can be larger than the traditional gains from trade, highlighted by the classical theory.

According to T. A. Pugel, in a more general way, openness to international activities leads the firms and people of the country to have more contact with technology developed in other countries. This greater awareness makes it possible for an LDC to gain the use of new technology—through purchase of capital goods or through licensing or initiation of the technology. Great economic openness is likely to have a favourable effect on the incentive to innovate. Trade is likely to put additional competitive pressure on the country's firms. The pressure drives the firms to seek better technology to raise their productivity in order to achieve greater international competitiveness.

Trade also provides a larger market in which to earn returns to innovation. Its sale into foreign markets provides additional returns, then the incentive to innovate increases, and firms devote more resources to R & D activities.

Openness thus can enhance the technology that a country can use—both by facilitating the diffusion of imported technology into the country and by accelerating the indigenous development of technology. Furthermore, these increases in current technology base can be used to develop additional innovations in the future.

The current technology base becomes a potent source of increasing returns over time to ongoing innovation activities. The growth rate for the country's economy (and for the world as a whole) increases in the long run.

In short, economic openness can accelerate long-run economic growth. This indicates an additional source of gains from international trade (or from openness to international activities more generally). Empirical studies show that there is a strong positive correlation between the growth rate of a country and its international openness. This is not a proof of causation, 'but it is consistent with the theoretical analysis that suggests why openness can raise growth.

## **Domestic Law**

### **A. Various Sources of Domestic Law**



Domestic law is very important in international legal practice. Domestic law in question, as separate from international law, includes law of foreign countries. In reality, the understanding and application of laws of other countries are always a 'nightmare' for both international traders and lawyers.

### **Limits of Domestic Law in Governing International Trade and Business Transactions**

The effect of the domestic law of a state is usually limited to governing acts done by subjects who are its citizens and performed in its territory. The determination of a MNC's nationality becomes very important and complex in the case where government needs to protect the interest of its MNC in international business activities.

- ❖ The limit of domestic law in governing international trade and business transactions sometimes conflicts with the issue of the extra-territoriality of jurisdiction. The extra-territoriality of jurisdiction of a state is the competence to govern by law:
- ❖ Acts of breach of law done by its citizens and performed outside of its territory. For example, a Chief Executive Officer ('CEO') who is a Japanese citizen and performed the act of bribery in Vietnam would be put on trial by Japanese tribunal;
- ❖ Acts done by foreigner and performed abroad injuring national security or other interests of state;
- ❖ Acts of breach of law performed abroad of which victim is its citizen;
- ❖ Acts of international crimes, such as sea piracy, air piracy, slave trade, genocide, etc.
- ❖ The extra-territoriality of jurisdiction issue frequently leads to incidents in diplomatic relation.

### **Major reasons for the development of law are:**

1. To give basic rights to individuals, to society and organizations, and
2. To legally protect the enjoyment of these rights. Put in a general way law is for regulating relationships between individuals or between individuals and their society.
3. To provide a positive force to promote worthwhile individual, social and national goals

Coming to Business Laws, it may be stated we are living in a world of business with roles as consumers and producers, employers and employees, principals and agents, and so on with rights, responsibilities and obligations placed on us. In fact, in our business-oriented society law touches every aspect of business life. Therefore, it is imperative to know what Business Law is. Business law

is that part of the law which deals with mercantile transactions of people and institutions. One of the reasons for studying business law is to learn what the law provides as conditions for conduct of businesses both at the national and international level.

Understanding business law will enhance the ability to take right decisions without violating rules framed by the Government. The following brief introduction helps the students to get acquaintance with Business Law.

### **International law:**

International law may be defined as a body of law formed as a result of international customs, treaties, and organizations that governs relations among or between nations. International Customs are customs evolved over the centuries. Treaties and International Agreements are agreements between or among nations. International Organizations and Conferences are composed mainly of nations and usually established by treaty — for example, the 1980 Convention on Contracts for the International Sale of Goods, or CISG.

Legal systems are generally divided into common law and civil law systems. Common law systems are based on case law. These systems exist in countries that were once a part of the British Empire (such as Australia, India, and the United States). Civil law systems are based on codified law (statutes). Courts interpret the code and apply the rules without developing their own laws. Civil law systems exist in most European nations, in Latin American, African, and Asian countries that were colonies of those nations; Japan; South Africa; and Middle-east countries.

### **Scope of Legal Framework of International Business**

Business today is truly international. International trade has existed since times immemorial. There are findings to indicate that international trade existed as long back as 2000 B.C. With increasing complexities and volumes in international trade, an urgent need for a uniform code for regulating these transactions was keenly felt. The importance of international trade and a uniform code is more keenly felt in present day economy where domestic and foreign politics play their influencing role in conducting transnational business.

International Law for business aims at providing the regulations required for execution of international transactions involving more than one nation. Every country has its own set of laws for regulating business. Therefore, it is apparent that every international business transaction has to



comply with provisions of both domestic as well as international law. In order to ensure performance of the transaction(s), parties enter into treaties/agreement.

These treaties are framed according to general practice and customs. The most significant aspect of international law is jurisdiction. Though it is not important for students to go for a detailed study of business law in each country, understanding the structure of the legal system in various countries helps in making a good comparative study.

### **Laws Applicable to International Business**

- ❖ Domestic Laws
- ❖ Foreign Laws of Host Country
- ❖ International Law
- ❖ Executive Agreements
- ❖ Treaties
- ❖ Customary International (Common) Law
- ❖ “Private Law” law of the K (Contract)

One should keep in mind that the base for law is a dispute.

The judgment of a decided case becomes a referral point - known as a precedent. The reason behind this reference is to facilitate uniformity in deciding similar cases. It may be noted that precedents may be overruled if the judgment pronounced earlier is found to be erroneous.

### **Overview of Business Laws in Select Nations**

To enable students to have a better view of the legal structure, a discussion on the legal system existing in five economically important countries like Canada, Germany, Saudi Arabia, Japan, China, European Community and the USA would be fruitful.

**Canada**, the second largest country in the world framed its own constitution in 1982 by the Act of the British Parliament. It has a bicameral Parliament - House of Commons and a Senate. Canada follows the principle of legislative supremacy, giving importance to precedents. Cases, statutes, customs and royal prerogative are the sources of Canadian law. The judges for federal and provincial courts are selected by Governor-General of Canada. The legal system of Canada is primarily based on the common law tradition. By and large, the regulatory framework is uniformly applicable throughout Canada with the exception of the province of Quebec. Quebec has been given special rights to preserve its culture, language and governing institutions.

**Germany**, the largest European country, follows the civil law tradition. Of all the civil codes, the German Civil Code has had the widest influence in the development of laws in other countries like China, Japan and many Eastern and Central European countries. With the unification of the erstwhile two German nations, the political authority is divided between the federal government and the states. Matters of utmost importance like defence, foreign affairs, currency, nationality and intellectual property are exclusively looked into by the federal government. The Chancellor, the most powerful political figure, makes public policy and appoints heads of state. There is marked difference in the manner cases are resolved and the judiciary system that exists in Germany as compared to other countries.

Two important codes play a significant role. They are the German Civil Code and the German Commercial Code. The civil code has 2300 sections divided into five parts with the first two covering legal and contractual obligations. The commercial code sets rules for doing business in Germany.

**Saudi Arabia**, an Islamic country, has a legal system that follows the Sharia –commandments of Prophet Mohammad. Unlike other countries, Saudi Arabian government has only two wings - the executive and judicial, and the King is the supreme authority. The regulations approved by the King are published in the official gazette. There are agencies to assist in regulating the administration of the Kingdom. The most important among them are the Supreme Commission on Labor Disputes, the Commissioner for the Settlement of Commercial Disputes and Board of Grievances. A well regulated country, Saudi Arabia strongly abides by the Holy Quran. As such students will note that unlike common law systems, charging of interest is prohibited among many other things. Dispute resolution normally results in damages or recession. Despite the difference in the regulatory structure, the importance of Saudi Arabia in present day economy is continually growing.

**Japan**, is perhaps the only example of ‘real development’ in almost all areas. Japan which was battered and ravaged during the World War II is now among the most advanced counties of the world. A look at its legal system shows traces of the Tokugawa period influence of the German Civil Code and the American influence. Right from the early days, Japanese gave much importance to the Confucian system where the head of the family/village was the deciding authority. His word was rarely contested. The process of industrialization in the nineteenth century saw Japan draw up a Civil Code based on the German Civil Code This however, underwent a drastic change after the Second World War when the American influence separated the church and state and introduced a

parliamentary system with a duly elected Prime Minister and a bicameral legislature. Despite, the American influence Japanese have a different outlook in matters of international trade. All contracts have the regular clauses. Yet, the Japanese treat an international transaction as an opportunity to develop personal ties and business relationships. They look for flexibility, amicable settlement of disputes and performance of contract in good faith.

**China** has for many hundreds of years been known for the superior quality of goods it produces and its ancient medical practice. Thus, international trade has been an integral part of Chinese economy. Very much like the Japanese Confucian attitude, the Chinese have deep faith in behaving in an honorable and ethical manner. Until recently, the attitude of Chinese towards practitioners of law has been discerning. Primarily because it has gone through a lawless period during the Cultural Revolution known as 'Dark Ages' in 1966 and the second revolution which started in 1976 with the death of Mao Zedong's. Today, China has a large, complex system of agencies, the most important among them being Ministry-of Foreign Economic Relations and Trade which renders guidance in matters related to foreign trade. The governing statute for foreign trade is

Foreign Economic Contract Law (FECL). According to FECL all contracts should be in writing, must express the real intent of the parties who must have legal contractual capacity and the contract should not violate law or public policy. Before resorting to arbitration, Chinese prefer to settle disputes out of court through friendly consultations, which again reflects their reliance on traditional value of honorable and ethical behavior.

### **European Community -**

The aftermath of the Second World War set the world leaders to think of a united Europe to achieve economic alliance and compatible political and legal setup. Thus started the European Community. The first step towards this was, building a common market between France and Germany for coal and steel through the European Coal and Steel Community (ECSC). The success of this led to signing of a number of treaties like the EURATOM, European Economic Community (EEC) and the Maastricht Treaty, all directed towards political and economic unity. To simplify the administration of ECSC, EURATOM and EEC, a merger treaty was subsequently signed. The European community has a well organized administrative set-up comprising of council of ministers, parliament, courts of justice and auditors, and advisory committees. These community institutions have developed substantive laws-

which prevail over individual country laws and create rights in individuals and businesses which are to be protected by national courts.

**United States America** The United States America regulates its exports under the Export Administration Act (EAA) of 1979. The primary objective being to protect its economy in case of short supply, to protect national security and to further its foreign policy objectives. The US has a complex regulatory structure for both imports and exports which includes the anti-boycott regulations. The EAA provides the statutory authority for export controls on sensitive dual-use goods and technologies: items that have both civilian and military applications, including those items that can contribute to the proliferation of nuclear, biological, and chemical weaponry. The EAA, which originally expired in 1989, periodically has been reauthorized for short periods of time, with the last incremental extension expiring in August 2001. At other times and currently, the export licensing system created under the authority of EAA has been continued by the invocation of the International Emergency Economic Powers Act (IEEPA).

### **Global Frame of Business Laws**

Students interest in International Business and Trade Law need to learn the present legal structure and operation of the world trade system, which is primarily handled through multilateral and regional trade treaties and associated law and the regional systems that are in effect, including the European Union and the North American Free Trade Agreement. Students also need to master U.S. obligations under these international instruments to U.S. trade statutes, especially those relating to dumping, subsidies, and unfair trade practices. In addition, students need to understand the legal framework of private international business transactions, including: the international sale of goods; bills of lading; letters of credit; government regulation of imports and exports; technology transfer and intellectual property protection; and forms and regulation of foreign direct investment.

#### **i. Taxation in Global Economy:**

To explore current important issues related to taxation in a global economy, tax treaty, double taxation avoidance, General Anti Avoidance Rules, domestic and global tax laws, etc.

#### **ii. International commercial arbitration:**

International commercial arbitration is the single most important means to resolve cross-border commercial disputes in today's flat world economy. This fundamental legal and jurisdictional underpinnings of the international commercial arbitration system of dispute resolution, the procedural

mechanisms for conducting international commercial arbitrations, the domestic judicial tools to compel parties to arbitrate commercial disputes rather than proceed in domestic courts, the comparative law aspects of international commercial arbitration both for the procedural and the substantive matters in dispute and the enforcement of international commercial arbitration awards in domestic courts are important aspects.

iii. Public International Law:

Laws for fight against global terrorism, laws of war, war crimes and tribunals; the UN Charter; the concept of universal jurisdiction. the rules, procedures, institutions and actors that are involved in the development, enforcement and adjudication of public international law, the role and influence of states, non-governmental organizations and international organizations; the law of treaties; customary international law; jurisdiction and immunities; the interpretation of international law by national courts; the law governing the use of force; international dispute resolution; and the role of the United Nations and of international judicial bodies, human rights, law of the sea, international trade law, international criminal law and international environmental law -- with an emphasis on such current challenges as international terrorism, the global financial crisis and climate change.

iv. Laws on International Business Transactions:

The legal framework of private international business transactions, including: the international sale of goods; bills of lading; letters of credit; government regulation of imports and exports; technology transfer and intellectual property protection; and forms and regulation of foreign direct investment.

v. International Trade Law:

The legal structure and operation of the world trade system, multilateral and regional trade treaties and associated law focusing on the World Trade Organization, the General Agreement on Tariffs and Trade, and other agreements concluded in the Uruguay Round of trade negotiations. Since the world system is complemented--and subject to tensions-- by regional systems, study of schemes of regional integration, in particular the European Union, SAPTA and the North American Free Trade Agreement, etc is important. Special attention to comparing national obligations under these international instruments to domestic trade statutes, especially those relating to dumping, subsidies, and unfair trade practices is needed The new trade issues such as trade and the environment, trade and investment, and trade and competition policy are also relevant.

vi. International Intellectual Property laws:

With a growing global market, the spread of the Internet, and continuing disparity between developed and developing countries, intellectual property assumes a major role in cross-border litigation, licensing, and diplomatic activity pertaining to copyright, patents, or trademarks. Study of international IP issues that arise in domestic courts, including conflict of laws, jurisdiction, parallel imports, and enforcement of foreign judgments, principal multilateral global businesses.

vii. International financial Law and Environment:

The law and practice of international financial markets, international financial intermediaries and international financial instruments like GDRs, ADRs, FCCBs, ECB, FDI, FII, Prevention of Money Laundering, International Transfer Pricing, etc through which cross-border loan and securities transactions, etc. Attention to issues of sovereignty, efficiency and ethics raised at the intersection of global and emerging financial markets, structures and practices associated with financial melt-down, sovereign debt crisis, etc is also relevant for global businesses for investment and financing purposes within the laws of different nations. Also issues of multilateral investment guarantee, financing of heavily indebted countries, financing for UN's MDGs, etc are relevant. Global capital market laws, laws on financial scams, etc need attention.

viii. International and Legal Research:

Aspects of legal research methods, sources of international and foreign law, treaty research, United Nations documents and European Union documents, and methods for finding the law of foreign jurisdictions are to be known by international business institutions.

ix. International Environmental Law and Policy:

Examining how society manages or fails to manage the environmental issues that fall beyond the authority or capability of one national government, law and policy on specific international environmental issues like global climate change control, stratospheric ozone depletion control, control of long-range air pollution, protection of biological diversity, management of global fisheries, etc is the core area of knowledge needed. Conceptual knowledge of foundations of international politics and international law on international environmental issues like interpretation and assessment of scientific knowledge, negotiation, establishment and management of international organizations, implementation of international commitments, and monitoring, reporting, and verification of compliance is relevant for global business either for compliance or mitigation or exploring business



opportunities on this arena. Discussion of linkages of environment to other international issues like trade, economic policy, security, and development is additional input. Insights from research and scholarship to help advance practical understanding of what is happening, why, and how things might be done better are to be gathered.

x. International Mergers and Acquisitions:

Knowledge of principal legal, commercial and practical issues typically encountered in structuring and executing cross-border merger and acquisition transactions between domestic and non-domestic entities is the thrust. Today cross-border M&A is taking place on a vast scale. The cultural adjustment, the legality of partisan attitude of the government to foreign take-over-party, etc are important.

xi. GATT (1946 – 1994):

The General Agreement on Tariffs and Trade popularly known as GATT attempted to promote multilateral fair trade and reduce trade barriers. Members of GATT reduced trade barriers by granting 'Most Favored Nation' (MFN) status and charging the lowest applicable tariff rates for imports from MFN. GATT provided for promotion of fair trade by prohibiting 'dumping' and 'unfair subsidies, bounties and grants'. Lack of adaptability of GATT, to regulate world trade resulted in nations entering into a direct trade relationship like the North American Free Trade Agreement for example. In other cases some developed nations came forward to help the less-developed countries by permitting duty free imports of certain items under the Generalized System of Preferences.

xii. WTO (Since 1.1.1995):

The World Trade Organization (WTO) is an organization that intends to supervise and liberalize international trade. WTO's current (2013) Director-General Pascal Lamy leads a staff of over 600 people in Geneva,

Switzerland. WTO officially commenced on January 1, 1995 under the Marrakech Agreement, replacing the GATT. Until that time international trade was governed by GATT. WTO deals with regulation of trade between participating countries; it provides a framework for negotiating and formalizing trade agreements, and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements, which are signed by representatives of member governments and ratified by their legislative bodies. Most of the issues that the WTO focuses on derive from previous trade negotiations, especially from the

Uruguay Round of the GATT, 1986–1994. The organization is attempting to complete negotiations on the Doha Development

Round, which was launched in 2001 with an explicit focus on addressing the needs of developing countries. As of March 2013, the future of the Doha Round remains protracted as opinion on protectionism on farm produce and subsidies for farm sector remains polarized.

xiii. UN Conventions:

United Nations Organization, as an umbrella body of nations of the world, has made these nations to sign treaties and conventions that govern global business, economy, society, culture, human rights over war-time and peace-time etiquettes, etc. The listed conventions and treaties as agreed to by nations commit countries to collaborate and cooperate on relevant global issues dealt by respective agreements.

### **International Law**

#### **A. International Mercantile Customs and Usages**

##### **Concept of International Mercantile Customs and Usages**

International mercantile customs and usages are a very significant legal source of International Business Law. Traders, driven by economic goals, have always spoken in a common language, that of international mercantile customs and usages.

### **Trade Agreements:**

Trade agreements may be bilateral or multilateral—that is, between two states or more than two states. For most countries international trade is regulated by unilateral barriers of several types, including tariffs, nontariff barriers, and outright prohibitions.

### **REGIONAL TRADE AGREEMENT**

- ❖ In the WTO, regional trade agreements (RTAs) are defined as reciprocal trade agreements between two or more partners. They include free trade agreements and customs unions. Information on RTAs notified to the WTO is available in the RTA Database.



- ❖ Regional trade agreements (RTAs) cover more than half of international trade and operate alongside global multilateral agreements under the World Trade Organization (WTO). Two broad policy lessons have emerged from OECD work in this area.
- ❖ The first is that the actual effects of RTAs bolster the case for a strengthened multilateral framework, particularly when regionalism leads to a patchwork effect between members and non-members within the concerned region, and thereby raise transaction costs for business.
- ❖ A second lesson is that while some consequences of RTA activity contribute to the case for strengthening the multilateral framework, some features of regional approaches may complement multilateral rules. The scope for such complementarity arises from the contribution which regional initiatives can make towards multilaterally-driven liberalization and harmonious rule-making that goes beyond the WTO. Together, these two elements have yielded highly effective synergies between approaches at the regional and multilateral levels.

**Objectives of Regional Trade Agreements:**

- ❖ To obtain economic benefits
- ❖ To pursue non-economic objectives
- ❖ To ensure increased security of market access
- ❖ To improve members bargaining strength.
- ❖ To promote regional infant industries
- ❖ Trade Diversion

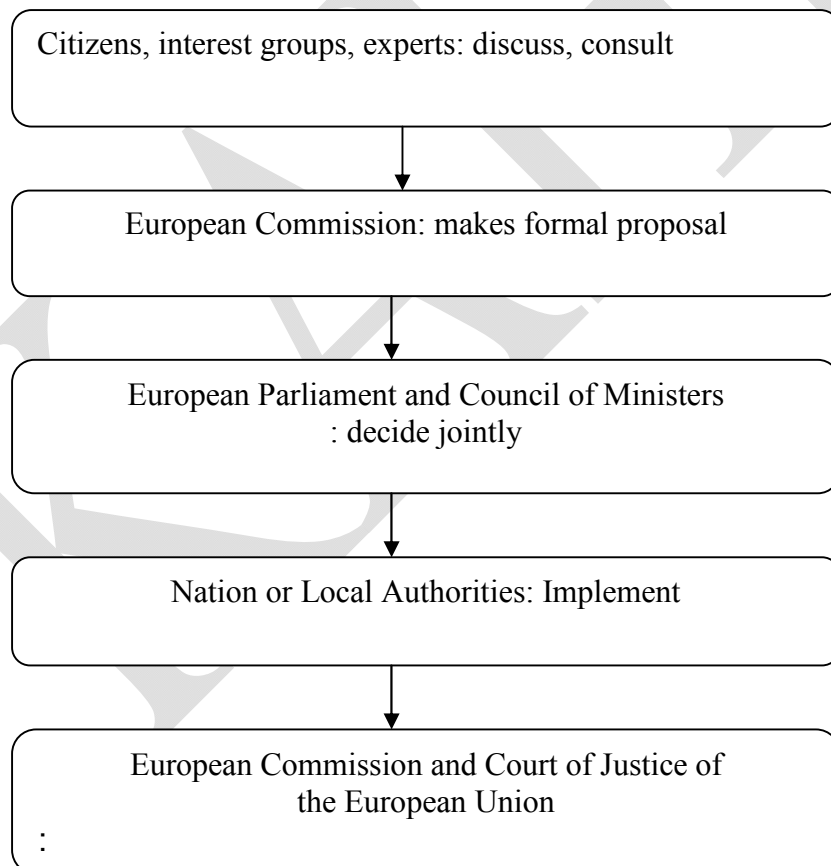
**European Union:**

- ❖ The European Union has concluded free trade agreements (FTAs) and other agreements with a trade component with many countries worldwide and is negotiating with many others.
- ❖ The EU has developed a single market through a standardized system of laws which apply in all member states.
- ❖ EU policies aim to ensure the free movement of people, goods, services, and capital; enact legislation in justice and home affairs; and maintain common policies on trade, agriculture, fisheries, and regional development.

- ❖ The euro is designed to build a single market by eliminating exchange rate problems, providing price transparency, creating a single financial market and low interest rates, providing a currency used internationally, and protecting against economic fluctuations through internal trade.

**EU's Standard Decision-Making Procedure:**

The EU's standard decision-making procedure is known as 'Ordinary Legislative Procedure', following which the European Parliament has to approve the EU legislation together with the European Council. The European Commission drafts and implements the EU legislation.



**Council of Ministers has following tasks:**

1. Passes EU laws;
2. Coordinates the broad economic policies of EU member countries;
3. Concludes agreements between the EU and other countries;
4. Approves the annual EU budget;
5. Develops the EU's foreign and defence policies;
6. Coordinates cooperation between courts and police forces of member countries.

**EU Law Structure: Three pillars**

The EU law structure is based on three pillars.

- ❖ The first pillar is the law concerning economic and social rights. This is found in the Treaty of the European Communities, signed at Rome in 1957 (hereinafter the 'TEC') and subsequently amended by other Treaties concluded between the member states. The first pillar of the EU law is right 'European Communities Law' ('EC Law'). After entry into force of the Lisbon Treaty on 1 December 2009, the EC law became the EU law.
- ❖ The second pillar concerning the EU Common Foreign and Security Policy ('CFSP') was established under the Treaty of the European Union, signed at Maastricht in 1992 (hereinafter the 'TEU').
- ❖ The third pillar concerning Police and Judicial Cooperation in Criminal Matters (formerly 'Justice and Home Affairs'), was established under the 'TEU'. All three pillars constitute the 'European Union Law' (the 'EU Law')

## **Objectives of the EU External Trade Relations or Trade Policy**

### **(a) Two main objectives of the EU Trade Policy**

Firstly, lower barriers to the EU export and EU investment through negotiations and, where necessary, dispute settlements;

Secondly, improve conditions for third country operators importing into the EU (especially DCs).

### **The Internal Market**

The single market involves the free circulation of goods, capital, people, and services within the EU, and the customs union involves the application of a common external tariff on all goods entering the market. Once goods have been admitted into the market, they cannot be subjected to customs duties, discriminatory taxes or import quotas, as they travel internally. The non-EU member states of Iceland, Norway, Liechtenstein, and Switzerland participate in the single market but not in the customs union.

Free movement of capital is intended to permit movement of investments such as property purchases and the buying of shares between countries. The free movement of persons means that EU citizens can move freely between member states to live, work, study, or retire. This required the lowering of administrative formalities and recognition of professional qualifications of other states.

The free movement of services and of establishment allows self-employed persons to move between member states to provide services on a temporary or permanent basis. While services account for 60% to 70% of GDP, legislation in the area is not as developed as in other areas.

**NAFTA (The North American Free Trade Agreement):**

- ❖ NAFTA is a 1994 agreement to remove taxes on products traded between North American countries (US, Canada and Mexico).
- ❖ NAFTA protects copyright, patents and trademarks between the three countries. It was updated with the North American Agreement on Environmental Cooperation, which helped reduce pollution and set more environmental regulations.
- ❖ Since NAFTA took away taxes between products traded between the US, Canada and Mexico, Mexico has been buying more products from the US.
- ❖ Some say NAFTA has been positive for Mexico, which has seen poverty rates fall and real income rise, while others argue that NAFTA has had negative impacts on farmers in Mexico who saw food prices fall based on cheap imports from the US.
- ❖ The North American Free Trade Agreement (NAFTA) is an agreement between Mexico, the United States and Canada. The agreement was signed by US President George H.W. Bush, Canadian Prime Minister Brian Mulroney, and Mexican President Carlos Salinas on December 17, 1992 in San Antonio, Texas, and took effect on January 1, 1994.
- ❖ The bill removed taxes on products traded between the three countries. It also protects copyright, patents, and trademarks between those countries. It was updated with the North American Agreement on Environmental Cooperation, which helped reduce pollution and set more environmental regulations. It was also updated with the North American Agreement for Labor Cooperation, which helped people fight for better labor conditions.

**Effects**

Since NAFTA took away taxes for products traded between the US, Canada, and Mexico, Mexico has been buying more products from the US. It saved U.S. companies the cost of selling products to Mexico, and saved Mexican companies the cost of buying items from US companies.

A benefit of the bill is that labels on products exchanged between the three countries come in French, English and Spanish. That way, Mexicans and Americans who speak Spanish can read the Spanish label, Americans and Canadians can read the English label, and Canadians who speak French can read the French label.

NAFTA also encourages more immigration from Mexico to the US. Since small businesses can no longer be protected by tariffs, many small business owners in Mexico cannot compete with the prices of subsidized products from the US. As a result, many Mexicans have gone to the US looking for work. Some believe that NAFTA has been positive for Mexico, which has seen its poverty rates fall and real income rise.

Others argue that NAFTA has been beneficial to business owners in all three countries, but has had negative impacts on farmers in Mexico. Mexican farmers have seen food prices fall due to cheap imports from US agribusiness, while US workers in manufacturing and assembly industries have lost jobs. Critics also argue that NAFTA has contributed to the rising levels of inequality in both the US and Mexico.

### **Goals of NAFTA**

NAFTA was created to eliminate barriers to trade and investment between the US, Canada and Mexico. The implementation of NAFTA immediately eliminated tariffs on more than one-half of Mexico's exports to the US and more than one-third of US exports to Mexico. Within 10 years of implementation, all US-Mexico tariffs would be eliminated except for some US agricultural exports that were to be phased out within 15 years. NAFTA also seeks to eliminate non-tariff trade barriers and to protect the intellectual property right of the products.

In the area of intellectual property, the North American Free Trade Agreement Implementation Act made changes to the copyright law of the US, foreshadowing the Uruguay Round Agreements Act of 1994 by restoring copyright (within NAFTA) on certain motion pictures which had entered the public domain.

## **Trade**

- ❖ The agreement opened the door for free trade, ending tariffs on various goods and services, and implementing equality between Canada, the US and Mexico. Since the implementation of NAFTA, the countries involved have been able to do the following:
- ❖ The US had a services trade surplus of \$28.3 billion with NAFTA countries in 2009.
- ❖ Foreign direct investment of Canada and Mexico in the US (stock) was \$237.2 billion in 2009, up 16.5% from 2008.
- ❖ Income in the maquiladora (maquiladora: Mexican factories that take in imported raw materials and produce goods for export.) sector has increased 15.5% since the implementation of NAFTA in 1994.
- ❖ To alleviate concerns that NAFTA would have negative environmental impacts, in 1994 the Commission for Environmental Cooperation (CEC) was given a mandate to conduct ongoing ex-post environmental assessment of NAFTA.
- ❖ Agriculture is the only section that requires three separate agreements between each pair of parties. The Canada–US agreement contains significant restrictions and tariff quotas on agricultural products, whereas the Mexico–US pact allows for a wider liberalization within a framework of phase-out periods.
- ❖ Mexico has gone from a minor player in the pre-1994 US export market to the 2nd largest importer of U.S. agricultural products.
- ❖ According to the Department of Homeland Security Yearbook of Immigration Statistics (2006), 73,880 foreign professionals were admitted into the US for temporary employment under NAFTA.

### **Key Elements in NAFTA:**

- ❖ The NAFTA eliminates or imposes strict rules on a range of barriers to trade and investment. Key elements of the Agreement include:
- ❖ Opening of government purchasing regimes to businesses in all three countries;
- ❖ eliminating restrictions on foreign investment (except in a limited number of restricted sectors listed by each party) and ensures non- discriminatory treatment for local companies owned by investors in other NAFTA countries;



- ❖ eliminating barriers that prevent services companies from operating across North American borders, including in such key sectors as financial services;
- ❖ provides comprehensive rules to protect intellectual property rights; and
- ❖ Provides three distinct dispute settlement mechanisms for state-to-state disputes, investor-state disputes, and disputes on antidumping measures and countervailing duties.

### **What Are Rules of Origin, and Why Do FTAs Have Them?**

Rules of Origin ('RoO') are a part of every FTA in order to ensure that the goods exported from a Party to the FTA are given lower tariff treatment and receive other preferential treatment as agreed to in the FTA. The RoOs are also structured to ensure that preferential treatment is not given to goods that originated in countries that are not a Party to the Agreement. In the simplest form, the RoO may indicate that a product is 'originating' and eligible for preferential treatment if it was entirely manufactured or produced in a country that is a Party to the Agreement. Because the supply chains of so many products are now multinational, RoOs have evolved to allow for some portion of the inputs to be obtained in a third country.

### **Conclusion**

The NAFTA has successfully liberalized trade and investment among Canada, Mexico, and the US. While the Agreement has increased trade and enhanced the economic integration of the three countries, the implementation process has not always been easy. Since the Agreement entered into force in 1994, there have been trade disputes, political tensions, AD cases, and arbitration cases among the three countries. Nevertheless, the overall record of the NAFTA implementation shows how a comprehensive and ambitious FTA may benefit developed and developing countries.

**ASEAN (The Association of Southeast Asian Countries)** was established on 8th August 1967 in Bangkok by the five original member countries: Malaysia, Indonesia, Thailand, Singapore, and Philippines.

- ❖ In 1984 Brunei Darussalam joined ASEAN followed by Vietnam in 1995, Lao PDR and Myanmar in 1997 and Cambodia in 1999. It is a geo-political and economic organization of ten countries located in Southeast Asia.
- ❖ The main objective of ASEAN is the acceleration of economic growth, social progress and cultural development of its members along with the promotion of regional peace.



- ❖ Originally, ASEAN was meant to be an association of countries engaged in nation building. The end of World War II saw the emerging of Indonesia, Malaysia, Philippines and Singapore as sovereign independent nations.
- ❖ Nation building was often vulnerable to foreign intervention. It was important for the governing people to have free hands to conduct their policies without interference from neighbouring countries. Small countries like Singapore and Brunei are always in fear of the influences exerted by bigger neighboring countries like Indonesia and Malaysia. ASEAN was established to ensure sovereignty stayed resolutely located at the national level.
- ❖ The primary principle of ASEAN was non-interference. ASEAN is open to the participation of all States in the Southeast Asian region which are willing to subscribe to its aims, principles and purposes.
- ❖ ASEAN aims to represent the collective will of the countries of Southeast Asia to bind themselves together in friendship. It hopes through the joint efforts of its members to secure for its peoples the blessings of peace, freedom and prosperity.
- ❖ The ASEAN holds meetings, known as the ASEAN Summit, where heads of government of each member country meet to confer and resolve regional issues. In addition meetings are conducted with other countries outside the block with the intention of promoting external relations. Officially the summit meets for three days annually to discuss the pressing issues affecting the region. Member nations host the summit in alphabetical order.
- ❖ The schedule of the meeting involves the internal meeting of its members, the meeting of the leaders of its member states with foreign ministers of the ASEAN Regional Forum, a meeting with ASEAN Plus Three: the leaders of three Dialogue Partners: People's Republic of China, Japan and South Korea and a meeting with ASEAN CER: the leaders of two dialogue partners Australia and New Zealand.
- ❖ The fundamental principles of ASEAN involve mutual respect for the independence and sovereignty of its members. It holds the right of every member state to lead its national existence from external interference. It calls for the non interference in the internal affairs of one another and the settlement of differences in peaceful manner. It denounces the use of force or threat.

- ❖ Ever since its inception three decades ago, no tension has spiraled into armed confrontation among ASEAN member countries due to the political dialogue and mutual understanding they share.
- ❖ The members of ASEAN vow to always resort to peaceful processes in the settlement of intra regional disputes and to look on their security as essentially linked to one another and held together by geographic location, common vision and objectives.

### **Policies: Progress With The Asean Communities**

1. The Socio-cultural Community - human rights: A small first step
2. The Politico-security Community - security co-operation: an encouraging start
3. The Economic Community - economic integration: in place by 2015

### **AIMS AND PURPOSES**

As set out in the ASEAN Declaration, the aims and purposes of ASEAN are:

1. Economic growth and social progress: To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations.
2. Regional peace and stability: To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter.
3. Collaboration and assistance: To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields.
4. Training and research: To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;

5. Overall improvements: To collaborate more effectively for the greater utilisation of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples.

6. Studies: To promote Southeast Asian studies

7. Cooperation: To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

### **Fundamentals Principles:**

At the First Asian Summit in Bali in February 1976 the member countries signed the Treaty of Amity and Co-operation in Southeast Asia (TAC).

It spelled out the basic principles for their relations with one another and the conduct of the association's programme for co-operation. The fundamental principles are the following:

1. Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
2. The right of every State to lead its national existence free from external interference, subversion or coercion;
3. Non-interference in the internal affairs of one another;
4. Settlement of differences or disputes by peaceful manner;
5. Renunciation of the threat or use of force; and
6. Effective co-operation among themselves.

### **Structure of ASEAN**

There are a number of decision-making bodies that comprise ASEAN, spanning from international to the very local. The most important are listed below:

Meeting of the ASEAN Heads of State and Government: The highest body made up of the heads of each respective government; meets annually.

Ministerial Meetings: Coordinates activities in many areas including agriculture and forestry, trade, energy, transportation, science and technology, among others; meets annually.

Committees for External Relations: Made up of diplomats in many of the world's major capitals.

Secretary-General: The appointed leader of the organization empowered to implement policies and activities; appointed to five year term. Currently Surin Pitsuwan of Thailand. Not mentioned above are over 25 other committees and 120 technical and advisory groups.

### **MERCOSUR The Common Market of the Southern Cone (MERCOSUR)**

- ❖ Mercosur is an economic and political agreement among Argentina, Brazil, Paraguay, Uruguay, and Venezuela created in 1991 to promote free trade.
- ❖ Its purpose is to promote free trade and the fluid movement of goods, people, and currency. The official languages are Guaraní, Portuguese, and Spanish.
- ❖ Intra-Mercosur merchandise trade grew from \$10 billion at the inception of the trade bloc in 1991, to \$88 billion in 2010.
- ❖ With a population of more than 270 million people, and a GDP of the full-member nations in excess of \$3 trillion a year, Mercosur is the fifth-largest economy in the world, just behind the European Union.

Mercosur is an economic and political agreement among Argentina, Brazil, Paraguay, Uruguay, and Venezuela. Established in 1991 by the Treaty of Asunción, it was later amended and updated by the 1994 Treaty of Ouro Preto.

The purpose of Mercosur is to promote free trade and the fluid movement of goods, people, and currency. The official languages are Guaraní, Portuguese and Spanish. Mercosur acts as a full customs union and works toward a continuing process of South American integration into the Union of South American Nations. The program also proposed the Gaucho as a currency for regional trade. The founding of the Mercosur Parliament was agreed at the December 2004 presidential summit.

**Objectives**

- ❖ Mercosur seeks the free transit of produced goods, services, and factors among the member states. Among other things, this includes the elimination of customs rights and lifting of non-tariff restrictions on the transit of goods or any other measures with similar effects.
- ❖ Mercosur seeks to fix a common external tariff (CET), adopt a common trade policy with regard to nonmember states or groups of states, and coordinate positions in regional and international commercial and economic meetings.
- ❖ Mercosur seeks to coordinate macroeconomic and sector policies of member states relating to foreign trade, agriculture, industry, taxes, monetary system, exchange and capital, services, customs, transport and communications, and any others they may agree on, in order to ensure free competition between member states.
- ❖ Mercosur seeks to commit to the integration process by making the necessary adjustments to member state's laws in pertinent areas. The common market will allow (in addition to customs unification) the free movement of manpower and capital across the member nations. Because member states will implement the trade liberalization at different speeds, during the transition period the rights and obligations of each party will initially be equivalent but not necessarily equal.

**Trade and Economy**

- ❖ Intra-Mercosur merchandise trade (excluding Venezuela) grew from USD 10 billion at the inception of the trade bloc in 1991, to \$88 billion in 2010; Brazil and Argentina accounted for 43% of this total. The trade balance within the bloc has historically been tilted toward Brazil, which recorded an intra-Mercosur balance of over \$5 billion in 2010. Trade within Mercosur amounted to only 16% of the four countries' total merchandise trade in 2010, and trade with

the European Union (20%), China (14%), and the United States (11%) was of comparable importance.

- ❖ Exports from the bloc are highly diversified, and include a variety of agricultural, industrial, and energy goods. Merchandise trade with the rest of the world in 2010 resulted in a surplus for Mercosur of nearly \$7 billion; trade in services, however, was in deficit by over \$28 billion.
- ❖ The bloc comprises a population of more than 270 million people, and the combined Gross Domestic Product of the full-member nations is in excess of \$3 trillion a year according to the International Monetary Fund (IMF), making Mercosur the fifth-largest economy in the world. It is the fourth-largest trading bloc after the European Union.

**Part B – 2 Marks**

1. What do you mean by International trade?
2. List out the advantages of International trade.
3. Distinguish between inter regional and international trade.
4. What do you mean by Terms of Trade?
5. Define the term “Trade Agreement”
6. List out the objectives of Regional Trade Agreements.
7. What is NAFTA?
8. What is ASEAN?
9. List out the members of ASEAN.
10. What is MERCOSUR.

**Part C- 5 Marks**

1. Explain the basis of International Trade.
2. Elucidate the importance of International Trade from India’s point of view.
3. Critically examine “Trade as an Engine of Growth – Indian Economy Perspective”.
4. Enumerate the limits of domestic law in governing International Trade and Business Transactions
5. Explain the structure and decision making procedure of European Union.
6. Enumerate the objectives of MERCOSUR.
7. Critically examine how does the ASEAN impact the World Trade?
8. What is NAFTA? Discuss the goals and key elements in NAFTA.
9. Explain the composition and direction of Trade in Indian perspective.
10. Discuss the history of International Trade.



**Part D- Case Study 10 Marks**

India is a giant market. An estimated 300 million people belong to what is called the middle-class. 'Capitalism Consumerism' is a characteristic of this category. Another 700 million consumers exist in rural India. Each of the above segments makes for bigger population than the rest of the world, except China. Irrespective of what some commentators have said, Indian firms are successfully competing across entire value-chains spanning sectors. With more millionaires living in rural areas than in urban, companies are realizing the existence of huge untapped market. Appropriately several banking, FMCG, healthcare, automobile, consumer durable companies have launched innovative strategies and products tailored for them. Among these are the Unilevers, ITC, ICICI Bank, State Bank of India, P&G, LG, Samsung, Hero Honda, Maruti Suzuki, Tata Motors, etc. The transformation in India in the early years of the 21st century is remarkable! Wherever one goes, in remote villages or urban townships, one can see thousands of self-employed young men and women trying to learn more of the new skills for employability in modern-day complex businesses.

- a. What do you understand by the term 'Consumerism?' Explain its significance in the context of international trade.
- b. Keeping in view the rate at which the Indian economy is growing, Indian MNCs should concentrate on consolidating their operations at home instead of thinking of expanding in foreign markets. What are your views in this regard?
- c. How should the government shape its international trade policies so as to achieve the goal of making India an economic superpower by the year 2030?

**KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE****DEPARTMENT OF MANAGEMENET****Unit 1- INTRODUCTION TO INTERNATIONAL TRADE- Multiple Choice Questions- Each Question carries ONE Mark**

<b>SL.NO</b>	<b>Question</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>	<b>Answer</b>
1	The Director General of Foreign trade is appointed by.....	Central Government	State Government	Ministry of commerce	Chief justice of the Supreme Court	Ministry of commerce
2	The incentive available under Focus Market Scheme (FMS) is.....	1.5 to 2 per cent	2 to 2.5 per cent	2.5 to 3 per cent	3 TO 3.5 per cent	2.5 to 3 per cent
3	To double India's percentage share of global merchandise trade is the objective of.....	1992- 97 policy	1997-02 policy	2002-07 policy	2009-14 policy	2009-14 policy
4	The foreign Trade (Regulation) Rules was passed in the year.....	1991	1992	1993	1994	1993
5	The apex body of the Foreign Trade is.....	Central Government	State Government	Ministry of commerce	WTO	Ministry of commerce
6	The tenure of the Foreign Trade policy is.....	3 years	5 years	1 year	7 years	5 years
7	How many chapters are there in The Foreign Trade (Development and Regulation) Act, 1992?	5	4	6	7	6
8	The legal settlement of international trade disputes is.....	Negotiation	Arbitration	Litigation	Conciliation	Litigation

9	The WTO Agreement related to investment measures is.....	TRIPS	TRIMS	GATT	TCA	TRIMS
10	In international business cheaper alternatives to litigation is/are.....	Conciliation	Arbitration	Negotiations	Conciliation and arbitration	Arbitration
11	TRIMs stands for.....	Trade Related Investment Measures	Trade Review Information Modules	Tripartite Review of Investment Means	Trade Related Intellectual Measures	Trade Related Investment Measures
12	Development in international law is process. What does this process promote?	Mainly human development	Mainly economic development	Mainly social development	Mainly political development	Mainly economic development
13	Why is sustainable development a principle of paramount importance in international law?	Because it promotes world peace	Because it is a principle which did not exist before	Because it is a principle recognised by the International Court of Justice as well as number of leading international organisations	Because non-governmental organisations support this principle	Because it is a principle recognised by the International Court of Justice as well as number of leading international organisations
14	Trade in services includes which of the following?	textiles	Computer hardware	Weapons	Insurance	Insurance
15	Which of the following is international trade.....	Trade between provinces	Trade between countries	Trade between regions	Trade between states	Trade between countries
16	Which is NOT an advantage of international trade.....	Export of surplus production	Import of defence material	Dependence on foreign countries	Availability of cheap raw materials	Dependence on foreign countries

17	If Japan and Pakistan start free trade, difference in wages in two countries will.....	Increase	Decrease	No effect	Double	Decrease
18	Trade between two countries can be useful if cost ratios of goods are.....	Equal	Different	Undetermined	Decreasing	Different
19	Foreign trade creates among countries.....	Conflicts	Cooperation	Hatred	Trade Increase	Cooperation
20	A tariff.....	Increases the volume of trade	Reduces the volume of trade	Has no effect on volume of trade	help weak countries	Reduces the volume of trade
21	A tariff is.....	A restriction on the number of export firms	Limit on the amount of imported goods	Tax and imports	Increases the volume of trade	Tax and imports
22	All are advantages of foreign trade EXCEPT.....	People get foreign exchange	Nations compete	Cheaper goods	Optimum utilisation of country's resources	People get foreign exchange
23	Terms of trade of developing countries are generally unfavourable because.....	They export primary goods	They import value added goods	They export few goods	(a) and (b) of above	(a) and (b) of above
24	Term of trade of a country show.....	Ratio of goods exported and imported	Ratio of import duties	Ratio of prices of exports and imports	(a) and (c) of above	Ratio of prices of exports and imports
25	In a free trade world in which no restrictions exist, international trade will lead to.....	Reduced real living standard	Decreased efficiency	Increased efficiency	Reduced real GDP	Increased efficiency
26	What would encourage trade between two countries.....	Different tax system	Frontier checks	National currencies	Reduced tariffs	Reduced tariffs

27	"Terms of trade" between two countries refer to a ratio of.....	Export prices to import prices	Currency values	Exports to imports	Balance of trade to balance of payments	Export prices to import prices
28	Terms of trade of a country.....	Mean the trade agreement between trading countries	Is another name of exchange ratio of two currencies	Show the ratio between total export earnings and import bill of a country	Are determined by the price index of export and import goods	Are determined by the price index of export and import goods
29	This is an advantage of foreign trade.....	We can preserve our natural resources	New technology comes to the country	People need not go abroad	We can get foreign currencies	New technology comes to the country
30	This is NOT an advantage of foreign trade.....	We can get gold from abroad	New technology comes to the country	We can import goods which are in short supply in India	We can made best use of natural resources	We can get gold from abroad
31	How many countries are members of the Eurozone in 2011?	20	17	16	25	17
32	India is part of.....	European Union	NAFTA	SAARC	CER	SAARC
33	Which of the following treaties marked the establishment of the European Union?	Maastricht Treaty	Treaty of Lisbon	Berlin Treaty	Treaty of London	Maastricht Treaty
34	The European Commission is headquartered in.....	London	Geneva	Paris	Brussels	Brussels
35	Which of the following is not a member of SAARC?	Afghanistan	Nepal	Mauritius	the Maldives	Mauritius
36	SAARC is headquartered in.....	New Delhi	Kathmandu	Islamabad	Colombo	Kathmandu
37	NAFTA is an example of a(n).....	FTA	customs union	common market	economic union	FTA

38	The Multi-Fibre Arrangement was an agreement in the area of.....	coffee	textiles	petroleum	bananas	textiles
39	Which of the following is not a founding member of the OPEC?	Venezuela	Brazil	Kuwait	Iran	Brazil
40	CARICOM was established under which of the following treaties?	Coal and Steel Treaty	Treaty of Venice	Treaty of Chaguaramas	Treaty of Rome	Treaty of Chaguaramas
41	MERCOSUR originated as free-trade pact between.....	Brazil and Argentina	Brazil and Venezuela	Argentina and Chile	Uruguay and Peru	Brazil and Argentina
42	Which of the following is a trade agreement between countries of the developed and developing world?	NAFTA	MERCOSUR	LAFTA	ALADI	NAFTA
43	The European Parliament meets at.....	Rome	Vienna	Berlin	Strasbourg	Strasbourg
44	The genesis of the European Union is in the.....	Treaty of Maastricht	Coal and Steel Treaty	Treaty of Rome	Schengen Agreement	Coal and Steel Treaty
45	The ANDEAN Pact is a(n).....	common market	customs union	FTA	political union	customs union

46	Regional economic integration presents potentially significant threats to business outside the area, including.....	long-term improvements in the competitive positions of firms inside the areas.	the end of a “fortress” mentality means other firms outside the area will be able to enter the areas more easily to compete with existing area firms	the end to efforts to rationalize production and reduce costs	the imposition of US standards, recognized as a pioneer in regional economic integration, which means US firms will not be able to get around the legal barriers	the end to efforts to rationalize production and reduce costs
47	Regional economic integration, for example, the EU, offers significant opportunities to US businesses including.....	non-EU companies no longer need to set up subsidiaries in EU countries	companies can realize significant cost economies by centralizing operations where factor costs and skills are optimal	it makes no difference where in the EU one locates an operation since the costs are the same throughout	cultural differences and national consumer preferences are now irrelevant	companies can realize significant cost economies by centralizing operations where factor costs and skills are optimal
48	In a(n).....similarities in the underlying structure of economic activity make it feasible to adopt a single currency and use a single exchange rate as an instrument of macroeconomic policy	optimal currency zone	free trade area	customs union	common market	optimal currency zone
49	Which institution is responsible for proposing EU legislation, implementing it, and monitoring compliance?	The European Council	The European Parliament	The Court of Justice	The European Commission	The European Commission



50	One of the main impediments to regional economic integration is the cost that individuals must bear even while the country as a whole might gain. The second major impediment is the.....	increased concern about monetary policy	loss of national sovereignty	loosening of controls	the increased costs of defending and monitoring borders	loss of national sovereignty
51	The North American Free Trade Agreement is an example of.....	western economic integration	regional economic integration	eastern economic integration	global economic integration	regional economic integration
52	An agreement between countries in a geographic region to reduce tariff and nontariff barriers to the free flow of goods, services, and factors of production between each other is referred to as.....	regional economic integration	cross-cultural economic integration	geographic economic-political integration	cross-cultural economic-political integration	regional economic integration
53	By 2008, ..... WTO members had notified the organization of participation in one or more regional trade agreements.	one-third of	one half of	two-thirds of	almost all	almost all
54	Nowhere has the movement toward regional economic integration been more successful than in.....	Africa	South America	Asia	Europe	Europe
55	Which three countries implemented NAFTA?	Panama, Mexico, and the United States	Canada, Brazil, and the United States	United States, Argentina, and Mexico	Canada, Mexico, and the United States	Canada, Mexico, and the United States

56	NAFTA stands for.....	North Asian Free Trade Agreement	North African Free Trade Association	North Atlantic Free Trade Agreement	North American Free Trade Association	North American Free Trade Association
57	Which countries are members of the free trade area known as MERCOSUR?	Chile, Mexico, Columbia, and Paraguay	Argentina, Brazil, Paraguay, and Uruguay	Chile, Brazil, Uruguay, and Columbia	Mexico, Columbia, Paraguay, and Uruguay	Argentina, Brazil, Paraguay, and Uruguay
58	A country that does not trade with other countries is called.....	Developed economy	Closed economy	Independent econo	Isolated economy	Closed economy
59	Policy of Protection in trade.....	Facilitates trade	Protects foreign pr	Protects local prod	Protects exporters	Protects local producers
60	Which of the following is a Latin American regional institution?	SAARC	MERCOSUR	APEC	ASEAN	MERCOSUR

**UNIT-II**

**SYLLABUS**

**World Trade Organization:** Law of WTO: Introduction, Objectives, Functions, Structure, Principles, Agreements – implications for International business, Progress made by WTO in the last one decade - Tariff and Non-tariff barriers - Implications for WTO members.

**World Trade Organization - Understanding its Implications for India**

**Introduction:**

The World Trade Organization is a Multi-lateral organization which facilitates the free flow of goods and services across the world and encourages fair trade among nations. The result is that the global income increases due to increased trade and there is supposed to be overall enhancement in the prosperity levels of the member nations. To put it in brief WTO encourages a multi-lateral trading system within its member countries.

**Origin and Evolution of WTO: - GATT to Uruguay**








WTO is of a very recent origin, it came into formal existence on January 1<sup>st</sup> 1995. As an organization it has vast powers and functions than what its predecessor GATT (General Agreement on Tariffs and Trade) had, the objectives and goals of both being broadly the same. GATT came into existence in the year 1948, after long negotiations to form an organization called ITO immediately after the Second World War did not materialize. The ITO was supposed to be the third international organization in the "Golden Triangle" that was supposed to come into existence, the first two being IMF and World Bank.

To begin with 23 countries became founding GATT members (officially, "contracting parties"). GATT remained the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995. There were several controversies on whether the GATT had actually

contributed to enhancement of world trade and did it serve its purpose of a multi-lateral trading organization. The liberalization of international trade during GATT era in its true sense was always debatable. However, it is very clear that over the period of 47 years of its existence, GATT was successful in initiating a process of tariff cutting in several groups of manufactured goods. Moreover the signatories in the GATT increased from 23 to more than 100 in a short span, ratifying the fact that being in the system was proved and considered more beneficial than not being in it.

On the other front, the internal and domestic economic problems and fluctuations made some economies to go back to increase the levels of protection and increase trade barriers to enable faster domestic growth and recovery. The problem was not just a deteriorating trade policy environment, but some other serious issues. GATT negotiations did not include services and agricultural trade in its gamut. As the world trade grew in size, the share of services trade along with that of merchandise started to increase leading to the insufficiency of the GATT principles to cover the expanding aspects of ever evolving global trade. As a result, these loopholes were taken as advantage by many trading countries, resulting in a lopsided development of world trade. These and other factors convinced GATT members that a new effort to reinforce and extend the multilateral system should be attempted. That effort resulted in the Uruguay Round, the Marrakesh Declaration, and the creation of the WTO.

#### **WTO - Some Basic Facts:**

-  Location: Geneva, Switzerland
-  Established: 1 January 1995
-  Created by : Uruguay Round negotiations (1986-94)
-  Membership: 148 countries (as of April 2005)
-  Budget: 155 million Swiss francs for 2003
-  Secretariat staff: 560
-  Head : Director-General, Supachai Panitchpakdi

#### **What are its Objectives and Functions?**

The overriding objective of the World Trade Organization is to help trade flow smoothly, freely, fairly and predictably; to meet its objective WTO performs the following functions

- ❖ Administering W.T.O Trade Agreements.
- ❖ Acting as a Forum for trade negotiations.
- ❖ Settling and Handling Trade disputes
- ❖ Monitoring and reviewing national trade policies,
- ❖ Assisting the member in trade policies through technical assistance and training programmes
- ❖ Technical assistance and training for developing countries.
- ❖ Co-operation with other International Organization

### **What are its Principles?**

The agreements of WTO cover everything from trade in goods, services and agricultural products, these agreements are quite complex to understand, however all these agreements are based on some simple principles;

#### ***Non-Discrimination***

This is a very simple principle which advocates that every member country must treat all its trading partners equally without any discrimination, meaning that if it offers any special concession to one trading partner, such concessions need to be extended to its other trading partners as well in entirety. This principle effectively gets translated into "MFN" or the Most Favored Nation. However, this principle is relaxed in certain exceptional cases, such as if country X has entered into a regional trade agreement with another country Y, then the concessions extended to Y country need not be extended to other non-members of the agreement. Besides these developing countries facing Balance of Payment problems also get concessions, and if a country can prove unfair trade it can retain its power to discriminate.

The Non-discrimination principle is also translated as a principle that would ensure "National Treatment" to all the goods, services or the intellectual property that enters any other countries national borders

- ***Reciprocity***

This Principle reflects that any concession extended by one country to another need to be reciprocated with an equal concession such that there is not a big difference in the countries Payments situation. This was further relaxed for developing countries facing severe Balance of Payments crisis. This principle along with the first principle would actually result in more and more liberalization of the world trade as any country relaxing its trade barriers need to extend it to all other members and this would be reciprocated. Thus progressive liberalization of the world trade was aimed at by WTO.

- ***Transparency***

The multilateral trading system is an attempt by governments to make the business environment stable and predictable. Thus this principle ensured that there is lots of transparency in the domestic trade policies of member countries. Moreover, the member countries are required to sequentially phase out the non-tariff barriers and progressively reduce the tariff barriers through negotiations.

Thus, these principles were primarily to serve the purpose of freer and fair trade and also to encourage competitive environment in the global market. This was further supposed to enhance development and Economic reforms in the developing countries over a period of time in a phased manner.

### **What are the Major Agreements in WTO?**

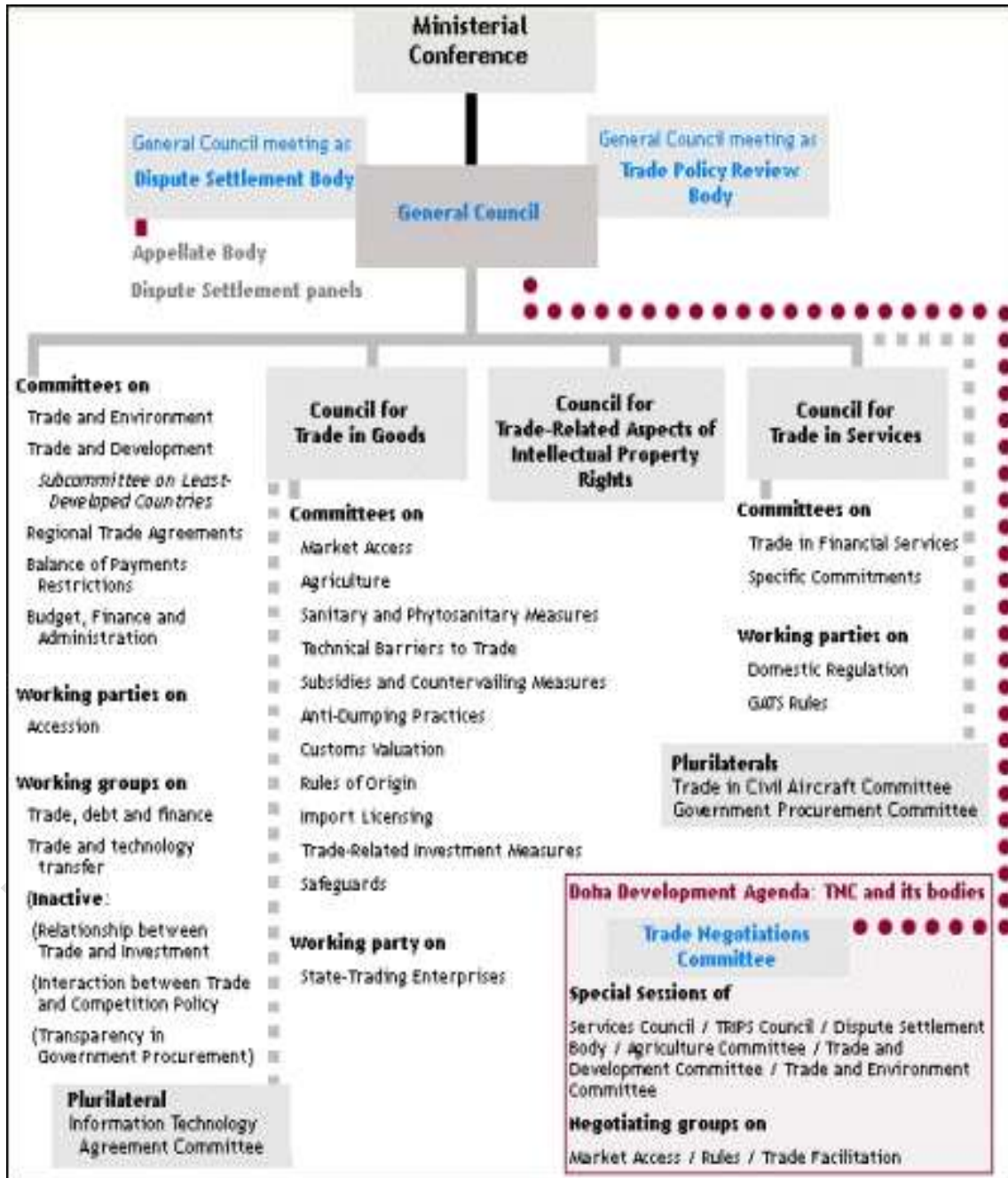
- ❖ There are several agreements which are agreed upon by member countries in the last round of negotiations under GATT, The Uruguay round (1986-94), which resulted in the formation of WTO The complete set runs to some 30,000 pages consisting of about 60 agreements and separate commitments (called schedules) made by individual members in specific areas such as lower customs duty rates and services market-opening.
- ❖ The main agreements cover vast areas from tariff reduction on specific manufactured goods and services; other agreements deal with trade in Textiles, Agriculture, Services; some other agreements talk about trade in Intellectual Property, cross-border Investments, anti-dumping duties, CVD's, Safeguards, and finally there are few agreements that aim to reduce the Non-Tariff Barriers that hinder trade between countries.

**The Decision Making Process and Organizational Structure of WTO**

Decisions are made by all the members together what we can term as by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO's predecessor, GATT. After the decision by individual countries, the WTO's agreements have been ratified in all members' parliaments. The structure of WTO is shown in Figure 1. The WTO's top level decision-making body is the Ministerial Conference which meets at least once every two years. The Fifth WTO Ministerial Conference was held in Cancún, Mexico from 10 to 14 September 2003. Below this is the General Council (normally ambassadors and heads of delegation in Geneva, but sometimes officials sent from members' capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Dispute Settlement Body. At the next level, the Goods Council, Services Council and Intellectual Property (TRIPS) Council report to the General Council. Numerous specialized committees, working groups and working parties deal with the individual agreements and other areas such as the environment, development, membership applications and regional trade agreements.

The WTO has nearly 148 members, accounting for over 97% of world trade; there are many other countries who are planning to become the members.





### **How Does the Agreements affect the Member Countries?**

The World Trade organization was established with an objective of enhancing the free and fair trade, improve growth rate of world trade by encouraging members to reduce trade barriers and to increase the overall prosperity in the global economies. As given in the official document of WTO following are the ten ways in which the organization affects the world Trade and its member countries.

1. The system helps promote peace
2. Disputes are handled constructively
3. Rules make life easier for all
4. Freer trade cuts the costs of living
5. It provides more choice of products and qualities
6. Trade raises incomes
7. Trade stimulates economic growth
8. The basic principles make life more efficient
9. Governments are shielded from lobbying
10. The system encourages good government

However, there are several groups that are against this multi-lateral organization, and they continuously propagate against the agreements considering them as being dis-advantageous to the developing countries and several other sectors in the economy. Following are some of the general aspects of disagreements on the principles and existence of WTO.

1. The WTO dictates policy
2. The WTO is for free trade at any cost
3. Commercial interests take priority over development ...
4. It takes over the environment aspects to give concessions to some countries for raising barriers.
5. Some issues which are continuously raised in the ministerial for discussions but never discussed are over health and safety
6. The WTO destroys jobs, worsens poverty
7. Small countries are powerless in the WTO

8. The WTO is the tool of powerful lobbies
9. Weaker countries are forced to join the WTO
10. The WTO is undemocratic

### **How Does it Affect India?**

India is a founder member of World Trade Organization, and also treated as the part of developing countries group for accessing the concessions granted by the organization. As a result, there are several implications for India for the various agreements that are signed under WTO.

**Let us understand each agreement in general, what it means and its implications for India in specific.**

1. India was a signatory of the **General Agreement on Tariffs & Trade (GATT)**, and as a part of the commitment had to change several laws and policies; the major changes that were incorporated were as follows

- Reduction of peak and average tariffs on manufactured products
- Commitments to phase out the quantitative restrictions over a period as these were considered non-transparent measure in any countries policy structure.

The result of this agreement as mentioned earlier was limited as, GATT was only an agreement and there was no enforcing agency to strictly implement the clauses and punish the country which breaks the clauses. Thus the impact was partial. However, with WTO coming into effect, the competition from imports for the domestic firms has increased. WTO had the deadline till 2005, for the domestic policy was supposed to phase out the QR's; for those countries which face severe balance of payments problems special concession period was given. Thus it is very clear that only those firms that have competitive advantage would be able to survive in the long run, and those firms which are weak would fade into history in the process.

### **2. Trade Related Investment Measures (TRIMS)**

The agreement relates to investments originating from one country to another. The agreement prohibits the host country to discriminate the investment from abroad with domestic investment, which implies that it favours national treatment of foreign investment. Besides this, there are several other clauses of the agreement totaling to 5 in this segment, one agreement requires investment to be freely allowed within domestic borders without any maximum cap on it. Another restricts to impose any kind of export obligation or import cap on the investment. Another requires that there should not be any domestic content requirement on foreign firms operating and manufacturing in other countries.

These agreements have a direct impact on our Trade, Investment and foreign exchange policy, domestic annual budgetary proposals and also on the industrial policy.

Implementation process for the above requires proper preparation by the industries and policy makers, as sudden change may result in loss of revenue and decline of foreign exchange for the government and economy, and it may result in decline of market share and profitability of businesses, decline in employment opportunities and over all decline in growth.

### **3. Trade Related Intellectual Property Rights (TRIPS)**

An intellectual property right refers to any creation of human mind which gets legal recognition and protection such that the creator of the intangible is protected from illegal use of his creation. This agreement includes several categories of property such as Patents, Copyrights, Trademarks, Geographical indications, Designs, Industrial circuits and Trade secrets.

Since the law for these intangibles vastly varied between countries, goods and services traded between countries which incorporated these intangibles faced severe risk of infringement. Therefore the agreement stipulated some basic uniformity of law among all trading partners. This required suitable amendment in the domestic IPR laws of each country. Since this process is not a simple one, a time period of 10 years was given to the developing countries.

As a result, in India there was a requirement to change the patents act, Trade and merchandise mark act and the copyright right act. Besides these main laws, other related laws also required changes.

The main impact of this is on industries such as pharma and bio-technology, because now with the law in place, it is not possible to reverse engineer the existing drugs and formulas, change the

process and produce the same product. Now new investment in fresh research is required. This is quite a burden for small industries and there is a possibility that they are thrown out of business due to competition.

Besides these, the technology transfer from abroad is expected to become costly and difficult.

Strict implementation of law is very important in India, otherwise there could be disastrous affect on the revenue of industries which invest millions of rupees in Research and development if their products get infringed.

**4. Agreement on Agriculture (AOA):** The Agriculture happens to be one of the most protected sectors in all the countries without any exceptions, and therefore an agreement on the agricultural issues have always been evading and debated strongly by all the countries involved in trade in agriculture.

The agreement on agreement deals with market access, Export subsidies and government subsidies. Broadly, as of now the requirement is to open up the markets in specific products in market access and incase of subsidies, it is to go for tarrification and phase it out eventually or reduce it to bound limits. The immediate impact of the agreement would be on the policy makers to scrutinize all the items under subsidy, QRs and tariffs. However, the calculation of AMS reveals that the subsidy given to Indian farmers are much below the acceptable levels and therefore need not be changed. Looking from other perspective, the reduction of tariffs and subsidy in export and import items would open up competition and give a better access to Indian products abroad. However, the concern is on the competitiveness and sustainability that the Indian farmer would be able to prove in the long run once the markets open up. Thus there is a requirement to change policy support to meet the changing needs of Indian agriculture to gear it up for future.

**5. Agreement on Sanitary and psyto-sanitary measures (SPM):** this agreement refers to restricting exports of a country if they do not comply with the international standards of germs/bacteria etc... if the country suspects that allowing of such products inside the country would

result in spread of disease and pest, then there is every right given to the authorities to block the imports.

Indian standards in this area are already mentioned and therefore there is no need to change the law, but the problem is that of strictly implementing the laws. There is an urgent need to educate the exporters regarding the changing scenario and standards at the international arena, and look at the possible consequence and losses to be incurred if the stipulations are not followed. Therefore, to meet the standards certain operational changes are required in the industries such as food processing, marine food and other packed food that is being currently exported from India.

**6. Multi-Fiber Agreement (MFA):** This agreement is dismantled with effect from 1 January 2005. The result was removal of QR on the textile imports in several European countries. As a consequence a huge textile market is opened up for developing countries textile industry as well as for other countries that have competitive advantage in this area. The immediate impact is on the garment and textile manufacturers and exporters. However, it still needs to be seen whether the industry is able and ready to take advantage of the large markets. This requires quite an amount of modernization, standardization, cost efficiency, and customization and frequent up gradation of designs to meet the changing need of global customers. The dismantling of QR also mean more competition to Indian textile exporters and therefore, it becomes imperative to enhance the competitiveness in niche areas.

Besides these major agreements there are several other agreements such as agreement on **Market Access**, which propagates free market access to products and reduction of tariff and non-tariff barriers; agreement to have **Safeguard Measures** if there is an import surge and it is liable to affect the domestic industries in the transition economies. These measures can include imposing QR for a certain period and also imposing tariffs on the concerned products. There are other agreements that call for direct reduction of **Subsidies on Exports**, which are not permissible, and phasing it out over a period of time. Besides these there are other **Counter-Veiling Duties (CVD)** that are permitted to be used in certain conditions. These are supposed to have an impact positive if they help the industries and negative if they reduce the cost competitiveness.



The trading countries are allowed to impose an **Anti-Dumping Duty (ADD)** against imported products if the charge of Dumping is claimed against them. The requirement is to prove that the product is being sold at a price, which results in material injury to the domestic industries. There are several cases in which the duty is imposed but it still remains to be proven by the Dispute settlement tribunal in case the other trading party opposes the duty imposed as "unfair". However, the proposal always should come from the representatives of the industries affected; this may result in a problem, as small industries voice may remain unheard in the process.

**Certain Other Unresolved Issues:**

There are several clauses in each of the above agreements; where there has been no consensus arrived. Besides that there are several other cases where there is no consensus on the entire agreement itself, which means that these are still in their conceptual and drafting stages.

Some of such agreements are on **Labour Standards** and core social clauses, which intend to impose a labour standard and certain norm against exploitation of labour by the organization where they work. Such standards are likely to result in banning of certain items exports to developed world causing severe damage to industries such as Carpet manufacturing, crackers, leather, handicrafts and sports goods.

There is another agreement, which is still under discussion by member countries; this is on **Trade and Environment**. Some countries wish to impose restrictions on trade on environmental grounds. The agreement revolves around protecting global environment by enforcing standards on production and consumption. The ranges of clauses are from production, packaging to transportation of the goods as specified by norms. The main impact of this clause would be on industries such as seafood, food processing and drugs and chemical manufacturing. There would also be a overall impact on the export business as the rules related to packaging would be very stringent.

Another agreement where the consensus is yet to be reached is on **Trade and Investment**. The main objective of this agreement is to enable a free operating environment for foreign investment in host countries such that there is minimum interference and equal rights. There would be a direct impact on the foreign investment policy and trade policy of the government with a long-term impact on



balance of payment and foreign exchange position of the country. This agreement would affect almost all industries and services without an exception. However the specific impact is expected on auto components and small retailers.

**Trade and Competition** is another agreement on which the discussions are going on to reach a consensus. The main aim of this is to stop the business practices that distort competition in any way and to curb monopolistic growth in trade. The agreement would have an impact on the MRTP act, which needs to be replaced by the new competition law, the process for which has already started. These changes would result in a more competitive environment and it would also be a deterrent for big business houses if they wish to expand further in the same area. Thus, the formation of cartels and mergers and acquisitions would be restricted to a great extent.

**Transparency in Procurements made by the Government** is one such clause where it is being debated to a large extent. This is particularly of concern to developing countries as the role played by the government in a countries development is much higher than what it is in other developed countries. This would have a serious impact on the way the government and other public sector units approach the domestic procurement. This would imply that no special preference would be given to the domestic suppliers and they also need to compete on a price basis for getting orders from domestic government. This clearly can mean that many government suppliers may lose out in competition with efficient and low cost foreign suppliers.

### **Major Conclusions**

The Indian economy has experienced a major transformation during the decade of the 1990s. Apart from the impact of various unilateral economic reforms undertaken since 1991, the economy also had to reorient itself to the changing multilateral trade discipline within the newly written GATT/WTO framework. The unilateral trade policy measures have encompassed exchange-rate policy, foreign investment, external borrowing, import licensing, custom tariffs, and export subsidies. The multilateral aspect of India's WTO commitments is regarding trade in goods and services, trade-related investment measures, and intellectual property rights.

After analyzing the economic effects on India and other major trading countries/regions of the Uruguay Round (UR) trade liberalization and the liberalization that might be undertaken in a new WTO negotiating round. India's welfare gain is expected to be 1.1% (\$4.7 billion over its 2005 GDP) when the UR scenarios get fully implemented. The additional welfare gain is an estimated 2.7% (\$11.4 billion) when the assumed future WTO round of multilateral trade liberalization is achieved.

It is expected that Resources would be allocated in India to the labor-intensive sectors such as textiles, clothing, leather and leather products, and food, beverages, and tobacco. These sectors would also experience growth in output and exports. Real returns to both labor and capital would increase in the economy. However as mentioned above in the analysis of each agreement there is a serious and urgent need to re-look the strategies followed by individual firms in the changing context of increasing competition and opened markets. As said time and again there is no reversal of agreements, so what is required is to make internal policy changes at macro, meso and micro level to suit the changed external environment.

#### Progress Made by WTO on Developing Countries:

The World Trade Report 2014 argues that the WTO has enabled developing countries to take advantage of, adapt to and mitigate risks arising from these trends. It has done so by ensuring that countries take binding commitments which increase certainty over their trade policies, by providing flexibilities that better allow developing countries to undertake such commitments, and by facilitating technical assistance to build trading capacity within those economies.

In addition, countries undertaking substantial reforms related to WTO accession were found to grow around 2.5 per cent faster for several years afterwards, the report notes.

The World Trade Report 2014 identifies these four trends as:

- the rise of the developing world;
- the expansion of global value chains;

— the higher prices of commodities; and

— the increasingly global nature of macroeconomic shocks.

The report shows how trade contributed significantly to the unprecedented economic development that has taken place since 2000. Trade has allowed many developing countries to benefit from the opportunities created by emerging new markets, to integrate into the world market through global value chains at lower costs, and to reap the rewards from higher world commodity prices.

The WTO has underpinned this progress by providing certainty, thereby creating the predictable environment that allowed economic activity to flourish. In addition, it helped contain protectionism in the face of the greatest economic crisis in 70 years, thus helping to safeguard the economic gains made by developing countries in the recent past.

#### **Main points of the Report Rise of the developing world**

- ❖ Incomes in developing countries have been converging with those of rich countries. Since 2000, GDP per capita of developing countries has grown by 4.7 per cent, with developing country G-20 members performing particularly strongly. Meanwhile developed countries only grew by 0.9 per cent. As a result, developing countries now account for more than half of world output (in purchasing power parity terms).
- ❖ Higher GDP per capita helps to achieve other societal objectives, such as reducing poverty and protecting the environment. Given that more trade is associated with faster growth, trade can make it easier to achieve these goals.
- ❖ Expanding trade underpinned these gains in income. The share of developing countries in global trade rose from 33 per cent to 48 per cent since 2000.
- ❖ Over the last couple of decades, developing countries as a whole have reduced MFN tariffs, enabling this trade expansion. Average reductions of MFN tariffs have been greater in G-20 developing countries.

Increasing participation of developing countries in global value chains

Developing countries are increasingly involved in international production networks, including through services exports. More than half of their total exports in value-added terms are now related to global value chains (GVCs). South-South global value chain linkages are becoming more important with the share of GVC-based trade between developing countries quadrupling over the last 25 years.

GVCs offer an opportunity to integrate in the world economy at lower costs. GVC participation can lead to productivity enhancements through technology and knowledge transfers. Countries with high greater GVC participation have experienced higher growth rates.

But gains from GVC participation are not automatic. Many developing countries join GVCs by performing low-skill tasks where value capture is low and achieving upgrading to higher value tasks can be challenging.

Countries with a favourable business environment and low tariffs participate to a greater extent in GVCs. In addition, GVCs are associated with “deep integration” agreements: more than 40 per cent of free trade agreements in force today include provisions related to competition policy, investment, standards and intellectual property rights.

Obstacles for developing countries seeking to participate in GVCs include infrastructure and customs barriers. Directing Aid for Trade resources toward these objectives should therefore remain a priority.

### **Higher commodity prices**

Prices for food, energy, metals and minerals roughly doubled since 2000. Although prices have eased back from these historical highs, strong demand from large developing countries provides a strong reason to believe that the high-price environment is likely to stay.

The challenges and opportunities arising from high prices differ significantly across countries. In many developing countries the agricultural sector is important in terms of employment, production

and consumption. This suggests an important role for agriculture in development strategies in the developing world. But higher prices pose challenges for net importers of these goods.

Developing countries increased their market share in global agricultural exports from 27 to 36 per cent since 2000. But traditional market access barriers such as tariffs and subsidies continue to affect their exports and non-tariff measures are playing an increasingly important role.

Trade in natural resources has also grown strongly, not only in value terms but also in terms of volume. Several resource-rich countries have achieved high growth as a result, but the social and environmental impacts of natural resource extraction as well as economic diversification remain significant challenges.

Increased synchronization in and globalization of macroeconomic shocks

Global trade value fell by over 30 per cent within only a few months in face of the global economic crisis. This 2008-09 trade collapse and quick subsequent recovery revealed the dependency of developing economies on cyclical developments originating in large developed economies. The synchronization of downswings and upswings across the world illustrated the strong interconnectedness of economies through trade and financial links, in particular the role of supply chains in the propagation of shocks, and the importance of trade finance, which had dried up.

Despite suffering the greatest economic downturn since the 1930s, the world did not see a repeat of the wholesale protectionism which marked that previous era. Explanations for this include the existence of a set of multilateral trade rules, the effectiveness of monitoring efforts by the WTO, countries' anticipation of the self-harming impacts of protectionism in light of their participation in global value chains, and the internationally coordinated macroeconomic response in light of the crisis.

### **WTO and development**

The WTO has underpinned the progress made by many developing countries by allowing them to take advantage of, adapt to and mitigate risks arising from the four trends identified in this report. It

has done so through binding commitments, flexibilities, technical assistance, and its institutional infrastructure.

Commitments under the WTO are important for developing countries to promote their trade and development. Countries undertaking substantial reforms in the context of WTO accession were found to grow 2.5 per cent faster for several years thereafter. At the same time, developing countries need flexibilities because their economic circumstances can hamper their ability to implement obligations.

Development is a fundamental objective of the WTO. The agreement reached in the Bali Ministerial Conference in December 2013 is a positive step in advancing this objective and offers many opportunities for developing countries. To make trade work more effectively for development, further progress on the Post-Bali Agenda would be important.

The four trends show that trade is one of the key enablers of development. Trade has played a central role in lifting millions of people out of poverty in recent years and helped to achieve many of the UN millennium development goals (MDGs). The WTO and its rules should be seen as an integral part of the enabling environment for realizing any post-2015 development agenda

### **Tariff and Non-Tariff Barriers**

Tariff and Non-Tariff Barriers are restrictions imposed on movement of goods between countries. It can be levied on imports and exports. Tariff and non tariff barriers are imposed for various reasons such as –

- (i) **National Security** – Countries enforce tariff and nontariff barriers to protect the security of the nation. Eg. Defence sector in India
- (ii) **Retaliation** – Government of a country intervenes in the trade policies in order to act as a bargaining tool. Retaliation agreements help countries to allow free trade among them.

(iii) **Protecting Jobs** – Government aims to protect domestic employment. Domestic employment is affected from foreign competition as domestic industries start to import services from abroad in order to keep up with the competition.

(iv) **Protecting Infant industries** – Competition from imported goods threatens the infant industries of a country. In order to develop and grow certain industries government may impose heavy tariffs on imported goods to increase prices and help the infant industries.

(v) **Protecting customers** – Government may levy a heavy tax on goods which are against the welfare of the country and its citizens. Tariff Barriers Tariff is a custom, duty or a tax imposed on products that move across borders.

The words tariff/custom/duty are interchangeable. It is the most common instrument used for controlling imports and exports.

**Import tariff/duty** – It is the custom duty imposed by the importing country i.e. the tax imposed on goods imported. It is levied to raise revenue and protect domestic industries.

**Export tariff** – It is the duty imposed on goods by the exporting country on its exports. Generally certain mineral and agricultural products are taxed.

**Transit duties** – It is levied on commodities that originate in one country, cross another and are consigned to another. Transit duties are levied by the country through which the goods pass. It results in increased cost of products and reduction in amount of commodities traded.

#### **Other Tariff barriers**

**Specific duty** – It is based on (Specific attribute) physical characteristics of goods. It is a fixed or specific amount of money that is levied as tax keeping in view the weight(quantity)/measurement (volume) of the commodity.

**Ad valorem duty** – These are duties that are imposed according to the value of commodities traded between countries. It is generally a fixed percentage of the invoice value of the goods traded.



Compound duty – It is a combination of specific duty and ad valorem duty on a single product. It is partly based Non Tariff Barriers These are non tax restrictions such as

(a) government regulation and policies

(b) government procedures which effect the overseas trade. It can be in form of quotas, subsidies, embargo etc.

Quotas – It is a numerical limit on the quantity of goods that can be imported or exported during a specified time period. The quantity may be stated in the license of the firm. If the importer imports more than specified amount, he has to pay a penalty or fine.

VER (voluntary export restraint) – It is a quota on exports fixed by the exporting country on the request of the importing country. The exporting country fixes a quota regarding the maximum amount of quantity that will be exported to the concerned nation.

Subsidies – It is the payment made by the government to the domestic producer so that they can compete against foreign goods. It can be a cash grant, subsidized input prices, tax holiday, government equity participation etc. It helps a local firm to reduce costs and gain control over the market. Other barriers

Administration dealings – These are regulatory controls and bureaucratic rules and regulations which affect the flow of imports. It can be a delay at custom offices, safety inspection, environment regulatory inspection etc.

Local content requirement – Legal content requirement is a legal regulation which states that a specified amount of commodity must be supplied in the domestic market by the producer. It is used to help local labour and domestic suppliers of goods.

Government may state a – (a) labour requirement (b) input requirement or (c) component required at a local level.

Currency Control – Government may impose restrictions on currency convertibility. In order to import goods countries have to make payment in foreign currency which is acceptable worldwide i.e.

US dollar, European Euro or Japanese Yen. The government can put a limit on the amount of money that can be converted in foreign currency or ask a company to apply for a license to obtain such currency.

◆ Embargo – It means a complete ban on certain commodities. A country may ban import and export of certain goods in order to achieve some political or religious goals.

◆ Product testing and standardization – Standards are set for health, welfare, safety, quality, size and measurements which have to be complied with in order to enter a foreign market. The products have to meet international quality standards. All Products must meet the quality standards of the domestic country before they are offered for trade. Inspection is very extensive in case of electronic goods, vehicles and machinery.

### **Implications of WTO on Members Countries:**

The World Trade organization was established with an objective of enhancing the free and fair trade, improve growth rate of world trade by encouraging members to reduce trade barriers and to increase the overall prosperity in the global economies. The implication of WTO can be mentioned as follows:

- Promote Peace in the world trade as the disputes are handled at WTO forum constructively.
- Freer trade reduces the costs of living.
- Wider choice of products and services.
- Promotes Economic Growth as result of increased trade.
- Encourages Efficiency

### **WTO and India:**

India is a founder member of World Trade Organization and also treated as the part of developing countries group for accessing the concessions granted by the organization. As a result, there are several implications for India for the various agreements that are signed under WTO discussed as follows:

**(i) Reduction of Tariff and Non-Tariff Barriers:** The agreement involves an overall reduction of peak and average tariffs on manufactured products and phasing out the quantitative restrictions over a period. The important implication is that the firms that have competitive advantage would be able to survive in the long run.

**(ii) Trade Related Investment Measures (TRIMS):** The agreement prohibits the host country to discriminate the investment from abroad with domestic investment i.e. agreement requires investment to be freely allowed by nations.

**(iii) Trade Related Intellectual Property Rights (TRIPS):** An intellectual property right seeks to protect and provide legal recognition to the creator of the intangible intellectual use of his creation. This agreement includes several categories of property such as Patents, Copyrights, Trademarks, Geographical indications, Designs, Industrial circuits and Trade secrets. Since the law for these intangibles vastly varied between countries, goods and services traded between countries which incorporated these intangibles faced severe risk of infringement. Therefore the agreement stipulated some basic uniformity of law among all trading partners. This required suitable amendment in the domestic Intellectual Property Rights (IPR) laws of each country over a period of time. As a result Patents Act, Trade and Merchandise Mark Act and the Copyright Right Act were amended in India. The main impact of this is on industries such as pharma and bio-technology. Further, the technology transfer from abroad is expected to become costly and difficult.

**(iv) Agreement on Agriculture (AOA):** The agreement on agriculture broadly deals with providing market access, reduction of export subsidies and government subsidies on agriculture products by member countries. The reduction of tariffs and subsidy in export and import items would open up competition and provide a better access to Indian products abroad.

**(v) Agreement on Sanitary and phytosanitary measures (SPM):** This agreement refers to restricting exports of a country that do not comply with the international standards of germs/bacteria etc. Since allowing such products inside the country, there would be spread of disease and pest in the importing country. The implication of these agreements is that there is an urgent need to educate the exporters regarding the changing scenario and standards at the international arena especially in food processing, marine food and other packed food industries.

**(vi) Multi-Fiber Agreement (MFA):** This agreement is dismantled with effect from 1 January 2005. The result was removal of quantitative restrictions (QRs) on the textile imports in several European countries. As a consequence a huge textile market is opened up for developing countries like India. In order to take advantage of opening up better preparedness is required in terms of modernization, standardization, cost efficiency, and customization to meet challenges of foreign customers.

Besides these major agreements there are several other agreements such as agreement on Market Access, which propagates free market access to products and reduction of tariff and non-tariff barriers; agreement to have Safeguard Measures if there is an import surge and it is liable to affect the domestic industries in the transition economies. These measures can include imposing Quantitative Restrictions (QRs) for a certain period and also imposing tariffs on the concerned products, Agreement on Counter-Veiling Duties (CVD), Anti-Dumping Duty (ADD) against imported products if the charges of Dumping are proved against the exporting country.

**Part B- 2 Marks**

1. What is WTO?
2. List out the objectives of WTO
3. What are the functions of WTO?
4. What do you mean by TRIMS?
5. What is GATT?
6. Define the term TRIPS.
7. Why does the WTO need a separate Agreement on Agriculture?
8. What are the different non-tariff barriers?
9. What are the trade related aspects of IPRs in TRIPS Agreement?
10. What are the goals of WTO Agreements?

**Part C- 5 Marks**

1. Write a note on WTO and its impact on Indian economy?
2. Enumerate the functions of WTO.
3. Explain the major agreements in WTO?
4. Explain the Principles of WTO.
5. How does WTO Agreements affect the Member Countries- Discuss
6. Elucidate the Implication of WTO in Indian perspective.
7. Discuss the progress made by WTO on Developing Countries.
8. Give an account of the Regional Trade Associations and their role in promoting WTO's goals
9. Elucidate the goals of WTO Agreements.
10. Examine the Implications of WTO in respect of GATS.

**Part D- Case Study 10 Marks**

Stylo Garments, one of the Pakistan's largest exporters of ready-made garments was recently hurt by the quota allocations imposed by the U.S. Because the U.S. was the firm's largest customer, its sales decreased by 40%. In order to counter balance this drastic sales drop Mr.Khan, the Company's Chairman, decided to enter the EEC market. The problem was that this market was highly fragmented, thus only a large number of relatively small orders were available.

**Question**

Q1. Evaluate the Pros and Cons of several alternatives that Mr.Khan might consider.

India's trade relations with the members of European Union (EU) are more than 500 years old. They started with the landing of Vasco da Gama, a Portuguese sailor, at Calicut, sailing via the Cape of Good Hope, in 1498. Since then, the relations have seen many ups and downs, but in recent past, realization has dawned on the both economic entities that deeper, wider and stronger trade bindings are the interests of both. That's why they have started talking of an Indo-EU free trade area pact. India's trade relations with the European Economic Community (EEC), the predecessor of EU, could be traced back to 1960s when the latter suspended duties on some major Indian export commodities like tea, species and hides. This was followed by many sectoral trade agreements between the two and the benefits provided by EEC under the Generalized System of Preferences (GSP), in 1971, to India. Later on trade ties got further cemented with the signing of the Commercial

Cooperation Agreement, in 1973, and a more comprehensive Economic and Commercial Cooperation Agreement, in 1981. In 1993, India and EU signed a multidimensional cooperation agreement for partnership and development; and in the 21<sup>st</sup> century, the commercial relations between the two got the necessary push and a platform for direct regular discussions with the start of Indo-EU business summits. The first of these summits took place at Lisbon, on June 28, 2000. The result of all these have been that the trade between the two registered an impressive growth of more than 150 percent; increasing from 9.97 billion euro in 1991 to 25.52 billion euro in 2001. The main items of Indo-EU bilateral trade are agricultural products, machinery, transport material, chemical products and textiles and clothing. Today, EU a conglomerate of 25 European nations has emerged as India's single largest trading partner, which accounts for, approximately, one-fifth of its exports and imports. In 2006, the value of Indian exports to EU was Euro 22.4 billion and the value of its imports from EU was euro 24 billion. As far as EU is concerned, India is only its tenth largest trading partner accounting for 1.8 per cent of its trade. In 2006, India accounted for only 1.7 per cent of EU imports and 2.1 per cent of its exports. During 2006, Indo-EU trade increased by almost 16 per cent and has increased with an annual average of 13.6 per cent between 2002 and 2006. The major trading partners of India within EU are UK, Germany, Belgium, Luxemburg, Italy, France and the Netherlands. Even though the Indo- EU trade has expanded rapidly in the past and the two meet regularly at annual trade summits for enhancing trade and investments, still the exporters on the two sides complain about the tariff and nontariff barriers faced by them. The Indian exporters face non-tariff barriers in the form of standards, testing, labeling, certification requirements etc. The issue of non tariff barriers has become so much important that speaking at the sixth Indo-EU business summit. On the other hand, since the coming into existence of WTO, EU has also complained about many issues considered by it as trade defence instruments used by India. The Indian government keeping the health and safety concerns of its citizens in mind, asked the customs authorities in March 2001 to ensure that all the imported food products satisfy the conditions laid down in the prevention of Food Adulteration (PFA), 1954, prior to the the custom clearance. In carrying out this, the custom authorities get the products tested at the designated laboratories; check the condition of the hold used for transportation to see whether it has resulted in the deterioration of the products or not; and try to ensure that the products meet the labeling requirements. The Indian government, after



consultations, cleared the imports of perishable for self consumption or for direct use from the mandatory testing process if they possess certificates from the internationally known testing laboratories or government laboratories. Still the European exporters complain that they face a number of difficulties in getting the food products cleared at the customs, owing to the limited number of designated labs; long time taken in issuance of certificates; heavy damages and demurrage charges at customs warehouse; and complex PFA rules that leads to corruption. Not long back, an order came from the Indian government which made the certification of 159 products mandatory. According to it products like electrical appliances, switchgears, PVC insulated cables, transformers, cement, gas cylinders, X-ray equipment, miner safety shoes, mineral water, clinical thermometer etc. could only be imported after the Bureau of Indian Standards (BIS) certification. All the expenses involved in this process viz application fees, testing costs and licensing fees etc. are to be borne by the application firms. The EU views this mandatory testing to be inconsistent with India's obligations under international agreements and charges that this effectively restricts the volume of exports to India. On the other hand, India counters these allegations on the basis that these are equally applicable on domestic products and are thus, in compliance with the WTO's national treatment requirement clause. In the view of changes and difficulties, India removed the mandatory requirements for the majority of steel products on October 28, 2003. The European wines and spirits industries lodged a complaint, on July 20, 2005, against the trade barriers maintained by India on imported wines and spirits. The complaints argued that the exports to India are getting affected on account of the additional duty which is imposed on all imported wines and spirits in India; the higher taxes applied by certain states on imported wines and spirits; and the restrictions maintained by some states on the import and sale of the same within their periphery. The second complaint was withdrawn by the complainants when the investigations by the commissions were under progress. After the investigations, the Commission reported that India imposes an additional duty on all imported wines and spirits, in lieu of the excise duties levied at the state level on domestic products, the amount of which appears to exceed the level levied on the domestic producers; and there are seven Indian states which do not have any policy regarding licensing for retail sale of imported wines and spirits. Not satisfied with its talks with the Indian authorities, the EC approached WTO in November 2006.

Q1: Do you think that the Indian Government's order regarding BIS certification is out of genuine concern or just to restrict the imports? Discuss.

Q2: To what extent you feel that EU is against the Indian Exports?

Q3: Comment on the trade dispute concerning the EU export of wines and spirits to India.



**KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE****DEPARTMENT OF MANAGEMENET****Unit 2- WORLD TRADE ORGANIZATION- Multiple Choice Questions- Each Question carries ONE Mark**

<b>SL.NO</b>	<b>Question</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>	<b>Answer</b>
1	Who has been appointed India's permanent WTO ambassador?	JS Deepak	TS Deepak	BS Deepak	RS Deepak	JS Deepak
2	India is set to withdraw MFN status to which country?	Pakistan	Afghanistan	Bangladesh	China	Pakistan
3	India has ratified the WTO trade facilitation agreement becoming the .....WTO member to accept the TFA	75	76	77	78	76
4	Cabinet has approved India's stand on what at the WTO?	Food security	Water security	Energy Security	Money	Food security
5	India is set to pitch for a strong TFA in services at WTO. What does TFA stand for?	Trade Facilitation Agreement	Trade Formation Agreement	Trading Formation Agreement	Trading Facilitation Agreement	Trade Facilitation Agreement
6	Which of the following is not a non-tariff barrier?	A quota on apparel	A tax equal to 12% of value on imported oil	A voluntary export restraint on cars	A regulation requiring government agencies to favor domestically producers	A tax equal to 12% of value on imported oil
7	The main difference between a tariff and a quota is.....	A quota reduces the quantity of imports more than a tariff	A tariff raises the price of imports more than a quota	A tariff generates government revenue, while a quota, unless it is sold, does not	A quota does not harm domestic consumers	A tariff generates government revenue, while a quota, unless it is sold, does not

8	A government procurement regulation or practice constitutes a nontariff barrier when.....	Government agencies are required to purchase from the lowest bidder	Government shows a preference for domestic sellers over foreign sellers	Government requires that goods that it purchases meet a uniform safety standard	Government purchases are financed by tax receipts	Government shows a preference for domestic sellers over foreign sellers
9	Import quotas are most commonly administered.....	By taxing imports	By auctioning import licenses to the highest bidder.	By granting import rights to domestic firms	By granting import rights to foreign firms or governments	By granting import rights to foreign firms or governments
10	Which of the following will cause the tariff equivalent of a quota to increase in a small country?	A decrease in domestic demand	A decrease in domestic supply	A rise in the world price	A rise in the quantity of imports permitted by the quota	A decrease in domestic supply
11	10th WTO Ministerial Conference was held in which city?	Nairobi	Durban	London	New York	Nairobi
12	WTO released its 2015 Annual Report on 30th September 2015 according to which global trade will grow by what percentage in 2015?	2.5	2.6	2.7	2.8	2.8

13	<p>Which two of the following are the most likely effects of the imposition of a tariff on an imported good?</p> <p>a) The domestic price of the imported good will fall</p> <p>b) Overseas production of the good may be stimulated</p> <p>c) Overseas employment will rise</p> <p>d) The domestic price of the imported good will rise</p> <p>e) Gain of tax revenue by the government</p>	d and e	b and d	c and d	b and e	d and e
14	<p>Which two of the following are arguments used by critics of free trade?</p> <p>a) Free trade does not take into consideration productivity differences between countries</p> <p>b) Free trade may lead to unemployment</p> <p>c) Free trade often ignores the effects of monopoly elements on consumer welfare</p> <p>d) Free trade can only work within trading blocs</p> <p>e) Free trade reduces international specialisation</p>	c,e	a,c	b,d	b,c	b,c

15	Which two of the following are regarded as the main aims of the World Trade Organisation (WTO)? a) To eliminate discrimination in world trade b) To provide financial assistance to countries with debt c) To reduce tariff barriers d) To make 'infant industry' protection illegal e) To help give preferences to smaller economies	b,d	c,e	b,e	a,c	a,c
16	Which two of the following are the most integrated forms of regional trading arrangement? a) Customs union b) Economic union c) Free trade area d) Multilateral trading area e) Common markets	b,c	a,e	b,e	b,d	b,e

17	Which two of the following arguments are most likely to be used to justify protectionism? a) To protect high cost domestic industries b) To protect strategically important industries c) To protect industries which are still immature d) To maximise government tax revenue e) To protect environmental standards	a,d	b,c	c,d	d,e	b,c
18	Where the member countries of a trading bloc may suffer because they have to buy products from within the bloc when cheaper sources are often available from outside the bloc.	The non-tariff effect	The multilateral trade effect	The inter-bloc effect	The trade diversion effect	The trade diversion effect
19	A form of protection which is often used to protect the agricultural sector in EU countries.....	Exchange controls	Tariffs on imports	Voluntary export restraints	Time consuming formalities	Tariffs on imports
20	A situation where any advantage given by one member of the WTO to another member must be extended to all WTO members.	The comparative advantage principle	The trade diversion principle	The excessive invoicing principle	The most favoured nation principle	The most favoured nation principle

21	A situation where countries export a product at a price below the cost of its production.	Price discrimination	Full cost pricing	Price skimming	Dumping	Dumping
22	A protectionist measure whereby members of a regional trading bloc agree to impose an identical rate of protection on all goods imported from non-member countries.	Non-tariff agreement	Common external tariff	Technological standards control	VER agreements	Common external tariff
23	The WTO Agreement related to investment measures is.....	TRIPS	TRIMS	GATT	TCA	TRIMS
24	By 2008, ..... WTO members had notified the organization of participation in one or more regional trade agreements.	one-third of	one half of	two-thirds of	almost all	almost all
25	WTO is.....	imposes tariffs on countries with a history of human rights violations.	liberalizes trade among many nations throughout the world.	lowers trade barriers and tariffs for developing countries.	increases trade barriers and tariffs for industrialized countries.	liberalizes trade among many nations throughout the world.

26	What is the underlying characteristic of the WTO?	It facilitates economic co-operation between different countries	It resolves disputes between economic trade blocks	It facilitates the development of less developed countries	It acts as an umbrella institution that regulates the agreements concluded at the Uruguay round, the organisation's ultimate goal being the promotion of free international trade	It acts as an umbrella institution that regulates the agreements concluded at the Uruguay round, the organisation's ultimate goal being the promotion of free international trade
27	Does the WTO come with its own institutional framework?	No, the WTO depends on the relevant frameworks of national governments	No, the WTO provides certain institutional arrangements but only on an ad hoc basis	Yes, the WTO provides a certain institutional framework which changes depending on the nature of free trade agreements	Yes, the WTO provides a common institutional framework for the implementation of free trade agreements	Yes, the WTO provides a common institutional framework for the implementation of free trade agreements
28	The institutional framework developed in 1947 to promote trade liberalization is known as.....	WTO	GATT	IMF	World Bank	GATT
29	The General Agreement on Tariffs and Trade was replaced by.....	NAFTA	FTA	WTO	SAPTA	WTO
30	Which of these organisations releases the Annual Corruption Perception Index ranking of countries by their perceived levels of corruption?	Transparency International	WIPO	WTO	World Bank	Transparency International
31	WTO was established .....year	1990	1995	1997	1999	1995

32	WTO Headquarters.....	Sweden	Norway	Switzerland	India	Switzerland
33	MFN means.....	Multi Flag Nation	Most favored Nation	Metromedia Fiber Network	Metro Flag Nation	Most favored Nation
34	Most-favoured-nation treatment means.....	A treatment extended to a State's own nationals	A favourable treatment extended to a particular State	A treatment similar to the one extended to any third State	Treaty Nation	A favourable treatment extended to a particular State
35	Which of the following is not a member of the WTO?	United States	Iran	China	Russia	Iran
36	Members of the World Trade Organization are required to.....	Eliminate all tariffs	Allocate quotas on a first-come-first-served basis	Enforce patent rights for patent holders from other countries	Prevent their firms from “dumping.	Enforce patent rights for patent holders from other countries
37	Which of the following exceptions in the WTO rules does not permit a country to use a tariff or quota that is more restrictive than its bound tariff?	Anti-dumping	Countervailing duties	Preferential trade agreements	Safeguards	Preferential trade agreements
38	Decisions are made by all the members together can be termed as.....	consensus	Trade Facilitation Agreement	cross-border Investments	anti-dumping duties	consensus
39	The WTO's top level decision-making body.....	WTO	GATT	Ministerial Conference	State Government	Ministerial Conference
40	The Fifth WTO Ministerial Conference was held in.....	Uruguay	Sweden	Mexico	Russia	Mexico



41	The Most Favored Nation (MFN) principle states that.....	a country should grant its favorite trade partners easier access to its national market than it grants to less favored trade partners	a country should grant every country the same trade privileges that it grants its most favored trade partner	a country should grant another country precisely the same trade privileges that the other country grants it	a country may not grant other countries the same privileges that it grants a country designated as its most favored trading partner	a country should grant every country the same trade privileges that it grants its most favored trade partner
42	The General Agreement on Trade and Tariffs (GATT).....	permitted countries to impose trade restrictions under certain conditions	did not permit countries to impose trade restrictions under any circumstance	mandated the immediate end to any and all trade restrictions, which is why it was widely ignored	permitted countries to raise tariffs on some goods provided they lowered them on other goods	permitted countries to impose trade restrictions under certain conditions
43	Participation in the GATT rounds.....	diminished after the easy issues were dealt with in the early rounds	increased from 23 countries in the first GATT round in 1947 to over 140 in the Doha Round	peaked at 62 countries in the Kennedy Round, but developing countries have refused to participate in subsequent rounds	grew to nearly 100 countries at the start of the Doha Round in 2001	increased from 23 countries in the first GATT round in 1947 to over 140 in the Doha Round
44	TRIM.....	Trade-related investment measures	Trade-related intellectual measures	Trade-related intellectual mechanism	Traiff-related intellectual measures	Trade-related investment measures
45	Total Members in WTO.....	164	166	167	160	164
46	WCO.....	World Customs Organization	World Consumers Organization	Work Customs Organization	World Council Organization	World Customs Organization

47	GATS.....	General Agreement on Traiff in Services	General Agent on Trade in Services	General Agreement on Trade in Services	General Agreement on Trade in States	General Agreement on Trade in Services
48	GATT.....	General Agreement on Tariffs and Trade	General Agreement on Trade and tax	General Agreement on Tax on Tax	General Agreement on Trade and tariff	General Agreement on Tariffs and Trade
49	ITO.....	International Trade Organization	International Trade Centre	International Labour Organization	Interim Commission Organization	International Trade Organization
50	One of the Objectives of WTO.....	Trade liberalization	Money control	Free and fair trade	Country growth	Free and fair trade
51	.....of peak and average tariffs on manufactured products	Increase	Reduce	Moderate	Constant	Reduce
52	TRIMS.....is having agreement	4	3	5	2	5
53	TRIPS is related to.....	Copyrights	investment	Foreign direct	Monetry policy	Copyrights
54	TRIPS time period is .....years	5	7	10	15	10
55	AOA means.....	America of Africa	African American Trade	Agreement on America	Agreement on Agriculture	Agreement on Agriculture
56	.....agreement refers to restricting exports of a country if they do not comply with the international standards	TRIPS	TRIMS	AoA	SPM	SPM
57	SPM Means.....	Strategic Portfolio Management	Agreement on Sanitary and psyto-sanitary measures	State Project management	State Product Measures	Agreement on Sanitary and psyto-sanitary measures
58	Multi-Fiber Agreement dismanteled from.....	2005	2010	2015	2016	2005

59	GVC Means.....	Global Value Chain	Gross Value Chain	Global Velocity Consus	Gross National Income	Global Value Chain
60	Import tariff/duty imposed by.....	importing country	Exporting Country	WTO	GATT	importing country

**UNIT-III**

**SYLLABUS**

**International Business Law:** International Business Law – International Sale of Goods, Laws governing International Sale of goods – Domestic laws, International Treaties, International Mercantile Customs and Usages – Inco terms, Rules on International Sale of Goods, International Commercial Dispute Settlement – Reconciliation, Arbitration etc.

**Introduction:**

The purpose of introducing this subject is to give an overview about the legal environment and the intricacies involved in international trade. Law is defined as a set of rules established by a Government to regulate the conduct of individuals and groups in a society. These rules are legal rights granted to and obligations imposed on citizens and enforced by the Sovereign. It is the duty of citizens to obey these rules and those who violate them are liable for punitive action as provided for in the law.

**Major reasons for the development of law are:**

- ❖ To give basic rights to individuals, to society and organizations, and to legally protect the enjoyment of these rights.
- ❖ Put in a general way law is for regulating relationships between individuals or between individuals and their society.
- ❖ To provide a positive force to promote worthwhile individual, social and national goals.

Coming to Business Laws, it may be stated we are living in a world of business with roles as consumers and producers, employers and employees, principals and agents, and so on with rights, responsibilities and obligations placed on us. In fact, in our business-oriented society law touches every aspect of business life. Therefore, it is imperative to know what Business Law is. Business law is that part of the law which deals with mercantile transactions of people and institutions. One of the reasons for studying business law is to learn what the law provides as conditions for conduct of businesses both at the national and international level.

Understanding business law will enhance the ability to take right decisions without violating rules framed by the Government. The following brief introduction helps the students to get acquaintance with Business Law.

**International law:**

International law may be defined as a body of law formed as a result of international customs, treaties, and organizations that governs relations among or between nations. International Customs are customs evolved over the centuries. Treaties and International Agreements are agreements between or among nations. International Organizations and Conferences are composed mainly of nations and usually established by treaty — for example, the 1980 Convention on Contracts for the International Sale of Goods, or CISG.

Legal systems are generally divided into common law and civil law systems. Common law systems are based on case law. These systems exist in countries that were once a part of the British Empire (such as Australia, India, and the United States). Civil law systems are based on codified law (statutes). Courts interpret the code and apply the rules without developing their own laws. Civil law systems exist in most European nations, in Latin American, African, and Asian countries that were colonies of those nations; Japan; South Africa; and Middle-east countries.

**What is the International Sales of Goods?**

In business operations in general and international business in particular, the sales of goods are key transactions. On the domestic scale, it is the exchange of goods within a country, while on the international scale, it is the exchange of goods among different countries through the import and export transactions.

Despite the increasing emergence of new international business transactions, such as international service provision and international investment, the international sales of goods, as traditional transactions, still have its important position in international business.

According to Article 27 of the Commercial Law of Vietnam 2005, the international sales of goods ‘are performed in the forms of export; import; temporary import for re-export; temporary export for re-import; and international sales of goods without import-export procedures at border-gates’.

The international sales of goods are business transactions that usually take place beyond the territory of a country. It is performed in different countries with different elements of geography, history,

climate, economy, policy, law, culture and religion. Therefore, it is much more complicated and more risky than the sales of goods within a country.

### **Regulations on International Sales of Goods**

There are many different sources of law that govern the international sales of goods, of which the three main sources are domestic law, international treaties, and international mercantile customs and usages.

#### **A. Domestic Law**

The sales of goods have been always basic business transactions, therefore each country has created its own rules governing the sales contracts. In several countries, there have been particular regulations on the sales contracts, e.g., The British Sales of Goods Act 1979. In certain other countries, for example, Vietnamese law on sales of goods now is a part of Commercial Law. In China, the law on sales contracts has been a chapter within Contract Law 1999.

#### **International Treaties**

Conflicts of laws may cause disputes in international sales of goods. To prevent these, countries often negotiate the adoption of related international treaties in order to unify certain rules aiming at governing these transactions.

There are two types of such international treaties - one to unify the substantive rules, and the other to unify the rules of conflict. These treaties may be either bilateral or multilateral.

#### **1. Treaties to Unify the Substantive Rules**

The unification of the substantive rules occurs when countries agree to create the substantive rules, in order to govern international sales of goods transactions. Since 1920s, many international commercial treaties containing substantive rules were adopted and performed, showing an indispensable trend in the economic development of the world.

There were several important international treaties in the field of the international sales of goods. These were:

The two The Hague Conventions 1964 on the international sales of tangible property

The first is the Convention on Uniform Law on the Formation of Contracts for the International Sales (hereinafter the 'ULF').

The second is the Convention on Uniform Law on the International Sales of Goods (hereinafter the 'ULIS'). In fact, these two conventions are rarely applied.

### **International Mercantile Customs and Usages**

International mercantile customs and usages are an important source of law governing sales contracts. They have been recognized and widely applied to business activities on a regional or a global scale. Some international mercantile customs and usages applied to the international sales of goods include International Commercial Terms (hereinafter the 'INCOTERMS') codified and issued by the International Chamber of Commerce (hereinafter the 'ICC') in 1936 (and amended in 1953, 1968, 1976, 1980, 1990, 2000 and 2010) (see, the Section Two of this Chapter); and Uniform Custom and Practice for Documentary Credits (hereinafter the 'UCP') (see the Section Four of this Chapter). The international mercantile customs and usages usually govern specific issues, such as the transfer of risk from the seller to the buyer, the obligations of each party related to the transport and insurance of goods, etc.

### **INCOTERMS 2000**

**Meaning of Incoterms** There are a number of common sale or trade terms used in international trade to express the sale price and corresponding rights and obligations of the seller and buyer. These terms are defined by the International Chamber of Commerce, which are known as 'Incoterms'.

### **Purpose of Incoterms**

The purpose of Incoterms is to provide common interpretation for the different trade terms used in international trade. In international business, parties are from diverse nations. Different meanings exist for different terms, due to different trade practices followed in those countries. Specific terms are to be interpreted by all parties in a similar manner; otherwise disputes are bound to arise. This can create misunderstandings and disputes. They may lead to litigation resulting in wastage of time,



money and strained relationship, disrupting the long- standing mutually beneficial business contacts. In order to remedy the problem, International Chamber of Commerce has developed Incoterms. The uncertainties of different interpretation have been greatly avoided or at least reduced by these Incoterms. These terms have been revised several times with the changes in international commercial practices, from time to time. The current version of Incoterms has been issued in 1990. They define the rights and responsibilities of importers and exporters in international trade.

**Types of Contracts** Type of contract depends on the basis of price quotation. Mainly, there are three types of contracts, which are often used in international market.

**Ex Works Contract:** The seller fulfills his obligation by delivering the goods at his factory/shop/warehouse. The buyer bears all the costs and risks in taking the goods from that place to the desired destination. This term represents the minimum obligation on the part of the seller. In this type of contract, the obligations of the seller are the lowest and contract price is always the lowest.

**Free on Board (FOB):** The seller fulfills his obligation when he delivers the goods on the ship rails at the named port of shipment. The buyer has to bear all costs and risks from that point of time. Cartage up to the port, inland insurance, port dues and loading charges into the ship are to be borne by the seller. The seller has to take care of all these expenses. The term can only be used for sea or inland water transport.

**Cost Insurance Freight (CIF):** In addition to the responsibilities associated with FOB contract, exporter has to arrange shipping space, bear the ship freight and marine insurance charges from his contract price.

**Major Laws having bearing on Export Contracts** Export contracts are private contracts and Government does not interfere with them so long as the provisions of the contract do not go against the provisions of various laws, which have been enacted for the export-import business contracts in India. The provisions of the export contracts should not flout the existing laws of the land. The following are the major laws: **(A) Foreign Trade Development & Regulation Act, 1992:** Under this Act, Director General of Foreign Trade brings out the export-import policy and lays down the procedures, from time to time. While entering into a contract, exporter has to draft the provisions of the contract in pursuance of the provisions of the Act. To illustrate, International Business Contracts

37 where there is a price regulation and a floor price is fixed in respect of a product, exporter should not enter into a contract with a foreign buyer for supplying that product below the price fixed. If a product is banned for export, contract should not cover export of that commodity. If Government releases certain goods on quota basis, it is necessary for the exporter to provide a clause in the export contract that the supply will be dependent on the release of quota from government. If the contingent clause is incorporated and quota is not released to that exporter and in consequence there is breach of contract in his performance, exporter would not be liable for default in performance.

**(B) Foreign Exchange Management Act, 1999:** As per the provisions of the Act, export proceeds are to be brought into India within a period of 180 days from the date of shipment. Exporter is not to enter a contract providing a period of credit of more than 180 days to the importer unless the exports are made on deferred payment basis or goods are sent on consignment basis. Further, an exporter is not permitted to pay commission more than 12.5% to his agent, abroad for the sales made by him and so provision for payment of commission is not to be made at a higher rate in the contract, unless prior permission of RBI has been obtained.

**(C) Pre Shipment Inspection and Quality Control Act, 1963:** In the larger interests of the international trade and in order to protect the image of the exporter as well as nation, certain products have been brought under the Act. Once a notification is made under the Act, certificate about pre-shipment inspection & quality control has to be obtained by the exporter. Quality norms have to be complied with while entering into the contract with the importer. Contract can stipulate higher quality norms but does not allow to mention a lower norm than the one mentioned in the Act. Even if the importer does not insist on the certificate, it is obligatory on the part of exporter to obtain the certificate from the approved agency before shipment of goods.

**(D) Customs Act, 1962:** No goods can be sent out of the country without the customs clearance. All consignment of goods can be checked by the customs to ensure that the goods stated in the invoice only are leaving the country and that there has been no over/under invoicing in this process. The authority to check the cargo involved is vested with the customs, under this Act.

**(E) International Commercial Practices:** Indian laws, basically, govern the export import contracts. In addition to these laws, there are International Commercial Practices, which also have a significant

bearing on these contracts. The International Chamber of Commerce, Paris has prepared two documents, in the context of international business. The documents are Uniform Customs and Practices for Documentary Credits (UCP) 1993 and Incoterms, 1990. Banks use UCP in the negotiation of export-import documents. Virtually, it is a bible to bankers for negotiation of documents.

### **International Commercial Dispute Settlement – Reconciliation, Arbitration**

Arbitration' as a mechanism of justice is as old as civilization. Arbitration literally means a mechanism in law which encourages parties to settle their differences privately either by mutual consensus or by mediation of a third person. It was prevalent under the Roman law and the Greek civilization in the sixth century. Earlier in England, the attitude towards arbitration was generally hostile but business exigencies changed the scene, in course of time as a yielding place for commercial arbitration. Ancient India had many traditions of arbitration/ mediation up to the medieval period.

The questions like what is the purpose of arbitration? what are prevalent treaties and conventions regarding arbitration? what are the laws present in India dealing with arbitration? are dealt in detail in the paper, as human conflicts are inevitable so are the disputes. It is difficult to imagine a human society without conflict of interest. Disputes must be resolved at the minimum possible cost both in terms of money and time.

Courts have become overcrowded with litigants. According to an official report of the year 2014, there is a pendency of over ninety-two crore cases in our high courts across the nation. Naturally litigants have to face so much loss of time and money that at long last when a relief is obtained, it may not be worth the costs. Thus this paper will also be an attempt to devise a machinery which should be capable of providing an alternative to the conventional methods of resolving disputes. All that can be said is that “ADR is rapidly developing its own national institutions, experience, and theoretical and practical development, and at the same time offering a simpler cross-border dispute resolution approach.”

## **Introduction**

For resolution of disputes, there is a legal system in every human society. Every injured person is supposed to go to the courts for his redressal. All the legal systems are trying to attain the legal ideal that wherever there is a wrong there must be a remedy so that nobody shall take law into his own hands. Courts have become overcrowded with litigants. According to an official report of the year 2014, there is a pendency of over ninety-two crore cases in our nation-wise high courts. Naturally, litigants have to face so much loss of time and money that at long last when a relief is obtained, it may not be worth the cost.

Hence, began the search for alternatives to the conventional court system. A large number of quasi-judicial and administrative tribunals have been created for quicker reliefs. All these tribunals and forums are in a way an alternative method of dispute redressal. But even such tribunals and forums have become overcrowded with the result that they are not able to provide relief within good time. Many tribunals in service matters have been able to provide relief only when the aggrieved employee has already retired from his position. Relief in terms of money which he may ultimately get may not be worth the service period lost. Consumer forums came into being to provide quick, effective and costless relief to buyers of goods and hirers of services. In a large number of cases, delayed consumer remedies have also lost their swiftness. Furthermore, they are not able to provide any remedy for non-consumer matters.

Thus, there remains the need of an alternative remedy which will not be bogged down by costs and delays. As and when such a method of dispute resolution is discovered or devised, or if it has already been discovered or devised, it will be entitled to be given the name of ADR, Alternative Dispute Resolution.

Arbitration is a method of settlement of disputes as an alternative to the normal judicial method. It is one of the methods of alternative dispute resolution (ADR). Among all the forms of ADR like conciliation, mediation, negotiations, etc., arbitration has become the dominant form. It is more firmly established in its utility. The reason for this phenomenal popularity and value is that it is the only real alternative to judicial adjudication. The role and interference of courts in the process of arbitration has been minimized.

### **Scope And Development Of ADR**

Alternative Dispute Resolution is an alternative to the traditional process of dispute resolution through courts. It refers to set of practices and techniques to resolve disputes outside the courts. It is mostly a non-judicial means or procedures for the settlement of disputes. ADR has been a spoke in the wheel of the larger formal legal system in India since time immemorial. The search for a simple, quick, flexible and accessible dispute resolution system has resulted in the adoption of Alternative Dispute Resolution' mechanisms. The primary object of ADR system is avoidance of vexation, expense, and delay and the promotion of the ideal of —access to justice.

The ADR techniques mainly consist of negotiation, conciliation, mediation, arbitration and a series of hybrid procedures. Arbitration is adjudicatory and the result is binding, whereas conciliation is consensual and very helpful in making the parties in settling their disputes mutually with the help of a neutral third person. The success of conciliation depends on the mental attitude of the parties, the skill of the conciliator and creation of proper environment which is most essential in matrimonial disputes. Negotiation is a non-binding procedure resorted to by the parties for arriving at a negotiated settlement. Willingness to resolve the dispute and objectivity necessarily becomes essential to arrive at a negotiated settlement. Mediation is a decision-making process in which the parties are assisted by a third party, the mediator. The mediator attempts to improve the process of decision making and to assist the parties' reach an outcome to which each of them can consent.

ADR is based on more direct participation by the disputants rather than being run by lawyers and judges. This type of involvement is believed to increase people's satisfaction with the outcome as well as their compliance with the settlement reached. Most ADR processes are based on an integrative approach. They are more cooperative and less competitive than adversarial court based methods like litigation. For this reason, ADR tends to generate less escalation and ill-will between

parties. This is a key advantage in situation where the parties most continue to interact after settlement is reached, such as in matrimonial cases of labor-management cases.

### **Some International ADR Institutions And Organizations:**

Arbitration Chambers, Singapore is a commercial company whose main business is to provide an independent source of expertise to parties in dispute. It is a firm of professional arbitrators and mediators who are available to undertake resolution of commercial disputes through arbitration or mediation. There is a large network of office in various cities of Asia and the Pacific.

Singapore International Arbitration Centre, Singapore was established in 1991. SIAC is now one of the premier international arbitration institutions. It provides a neutral, efficient and reliable dispute resolution service in the regional hub that is the Centre of Asia's legal and business activity.

American Arbitration Association (AAA) was founded in 1926. It is a private enterprise in the business of arbitration, and one of several arbitration organizations that administers arbitration proceedings. The American Arbitration Association also administers mediation and other forms of alternative dispute resolution. It is headquartered in New York City.

International Centre for Dispute Resolution (ICDR), established in 1996 by the American Arbitration Association, administers international arbitration proceedings initiated under the institution's rules. ICDR currently is headquartered in New York City. It also has offices in Ireland, Bahrain, Dublin, and Mexico City, and is scheduled to open an office in Singapore.

International Chamber of Commerce (ICC) is an international business organization with hundreds of thousands of member companies in over 130 countries spanning virtually every sector of private enterprise.

World Intellectual Property Arbitration and Mediation Centre based in Geneva, Switzerland, the WIPO Arbitration and Mediation Centre was established in 1994 to offer Alternative Dispute Resolution (ADR) options for the resolution of international commercial disputes between private parties.



European Court of Arbitration is a legal entity under the Alsace- Moselle law, formed in 1959. It promotes arbitration and mediation. It is a branch of European Centre of Arbitration which promotes arbitration and administers domestic and international arbitration. Its branches are spread over Europe including Eastern Europe, the Mediterranean, the Middle East and the Black Sea countries.

Gulf Cooperation Council Commercial Arbitration Centre (GCCCCAC) was established on 19th March 1995 by GCC leaders, one of the main objectives of G.C.C. Commercial Arbitration Centre is fill the vacuum in the region by providing expeditious and effective Arbitration services.

### **RULES ON INTERNATIONAL SALES OF GOODS CONTRACTS**

1. The Vienna Convention 1980 - The United Nations Conventions on Contracts for International Sales of Goods (CISG) (\*)

The CISG was drafted by the United Nations Commission on International Trade Law (hereinafter the 'UNCITRAL') and adopted in Vienna in 1980. The CISG was based on two previous attempts to achieve an uniform law on international sales, such as the Conventions relating respectively to the Uniform Law on the Formation of Contracts for the International Sales ('ULF'), and to the Uniform Law on the International Sales of Goods ('ULIS'), and both adopted in The Hague in 1964. These two predecessors of the CISG, however, did not gain widespread success. The CISG has now gained worldwide acceptance and is considered to be the most successful convention promoting international commerce. Since its entry into force on 1 January 1988, as of 1 August 2011, UNCITRAL reported that 77 states have adopted the CISG.

The CISG includes 101 articles and is divided into four parts:

- Part I (from Article 1 to Article 13) lays down rules on its application and general provisions;
- Part II (from Article 14 to Article 24) governs the formation of the contract;
- Part III (from Article 25 to Article 88) contains the substantive rules for the sales contract, i.e., the obligations and rights, in particular the remedies, of the parties;
- Part IV (from Article 89 to Article 101) contains rules on ratification and entry into force, including the reservations.

The Criterion for Identifying an International Sales Contract According



to the CISG

Article 1 of the CISG laid down 'place of business of parties to contract' as an only criterion for identifying an international sales contract. A contract is considered as an international sales contract if the parties to the contract have their respective places of business in different countries which are contracting states; or the rules of private international law lead to the application of the law of a contracting state. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the 'international nature' of the sale of goods contracts under the CISG.

#### **Formation of International Sales Contract:**

1. Offer
2. Acceptance

#### **The Buyer's and Seller's Obligations**

The buyer's and seller's obligations, in principle, are identified under the contract and the CISG as an applicable law. As stated in Article 9, however, the parties are bound by any usages to which they have agreed and by any practices which they have established between themselves. The buyer and seller, thus, have to perform the obligations under the contract, the CISG, the usages and practices. According to the CISG, the buyer and the seller are under the following main obligations:

##### **1. Obligations of the Seller**

**(a) The seller must deliver goods that conform and are free of third party rights.** Delivery is the physical hand-over of goods to the buyer. If nothing has been negotiated about the place of delivery, the seller must in principle make the goods available at the place of where he has the place of business at the time of concluding the contract. The seller shall deliver on the date agreed in the contract or implied by the contract. If nothing is fixed for the delivery date, then the principle of reasonableness applies.

The delivered goods must be conformable. The conformity of the Goods means that the goods must be of the quality, quantity and description required by the contract and are packaged in a manner required by the contract or as sale by sample.

In addition, the seller must deliver the goods free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. The seller must protect not only against well-founded claims, but also against ill-founded claims. The buyer has to inform the seller within a reasonable period about the existence of any rights or claims, unless the seller is already aware of these. There is a special regulation for goods subject to IP claims.

**(b) The seller must hand over any documents relating to the delivered goods**

**Obligations of the Buyer**

(a) The buyer must take delivery of the goods.

Taking delivery is indelibly linked to the passing of the risk. The buyer must do all that can reasonably be expected of him/her in order to make delivery possible. Thus, s/he must, if necessary, inform the seller of the exact place of delivery. The buyer must actually take possession of the goods.

In principle, the risk passes at the taking delivery of the goods. If the buyer does not take delivery, s/he would breach the contract, which may make him/her liable for any damage to the goods. The passing of risk is governed by Articles 66-70, if contract involves carriage, in Article 67; if goods in transit, Article 68.

(b) The buyer must pay for the goods

Payment is the buyer's main obligation. The obligation to pay covers four elements, such as the determination of the price, the place of payment, the moment of payment, as well as the method of payment. These elements are usually agreed in the contract. However, the contract may remain obscure in respect of some of these elements. In that a case, the supplementary rules of the CISG apply. So, unless the contract states otherwise, the buyer must pay at the seller's place of business or place of handing over, without notice when goods or documents come under the buyer's control.

**E. Remedies for Breach of International Sales Contract**

In the process of implementing the international sales contracts, if the breach of contract is committed by a breaching party, the other party can apply the agreed remedies in the contract or as laid down in the CISG. It is important to note that the applying the remedies provided for by the CISG depends on whether there is a breach of contract or not. Unfortunately, the CISG did not define what constitutes a breach of contract. However, one can

conclude from the CISG's remedial regime and Article 79(1) that 'breach of contract' includes all forms of defective performance, as well as a complete failure to perform. It also includes both excusable and inexcusable non-performance. The contractual obligation may either be one expressly defined in the CISG (e.g., delivery at the right time, at the right place and of the correct goods) or one created and defined by the parties.

In addition, for the choice of remedy, it is important to know whether is a so-called 'fundamental breach of contract.' A fundamental breach of contract has two elements:

- (i) there has to be a substantial detriment which deprived the aggrieved party of what s/he is entitled to expect under the contract;
- (ii) the result of the breach must be foreseeable. It is for the party in breach to prove that neither s/he nor any reasonable person of the same kind and in the same circumstances could have foreseen the result.

### **1. Remedies of the Buyer**

If the seller fails to perform any of his obligations, the buyer may, depending on the circumstances, resort to a number of remedies such as:

- ❖ Specific performance;
- ❖ additional period for performance
- ❖ avoidance (rescission),
- ❖ requiring notice under Article 26;
- ❖ reduction of price;
- ❖ remedies for partial delivery/conformity of goods;
- ❖ damages.

### **Remedies of the Seller**

The remedies available to the seller are the same as those available to the buyer. S/he may also require the performance of an obligation, declare the contract avoided, and claim damages

**Part B- 2 Marks**

1. Define International Law
2. What is the International Sales of Goods?
3. What are the types of International treaties?
4. Define Incoterms.
5. What is Ex Works Contract?
6. What is FOB?
7. What is CIF?
8. What is the purpose of arbitration?
9. What are the rights and duties of agents and distributors under international business?
10. What is the goal of Foreign Exchange Management Act, 1999?

**Part C- 5 Marks**

1. Explain the necessity of International Business law and trace its history.
2. Examine the nature and complexities of International Business law.
3. What are the sources of International Business law?
4. Explain the contents of an International Sales Agreement.
5. What are the rights and duties of agents and distributors under international business?
6. Describe business laws affecting global trade in different countries.
7. Examine the basic legal requirements of global commercial contracts.
8. Explain the rights and duties of agents and distributors under international business?
9. Write a note on Foreign Exchange Management Act, 1999?
10. Elucidate the various International Commercial Terms in details.

**Part D- Case Study- 10 Marks**

In Mid-February 1994, the British Paper, the Sunday Times ran an article that alleged that a 1 billion sterling sale of defence equipment by British companies to Malaysia was secured only after bribes had been paid to Malaysian Government officials and after the British overseas development administration had agreed to approve a 234 million sterling grant to the Malaysian Government for a hydroelectric dam of dubious economic value.

What happened next took everyone by surprise. The Malaysian Government promptly announced a ban on the import of all British goods and services into Malaysia and demanded an apology from the British Government.

Officially the ban applied only to Government orders. The private sector was free to buy as it chose. However, British companies with experience in the region were nervous that the private sector would

follow the Government's lead in shunning British products. At stake was as much as 4 billion sterling in British exports and construction activities in Malaysia and a presence in one of the world's fastest growing developing economies. In announcing the ban, Malaysian Prime Minister noted that the British Media Portrays Malaysians as corrupt because "they are not British and not White"... and "we believe the foreign media must learn the fact that developing countries including a country led by a brown mortem, have the ability to manage their own affairs successfully".

The British Government responded by stating, it could not tell the British press what and that not to publish. To which the Malaysian Prime Minister replied there would be "no contracts for British press freedom to lies". At the sometime, the British Government came under attack from members of parliament in Britian, who suspected the Government acted unethically and approved the Official development Assistance (ODA) hydroelectric grant to help British companies win orders in Malaysia.

- a) What does this case teach us about the relationship between politics and international trade?
- b) How do you think the British Government should respond to the Malaysian action?
- c) You are the CEO of a British Company that now faces the loss of a lucrative contact because of this dispute. What action should you take?

**KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE****DEPARTMENT OF MANAGEMENET****Unit 3- INTERNATIONAL BUSINESS LAW- Multiple Choice Questions- Each Question carries ONE Mark**

<b>Sl.NO</b>	<b>Question</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>	<b>Answer</b>
1	How can the structure of the international society be displayed?	The structure of the international society follows the vertical model of the domestic legal orders	International society consists of a constellation of sovereign States and other international organizations, which are dispersed in a rather horizontal order of authority	International society is so anarchical that there is no order of authority, neither vertical nor horizontal	The structure of the international society resembles the structure of the most powerful nations in the world	International society consists of a constellation of sovereign States and other international organizations, which are dispersed in a rather horizontal order of authority
2	Is there any hierarchy or priority among States under international law?	Yes, the States that were the founding members of the United Nations are vested with more powers and authority	Yes, the Permanent Five Members of the UN Security Council (UK, USA, France, Russia, China) are in a superior position than the other States	No, all States are considered equal as sovereign States (the principle of sovereign equality	Whether there will be any hierarchy among States is a matter of each international organization to decide	No, all States are considered equal as sovereign States (the principle of sovereign equality

3	What is the problem of 'fragmentation' of international law?	Fragmentation of international law concerns the possibility of different legal regimes apply the same rules of international law	It is possible for several legal regimes (ie foreign investment law and human rights law) to exist and develop in isolation of each other, ultimately culminating in the production of divergent rules of international law	Fragmentation is when States assume different interpretations of the same rule of international law	Fragmentation is when States disagree to abide by a certain rule of international law	It is possible for several legal regimes (ie foreign investment law and human rights law) to exist and develop in isolation of each other, ultimately culminating in the production of divergent rules of international law
4	Is there any priority among international courts and tribunals?	According to the lis pendens rule, the court or the tribunal that seizes first the dispute has exclusive jurisdiction to adjudicate it	The International Court of Justice has by definition priority over any other court or tribunal	Since there is no lis pendens rule in international law and all depends on the consent of the parties to a dispute, there is no priority or hierarchy among international courts and tribunals	Regional or special courts have priority over all others in line of the principle of lex specialis	Since there is no lis pendens rule in international law and all depends on the consent of the parties to a dispute, there is no priority or hierarchy among international courts and tribunals

5	What is the major difference between naturalism and positivism?	On the one hand, naturalism is based on a set of rules that are of universal and objective scope and on the other hand, positivism is based on a structured and coherent legal system that is created by States in light of their interests and desires	While naturalism serves only the theory human rights law, positivism has a wider and more general scope	Naturalism concerns the underpinning values of the international society, while positivism the international rules	Naturalism is a school of thought advocated outside of Europe, while positivism is Euro-centric theory	On the one hand, naturalism is based on a set of rules that are of universal and objective scope and on the other hand, positivism is based on a structured and coherent legal system that is created by States in light of their interests and desires
6	Are there any limits to the application of article 103 of the UN Charter	No, there are no limits to article 103	Yes, Article 103 cannot trump multilateral treaties	Yes, article 103 of the UN Charter cannot trump jus cogens norms	Yes, when a case is submitted to the ICJ, article 103 ceases to have any effect	Yes, article 103 of the UN Charter cannot trump jus cogens norms
7	Which are the formal sources of international law?	Custom, treaties and judicial decisions	Custom, general principles of law and theory	Treaties, custom and general principles of law	Treaties, custom and General Assembly Resolutions	Treaties, custom and general principles of law



8	Which treaties are considered as 'source of international law' under article 38 ICJ Statute?	All treaties that are in force at the time of the dispute	Only the treaties that are in force and binding upon the parties to the dispute	All treaties that have been concluded between the parties to the dispute, regardless whether they are in force	Only treaties that are multilateral and of paramount significance	Only the treaties that are in force and binding upon the parties to the dispute
9	What is required for a general rule of customary law to be formed?	Only general, widespread and consistent practice on the part of States is required	The consistent practice of few States is sufficient	The legal conviction that a certain practice of a State is in accordance with international law is the most significant requirement	Both the elements of widespread and consistent State practice and of the opinio juris are required	Both the elements of widespread and consistent State practice and of the opinio juris are required
10	What kind of State practice is required?	Widespread, consistent and uniform practice, consisting both of acts and omissions	Only widespread, consistent and uniform acts and not omissions of States	Widespread acts and omissions of States but not necessarily consistent or uniform	Consistent practice of few States, including both acts and omissions, which is met with protestation by the other States	Widespread, consistent and uniform practice, consisting both of acts and omissions
11	Who is a 'persistent objector'?	The State which persistently objects to the rule in question after its formation	The State which denies to be bound by the rule in question for a short period	The State which persistently and publicly objects to the formation of a rule of customary law from its outset	The State which accepts the formation of a rule of customary law but it retains objections as to its content	The State which persistently and publicly objects to the formation of a rule of customary law from its outset

12	Where do we find the 'general principles of law recognized by civilized nations' (article 38 ICJ Statute)?	We look for established principles of law recognized only among the most civilised nations	We look for established principles of law, which are common to all major legal systems	We look for general principles of international law recognized by international courts and tribunals	We look for general principles of law recognized by all nations	We look for established principles of law, which are common to all major legal systems
13	What is the relationship between the formal sources of international law?	There is no hierarchy between the formal sources of international law	Treaties supersede custom	Custom supersedes treaties	General Principles of Law supersede both custom and treaties	There is no hierarchy between the formal sources of international law
14	What is the value of the Resolutions of the UN General Assembly in terms as a 'source' of international law?	GA Resolutions are considered as additional sources of international law	GA Resolutions are equivalent to treaties	GA Resolutions reflect always customary law	GA Resolutions are considered as material source	GA Resolutions are considered as material source
15	How can customary law be related to treaty provisions?	Treaties may only codify customary law	Customary law is a different source of international and it cannot be embodied in treaties	Treaties may 1) codify customary law, 2) 'crystallise' customary law, 3) lead to the emergence of customary law	Customary law can emerge only from few multilateral treaties	Treaties may 1) codify customary law, 2) 'crystallise' customary law, 3) lead to the emergence of customary law
16	What is 'unilateral acts'?	They are acts that States perform as practice in the context of custom	They are acts creating unilateral legal obligations to the acting State	Unilateral acts are simply political acts of State devoid of any legal effect	Unilateral acts are those that State perform in order to be bound by a treaty	They are acts creating unilateral legal obligations to the acting State

17	What is a 'treaty' according to the Vienna Convention on the Law of Treaties (VCLT)?	Treaties are all agreements concluded between States, international organizations and non-State entities	Treaties are agreements concluded between States in written form and governed by international law	Treaties are both the written and oral agreements between States	Treaties are agreements concluded between States in written form governed either by international or domestic law	Treaties are agreements concluded between States in written form and governed by international law
18	Should treaties assume a particular form?	Treaties should always be designated as such and assume a particular form	Treaties should always assume a particular form, no matter how they are designated	Treaties do not have to assume a particular form or designated	Treaties have to be designated as such, no matter what form they assume	Treaties do not have to assume a particular form or designated
19	Who has the authority to conclude a treaty on the part of States?	Treaties are concluded by the competent representatives of States.	Treaties may only negotiated and concluded by the heads of State and ministers of foreign affairs	Treaties are negotiated and signed only by the persons that bear the necessary 'full powers' and no person is presumed to hold such authority	Treaties are concluded only by members of the diplomatic missions of States	Treaties are concluded by the competent representatives of States.
20	How the consent to be bound of a State may be expressed?	The consent of a State to be bound is expressed only by ratification	The consent of a state to be bound by a treaty may be expressed by signature, ratification, acceptance, approval or accession	The consent of a State to be bound is expressed by signature	The consent of a State to be bound is expressed by whatever means they choose	The consent of a state to be bound by a treaty may be expressed by signature, ratification, acceptance, approval or accession

21	Do treaties bind third States, ie non-State parties?	Treaties may create only rights for third States	Treaties create both obligations and rights for third States	Treaties do not create obligations or rights for third States without their consent	Treaties do not create any obligations or rights for third States, even when the latter consent	Treaties do not create obligations or rights for third States without their consent
22	How treaties are to be interpreted?	Treaties are to be interpreted in good faith	Treaties are to be interpreted only in accordance with the ordinary meaning of their terms	Treaties are to be interpreted in accordance with the intention of the parties, as evidenced in the preparatory works of the treaty	Treaties are to be interpreted only in light of its object and purpose	Treaties are to be interpreted in good faith
23	When a reservation is considered as invalid under the law of treaties?	A reservation is invalid when the majority of the State parties objects to it	A reservation is invalid only when an international tribunal	A reservation is invalid only when is incompatible with a peremptory norm of international law	A reservation is invalid when it is incompatible with the object and purpose of the treaty	A reservation is invalid when it is incompatible with the object and purpose of the treaty
24	What is 'material breach' of the treaty?	'Material breach' is a ground for the invalidation of a treaty	'Material breach' is the repudiation or a significant violation of the treaty and serves as a ground for the unilateral termination of the treaty	'Material breach' is an insignificant violation of a treaty	Material breach' is a significant violation of the treaty which can never lead to the termination of the treaty	'Material breach' is the repudiation or a significant violation of the treaty and serves as a ground for the unilateral termination of the treaty

25	What does the 'fundamental change of circumstances' entail for the treaty?	A fundamental change of circumstances concerns the object and purpose of the treaty and it leads to its amendment	A fundamental change of circumstances has no bearing on the life of treaties	A fundamental change of the circumstances which constituted an essential basis of the consent of the parties to be bound by the treaty and which was not foreseen by the parties, may be invoked as a ground for terminating or withdrawing from the treaty	A fundamental change of circumstances leads to the automatic termination of the treaty	A fundamental change of the circumstances which constituted an essential basis of the consent of the parties to be bound by the treaty and which was not foreseen by the parties, may be invoked as a ground for terminating or withdrawing from the treaty
26	Can countries rely on their domestic law as an excuse to violate their obligations under international law?	Domestic law always prevails over international law	Only customary international law prevails over domestic law	Obligations under international law prevail over domestic law	Constitutional obligations always prevail over obligations under international law	Obligations under international law prevail over domestic law
27	What is the fundamental premise?	Monism posits that international law is superior to domestic laws	Monism posits that international and domestic law are part of the same legal order	Monism posits that domestic laws are superior to international law	Monism posits that domestic and international law never clash	Monism posits that international and domestic law are part of the same legal order

28	What is dualism?	Dualism suggests that international and domestic law are part of a unified legal system	Under dualism, international and domestic laws comprise distinct legal Systems	Dualism suggests that international and domestic law are distinct but equal in hierarchy	Dualism suggests that international and domestic law are distinct legal systems whereby domestic law always prevails	Under dualism, international and domestic laws comprise distinct legal Systems
29	What does the doctrine of incorporation suggest?	The doctrine of incorporation requires that all treaties undergo legislative transformation before they become domestic law	The doctrine of incorporation does not require any further action at the domestic level	The doctrine of incorporation treats treaties as inferior to domestic law	The doctrine of incorporation suggests that ratified treaties automatically pass into the sphere of domestic law	The doctrine of incorporation suggests that ratified treaties automatically pass into the sphere of domestic law
30	What are self-executing treaties?	Self-executing treaties are adopted only by the executive	Self-executive treaties are clear and precise enough so as not to require any further implementing measures	Self-executing rely on implementing measures stipulated in the treaty Itself	Self-executing treaties follow the doctrine of transformation	Self-executive treaties are clear and precise enough so as not to require any further implementing measures
31	What is the fundamental principle of incorporation?	Custom is incorporated if it is not in conflict with existing legislation	Custom is superior to English law and is always incorporated	Custom must first be recognised by Parliament before the courts can bring it into the domestic sphere	Custom is incorporated with the passing of implementing legislation	Custom is incorporated if it is not in conflict with existing legislation

32	What dimension did the Kadi j	The Kadi judgment demanded that UNSC resolutions are construed in accordance with human rights	The Kadi judgment demanded that all UNSC resolutions be incorporated without any further implementing legislation	The Kadi judgment required that important UNSC resolutions be transformed and not merely incorporated	The Kadi judgment claimed that UNSC resolutions are not binding if they violate human rights	The Kadi judgment demanded that UNSC resolutions are construed in accordance with human rights
33	What was the consequence fro	The International Tin Council was headquartered in London and hence the absence of implementing legislation was inconsequential	The constitutive treaties of international organisations are subject to the doctrine of incorporation	The absence of implementing legislation with respect to the Council's founding treaty meant that individuals did not derive rights and duties from it in the English legal system	The absence of implementing legislation in England in respect of an international organisation is inconsequential under international law	The absence of implementing legislation with respect to the Council's founding treaty meant that individuals did not derive rights and duties from it in the English legal system
34	Are there any limitations to th	There are no limitations to the incorporation of customary crimes	Customary crimes must be contained in a multilateral treaty in order to be automatically incorporated	The courts may freely incorporate customary crimes into the domestic sphere	The situation is not clear-cut but an act of parliament would most probably be required	The situation is not clear-cut but an act of parliament would most probably be required

35	Is the recognition of foreign judgments	Foreign judgments are enforced on the basis of the doctrine of incorporation	Foreign judgments are enforced on the basis of the doctrine of transformation	The recognition of foreign judgments is dependent on the existence of appropriate bilateral or multilateral treaties	The courts exercise discretion as to the enforcement of foreign judgments on the basis of the rule of comity	The recognition of foreign judgments is dependent on the existence of appropriate bilateral or multilateral treaties
36	Incoterms has been issued in	1990	1995	1997	2000	1990
37	In which I.C.J Article the source	Article 15	Article 38	Article 50	Article 48	Article 38
38	The UN membership as at Dec	190	193	200	210	193
39	Principle of “ Pacta sunt servanda	Treaties are binding	Treaties have no force	Agreements are sacred	Treaties are to be	Agreements are sacred
40	What was the exact number of	41	51	61	71	51
41	The British Sales of Goods Act	1979	1989	1999	2009	1979
42	The unification of the substantive	resolution of Conflict	settlement	negotiation	govern international	govern international sales of goods transactions
43	ULF means.....	Uniform Law on the Formation	Unity legal formation	Uniform law function	United nation law frame	Uniform Law on the Formation
44	The purpose for ULF is.....	negotiation	dispute settlement	Formation of Contracts	Legal frame	Formation of Contracts
45	The purpose for ULIS is.....	negotiation	International Sales of Goods	Formation of Contracts	Legal frame	International Sales of Goods
46	International mercantile custom	Formation of Contracts	sales contracts	International Sales of Goods	negotiation	sales contracts
47	CPT means _____.	carrier posted to.	carrier paid to.	carriage paid to.	carriage posted to.	carriage paid to.
48	CFR means _____.	container and freight.	cost and freight.	carriage and freight.	carrier and freight.	cost and freight.
49	FOB means.....	Freight on Board	Free on Board	Free of business	freight rate	Free on Board
50	Foreign Trade Development &	1990	1991	1992	1993	1992



51	Foreign Exchange Management Act	1990	1991	1992	1999	1999
52	Pre Shipment Inspection and Control Act	1990	1991	1963	1999	1963
53	Customs Act.....	1963	1999	1972	1962	1962
54	"Treaties are the supreme law of the land"	Constitution of USA	UN Charter	Statute of the ICJ	British Constitution	Statute of the ICJ
55	"International Law is not true law"	Pufendorf	Austin	Bentham	Pollock	Austin
56	The permanent court of arbitration	The Hague Conferences of 1899 and 1907	The Washington Naval Conference of 1922	The Vienna Conference of 1968-69	The Geneva Convention of April 29, 1958.	The Hague Conferences of 1899 and 1907
57	A Condominium is.....	A State of Chaos	A State enjoying Dominion status	A particular territory over which joint dominion is exercised by two or more external powers.	A State with a Federal form of Constitution	A particular territory over which joint dominion is exercised by two or more external powers.
58	Arbitration is a method of ....	negotiation	International Sales of Goods	settlement of disputes	Legal frame	settlement of disputes
59	American Arbitration Association	1926	1936	1946	1956	1926
60	International Centre for Dispute Settlement	1986	1996	1997	1998	1996

**UNIT-IV**

**SYLLABUS**

**Intellectual Property:** Historical Background, IPR Administration – WIPO, WTO, Indian Patent Office, Patents, Copyrights, Trademarks, Geographical Indications, Industrial Designs, Layout Designs, Trade secrets

**Introduction**

**Intellectual property** is, in essence, useful information or knowledge. It is divided, for the purposes of study (and for establishing legal rights), into two principal branches: artistic property and industrial property.

**Artistic property** encompasses artistic, literary, and musical works. These are protected, in most countries, by copyrights and neighboring rights.

**Industrial property** is itself divided into two categories: inventions and trademarks. Inventions include both useful products and useful manufacturing processes. They are protected in a variety of ways, the most common protection being in the form of patents, petty patents, and inventors' certificates.

Trademarks include “true” trademarks, trade names, service marks, collective marks, and certification marks. All of these are markings that identify the ownership rights of manufacturers, merchants, and service establishments. They are protected by trademark laws. Regardless of its form, intellectual property is a creature of national law. International law does not create it. International law does, however, set down guidelines for its uniform definition and protection, and it sets up ways that make it easier for owners to acquire rights in different countries. National law—and sometimes regional law—is also important in establishing the rules for assigning and licensing intellectual property. Recently, the international community has worked to establish international norms for the transfer of intellectual property, but so far the effort has not been fully successful. These aspects of intellectual property law—its creation, protection, and transfer—form the subject matter of this chapter. Each is discussed in turn.

**What are Intellectual Property Rights (IPR)?** IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, layout design of integrated circuits, undisclosed information (trade secrets) and new plant varieties.

**What are the legislations covering IPRs in India?**

**Patents:** The Patents Act, 1970 as amended in 1999, 2002 and 2005

**Design:** The Designs Act, 2000

**Trade Mark:** The Trade Marks Act, 1999

**Copyright:** The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999

**Layout Design of Integrated Circuits:** The Semiconductor Integrated Circuits Layout Design Act, 2000

**Protection of Undisclosed Information:** No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872

**Geographical Indications:** The Geographical Indications of Goods (Registration and Protection) Act, 1999

**Plant Varieties:** The Protection of Plant Variety and Farmers' Rights Act, 2001

### THE INCREASING IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

- ❖ Protecting Intellectual Property Rights
- ❖ Technology has led to increase awareness about the IP
- ❖ Some individuals and companies offer only knowledge. Thus, computer consultant, advertising agencies, Internet companies, and software implementers sell only brainpower
- ❖ Domain names and moving images are also be protected
- ❖ More than fifty percent of US exports now depend on some form of intellectual property protection
- ❖ The rapidity with which information can be communicated through the Internet has led to increasing challenges in the field of intellectual property
- ❖ The most valuable assets a company owns are its Intellectual property assets
- ❖ Companies must act aggressively to protect these valuable assets from infringement (breaching, violation of law) or misuse by others

- ❖ The field of intellectual property law aims to protect the value of such investments

## **HISTORICAL BACKGROUND OF IP**

Intellectual property is neither a new nor a static concept. Trademarks are believed to date back to at least 3,500 years when potters' marks were used to identify the source of earthen pots. However, jurisprudence and statutes for the protection of trademarks appear to date back to only 350 years, i.e. seventeenth century, in England<sup>3</sup>. In the early part of the fifteenth century in Venice, the State started granting certain exclusive rights to inventors for their inventions. It spread rapidly during the sixteenth century to Germany, France, the Netherlands and England. It was then recognised that in a free market economy, patent protection provides the necessary incentive to invent to disclose the invention, to invest in the commercial development of the invention and to motivate others to add to the store of human knowledge.

The first Copyright Statute of Queen Anne was enacted in 1709 in England. It was the first recognition of the source of the copyright interest in the creative act of authorship. Trade secret protection is an integral part of honest business practices, if information is not generally known. It has commercial value and the owner takes reasonable steps to protect it. Trade secrets are often the oil that lubricates a technology transfer agreement. Without it, the parties to an agreement find it difficult or impossible to freely exchange the information vital to making the agreement work.

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<sup>3</sup> Source: <http://www.en.wikipedia.org>

**6 Managing Intellectual Property: The Strategic Imperative**

Laws for the protection of intellectual property are not static but change with the changes in technology and society. Adam Smith in his book *Wealth of Nations* (book 2, chapter III) stated that the labour of persons, we now call “performers”, is “like that of menial servants, unproductive of any value, and does not fix or realize itself any permanent subject, or vendible commodity, which endures after that labour is past, and for which an equal quantity of labour could afterwards be procured.” He concluded, “like the declamation of the actor, the harangue of the orator, or the tune of the musician, the work of all of them perishes in the very instant of its production.”

**World Patent Enactment History at Glance**

- First Patents Law — 1474 at Venice
- English Law — 1624 — status of Monopolies
- French Law — Patents Act, 1791
- American Law — Patents Act, 1790
- Other European countries — Enactment 1800–1882

## History of Patent Acts in India

Year	Event
1856	Act for protection of inventions on the basis of British law of 1852
1859	Patent monopolies called exclusive privileges
1872	Patents and Designs Act
1883	Protection of Inventions Act 1888 Inventions and Designs Act 1911-1947 Modern patent era by Patents and Designs Act. First time an authority call Controller General of Patents appointed
1959	Justice Ayyangar's report
1967	Patent Act bill introduced in the Parliament
1970	The Patents Act passed by the parliament
1972	The Patents Act-1970 came into force on April 20, 1972
1994	Amendment by ordinance to include Exclusive Marketing Rights (EMR's)
1999	Amendment passed by the parliament. New patent amendment bill referred to select committee
2003- 2005	Patents Act 1970 with second amendment comes into force Patent Act 1970 (2005 Amendment) comes in to force from 1-1-2005

## INSTITUTIONS FOR ADMINISTERING THE IP SYSTEM

For administering IP system, there are both national and international bodies, which are responsible for evolving IP policies and their implementation. At the national level, the respective national governments have IP offices for IP registration to give legal protection to new creations and bar others from misusing the same. However, at the international level global organisations evolve the IP policies for their uniform implementation and governance.

### National Patent Offices

Every country with a patent system has a national patent office where claims of IP may be made for a matter of public record. As mentioned above, in many countries there is an examination before a creator is given any substantive rights. In other countries, IP claims are registered but detailed examination is delayed until a dispute over infringement arises. However, even in these countries a search of the prior art is often conducted as a part of the registration process, and the search results are published so that members of the public can assess the claims made by the registrant.

**World Intellectual Property Organization (WIPO)** was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties (Present 26 treaties) dealing with intellectual property WIPO is one of the 17 specialized agencies of the United Nations It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world More than 175 (**Present 188**) nations are members of WIPO



Its headquarters in Geneva, Switzerland, current Director General of WIPO is *Francis Gurry* took charge on October 1, 2008 The predecessor to WIPO was the BIRPI [Bureaux for the Protection of Intellectual Property] it was established in 1893 WIPO was formally created by the convention (meeting) establishing the world intellectual Property organization which entered into force on April 26 1970 and artistic works It has more than 145 member nations The United States became a party to the Berne Convention in 1989 The Berne Convention is administered by WIPO and is based on the precept that each member nation must treat nation must treat nationals of other member countries like its own nationals for purposes of copyright (the principle of “nation treatment”) In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyrights law It was influenced by the French “right of the author”.

### **The World Trade Organisation (WTO)**

The World Trade Organisation was established in 1994 in Marrakech following the successful conclusion of the Uruguay Round of Trade Negotiations. The predecessor to the WTO was the General Agreement on Tariffs and Trade (GATT). A key reform of the Uruguay Round was the Agreement on Trade Related Aspects of Intellectual Property Rights, known as TRIPS, codified as an annex to the treaty establishing the WTO. It is important to recognise that the TRIPS Agreement was intended to create a more equitable system of international trade. Wealthy countries agreed to reduce barriers to price competitive imports from abroad, while developing countries agreed to open their markets to the high value-added exports of the developed nations. These high value-added exports disproportionately consist of technology in which much of the value is intangible and must be protected by strong intellectual property regimes for its effective exploitation.

Patents:

Meaning:

Patents are one of the oldest forms of intellectual property protection. The basic aim of a patent system is to encourage economic and technological development by rewarding individual creativity and/or intellectual. A patent under the act is a grant from the government to inventors, for a limited period of time, the exclusive right to make, use, exercise, and vend the invention.

As per Trade Related Intellectual Property Rights (TRIPS), Article 33, the periods of patent is 20 years from the date of filing of the application for a patent. At the end of patent period, the government publishes the invention and it becomes part of the public domain.

In other words, after the expiry of patent period the public can make use of the patent. As part of the public domain it is assumed that the disclosure of patent for public will stimulate ideas and perhaps even the development of an even better product that could replace the original.

Patents as one's exclusive property rights can be sold, transferred, willed, licensed, or used as collateral much like other valuable assets. In fact, most independent inventors do not commercialise their inventions or create new products from their ideas, instead, they sell or license their patents to others who have the resources to develop.

To quote one such case, the Coca-Cola formula was developed by a compounder. He could not commercialise it due to lack of required resources. He sold it to a doctor who commercialised 'the Coca Cola formula'. Patent history is replete with such examples.

What can be patented?

The Indian Patent Act, 1970 has notified the nature of patentable inventions.

Sl.No	Contents	Descriptions
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1	Processes	Methods of production, research, testing, analysis, and other technologies with new applications.
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2	Machines	Products, instruments, machines, and other physical objects that have proved useful and unique in nature.
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3	Manufactures	Combination of physical matter not found in nature fabricated in unique and useful application.
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4 Compositions of Matter Chemical compounds, medicines, and botanical compositions that do not exist in nature in an uncultivated state, nor those that could evolve in nature, better new and useful.

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**Process:**

In the patents law, the word process refers to either new methods of manufacturing or new technological procedures that can be demonstrated and validated as new and/or unique. For example, the process of electrical power transmission was new and unique when it was patented.

Similarly, a new process of testing blood samples was patented. Here, what is worth noting that, in both the cases, there was not a specific product {i.e., no physical object), but both the processes were well documented and subsequently demonstrated as being workable, new, and useful.

**Machine:**

According to Patent Law, machine means the application of patent for a specific physical item. Generally, we think of patents for physical products. Here also, machine needs to be new and useful. That is just an art work or mere curiosity for something cannot be patented.

**Manufacture:**

The word machine in a patent law refers to specific physical items that have been fabricated through new combinations of materials or technical applications. The application must demonstrate and validate how the product is manufactured.

**Composition of Matter:**

The composition of matter as used in the patent law refers to composition, or say, mixture of chemical compounds such as synthetic materials, medicines, cosmetics, and biogenetic catalysts. This means simply having a composition or mixture of ingredient does not constitute a patentable composition. Thus, what follows is that the compositions or mixtures of known ingredients are not patentable. To be patentable, the composition must have a new ingredient.

**Types of Patents:**

The Patent Law classifies all the patents into three types:

1. Utility Patents.
2. Design Patents.
3. Plant Patents.

These are discussed one by one:

**1. Utility Patents:**

Patents granted for new products, processes, machines, methods of manufacturing, and composition of matter come under the category of utility patents. This is the most common patents sought by the inventors. It is granted for 17 years. The utility patents exclude most of botanical creations related to plant and agricultural use.

**2. Design Patents:**

Design Patents are granted for any new or original ornamental design for an article of manufacture. Examples are shoe companies such as Reebok and Nike that have become more interested in design patents as a means of protecting their ornamental designs. What is the most important element in the design patent is that it protects the appearance (say, design) of the article, not the article itself.

For example, dozens of bicycle manufacturers manufacture their bicycles for exercise and fitness. These bicycles use similar principles of dynamic tension. Nonetheless, the bicycle manufacturers design their bicycles so that these appear different and unique.

By obtaining design patents, they differentiate their bicycles and cycle market reaches from cloning manufacturers that might replicate bicycles. Here, it is important to mention that merely having the idea of cycling for exercise and fitness is not patentable. Compared to utility patent design patent has a shorter life for 3.5 or 7 years.

### 3. Plant Patent:

Plant Patent is granted for any new variety of plant that has been asexually reproduced by an inventor. The new plants may be patented only when the inventor satisfies the patent office that the new plant did not exist in nature or in an uncultivated state. Like utility patent, a plant patent provides the protection for 17 years.

### **COPYRIGHT:**

“The legal protection given to published works forbidding anyone but the author from publishing or selling them An author can transfer the copyright to another person or corporation, such as a publishing company”\

### **What is a Copyright?**

Copyright is a form of protection provided by US Law to the authors of “Original Works of Authorship” fixed in any tangible medium of expression

The manner and medium of fixation are virtually unlimited

Creative expression may be captured in words, number, notes, sounds, pictures or any other graphic or symbolic media

The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audiovisual and architectural works.

- ❖ Copyright protection is available for both published and unpublished works

Thus, there are three basic requirements for copyright ability:

1. A work must be original
2. A work must be fixed in a tangible form of expression; and
3. A work must be a work of authorship

### **Originality of Material**

- ✚ To be eligible for copyright protection
- ✚ Material must be original
- ✚ Meaning
- ✚ Independently created
- ✚ Posses a modicum of creativity
- ✚ It should not confused with novelty, worthiness or aesthetic [dealing with beauty] appeal
- ✚ “Originality” thus does not mean “first”, it merely means “independently created”,
- ✚ A slight amount of “creative spark”.

### **THE RIGHTS AFFORDED BY COPYRIGHT LAW: INTRODUCTION**

The copyright act provides that, subject to certain exceptions, the owner of copyrights has the exclusive rights to do and to authorize any of the following:

- i. To reproduce the copyrighted work in copies or phonorecords
- ii. To prepare derivative works based on the copyrighted work
- iii. To distribute copies or phonorecords of the copyrighted work to the public
- iv. To perform the copyrighted work publicly
- v. To display the copyrighted work publicly
- vi. To perform the copyrighted work publicly by means of a digital audio transmission
- vii. Unless exemption exists, unauthorized exercise of any of these rights by another is an infringement

### **These exclusive rights, usually referred to as a “bundle” Rights of Reproduction:**

- ❖ The most fundamental of the rights granted to copyright owners is the right to reproduce the work
- ❖ A violation of the copyright act occurs whether or not the violator profits by the reproduction
- ❖ Only the owner has the right to reproduce the work
- ❖ Secretly taping a concert, taking pictures at a performance, or recording all violate the owner’s right to reproduce

- ❖ The suggestion of congress, in 1978 a group of authors, publishers and users established a not-for-profit entity called Copyright Clearance Center [CCC]
- ❖ CCC grants licenses to academic, government and corporate users to copy and distribute the works
- ❖ It collects royalty fees, which are distributed to the authors
- ❖ Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC so they can make copies.

### **COPYRIGHT REGISTRATION**

A work is “created” when it is fixed in a copy or phonorecord for the first time. Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office is expensive, easy and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of US origin. To register a work, the applicant must send the following three elements to the Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered. Registration may be made at any time within the life of the copyright.

### **COPYRIGHT PROTECTION IN INDIA**

Copyright law protects expressions of ideas rather than the ideas themselves. Under section 13 of the Copyright Act 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording. For example, books, computer programs are protected under the Act as literary works.

#### ***About copyright***

Copyright refers to a bundle of exclusive rights vested in the owner of copyright by virtue of Section 14 of the Act. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc.

#### ***Conditions for Copyright Protection***

Copyright protection is conferred on all Original literary, artistic, musical or dramatic, cinematograph and sound recording works. Original means, that the work has not been copied from any other source.

Copyright protection commences the moment a work is created, and its registration is optional. However it is always advisable to obtain a registration for a better protection. Copyright registration does not confer any rights and is merely a prima facie proof of an entry in respect of the work in the Copyright Register maintained by the Registrar of Copyrights.

***Owner of copyright***

As per Section 17 of the Act, the author or creator of the work is the first owner of copyright. An exception to this rule is that, the employer becomes the owner of copyright in circumstances where the employee creates a work in the course of and scope of employment.

***Copyright Registration***

Copyright registration is invaluable to a copyright holder who wishes to take a civil or criminal action against the infringer. Registration formalities are simple and the paperwork is least. In case, the work has been created by a person other than employee, it would be necessary to file with the application, a copy of the assignment deed.

***Protection in other countries***

One of the supreme advantages of copyright protection is that protection is available in several countries across the world, although the work is first published in India by reason of India being a member of Berne Convention. Protection is given to works first published in India, in respect of all countries that are member states to treaties and conventions to which India is a member. Thus, without formally applying for protection, copyright protection is available to works first published in India, across several countries. Also, the government of India has by virtue of the International Copyright Order, 1999, extended copyright protection to works first published outside India.

**TRADEMARKS****Definition of Trademark:**

The modern definition of trademark is that “it is a word, name, symbol, or device or a combination thereof, used by a person [including a business entity], or which a person has a bonafide intention to use, to identify and distinguish his or her goods from those manufactured by others and to indicate the source of those goods”

## **PURPOSE AND FUNCTION OF TRADEMARK**

Trademarks perform two critical functions in the marketplace:

- [1] They provide assurance that goods are of a certain quality and consistency, and
- [2] They assist consumers in making decisions about the purchase of goods.

The main purpose of trademark is to show the difference about the quality of goods and service

For example: If a trademark such as NIKE could be counterfeited (imitating) and used by another on inferior merchandise (goods), there would be no incentive for the owners of the NIKE mark to produce high-quality shoes and to expend money establishing consumer recognition of the products offered under the NIKE marks.

Thus, protection of trademarks results in increased completion in the marketplace, with both the producer of goods and services and the consumer as the ultimate beneficiaries Business benefit because they can reap the rewards of their investment in developing and marketing a product with one fearing another business will deceive consumer by using the same or a confusingly similar mark for like goods, and consumers benefit because they are able to identify and purchase desired and quality goods.

The value inherent in achieving consumer loyalty to a particular product or service through the maintenance of consistent quality of the products or service offered under a mark is called goodwill.

- ❖ They identify one maker's goods or services and distinguish them from those offered by others
- ❖ They indicate that all goods or services offered under the mark come from a single producer, manufacturer, or "source"
- ❖ They indicate that all goods or services offered under the mark are of consistent quality and
- ❖ They serve as an advertising device so that consumers link a product or service being offered with a mark

## **TYPES OF MARKS**

There are four different types of marks They are:

- 1.Trademark
- 2.Service mark



3.Certification mark

4.Collective mark

### **Trademark & Service mark**

The term trademark thus refers to some physical and tangible good, and service mark refers to an intangible service, in common usage the term trademark is often used to refer to marks for both goods and service. The key point in this legal description is that a trademark is a visual mark that may use any combination of letters and imagery to aid a company in differentiating itself from other entities. The purpose of a trademark is to visually represent a person, company, or product, and trademark should be designed to provide easy and definite recognition. The term mark will be used as a synonym for both trademark and service marks. The federal statute ((law) an act passed by a legislative body) governing trademark law, the US Trademark Act (Lanham Act, found at 15 USC 1051 et seq) itself states that the term mark includes any trademark, service mark, collective mark, or certificate mark.

### **A Certification mark**

A certification mark is a word, name, symbol, device, or combination thereof, used by one person to certify that the goods or services of others have certain features in regard to quality, material, mode of manufacture, or some other characteristic (or that the work done on the goods or services was performed by members of a union or other organization).

For example:

Hallmark, ISO mark and in US Underwriters Laboratory seals of approval (Underwriters Laboratory is the largest and best known independent, not for profit testing laboratory in the world based in Northwood, Illinois, UL conducts safety and quality tests on a broad range of products, from fire door's to CCTV cameras seals of approval)

### **Collective Mark:**

A collective mark is one used by a collective membership organization, such as a labor union, fraternity, or professional society, to identify that the person displaying the mark is a member of the organization. Thus, the FUTURE FARMERS OF AMERICA and AMERICAN BAR ASSOCIATION marks indicate membership in certain organizations. A company may use several marks.



For Example: the word: COCA-COLA, the stylized WAVE DESIGN, and the slogan “THINGS GO BETTER WITH COKE” All of these marks are used on one product and all are protected by the Coca-Cola Company On some occasions, companies use house marks to establish recognition in a wide range of products or service.

## **CATEGORIES OF MARKS**

Although marks can consist of words, symbols, designs, slogans, or a combination thereof, not every term is protectable Even among marks that are protectable, some marks are stronger than other In determining strength of marks, courts recognize several categories of marks In ascending order of strength and protectability, the five categories are:

### **1. A Generic Mark**

Generic "marks" are devices which actually name a product and are incapable of functioning as a trademark Unlike descriptive marks, generic devices will not become a trademark even if they are advertised so heavily that secondary meaning can be proven in the mind of consumers The rationale for creating the category of generic marks is that no manufacturer or service provider should be given exclusive right to use words that generically identify a product A valid trademark can become generic if the consuming public misuses the mark sufficiently for the mark to become the generic name for the product The prime examples of former trademarks that became the generic name for a product are ASPIRIN, XEROX and CELLOPHANE

**2. Descriptive mark** (or more properly, "merely descriptive marks") are devices which merely describe the services or goods on which the mark is used If a device is merely descriptive, it is not a mark at all, since it does not serve to identify the source of the goods or services No trademark rights are granted to merely descriptive marks Misdescriptive marks are equally weak As explained in connection with suggestive marks above, descriptive marks are often difficult to distinguish from suggestive marks Suggestive marks require some imagination, thought, or perception to reach a conclusion as to the nature of the goods.

Descriptive marks allow one to reach that conclusion without such imagination, thought or perception Putting this distinction into practice can be very difficult Merely descriptive marks can be registered federally on the Supplemental Register (see the Bit Law discussion on federal registration of trademarks for more information) The descriptive mark will not

register in PTO until the consumer links the mark with a single source That learned association is called Secondary meaning

or acquired distinctiveness The PTO assumes that secondary meaning has been acquired after five years of consecutive and exclusive use of a mark Secondary meaning can be demonstrating a significant level of advertising, sales an consumer survey evidence, to prove that when consumer encounter a mark.

For Example:

The following imaginary marks could be considered merely descriptive for computer peripherals:

- ❖ FAST BAUD for modems (describing the quickness of the modem);
- ❖ 104 KEY for computer keyboards (describing the number of keys on a
- ❖ keyboard);
- ❖ LIGHT for portable computers (describing the computer's weight);
- ❖ TUBELESS for computer monitors (even if misdescriptive for a monitor that contains tubes)

### 3. Suggestive mark

are marks that suggest a quality or characteristic of the goods and services Despite the fact that suggestive marks are not as strong as fanciful or arbitrary marks, suggestive marks are far more common due to the inherent marketing advantage of tying a mark to the product in a customer's mind Suggestive marks are often difficult to distinguish from descriptive marks (described below), since both are intended to refer to the goods and services in Question. Suggestive marks require some imagination, thought, or perception to reach a conclusion as to the nature of the goods Descriptive marks allow one to reach that conclusion without such imagination, thought or perception Putting this distinction into practice clearly is one of the most difficult and disputed areas of trademark law

The following marks can be considered suggestive

- ❖ MICROSOFT (suggestive of software for microcomputers)
- ❖ NETSCAPE (suggestive of software which allows traversing the "landscape" of the

**4. Arbitrary Marks** An arbitrary mark utilizes a device having a common meaning that has no relation to the goods or services being sold Examples of arbitrary marks include:

- ❖ APPLE (for computers)
- ❖ LOTUS (for software)

**5. Fanciful Marks** are devices which have been invented for the sole purpose of functioning as a trademark and have no other meaning than acting as a mark Fanciful marks are considered to be the strongest type of mark Examples of fanciful marks are: EXXON, KODAK and XEROX

### **PROTECTABLE MATTER**

1. Slogans,
2. Letters and Numbers
3. Logos and Symbols
4. Names of performing Artists
5. Domain Names
6. Shapes and Containers
7. Trade Dress
8. Color Fragrances, Sounds, and
9. Moving Images
10. Design and Ornamentation
11. Serialized Literary and Movie Titles

### **Process for Registration of a Trademark in India**

The process for registration of the trademark can be carried out by the business owner or his/her representative. Though entrepreneurs prefer to use an agent or a lawyer for filing an application for registration, there is no reason why it cannot be done by the entrepreneur or his/her employees. The entire registration process can be described in the following steps.

### **Trademark in India**

#### **The following tips are useful while selecting a trademark:**

- i. It should be easy to speak, spell, and remember.
- ii. Invented words or coined words are advisable.
- iii. Avoid selection of a geographical name.

iv. Avoid adopting laudatory word or words that describe the quality of goods (such as best, perfect, super, etc).

v. It is advisable to conduct a survey to ascertain if same/similar mark is used in market.

### **Application for Registration:**

The request for the registration should be in the prescribed form. Three completed copies of the form are submitted along with ten additional representations of the trademark. The representation of the trademark must contain a clear reproduction of the sign.

Even though a bare representation may be sufficient, it is advisable to include any colours, forms, or three-dimensional features. In addition to details of the applicant, the application must also indicate the class of goods/services to which it would apply. The following information should be mentioned in the form:

(a) The class of goods for which the mark is sought should be specified. Classes can be textiles, food and confectionery, machine tools, etc. Separate applications are required for applying in different classes.

(b) Definition of goods that is sought to be registered should be given.

(c) Details of the applicant including name, age, occupation, address, and nationality should be given.

(d) Whether the trademark is in use or is proposed to be used. If it is in use, then applicant must specify by whom it is being used and for what period.

### **Receipt and Examination:**

Receipt of the application is acknowledged by returning a copy of the application along with a representation of the mark. An official number is given to the application. The date of receipt of application can become very important in possible infringement proceedings later.

The office considers all documents and evidences and searches among existing trademarks. After such searching, the registrar can respond in the following ways:

1. Absolute acceptance
2. Acceptance subject to modifications in the mark
3. Refusal

In case modifications have been asked for, the applicant must comply with them within the stipulated period of three months.

**Acceptance, Advertisement, and Opposition:**

After the application has been accepted, it will be published in the Trademark journal. The advertisement will include all details of the acceptance including representation of the mark, date of filing, particulars of applicant, and conditions or limitations, if any. Opposition has to be done within three months of the date of the advertisement. Opposition must be in the prescribed form, in triplicate, and with the prescribed fee.

In addition to trademarks, the following categories of marks can also be registered under the TM Act:

- i. Certification marks, which are given for compliance with defined standards. These are not confined to any restricted membership. Such marks are granted to any entity that can certify that its products meet certain established standards. The internationally accepted 'ISO 9000' quality standard and the Indian ISI mark are examples of widely recognized certification marks.
- ii. Collective marks can be owned by any association. The members of such an association will be allowed to use the collective mark to identify themselves as members of the association. Examples of such associations would be those representing accountants, engineers, or architects or industry associations such as CII.

Usually, the entire process of registration takes more than a year after application. Although after receipt of the official number of an application, the applicant can request an expedited (Tatkat) examination of the registration application, together with a declaration stating the reason for the request and a payment of the fee five times the application fee.

If the Registrar of Trade Marks is satisfied with the reason, the examination of the application is expedited and the examination report is issued within three months of the date of the request. If such a request is rejected after the hearing, the fee paid is refunded.

The registration is valid for ten years and is renewable for subsequent consecutive periods of ten years. Non-renewal leads to a lapse of registration. However, a lapsed registration can be easily restored.

Reciprocity for the purpose of claiming priority is now allowed from the applications originating from the Paris Convention countries if filed within six months of the date of priority.

The courts in India have recognized the international reputation of foreign trademarks and trade names and the significance of their protection. Marks such as those of Amway, Whirlpool, and Ferrari have received protection through judicial decisions in India.

**Cancellation:**

An application for cancellation or rectification of registration of a trademark can only be filed by aggrieved parties, for example, those claiming to be prior users of the mark. An application for cancellation must be filed with the Registrar of Trade Marks or the Appellate Board.

The following are some of the usual grounds on the basis of which the registration of a trademark can be removed or cancelled:

1. The applicant did not intend to use the trademark in the normal course of trade and there has been no bona fide use of the trademark for the time being up to the date three months before the date of the application for removal.
2. There has been no bona fide use of the trademark for a continuous period of five years from the date on which the trademark was actually entered on the register or longer, during which the trademark was registered.
3. The trademark was wrongly registered. Before this trademark came into being, there was an established trademark that was identical or deceptively similar.

**Rights Conferred by Registration:**

The registration of a trademark gives the registered proprietor the exclusive right to use the trademark in relation to the goods or services for which it is registered and to obtain relief with respect to infringement of the same. Registration acts as a public notice to others, informing them that they should not use the trademarks that are registered or pending for registration.

Trademarks can also be assigned, licenced, or transferred with or without transmitting the goodwill of the company. There is a process for registration of all agreements that involve transmitting a trademark without the goodwill of the company.

**Infringement of Trademarks:**

Registration of a trademark is a prerequisite for initiating an infringement action. The registered proprietor, his/her heirs and users can sue for infringement. An assignee of a registered trademark can

also sue for infringement. The following essential conditions must exist for initiation of an infringement action:

1. The allegedly infringing mark must be either identical or deceptively similar to the registered trademark.
2. The goods/services in relation to which the allegedly infringing mark is used must be specifically covered by the registration of the registered trademark.
3. The use of the allegedly infringing mark must be in the course of trade.
4. The use must be in such a manner as to render the use likely to be taken as being used as a trademark.

**A registered trademark (RTM) is also infringed by use of a mark when because of.**

- i. Its identity with RTM and similarity with goods/services covered by registration;
- ii. Its similarity with RTM and identity with goods/services covered by registration; or
- iii. Its identity with RTM and identity with goods/services covered by registration

It is likely to cause confusion on the part of the public (in case 3 above, confusion is presumed), or which is likely to have an association with the RTM.

If an identical or similar mark is used with respect to goods or services that are not similar to those for which an RTM is registered, such use amounts to infringement if an RTM has reputation in India and the use of the mark without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute of the RTM.

Under the TM Act, the following acts would also amount to an infringement of the RTM:

1. Use of the RTM as a trade name or part of the trade name dealing in same goods or services for which the RTM is registered.



2. Use of the trademark in advertising if such advertising takes unfair advantage of and is contrary to the honest practice in industrial or commercial matters, or is detrimental to its distinctive character; or is against the reputation of the trademark.

Under the TM Act, even verbal use of the mark can constitute infringement.

Passing Off:

The user of an unregistered trademark is barred from instituting an infringement action. However, if the mark in question has become well known in India, the user of such a trademark is not without recourse and may seek a remedy by means of a passing-off action. The purpose of this tort is to protect commercial goodwill and to ensure that the user's business reputation is not exploited.

Since business goodwill is an asset and, therefore, a species of property, the law protects it against encroachment as such. In a passing-off action, the plaintiff must establish that the mark, name, or get-up-the use of which by the defendant is subject of the action is distinctive of his/her goods in the eyes of the public or class of public and that his/her goods are identified in the market by a particular mark or symbol. A passing-off suit can be converted into a combined action of infringement and passing off, if the registration of the trademark is obtained before the final hearing of the passing-off suit.

### **Orders in Infringement and Passing-Off Suits:**

In an action for infringement of a registered trademark, or in an action for passing off for either a registered or an unregistered mark, the court may order an injunction. The court may also pass an order to award damages on account of profits lost along with the delivery of the infringing marks, for destruction or erasure. In addition to the civil remedies, the TM Act contains stringent criminal provisions relating to offences and penalties.

Indian courts have been proactive in granting orders against the use of infringing domain names. In the *www.yahoo.com vs. yahooindia.com* case, it has been held that 'the domain name serves the same function as a trademark, and is not a mere address or like finding number on the Internet, and, therefore, it is entitled to equal protection as a trademark.'



Often, new ventures neglect to approach the issue of trademarks in an organized way. It is important for entrepreneurial firms to establish a trademark in the early days of the enterprise and to protect it once it gets established. The following path is suggested for firms in creating and dealing with their intellectual property in the form of trademarks.

#### Select Trademark:

The trademark selected should be distinctive. There should not be any scope for confusion with existing trademarks. Not only is it bad for business, it is unlikely to be registered by the Registry of Trademarks. Also, the trademark should be appealing to the consumers.

#### Search and Register:

A few selected trademarks should be submitted at the Registry of Trademarks for a paid search. Even the unlikeliest of trademarks could have been visualized and registered by someone in the past. This search will virtually eliminate the possibility of a similar trademark having been registered earlier.

#### Establish Trademark:

The trademark can be established in the market by brand building exposure. A trademark is established by building recognition. Adequate investments have to be made in an appropriate advertising and marketing strategy.

#### Protecting Trademark:

The trademark is protected by regularly scanning the market for imitations and attempts of passing off. The market has to be monitored by the sales team. The Journal of Trademarks has to be scanned to ensure that similar or identical trademarks do not get registered.

## TRADE SECRET

A **trade secret** is a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information not generally known or reasonably ascertainable by others by which a business can obtain an economic advantage over competitors or customers.

### Types of Trade Secret:

- 1. Formula** The formula for a product. Some types of products, such as food are required to display ingredients on the label in most jurisdictions. However, this is usually a high level list of ingredients that leaves the exact formula a secret.
- 2. Process** A process such as a cooking process that results in an advantage such as a unique flavor.
- 3. Design** The design of a product or service. It can be difficult to keep designs secrets for long as they can typically be reverse engineered.
- 4. Methods** Methods such as an algorithm or calculation that improves decisions, operations or products.
- 5. Tools** A tool that improves work results such as a propriety design tool that improves productivity and quality.
- 6. Automation** Propriety systems and robotics that automate work to improve efficiency and quality.
- 7. Patterns** A reusable solution that applies to multiple designs, systems or processes.
- 8. Know-how** The ability to solve a problem that the competition isn't able to solve.

## PROTECTING A TRADE SECRET

Some of the ways to protect a trade secret are as follows:

- ❖ Restrict access to the information (lock it away in a secure place, such as a bank vault).
- ❖ Limit the number of people who know the information.
- ❖ Have the people who know the trade secret agree in writing not to disclose the information (sign nondisclosure agreements).
- ❖ Have anyone that comes in contact with the trade secret, directly or indirectly, sign non-disclosure agreements.
- ❖ Mark any written material pertaining to the trade secret as proprietary.

**LEGAL PROTECTION OF TRADE SECRETS:**

Trade secret rights are protected under the state as well as under federal law by different statute as explained here:

1. STATE LAW: Trade secrets are mainly protected under the state law rather than federal law in many countries. A model law which is adopted by almost 40 states mainly U.S. is “Uniform Trade Secret Act ” . UTSA was drafted by the National Conference of Commissioners on Uniform State Laws in 1970 and after that amended in 1985. Approximately 45 states have adopted the modified version of the UTSA. UTSA is the relevant law for the unauthorized commercial use of a trade secret by a third party, first of all enacted in U.S. The U.S. has such legal instrument to protect trade secrets. The nature and methodology used in this act is quite different from the others.

2. FEDERAL LAW: The misappropriation or theft of the trade secret is a federal crime<sup>18</sup> by the Economic Espionage Act<sup>19</sup> of 1996. This law contains two provisions for criminalizing two sort of the activity. The act criminalizes the theft or misappropriation of the trade secrets for the commercial or economic purposes<sup>20</sup> or for the benefit of the foreign powers. The statutory penalties are different for the two offenses.

The first, 18 USC section 1831 (a) criminalizes the misappropriation of trade secrets (including conspiracy to misappropriate trade secret and subsequent acquisition of such misappropriated trade secrets) with the knowledge or intent that the theft will benefit a foreign power. Penalties for the violation are fines up to US \$500,000 per offense and imprisonment of up to 15 years for individuals, and fines of up to US \$ 10 million for organizations. The second, 18 USC section 1832, criminalize the misappropriation of trade secrets related to or included in a product that is produced for or placed in interstate (including international) commerce, with the knowledge or intent that the misappropriation will injure the owner of the trade secret. Penalties for violation of section 1832 are imprisonment for up to 10 years for individuals (no fines) and fines of up to US \$5 million for the organization. In addition to these penalties, section 1834 of the EEA also requires criminal forfeiture of any proceeds of the crime and property derived from proceeds of the crime; and any property used, or intended to be use, in commission of the crime. Trade secrets are also protected under the Commonwealth common law jurisdictions, in this confidentiality and trade secrets are regarded as an equitable right rather than a property right<sup>22</sup>.

**Difference Between Trade Secret and Patent**

A patent is the exclusive right (or monopoly) given by the Government to the owner of an invention, in return for the sharing of his knowledge and experiences in the making of the invention. Only inventions can be patented. The temporary monopoly on the subject matter of the patent is regarded as a quid pro quo for thus disclosing the information to the public.

**GEOGRAPHICAL INDICATIONS**

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place.

**Examples of GI in India:**

S. No.	Application No.	Geographical Indication	Type	State / Country
1	1	Darjeeling Tea (Word)	Agricultural	West Bengal
2	2	Darjeeling Tea (Logo)	Agricultural	West Bengal
3	3	Aranmula Kannadi	Handicraft	Kerala
5	5	Salem Fabric	Handicraft	Tamil Nadu
6	6	Payyannur Pavithra Ring	Handicraft	Kerala

**INDIAN SCENARIO OF GI ACT 1999,**

In December 1999, the Parliament had passed the Geographical Indications of Goods (Registration and Protection) Act, 1999, on the basic premise that unless a Geographical Indication had been protected in the country of its origin, there would be no obligation under the WTO for other countries to extend reciprocal protection. This Act seeks to provide for the registration and better protection of geographical indications relating to goods in India. The Controller General of Patents, Designs and Trade Marks, who is the Registrar of Geographical Indications, would administer the Act. The Geographical Indications Registry would be located at Chennai.

**Darjeeling Tea — Statutory Protection**

Geographical Indications worldwide primarily face two risks, one arising out of generic use to indicate a class of products without any regional connection and other is from their dilution of trademark on similar goods or services. Enforcement of 'Darjeeling Tea' has no exception to this and it is being faced with challenges in USA and France. Enforcement is more compounded due to diverse civil and common laws in the various countries. Tea Board has obtained 'home protection' by registering Darjeeling Tea certification mark under Trademark Act, 1999. The Darjeeling logo and the word are also registered as Geographical Indication under Geographical Indication Act, 1999. During the last four years, Tea Board of India has spent USD 200,000 on legal and registration expenses, cost of hiring international watch agency and fighting on infringements in overseas jurisdiction. Despite the heavy cost of protection, Tea Board of India has recognised the importance of protecting Darjeeling Tea for benefits of both tea producers and consumer towards public policy objectives and concerns. Due to the concentrated efforts of the Tea Board, 'Darjeeling Tea' is now registered in almost all the major countries in the world.

(Source: [http://www.wipo.int/sme/en/case\\_study/darjeeling\\_tea.htm](http://www.wipo.int/sme/en/case_study/darjeeling_tea.htm))

In the *Basmati rice* case, India could not get help from the WTO on the issue of the patenting of a geographical indication name because India did not have its own legislation for registration of geographical indications that time. In this case the Indian government took up the matter with the USPTO (United States Patent & Trademarks Office) and managed to stop the patenting of

a geographical indication. The US government too supported India on the *Basmati* rice issue.

There are three primary reasons why GI Act was introduced in India:

- As per TRIPS, all WTO members must provide means for interested parties to prevent use of marks, which misleads the public on the geographical origin of goods.
- The use should not amount to unfair competition.
- To protect Indian GIs from being misused in other countries.

The GI Act has been passed with the object of providing protection to a geographical indication, to any agricultural goods, natural goods or manufactured goods or any goods of handicraft or goods of industry including food stuff.

Under the GI Act, any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication. Geographical indications, which cannot be registered are:

- the use of which would be likely to deceive or cause confusion or contrary to any law.
- those which comprises or contains scandalous or obscene matter or any matter likely to hurt religion, susceptibility of any class or section of citizens of India.
- which would otherwise be disentitled to protection in a court.
- which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country.
- which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.



## Benefits of GI

- It confers legal protection to Geographical Indications in India.
- Prevents unauthorised use of a Registered Geographical Indication by others.
- It provides legal protection to Indian Geographical Indications which in turn boosts exports.
- It helps in the economic prosperity of producers of the goods produced in a geographical territory.

The Act provides for the establishment of a Geographical Indications Registry. Under the Act, the registered proprietor of the GI and the authorised user or users shall have the right to use the GI exclusively in relation to goods for which the GI is registered. They would also have the right to file for infringement of the GI and obtain relief as provided under the Act. In all legal proceedings relating to a GI, the certificate of registration granted by the GI Registry shall be prima facie evidence of the validity of the GI and will be admissible in all courts without further proof.

The Act makes a registered GI public property, which, once registered, cannot henceforth be assigned, licensed or mortgaged. The Act also prohibits the registration of the GI as a trademark and invalidates any GI registered as a trademark as it would lead to expropriation of a public property by an individual leading to confusion in the market. In a nutshell, this is a comprehensive legislation, which covers all the aspects of GI.

Under the Trademark Act, the trademarks, which exclusively consist of marks or indications that may serve in trade to designate geographical origin of goods or services, cannot be registered. The purpose of a trademark is to denote the origin of the goods from a particular trader. In case of geographical name, the name would lead the consumer to believe that the goods originate from that particular place thus causing confusion and even deception. Thus Geographical Indication must satisfy two requirements, which are—the territorial aspect and that a given quality, reputation or other characteristic should be essentially attributable to its geographical origin. The salient features of the GI Act are:

## Salient Features of the GI

### Rights to Users

The GI Act provides for registration of GI and the authorised user thereof who is able to bring an action based on this registration.

Registration of a Geographical Indication confers the following rights on the registered proprietor and the authorised users:

- Exclusive right to the use of the Geographical Indication in relation to the goods in respect of which Geographical Indication is registered.
- Right to obtain relief in case of the infringement of the Geographical Indication.
- Two or more authorised users of a registered Geographical Indication have co-equal rights.

#### **Classes**

All the goods have been classified in different classes in accordance with the international classification of goods for the purposes of registration of Geographical Indications.

#### **Duration and Renewal**

The registration of Geographical Indication is valid for a period of ten years, and may be renewed thereafter for further periods of ten years.

The registration of an authorised user is valid for a period of ten years or for the period till the date on which the registration of Geographical Indication in respect of which the authorised user is registered expires, and whichever is earlier.

#### **Prohibition of Assignment, Transmission, etc.**

The Geographical Indication law prohibits assignment, transmission, licensing, pledge, mortgage or any such other agreement in respect of a Geographical Indication.

#### **Infringement**

The Act also provides for infringement and passing off actions thus recognising the common law right in a GI and includes civil as well as criminal remedies. Infringement has been defined to include unfair competition. In a civil suit, the following reliefs are available: Injunction, discovery of documents, damages or accounts of profits,

### **Registration of Geographical Indication:**

The protection is granted to geographical indications through registration. The registering authority is the Registrar of Geographical Indications.

Who can apply for registration?

- (i) any associate of persons;
- (ii) producers; or
- (iii) any organisation or authority established by or under any law representing the interest of the producers of the concerned goods.

#### **Who Can Apply?**

The application must be made to the Registrar under the Act, the Controller-General of Patents, Designs and Trademarks appointed under sub-section (1) of section 3 of the Trademarks Act, 1999



shall necessary be the Registrar of Geographical Indications. He shall be assisted by such number of officer, which the central government may think fit.

A fully fledged modern patent office and the country's first geographical indication (GI) registry was put up in Chennai which is really a good step forward in this field. This registry will satisfy the requirements mentioned in the Act further supplementing it.

**Where to file the application?**

Every application shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indications relates is situated.

**INDUSTRIAL DESIGN:**

## **WHAT IS INDUSTRIAL DESIGN?**

There are two forms of designs recognised by law. One form is functional aspects and other one is visual aspects. Under functional aspects are covered a tool box, car engine, wrist watch, etc. The visual aspect covers car body, furniture shape, shape of packaging container, etc. WIPO (World Intellectual Property Organisation) defines an industrial design as an ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features such as patterns, lines or colour. In IP law, the word 'design' has restricted meaning. It means a plan or a scheme that may be written or drawn, showing how something is constructed or the product components are arranged. Visually attractive designs intended to appeal to the eyes fall under the purview of design law. However, in cases where the design relates to the functional aspects of a product, it falls in the purview of patent law.

Scope of design protection is very wide, covering a variety of products of industry and handicraft: from technical and medical instruments to watches, jewellery, and other luxury items; from house-wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods. Industrial designs are what make an article attractive and appealing; hence, they add to the commercial value of a product and increase its marketability.

To be protected under Indian Design Act, 2000, design must appeal to the eye. This means that design is primarily of an aesthetic nature, and does not protect any technical features of the article to which it is applied.

When an industrial design is protected, the owner—the person or entity that has registered the design—is assured an exclusive right against unauthorised copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An

Industrial Design protection is provided for a shape, configuration, surface pattern, colour, or line (or a combination of these), which, when applied to a functional article, produces or increases aesthetics, and improves the visual appearance of the design, be it a two-dimensional or a three-dimensional article. As per Indian Law, under the Design Act of 2000, Industrial Design protection is a type of intellectual property right that gives the exclusive right to make, sell, and use articles that embody the protected design, to selected people only. Protection rights are provided for a period of 10 years. They can then be renewed once for an additional period of 5 years. Design protection provides

geographical rights, like Patents and Trademarks do. To obtain Design Protection in India, the same has to be registered in India.

The pre-requisites for a design to qualify for protection are as follows:

- ❖ It should be novel and original
  - ❖ It should be applicable to a functional article
  - ❖ It should be visible on a finished article
  - ❖ It should be non-obvious
  - ❖ There should be no prior publication or disclosure of the design.
  - ❖ How to obtain Industrial Design protection in India?
- 
- ❖ The application procedure for Design protection is fairly simple. The Design office provides a paper filing option as well as an online filing option. All designs are categorized as per the Locarno Classification for Industrial Designs, and filing is done as per the class that pertains to the design in question.
  - ❖ An application is to be submitted to the design office with the desired designs, with a classification code and a description of the design. The application then goes through an examination process, after which the applicant receives a communication from the Design office regarding any objections, if present.
  - ❖ After rectifying the application based on the objections and responding to the Design Office, the application will be granted if all the requirements are met. Once granted, and if there is no objection from any third party sources, the design is exclusive to the owner for the time period mentioned above.

**Difference between Patent Protection, Industrial Design Protection and Copyrights**

	Patents	Industrial Designs	Copyrights
<b>What can be protected?</b>	A technical enhancement which is novel, unique and useful	Novel ornamental or aesthetical appearance of any article of use	Any literary object namely artwork, poetry, films, books, music, photography, etc.
<b>Duration and region of protection</b>	20 years' protection in the country of filing, with no extension after 20 years	10 years' protection in the country of filing, and can be renewed once for 5 years	Worldwide protection for the lifetime of the creator plus 60 years
<b>Maintenance of the Right</b>	Annual fee for the duration of 20 years	If applying for renewal, fee is required after 10 years to renew protection	No fee required, as registration is not mandatory
<b>When to apply</b>	Before launching product into the market	Before launching design into the market	Can apply at any time

Table 1: Differences between Patents, Industrial Designs and Copyrights

In some cases, a question may arise as to which type of protection to opt for; it is ambiguous as to whether industrial design protection, patent protection or copyright protection would be more relevant. For this reason, here is a detailed difference between patents, industrial designs, and copyrights, in order to give you a basic understanding of the main aspects of each.

**Why should one look into filing for Industrial Design?**

The outer appearance of a product makes it visually more appealing and attractive. This acts as a value-adding aspect, which in turn increases the marketability of the product. This leads to the need to protect your creation from third parties' use, in order to prevent them from taking advantage of your rights in this world of competition. In many cases, the design itself becomes the identity of a brand. Some of the most famous examples are Coca Cola's contour bottle, the contours of the iPhone/iPad/iPod, and the shape of the Volkswagen Beetle and the Mini Cooper.

When a product's design is protected, it stops illegitimate products from destroying the brand's efficacy and safety. Protection of industrial designs also encourages creativity in the manufacturing and industrial sectors, which leads to an expansion in commercial activities.

The old saying goes 'the first impression is the best impression'. In the case of a product, the first impression is inadvertently made by the appearance of the product, before the user even explores its functionality. In this era of creativity, aesthetics and presentation, the overall design and visual appeal of any product is very significant. Hence, the ability to design a creative appearance is a marketable talent in itself. So why not protect your creativity and efforts, without allowing others to use your novel creations? Think beyond just functionality, and look into eye appeal too!

### **LAYOUT DESIGNS**

Layout designs (topographies) of integrated circuits are a field in the protection of intellectual property.

What is a layout-design (topography) of an integrated circuit?

An integrated circuit (or "chip") is an electronic device that incorporates individual electronic components within a single "integrated" platform of semiconductor material, typically silicon, configured so as to perform a complex electronic function. Typically, an integrated circuit comprises active elements such as electronic switches and gates (like transistors or diodes) and passive electronic components (such as resistors and capacitors). Broadly, integrated circuits are classified into microprocessors and memories. A microprocessor typically performs information-processing functions because it has logic circuits capable of electronically performing information processing. Memories enable storing and retrieval of data.

An integrated circuit is thus formed when a miniaturized electrical circuit is embodied within a chip. All the active and passive components are created in the semiconductor wafer during the fabrication process itself and are therefore inseparable once the chip has been produced.

A layout-design, also known as an integrated circuit topography, is defined in Article 2(i) of the IPIC Treaty, as incorporated into the TRIPS Agreement, as the three-dimensional disposition, however expressed, of the elements at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture. In other words, a layout design is the three-dimensional layout of an integrated circuit, i.e. the arrangement in a chip (usually made of semiconductor crystal) of active and passive electronic components.

Such layout-designs do not fall easily under the pre-existing categories of intellectual property law. They may be too functional for copyright or design protection but not inventive enough to merit patent protection. Thus the TRIPS Agreement contains rules specifically addressing their protection. However, these rules are flexible enough to allow countries to use more patent-like approaches with formalities or more copyright-like approaches without formalities as they see fit.

Article 4 of the IPIC Treaty as incorporated in the TRIPS Agreement recognizes that Members are free in the manner in which they implement this protection of layout-designs in their national law and explicitly mentions the possibility to achieve such protection through copyright, patent, utility model, industrial design or unfair competition law, or any other law or combinations thereof. Members, therefore, are not obliged to create a separate law for layout designs of integrated circuits, but can meet their obligation to protect layout-designs by providing for it in existing categories of intellectual property or in other laws.

**What has to be eligible for protection as a layout-design of an integrated circuit?**

According to Article 3(2) of the IPIC Treaty, as incorporated into the TRIPS Agreement, protection extends to such layout-designs that are:

- ❖ original in the sense that they are the result of their creators' own intellectual effort; and
- ❖ not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of their creation.

While the originality requirement is similar to the concept of originality in copyright, the requirement of the layout-design not being commonplace is closer to the more objective test of novelty in industrial property law. It is explicitly recognized in Article 3(2)(b) of the IPIC Treaty that a layout-design using elements that are commonplace can still meet these criteria if the combination of these elements is original and not commonplace. Neither the TRIPS Agreement nor the incorporated provisions of the IPIC Treaty stipulate formality requirements for obtaining protection of a layout-design of integrated circuits. However, Article 7 of the IPIC Treaty explicitly states that Members are free to require, as a condition of protection:

that the layout-design has been ordinarily commercially exploited somewhere in the world (Article 7(1));

- the application for registration of the layout-design with the competent public authority,



including the disclosure of information on its electronic function. This may include specifying that filing has to be effected within a certain time period from the date of the first commercial exploitation and the payment of a fee for the registration of the layout design (Article 7(2)).

Members are therefore free to prescribe such formalities or not in their law. However, Members that choose to prescribe such formalities must respect the provisions of Article 62 of the TRIPS Agreement which provide that any such procedures must permit a reasonably speedy grant or registration so as to avoid unwarranted curtailment of the period of protection.

**What are the rights to be conferred on the owner of a protected layout-design?**

According to Article 36 of the TRIPS Agreement and Article 6 of the IPIC Treaty, Members are to consider unlawful:

- ❖ the reproduction; and
- ❖ the importation, sale or other distribution for commercial purposes of a protected layout-design, if it was not authorized by the right holder.

These prohibitions also extend to integrated circuits incorporating such a design, and to articles which contain such integrated circuits. This means that the owner of the layout-design has the exclusive right to authorize the reproduction and the commercial distribution of the protected layout-design itself, as well as of products incorporating such a design (e.g. mobile phones or other consumer electronics).

**How long does the protection of a layout-design have to last?**

According to Article 38 of the TRIPS Agreement protection is to last for a minimum of 10 years counted from either the date of filing an application for registration or from the first commercial exploitation wherever it occurs in the world. As the TRIPS regime on the protection of layout-designs contains no obligation for Members to require, as a condition for protection, the registration or the commercial exploitation of a layout-design, Article 38 provides thus alternative starting points for the required 10 year period of protection. As a further possibility, Article 38.3 of the TRIPS Agreement suggests that Members may also provide for protection of a layout-design to lapse 15 years after the creation of the layout-design.

**Part B- 2 Marks**

1. What is Intellectual Property Rights (IPR)?
2. What are the legislations covering IPRs in India?
3. Who are responsible for administration of IPRs in the country?
4. What is IP Governance?
5. What is Patent?
6. What is a Copy Right?
7. Define Trademark.
8. List out the types of Trade Secret.
9. What is Geographical Indication and give two examples of GI.
10. What is Industrial Design?

**Part C- 5 Marks**

1. What is IP Governance? Discuss the role of institutions that are responsible for it.
2. Discuss the various types of IPs, which need to be protected.
3. Which are the different types of patent in general? Explain the scope of granting patents under the Indian Patent Act.
4. Explain the salient features of Indian Patent Act 1975.
5. Discuss the Copy Right Protection in India.
6. Elucidate the various types of Trade Mark with suitable example.
7. Define Trade Secret. Enumerate the different types of Trade Secret.
8. Discuss the salient features of the Geographical Indication
9. Distinguish between Patent Protection, Industrial Design Protection and Copyrights.
10. Elucidate the pre-requisites for a Industrial design to qualify for protection in India.



**Part D- 10 Marks Case Study**

The Whopper Co. is a manufacturer of gumballs. The technology and know-how to do this are well known in the scientific and engineering community in Whopper's home country, where gumballs have been popular with consumers for decades. Whopper decided recently to expand into Country X and to introduce gumballs to a market that have never seen them before. Before doing so, Whopper filed for a patent in Country X. The local patent office examined the application as to form (it was fine), searched the local records to determine if the technology was known locally (it was not), and then published notice of the application in the

Patent Gazette for public comment. There was no public comment, and the patent was issued. Now Bubble Co., a local Country X business, has begun manufacturing and selling gumballs in Country X that are identical to those being manufactured and sold by Whopper. Whopper brings suit for patent infringement. Bubble countersues to have Whopper's patent revoked. Who will win? Explain.

**KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE****DEPARTMENT OF MANAGEMENET****Unit 4- INTELLECTUAL PROPERTY- Multiple Choice Questions- Each Question carries ONE Mark**

<b>SL.NO</b>	<b>Question</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>	<b>Answer</b>
1	Intellectual Property Rights (IPR) protect the use of information and ideas that are of.....	Ethical value	Social value	Moral value	Commercial value	Commercial value
2	If Francesca invents a new process for recording music, she will likely apply for a.....	Patent	Trademark	Copyright	Industrial design	Patent
3	The rights of an author or artist with respect to his or her creation are governed by the law of.....	Patent	Trademark	Copyright	Industrial design	Copyright
4	A street vendor on Bloor Street is selling fake "TAGG" watches. Under which area of intellectual property would the TAG Company likely seek a remedy?	Patent	Trademark	Copyright	Industrial design	Trademark
5	Which is false? Intellectual property rights may be protected by.....	Maintaining secrecy	Registration	Use of a confidentiality clause	Assignment	Assignment

6	Meena has designed a uniquely shaped walker for senior citizens, which can be collapsed and, with the aid of two levers, used as a chair. Reeti's design is in commercial production under the name of Supportive Stroller. Which types of intellectual property would most likely apply to Meena's creation?	Patent; copyright; trademark	Copyright; trademark; industrial design	Trademark; industrial design; trade secret	Patent; trademark; industrial design	Patent; trademark; industrial design
7	Which is not a remedy for infringement of intellectual property rights?	An accounting for profits	An injunction	Specific performance	Damages	Specific performance
8	Passing off is.....	Incitement to break the contractual obligations of another	Presenting another's goods and services as one's own	The public utterance of a false statement of fact or opinion that harms another's reputation	The utterance of a false statement about another's goods or services that is harmful to the reputation of those goods or services	Presenting another's goods and services as one's own
9	A trademark is.....	The ornamentation or shape of a functional object, such as a chair	The right to prevent others from copying or modifying certain works	A monopoly to make, use, or sell an invention	A mark used to distinguish the source of goods or services	A mark used to distinguish the source of goods or services
10	Under the Patent Act, the person entitled to receive a patent on a new invention is.....	The one who invented it first	The who applied for a patent first	The one who commercialized it first	The one who first thought of it	The who applied for a patent first

11	The protection afforded by a Canadian patent lasts for a maximum of.....	10 years	20 years	The life of the patent holder	The life of the inventor plus 50 years	20 years
12	Use of a trademark that is the property of a competitor is.....	The tort of passing off	The tort of deceit	The tort of fraud	The tort of negligence	The tort of passing off
13	As a general rule.....	Intellectual property rights are assignable	Moral rights can be assigned but not waived	Intellectual property rights are not assignable	Intellectual property rights are assignable and Moral rights can be assigned but not waived	Intellectual property rights are assignable and Moral rights can be assigned but not waived
14	Where does the Banaganapalle mango hail from?	TN	Andhra Pradesh	Kerala	Karnataka	Andhra Pradesh
15	Which of the following was awarded with GI tag? 1. Dharwad Pedha 2. Tirupathi Laddu 3. Hyderabad Haleem 4. Bengal Rasagolla	1,2	1,2,4	2,3	1,2,3	1,2,3
16	Which of the following statement / s is / are correct? 1. Joha is an aromatic rice that is cultivated exclusively in Brahmaputra Vally of Assam. 2. It has got the GI tag.	Only 1	Only 2	1,2	None	Only 1

17	The term 'Geographical Indications' could be used for.....	Agricultural goods	Natural goods	Manufactured goods	Agricultural, Natural and Manufactured goods,	Agricultural, Natural and Manufactured goods,
18	Geographical Indications are used to indicate.....	A geographical place	A link between some characteristic of the good and the particular region where it is produced	The place where the goods are manufactured/produced	The origin of goods	A link between some characteristic of the good and the particular region where it is produced
19	The sign used for a Geographical Indication may be.....	A name of a geographical place	A symbol	A map	A name of a geographical place, Symbol and map	A name of a geographical place, Symbol and map
20	Who can apply for registration of a Geographical Indication?	An association of persons	An organization of producers	An individual	Only 1 and 2	Only 1 and 2
21	Who can use a registered Geographical Indication?	A person having interest in goods to which the Geographical Indication relates	A person residing in the area to which the Geographical Indication relates	A producer of the goods in respect of which a Geographical Indication has been registered	An authorised user	An authorised user
22	Who can be considered a 'producer' in relation to goods under the Geographical Indications of Goods Act?	A person who produces, processes or packages agricultural goods	A person who uses natural goods in making or manufacturing products	A person who makes or manufactures handicrafts or industrial goods	All of the above	All of the above
23	Which one of the following is not a Geographical Indication?	Goa Feni	Nagpur orange	Indian Neem tree	Kolhapuri chappal	Indian Neem tree

24	Who can initiate an action for the infringement of a Geographical Indication?	The government	The registered proprietor	The authorized user	The registered proprietor and the authorized user	The registered proprietor and the authorized user
25	Intellectual property rights and .....are two of the most important developing areas of law.	Cyber law	copyright infringement	patent law	trademark infringement	Cyber law
26	What action would a person bring against someone who steals a trade secret?	Economic Espionage Act	Infringement action	Misappropriation	Violation of trademark law	Misappropriation
27	To be patented, an invention must be.....	non-obvious	useful	novel	non-obvious,useful, novel	non-obvious,useful, novel
28	Who can challenge the issue of a patent?	Business competitors	The inventor's partners or employees	Anyone	Federal government	Anyone
29	Which of the following can a successful plaintiff in a patent infringement suit not recover?	Money damages	Royalties for the next ten years	Injunction preventing future infringements	Order requiring the destruction of the infringing article	Royalties for the next ten years
30	A patent may not be granted if the public used the invention for more than one year prior to the filing of the patent application pursuant to the.....	fair-use doctrine	public-use doctrine	World Trade organization treaty	American Inventors Protection Act	fair-use doctrine
31	Which of the following examples would not fall into the scope of the fair-use doctrine?	Brief quotation in a news report	Use in a parody	International reproduction in a broadcast of a reported event	Reproduction by a teacher to illustrate a lesson	International reproduction in a broadcast of a reported event

32	Which of the following statements is true?	Trademark registrations can be renewed for an unlimited number of ten-year periods.	Trademark law is intended to protect the owner's original work.	To qualify for federal protection, a mark must be distinctive and have a "secondary meaning."	Surnames alone can be trademarked.	Trademark registrations can be renewed for an unlimited number of ten-year periods.
33	Which of the following would not qualify as a mark?	Toys "R" Us	Reebok	North	The Green Family Fun Experience	North
34	Which of following would not gain copyright protection?	A DVD	An unrecorded speech	Written lyrics of a song	A hand knitted jumper	An unrecorded speech
35	What is the duration of copyright protection for a novel?	A novel will not gain copyright protection	The day the author dies	The end of the calendar year in which the author died	70 years from the end of the calendar year in which the author died	70 years from the end of the calendar year in which the author died
36	Which one of the following actions is not a breach of copyright?	To import copied CDs	To make a copy of a CD and sell it	To borrow a CD from a friend and copy it to your laptop for your own private use	To purchase a CD and copy it to your laptop for your own private use	To purchase a CD and copy it to your laptop for your own private use
37	Which of the following is not one of the three essential elements for a patent to be granted for an invention?	Be a product	Be new to the public	Involve an inventive step	Be capable of industrial application	Be a product
38	Which one of the following statements is true?	A patent must be registered in order to gain protection	Copyright must be registered in order to gain protection	The owner of a patent cannot sell it but can prevent others using his invention	The definition of an invention is set out in the Patents Act 1977	A patent must be registered in order to gain protection



39	The law governing registered trade marks can be found in which Act?	The Intellectual Property Act 1994	Copyright, Designs and Patents Act 1988	The Registered Trade Marks Act 1994	The Trade Marks Act 1994	The Trade Marks Act 1994
40	Which one of the following could not be registered as a trade mark?	The mark is an image	The mark is made up of letters and numbers	The mark is made up of a symbol with no words or letters	The mark represents the natural or technical shape of the goods	The mark represents the natural or technical shape of the goods
41	Which one of the following statements is false?	The maximum duration for an unregistered design right is 15 years	A registered design right may cover 2 dimensional and 3 dimensional objects	A registered design right only applies to 3 dimensional objects	The maximum duration for a registered design right is 25 years	A registered design right only applies to 3 dimensional objects
42	Unless a contract provides otherwise, who is the first owner of a design right created on or after 1 October 2014?	The person who commissioned the design	The manufacturer of the design	The government	The designer	The designer
43	The tort of passing off is governed by which statute?	The Passing-off Act 1977	The Tort Act 1977	The Unfair Contract Terms Act 1977	There is no statute that governs the law of passing-off	There is no statute that governs the law of passing-off
44	The Intellectual Property Act .....	1990	1991	1992	1994	1994
45	Copyright, Designs and Patents Act.....	1978	1988	1998	2001	1988
46	The Registered Trade Marks Act.....	1974	1984	1994	1999	1994
47	The Trade Marks Act .....	1994	1984	1995	1999	1994

48	The term of copyright for an author lasts how long?	the life of the author	the life of the author plus seventy years	ninety-five years	seventy years	the life of the author plus seventy years
49	Copyright protection begins when?	When the original work is fixed in a tangible medium of expression	Immediately when the author or creator comes up with the idea	When it is published	When it is registered	When the original work is fixed in a tangible medium of expression
50	International organization with objective to encourage creative activity and to promote intellectual property throughout world is.....	WIPO	UPU	BIRD	WTO	WIPO
51	World Intellectual Property Organization was established in.....	14 March, 1959	14 July, 1967	14 August, 1965	14 October, 1960	14 July, 1967
52	World Intellectual Property Organization is specialized agency of.....	United Nations	United Nations Security Council	United Nations Economic Council	United Nations Social Council	United Nations
53	First World Intellectual Property Organization on Changing Face of Innovation was published in.....	2005	2007	2011	2009	2011
54	Headquarter of World Intellectual Property Organization is located in.....	Rome, Italy	Bern, Switzerland	Berlin, Germany	Geneva, Switzerland	Geneva, Switzerland
55	Which section of Design Act, 2000 defines the term 'Design'.....	2	3	4	1	2

56	What is encompassed in design as per Intellectual Property Law.....	Pattern	Configuration	features of shape	Pattern, Configuration and Features of shape	Pattern, Configuration and Features of shape
57	Which of the following can be considered as an article for purpose of registration of design.....	lable	token	card	Novel Industrial Product	Novel Industrial Product
58	What constitute article under the design act 2000.....	Natural Article	Public domain article	Historical Article	Manufactured Article	Natural Article
59	What is the duration of a design registered under the design act, 2000?	5 years	depends upon the commercial value of infringement	2 years	10 years	10 years
60	The design Act.....	1990	1991	1999	2000	2000

**UNIT-V**

**SYLLABUS**

**Regional Blocks - NAFTA, EU, ASEAN, SAARC, SAPTA, Indo-Lanka Free trade, Indo -Singapore  
CECA Globalization vs. Regionalization**

**Introduction to Economic Integration**

- ❖ Regional integration is a process in which states enter into a regional agreement in order to enhance regional cooperation through regional institutions and rules.
- ❖ Regional Integration as an association of states based upon location in a given geographical area, for the safeguarding or promotion of the participants, an association whose terms are fixed by a treaty or other arrangements.

**Key Objectives**

- ❖ Strengthening of trade integration in the region
- ❖ Enabling environment for private sector development
- ❖ Economic growth
- ❖ Development of strong public sector institutions and good governance
- ❖ Reduction of social exclusion and the development of an inclusive civil society
- ❖ Contribution to peace and security in the region
- ❖ Building of environment programmes at the regional level
- ❖ Strengthening of the region interaction with other regions of the world

**Definition:**

Economic integration is an agreement among countries in a geographic region to reduce and ultimately remove, tariff and non tariff barriers to the free flow of goods or services and factors of production among each others; any type of arrangement in which countries agree to coordinate their trade, fiscal, and/or monetary policies are referred to as economic integration. Obviously, there are many different stages of integration. a. integration as an outcome – integration as something static;

integration can be achieved when certain criteria are fulfilled b. integration as a process – integration as a dynamic process; represented by stages of integration going from FTA to political integration.

## OBJECTIVE

An increase of welfare has been recognized as a main objective of economic integration. The increase of trade between member states of economic unions is meant to lead to the increase of the GDP of its members, and hence, to better welfare.

## STAGES OF ECONOMIC INTEGRATION

The degree of economic integration can be categorized into five stages:

1. Free trade area
2. Customs union
3. Single market
4. Economic and monetary union
5. Complete integration (political union)

These differ in the degree of unification of economic policies, with the highest one being the political union.

**A free trade area (FTA)** is formed when at least two states partially or fully abolish custom tariffs on their inner border. Free trade area is a type of trade bloc, a designated group of countries that have agreed to eliminate tariffs, quotas on most (if not all) goods traded between them. To exclude regional exploitation of zero tariffs within the FTA there is a rule of certificate of origin for the goods originating from the territory of a member state of an FTA. Unlike a customs union, members of a free trade area do not have a common external tariff (with respect to non-members), meaning different quotas and customs. To avoid evasion (through re-exportation) the countries use the system of certification of origin most commonly called rules of origin, where there is a requirement for the minimum extent of local material inputs and local transformations adding value to the goods. Goods that don't cover these minimum requirements are not entitled for the special treatment envisioned in the free trade area provisions.

Examples of FTA:

Central European Free Trade Agreement (CEFTA)

North American Free Trade Agreement (NAFTA)

**A customs union** introduces unified tariffs on the exterior borders of the union (common external tariffs). A customs union is a type of trade bloc which is composed of a free trade area with a common external tariff. The participant countries set up common external trade policy.

**A common market** adds the unification of economic policies (tax, social welfare benefits etc.). A common market is a type of trade bloc which is composed of a customs union with common policies on product regulation, and freedom of movement of the factors of production (capital and labour) and of enterprise. The goal is that the movement of capital, labour, goods, and services between the members is as easy as within them. A single market has many benefits. With full freedom of movement for all the factors of production between the member countries, the factors of production become more efficiently allocated, further increasing productivity. For both business within the market and consumers, a single market is a very competitive environment, making the existence of monopolies more difficult. This means that inefficient companies will suffer a loss of market share and may have to close down. However, efficient firms can benefit from economies of scale, increased competitiveness and lower costs, as well as expect profitability to be a result. Consumers are benefited by the single market in the sense that the competitive environment brings them cheaper products, more efficient providers of products and also increased choice of products. What is more, businesses in competition will innovate to create new products; another benefit for consumers.

**An economic and monetary union** is a type of trade bloc which is composed of a single market with a common currency. Example: Economic and Monetary Union of the European Union **Complete economic integration** is the final stage of economic integration. After complete economic integration, the integrated units have no or negligible control of economic policy, including full monetary union and complete or near-complete fiscal policy harmonisation.

**NAFTA (The North American Free Trade Agreement):**

- ❖ NAFTA is a 1994 agreement to remove taxes on products traded between North American countries (US, Canada and Mexico).

- ❖ NAFTA protects copyright, patents and trademarks between the three countries. It was updated with the North American Agreement on Environmental Cooperation, which helped reduce pollution and set more environmental regulations.
- ❖ Since NAFTA took away taxes between products traded between the US, Canada and Mexico, Mexico has been buying more products from the US.
- ❖ Some say NAFTA has been positive for Mexico, which has seen poverty rates fall and real income rise, while others argue that NAFTA has had negative impacts on farmers in Mexico who saw food prices fall based on cheap imports from the US.
- ❖ The North American Free Trade Agreement (NAFTA) is an agreement between Mexico, the United States and Canada. The agreement was signed by US President George H.W. Bush, Canadian Prime Minister Brian Mulroney, and Mexican President Carlos Salinas on December 17, 1992 in San Antonio, Texas, and took effect on January 1, 1994.
- ❖ The bill removed taxes on products traded between the three countries. It also protects copyright, patents, and trademarks between those countries. It was updated with the North American Agreement on Environmental Cooperation, which helped reduce pollution and set more environmental regulations. It was also updated with the North American Agreement for Labor Cooperation, which helped people fight for better labor conditions.

### **Effects**

Since NAFTA took away taxes for products traded between the US, Canada, and Mexico, Mexico has been buying more products from the US. It saved U.S. companies the cost of selling products to Mexico, and saved Mexican companies the cost of buying items from US companies.

A benefit of the bill is that labels on products exchanged between the three countries come in French, English and Spanish. That way, Mexicans and Americans who speak Spanish can read the Spanish label, Americans and Canadians can read the English label, and Canadians who speak French can read the French label.

NAFTA also encourages more immigration from Mexico to the US. Since small businesses can no longer be protected by tariffs, many small business owners in Mexico cannot compete with the

prices of subsidized products from the US. As a result, many Mexicans have gone to the US looking for work. Some believe that NAFTA has been positive for Mexico, which has seen its poverty rates fall and real income rise.

Others argue that NAFTA has been beneficial to business owners in all three countries, but has had negative impacts on farmers in Mexico. Mexican farmers have seen food prices fall due to cheap imports from US agribusiness, while US workers in manufacturing and assembly industries have lost jobs. Critics also argue that NAFTA has contributed to the rising levels of inequality in both the US and Mexico.

### **Goals of NAFTA**

NAFTA was created to eliminate barriers to trade and investment between the US, Canada and Mexico. The implementation of NAFTA immediately eliminated tariffs on more than one-half of Mexico's exports to the US and more than one-third of US exports to Mexico. Within 10 years of implementation, all US-Mexico tariffs would be eliminated except for some US agricultural exports that were to be phased out within 15 years. NAFTA also seeks to eliminate non-tariff trade barriers and to protect the intellectual property right of the products.

In the area of intellectual property, the North American Free Trade Agreement Implementation Act made changes to the copyright law of the US, foreshadowing the Uruguay Round Agreements Act of 1994 by restoring copyright (within NAFTA) on certain motion pictures which had entered the public domain.

### **Trade**

The agreement opened the door for free trade, ending tariffs on various goods and services, and implementing equality between Canada, the US and Mexico. Since the implementation of NAFTA, the countries involved have been able to do the following:

- ❖ The US had a services trade surplus of \$28.3 billion with NAFTA countries in 2009.
- ❖ Foreign direct investment of Canada and Mexico in the US (stock) was \$237.2 billion in 2009, up 16.5% from 2008.



- ❖ Income in the maquiladora (**maquiladora**: Mexican factories that take in imported raw materials and produce goods for export.) sector has increased 15.5% since the implementation of NAFTA in 1994.
- ❖ To alleviate concerns that NAFTA would have negative environmental impacts, in 1994 the Commission for Environmental Cooperation (CEC) was given a mandate to conduct ongoing ex-post environmental assessment of NAFTA.
- ❖ Agriculture is the only section that requires three separate agreements between each pair of parties. The Canada–US agreement contains significant restrictions and tariff quotas on agricultural products, whereas the Mexico–US pact allows for a wider liberalization within a framework of phase-out periods.
- ❖ Mexico has gone from a minor player in the pre-1994 US export market to the 2nd largest importer of U.S. agricultural products.
- ❖ According to the Department of Homeland Security Yearbook of Immigration Statistics (2006), 73,880 foreign professionals were admitted into the US for temporary employment under NAFTA.

**Key Elements in NAFTA:**

The NAFTA eliminates or imposes strict rules on a range of barriers to trade and investment. Key elements of the Agreement include:

- ❖ Opening of government purchasing regimes to businesses in all three countries;
- ❖ eliminating restrictions on foreign investment (except in a limited number of restricted sectors listed by each party) and ensures non-discriminatory treatment for local companies owned by investors in other NAFTA countries;
- ❖ eliminating barriers that prevent services companies from operating across North American borders, including in such key sectors as financial services;
- ❖ provides comprehensive rules to protect intellectual property rights; and
- ❖ provides three distinct dispute settlement mechanisms for state-to-state disputes, investor-state disputes, and disputes on antidumping measures and countervailing duties.

**What Are Rules of Origin, and Why Do FTAs Have Them?**

- ❖ Rules of Origin ('RoO') are a part of every FTA in order to ensure that the goods exported from a Party to the FTA are given lower tariff treatment and receive other preferential

treatment as agreed to in the FTA. The RoOs are also structured to ensure that preferential treatment is not given to goods that originated in countries that are not a Party to the Agreement. In the simplest form, the RoO may indicate that a product is 'originating' and eligible for preferential treatment if it was entirely manufactured or produced in a country that is a Party to the Agreement. Because the supply chains of so many products are now multinational, RoOs have evolved to allow for some portion of the inputs to be obtained in a third country.

### **Conclusion**

- ❖ The NAFTA has successfully liberalized trade and investment among Canada, Mexico, and the US. While the Agreement has increased trade and enhanced the economic integration of the three countries, the implementation process has not always been easy. Since the Agreement entered into force in 1994, there have been trade disputes, political tensions, AD cases, and arbitration cases among the three countries. Nevertheless, the overall record of the NAFTA implementation shows how a comprehensive and ambitious FTA may benefit developed and developing countries.

**ASEAN** (The Association of Southeast Asian Countries) was established on 8th August 1967 in Bangkok by the five original member countries: Malaysia, Indonesia, Thailand, Singapore, and Philippines.

- ❖ In 1984 Brunei Darussalam joined ASEAN followed by Vietnam in 1995, Lao PDR and Myanmar in 1997 and Cambodia in 1999. It is a geo-political and economic organization of ten countries located in Southeast Asia.
- ❖ The main objective of ASEAN is the acceleration of economic growth, social progress and cultural development of its members along with the promotion of regional peace.
- ❖ Originally, ASEAN was meant to be an association of countries engaged in nation building. The end of World War II saw the emerging of Indonesia, Malaysia, Philippines and Singapore as sovereign independent nations.
- ❖ Nation building was often vulnerable to foreign intervention. It was important for the governing people to have free hands to conduct their policies without interference from neighbouring countries. Small countries like Singapore and Brunei are always in fear of the

influences exerted by bigger neighboring countries like Indonesia and Malaysia. ASEAN was established to ensure sovereignty stayed resolutely located at the national level.

- ❖ The primary principle of ASEAN was non-interference. ASEAN is open to the participation of all States in the Southeast Asian region which are willing to subscribe to its aims, principles and purposes.
- ❖ ASEAN aims to represent the collective will of the countries of Southeast Asia to bind themselves together in friendship. It hopes through the joint efforts of its members to secure for its peoples the blessings of peace, freedom and prosperity.
- ❖ The ASEAN holds meetings, known as the ASEAN Summit, where heads of government of each member country meet to confer and resolve regional issues. In addition meetings are conducted with other countries outside the block with the intention of promoting external relations. Officially the summit meets for three days annually to discuss the pressing issues affecting the region. Member nations host the summit in alphabetical order.
- ❖ The schedule of the meeting involves the internal meeting of its members, the meeting of the leaders of its member states with foreign ministers of the ASEAN Regional Forum, a meeting with ASEAN Plus Three: the leaders of three Dialogue Partners: People's Republic of China, Japan and South Korea and a meeting with ASEAN CER: the leaders of two dialogue partners Australia and New Zealand.
- ❖ The fundamental principles of ASEAN involve mutual respect for the independence and sovereignty of its members. It holds the right of every member state to lead its national existence from external interference. It calls for the non interference in the internal affairs of one another and the settlement of differences in peaceful manner. It denounces the use of force or threat.
- ❖ Ever since its inception three decades ago, no tension has spiraled into armed confrontation among ASEAN member countries due to the political dialogue and mutual understanding they share.
- ❖ The members of ASEAN vow to always resort to peaceful processes in the settlement of intra regional disputes and to look on their security as essentially linked to one another and held together by geographic location, common vision and objectives.

### **POLICIES: PROGRESS WITH THE ASEAN COMMUNITIES**

1. The Socio-cultural Community - human rights: A small first step
2. The Politico-security Community - security co-operation: an encouraging start
3. The Economic Community - economic integration: in place by 2015

### **AIMS AND PURPOSES**

As set out in the ASEAN Declaration, the aims and purposes of ASEAN are:

1. Economic growth and social progress: To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations.
2. Regional peace and stability: To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter.
3. Collaboration and assistance: To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields.
4. Training and research: To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. Overall improvements: To collaborate more effectively for the greater utilisation of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples.
6. Studies: To promote Southeast Asian studies
7. Cooperation: To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

### **Fundamentals Principles:**

At the First Asian Summit in Bali in February 1976 the member countries signed the Treaty of Amity and Co-operation in Southeast Asia(TAC).

It spelled out the basic principles for their relations with one another and the conduct of the association's programme for co-operation. The fundamental principles are the following:

1. Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
2. The right of every State to lead its national existence free from external interference, subversion or coercion;
3. Non-interference in the internal affairs of one another;
4. Settlement of differences or disputes by peaceful manner;
5. Renunciation of the threat or use of force; and
6. Effective co-operation among themselves.

### **Structure of ASEAN**

There are a number of decision-making bodies that comprise ASEAN, spanning from international to the very local. The most important are listed below:

**Meeting of the ASEAN Heads of State and Government:** The highest body made up of the heads of each respective government; meets annually.

**Ministerial Meetings:** Coordinates activities in many areas including agriculture and forestry, trade, energy, transportation, science and technology, among others; meets annually.

**Committees for External Relations:** Made up of diplomats in many of the world's major capitals.

**Secretary-General:** The appointed leader of the organization empowered to implement policies and activities; appointed to five year term. Currently Surin Pitsuwan of Thailand. Not mentioned above are over 25 other committees and 120 technical and advisory groups.

### **European Union:**

The European Union has concluded free trade agreements (FTAs) and other agreements with a trade component with many countries worldwide and is negotiating with many others.

- ❖ The EU has developed a single market through a standardized system of laws which apply in all member states.

- ❖ EU policies aim to ensure the free movement of people, goods, services, and capital; enact legislation in justice and home affairs; and maintain common policies on trade, agriculture, fisheries, and regional development.
- ❖ The euro is designed to build a single market by eliminating exchange rate problems, providing price transparency, creating a single financial market and low interest rates, providing a currency used internationally, and protecting against economic fluctuations through internal trade.

**EU's Standard Decision-Making Procedure:**

The EU's standard decision-making procedure is known as 'Ordinary Legislative Procedure', following which the European Parliament has to approve the EU legislation together with the European Council. The European Commission drafts and implements the EU legislation.

**Council of Ministers has following tasks:**

1. Passes EU laws;
2. Coordinates the broad economic policies of EU member countries;
3. Concludes agreements between the EU and other countries;
4. Approves the annual EU budget;
5. Develops the EU's foreign and defence policies;

6. Coordinates cooperation between courts and police forces of member countries.

**SAARC** or “South Asian Association for Regional Co-operation” was formed in December, 1985 at Dhaka. India, Pakistan Nepal, Bhutan, Bangladesh, Sri Lanka and Maldives are its founding members. Afghanistan became its 8th member in 2007.

SAARC is the first systematic organizational output of efforts at regional level among member states of South Asia. The original idea was put forth by President Zia-ur-Rahman of Bangladesh.

### **Objectives of SAARC:**

- i. Promote welfare of the people
- ii. Promote mutual trust and understanding
- iii. Accelerate economic growth
- iv. Collaborate with regional and international organisations with similar objectives
- v. Collaborate in socio-economic, cultural and scientific fields

But, it also showed commitment to non-interference in internal affairs and respect for the sovereignty, equality and territorial integrity of member states. It emphasised that decision must be taken on the basis of consensus leaving aside bilateral or contentious issues.

### **Areas of Cooperation:**

- ❖ SAARC countries have identified some areas of cooperation.
- ❖ The 11 stated areas of cooperation are agriculture and forestry, health and population, meteorology, rural development; telecommunications; transport; science and technology; postal services; sports, arts, and culture; women in development; and drug trafficking and abuse.
- ❖ Other concerns, such as tourism and terrorism, however, have also been targeted. The charter stipulates that decisions are unanimous and that “bilateral and contentious issues” are to be avoided.

### **Social Charter:**



- ❖ The charter deals with poverty alleviation, health issues, education, human resource development and youth mobilisation, promotion of the status of women, promotion of the rights and well being of the child, population stabilization and drug addiction, rehabilitation and reintegration.
- ❖ The charter urges all the member-states to attach importance to social development and economic growth.
- ❖ It stresses that legislative, executive and administrative frameworks should be provided for the progressive realization of social and economic goals. It asks the SAARC states to maintain a social policy and strategy to ensure an overall and balanced social uplift of their people.

### **India's Role:**

- ❖ India realizes the importance the regional organizations are to play in foreseeable future. Since its formation, India has played vital role and at times as a 'big brother' in establishing cooperation between members.
- ❖ In later years SAARC sought to tackle issues such as women's participation, drug trafficking, tackling terrorism etc.
- ❖ It urged resumption of North- South dialogue to normalize the distribution of world trade, titled in favour of the developed countries. It established Food Security Reserves (1988) and adopted convention on Narcotic drugs (1990).

### **SAPTA: South Asian Preferential Trade Arrangement**

An inter-government group (IGG) formed by South Asian Association for Regional Cooperation (SAARC) members to negotiation incremental tariff reforms between member countries. The goal is to increase trade between Asian countries and to assist less economically advantaged members through preferential treatment.

On April 11, 1993, the Council of Minister signed the SAPTA. Its main objectives are:

1. Gradual liberalization of trade among the SAARC members.
2. Elimination of trade barriers among the SAARC nations. Especially, Tariff reduction.
3. Promoting and sustaining trade and economic cooperation among the member nations of



SAARC.

- ❖ SAPTA would be improved gradually for the mutual benefit of all the practice in the product areas covering raw material., semi-finished goods and finished goods for mutual convenience.
- ❖ SAPTA makes provision for information, consultation and dispute settlement. Least development countries such as Bhutan and Nepal among the members are given extra concessions. Members can withdraw from SAPTA by giving a 6 month notice.
- ❖ In 2005, SAARC's 13<sup>th</sup> meeting was held at Dhaker for obtaining consensus about the South Asian Free Trade Agreement (SAFTA) from 1, January 2006.
- ❖ SAARC's 14<sup>th</sup> meeting was held at New Delhi in April 2007. Agreement took place above to root-out terrorism in the region.
- ❖ India accorded the most favoured Nation (MFN) status to Pakistan in the trade and economic multers.
- ❖ SAARC members also united to fight against biases under the WTO arrangements.
- ❖ China has shown her interest in joining the SAARC and in the 14<sup>th</sup> summit the members have supported this issue.
- ❖ Iran has also shown her interest in joining the SAARC on observer category. The issue was postponed for the next meeting.
- ❖ Critics have however observed that the SAPTA has not been functioning effectively due to conflict between India and Pakistan. Further, the SAARC members lack significant trade potential and enthusiasm such as in the case of ASEAN members.

#### **The SAFTA Agreement:**

- ❖ The agreement on South Asian Free Trade Area (SAFTA) came into effect from January 1, 2006, ushering in an era of free trade in goods among the seven South Asian Association for Regional Cooperation (SAARC) member-countries. It paves the way for a full-fledged South Asia economic union in the future.

- ❖ As per the agreement terms, India, Pakistan and Sri Lanka have to scale down their customs duties to the level of 0-5 percent by 2013. On the other hand, the four “least developed” members in the SAARC group—Bangladesh, Maldives, Nepal and Bhutan—are expected to follow suit by 2018.
- ❖ India, being the larger economy among the seven members, has to provide certain concessions to the four least developed countries (LDCs). This would include a compensation mechanism for the revenue loss that they may incur owing to the cut in their import duties.
- ❖ As per the agreement provisions, the trade liberalisation programme would not be applicable to the tariff lines included in the ‘sensitive’ list of items
- ❖ Accordingly, India, which ratified the agreement at the Cabinet meeting on December 29, 2005, has finalized two lists for the purpose. For Pakistan and Sri Lanka, it has prepared a list containing 884 items, while that for Bangladesh, Nepal, Bhutan and Maldives, the list contains 763 items.
- ❖ The four LDCs within the SAARC have to be provided technical assistance by the other three members in training of human resources, improvement of the legal system and administration, custom procedures and trade facilitation.

## **THE INDO-SRI LANKA FREE TRADE AGREEMENT**

### **BACKGROUND**

The Indo-Sri Lanka Free Trade Agreement (ISFTA), which was signed on 28th December 1998 and entered into force with effect from 1st March 2000, provides duty free concessions to a wide range

of products traded between the two countries. Sri Lanka's final tariff liberalization commitment under ISFTA came into effect since November 2008 and with this completion of the commitment, the ISFTA which came into effect from March 2000 has been fully implemented. However, Sri Lanka has already got a fully duty free access to the vast Indian market under the ISFTA since the end of March 2003. Thus, the entrepreneurs based in Sri Lanka can now export more than 4000 product lines to the Indian market on duty free basis.

### **WHY INDIA IS IMPORTANT AS A TRADING PARTNER**

India is Sri Lanka's third largest trading partner globally, while Sri Lanka is India's second largest trading partner in the SAARC. It is the number one source of supplies accounting for twenty percent of Sri Lanka's total imports and third largest export destination for Sri Lankan products absorbing six percent of total exports. Among tourists, Indian visitors make the largest single group having a share of twenty seven percent of total arrivals. In the investment field, India is among the top five foreign investors in Sri Lanka. Trade between Sri Lanka and India has grown rapidly after the entry into force of the Indo-Sri Lanka Free Trade Agreement in March 2000. The value of bilateral trade increased from US\$658 million in 2000 to US\$ 3.6 billion in 2013.

### **OBJECTIVES**

The objectives of this Agreement are:

- (i) To promote through the expansion of trade the harmonious development of the economic relations between India and Sri Lanka.
- (ii) To provide fair conditions of competition for trade between India and Sri Lanka
- (iii) In the implementation of this Agreement the Contracting Parties shall pay due regard to the principle of reciprocity
- (iv) To contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

### **INDIA AND SINGAPORE -COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT (CECA)**

India and Singapore signed a Comprehensive Economic Cooperation Agreement (CECA) on 29 June, 2005 to enhance trade and investment ties between them. The CECA comprises a free trade

agreement on trade of goods and services, a bilateral agreement on investment promotion, protection and cooperation and an improved double taxation avoidance agreement. It also includes Mutual Recognition Agreements on quality certification of goods and services, liberalized visa rules for professionals, and undertakings to cooperate on several sectors like customs, dispute settlement, intellectual property rights, education and e-commerce. CECA was the first of its kind of trade agreement signed by India and has ushered in a new model for our future bilateral and regional economic alliances. It was also Singapore's first comprehensive economic pact with a South Asian country.

Currently, India and Singapore do trade worth Rs.62,344.4 crore (2007-08), a figure which has growing at an average of 35% since 2003-04. Singapore is India's second largest source of foreign direct investment, 3rd largest consumer of its merchandise exports and its largest trading partner among ASEAN states. For Singapore, India is one of its fastest growing trading partners among major economies. The idea for establishing a CECA between India and Singapore first came up formally in a meeting between then Prime Minister of Singapore Mr Goh Chok Tong and then Prime Minister of India Shri Atal Bihari Vajpayee in Singapore on 8 April, 2002. A Joint Study Group (JSG) was established to study the potential benefits of a CECA between the two countries.

The JSG identified major areas of economic cooperation and recommended a broad outline for the comprehensive agreement. Following the completion of the JSG report, a Declaration of Intent was signed on 8 April, 2003 by BG (NS) George Yeo, then Minister for Trade and Industry, Singapore, and Shri Arun Jaitley, then Minister for Commerce and Industry, India. A month later, the relevant ministries for the two governments began negotiations on the details of the agreement. After 13 rounds of formal negotiation, the two countries finally concluded the CECA. On 29 June 2005, Prime Minister of India Mr. Manmohan Singh and Prime Minister of Singapore H.E. Mr Lee Hsien Loong signed the agreement during the latter's State Visit to India. The CECA has become operational with effect from 1 August, 2005. It is reviewed from time to time; the first round of review was concluded on 1st October, 2007, and the latest review was done recently in 2009 at the level of Secretaries.

**India has signed the Comprehensive Economic Cooperation Agreement (CECA) with Singapore in the year 2005.**

- ❖ A JSG (Joint Study Group) was formed to study the benefits of the agreement. The JSG concluded that the CECA agreement would be beneficial for both the countries in terms of increased trade and investment by economic cooperation.
- ❖ This free trade agreement has been signed to shape up the trade of goods and services of the two nations. It also comprises of a bilateral agreement on investment cooperation, protection and promotion.
- ❖ An integral part of the CECA was the double taxation avoidance agreement which ensures that the companies should be taxed in those countries from where they have been originated. It also included Mutual Recognition Agreements on quality of goods and services, liberalized visa rules, and undertakings to cooperate on different areas of dispute settlement, education, etc.
- ❖ CECA has been penned by both the countries to bring mutual benefits. From Indian prospective it brought a gateway pass for trading with Southeast Asian countries.
- ❖ Also India looked upon this opportunity to bring in more FDI's and portfolio investments which helped her to develop crucial sectors of the economy like telecommunication, SEZs, infrastructure, etc.
- ❖ India also saw the option of rendering its services in which it has a comparative advantage because of cheap and skilled labour especially in area of IT. Moreover, the transfer of Human Resource practices were seen as an again for Indian businesses.
- ❖ From Singapore's point of view it has gained mainly from the removal of tariffs on goods because India had high tariffs on more goods than Singapore.
- ❖ So, the reduction on the tariffs has been done from India's side. This agreement has acted as a catalyzing factor to enhance the bilateral ties between the counties in terms of the trade, investments, ideas and people.

### **Benefits of CECA between India and Singapore**

- ❖ Trade in Goods
- ❖ Eligible goods are being offered at 'discounted ' rates instead of MFN rates (given to all members countries of WTO)
- ❖  $\text{Tariff Savings} = (\text{MFN rate} - \text{Discounted rate}) * \text{Export value}$

- ❖ Lower import costs help to keep a check on trade balance
- ❖ Trade in Services
- ❖ Improved and preferential Market Access for both countries
- ❖ Investment
- ❖ Singapore has become India's 2nd largest source of FDI Inflow
- ❖ India offers national treatment to Singaporean investors in some committed sectors, so they do not need approval for investing
- ❖ Intellectual property Protection
- ❖ Mutual Recognition of IP registration in both countries
- ❖ Movement of Business persons
- ❖ Free movement of professionals and workers across borders
- ❖ Mutual Recognition of Standards and Qualifications
- ❖ Recognition of testing standards of exporting country (negate the need for exporters to test products in partner country, reduce costs)
- ❖ Double Tax Avoidance Agreement
- ❖ Singaporean investors face no tax for their investments in securities in India which has contributed to rising FDI from Singapore.

### **Globalization Vs Regionalization**

#### **Globalization**

- ❖ It is the process of dividing an area into smaller segments called regions.
- ❖ Ex: Division of nation into states or provinces.

#### **Regionalization**

- ❖ Business also uses regionalization as management tool.
- ❖ It is the process of international integration arising from the interchange of world views, products, ideas, and other aspects such as technology etc.

1. **Nature** Globalization promotes the integration of economies across state borders all around the world but, regionalization is precisely the opposite because it is dividing an area into smaller segments.
2. **Market:** Globalization allows many Co. to trade on international level so it allows free market but in regionalized system, monopolies are more likely to develop.
3. **Cultural & Societal relations:** Globalization acceleration to multiculturalism by free and inexpensive movement of ppl But, regionalization does not support this.
4. **Aid:** Globalized international community is also more willing to come to the aid of a country stricken by a natural disaster but, a regionalized system not get involved in the affairs of other areas.
5. **Technological advances:** Globalization has driven great advances in technology but, advanced tech. is rarely available in one country or region.

#### Part B- 2 Marks

1. What is Economic Integration?
2. List out the objectives of Economic Integration.
3. What is European Union?
4. What is SAARC?
5. List out the members of SAARC.
6. List out the objectives of SAARC.
7. What is SAPTA?
8. List out the objectives of SAPTA.
9. What is CECA?
10. What is Regionalization?

#### Part C- 5 Marks

1. Enumerate the different stages of Economic Integration.
2. What is ASEAN? Discuss the fundamental principles of ASEAN.
3. What is SAARC? Enumerate the objectives of SAARC.
4. Elucidate the India's Role in SAARC.

5. Write a note on SAPTA and its Agreements.
6. Explain the objectives of the Indo-Sri Lanka free trade agreement.
7. India has signed the Comprehensive Economic Cooperation Agreement (CECA) with Singapore in the year 2005- Discuss.
8. Enumerate the Benefits of CECA between India and Singapore.
9. How Globalization is different from Regionalization- Explain.
10. Explain the structure and decision making procedure of European Union.
11. What are trading block? Explain in detail various levels of integration.

**Part D- Case Study- 10 Marks**

Regionalism and maximizing intra-regional interaction has become a significant phenomenon in international relations. The waves of globalization and liberalization have further made it obligatory for all the nation-states to strengthen their regional economic inter-linkages. The need for the South Asian regional alliance was felt during the eighties. The agreement among the seven South Asian countries – India, Pakistan, Bangladesh, Sri Lanka, Nepal, Bhutan and Maldives – over the establishment of SAARC has been a significant achievement in the decade of the eighties. In 2007 Afghanistan joined the association, as the eighth member. With the aim of promoting cooperation in economic, social, cultural and scientific fields, this regional forum opens new opportunities for the region. The members of SAARC are determined to improve the quality of life of the South Asian people by uplifting social, economic and cultural standards; encouraging self-reliance; promoting mutual assistance; enhancing collaboration with other countries and regional and international organizations. Despite strong ambitions, the progress of SAARC has not been encouraging. Compared to other regional organizations specially the EU or ASEAN, its record of achievements is hardly impressive.

**Critically examine- to identify the major obstacles that hinder the smooth progress of SAARC and affect the process of economic integration in the region?**



In the last few years, especially after the establishment of World Trade Organisation, the world has seen an upsurge in Regional Trade agreements. While many RTA's are flourishing worldwide, the South Asian Association for Regional Cooperation (SAARC) is already considered to be dead by some scholars. On one hand we have the global Regional Trade Agreements which are devising strategies to strengthen intra-regional trade relations, the South Asian countries on the other hand are entering into more and more bilateral treaties with the countries within and outside the region, shifting the focus from SAARC. The thorny relationship between the two big countries of the region, India and Pakistan and the lack of complementarities in trade in goods are also considered to be major road blocks. However, great potential of reviving intra-regional trade and cooperation in this region lies in the service sector. All the countries in the region have seen a shift in the structure of their economies moving away from agriculture and towards services. There is a considerable variation across countries in this region in terms of size of their service economies, the output and export growth performances of services, the relative shares of individual economies in regional services trade and their revealed comparative advantage indices.

Discuss- the potentialities and complementarities in cooperation with the education sector and the lessons from other regional initiatives to chalk out an action plan for SAARC.

**KARPAGAM ACADEMY OF HIGHER EDUCATION, COIMBATORE****DEPARTMENT OF MANAGEMENET****Unit 5- REGIONAL BLOCKS- Multiple Choice Questions- Each Question carries ONE Mark**

<b>SL.NO</b>	<b>Question</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>	<b>Answer</b>
1	Several levels of economic integration are possible. Three such levels from the least integrated to the most integrated are.....	free trade area, customs union, common market	customs union, political union, economic union	free trade area, political union, common market	common market, customs union, political union	free trade area, customs union, common market
2	Regional economic integration can be seen as an attempt to achieve gains from..... beyond those attainable under international agreements such as the WTO.	common currencies	region-specific tariffs	the free flow of trade and investment	gains from common access to intellectual property	the free flow of trade and investment
3	One of the main impediments to regional economic integration is the cost that individuals must bear even while the country as a whole might gain. The second major impediment is the.....	increased concern about monetary policy	loss of national sovereignty	loosening of control over fiscal issues	the increased costs of defending and monitoring borders	loss of national sovereignty
4	If, prior to NAFTA, the U.S. produced its own textiles at a higher cost than Mexico, but after NAFTA imports them from Mexico.....	trade has been diverted	trade has been created	Mexico is worse off	the U.S. is worse off	trade has been created

5	Regional economic integration, for example, the EU, offers significant opportunities to US businesses including.....	non-EU companies no longer need to set up subsidiaries in EU countries	companies can realize significant cost economies by centralizing operations where factor costs and skills are optimal	it makes no difference where in the EU one locates an operation since the costs are the same throughout	cultural differences and national consumer preferences are now irrelevant	companies can realize significant cost economies by centralizing operations where factor costs and skills are optimal
6	Regional economic integration presents potentially significant threats to business outside the area, including.....	long-term improvements in the competitive positions of firms inside the areas.	the end of a "fortress" mentality means other firms outside the area will be able to enter the areas more easily to compete with existing area firms	the end to efforts to rationalize production and reduce costs	the imposition of US standards, recognized as a pioneer in regional economic integration, which means US firms will not be able to get around the legal barriers	the end to efforts to rationalize production and reduce costs
7	The North American Free Trade Agreement (NAFTA).....	set up a common trading area for all states in the upper Midwest and New England	created the world's largest free trade zone	includes only Canada and the United States	includes only Canada and Mexico	created the world's largest free trade zone
8	How has NAFTA affected Mexico?	There is increased confidence on the part of foreign firms to invest in Mexico.	Reduced economic advantage of Mexican labor over its American counterpart	Increased surplus of more than \$2 billion in farm trade with America	Reduced farm subsidies to improve the efficiency of agricultural exports	There is increased confidence on the part of foreign firms to invest in Mexico.
9	Which of the following is not a preferential trading arrangement?	EU	NAFTA	OECD	Anti-dumping duty	OECD

10	Because wages in Mexico before the NAFTA were only a small fraction (perhaps 1/10) of wages in the U.S., we should infer that.....	Prior to NAFTA, Mexican workers were paid far below their productivity	After NAFTA, most U.S. firms would be unable to compete with imports from Mexico	After NAFTA, most U.S. firms would close their U.S. plants and move to Mexico	Prior to NAFTA, since U.S. tariffs against Mexico were small, the productivity of Mexican workers must also have been only a small fraction of that in the U.S	Prior to NAFTA, since U.S. tariffs against Mexico were small, the productivity of Mexican workers must also have been only a small fraction of that in the U.S
11	European Union was established in.....	1995	1985	1993	1983	1993
12	Which of the following is not a key quality of an international organization?	voluntary cooperation	shared interests	communal management	sovereignty	sovereignty
13	In most cases, support by states for regionalism is motivated primarily by.....	the desire for economic cooperation	the desire for political unity	the desire for social cohesion	the desire for shared military protection	the desire for economic cooperation
14	Realists believe that.....	Option states lost their credibility and political rights following world war two	the global system is anarchic	states trust long-term cooperation and alliances	humans are naturally cooperative	he global system is anarchic
15	All but one of these qualities increase the integrative potential of states. Mark the exception.....	Their economic equality and compatibility	Like-mindedness among their elites	The absence of interest group activity	The capacity of decision-makers to respond to public demands	The absence of interest group activity
16	Which of this is not a useful approach to the study of the EU?	international organization	unique	nation	political system in its own right	nation

17	How is governance best defined?	the rules and norms that lie at the basis of a system of government	an arrangement in which power is shared among groups in divided societies	an arrangement by which decisions are made without the existence of formal institutions of government	an administrative system in which power is shared and distributed horizontally and vertically among different levels of government	the rules and norms that lie at the basis of a system of government
18	Which of these best describes a federal system?	one in which authority is divided between two or more layers of government, each with independent powers	one in which the local units of government have more powers than the national government	one in which power is distributed both horizontally and vertically	one in which states pool authority in the hands of a powerful joint government	one in which authority is divided between two or more layers of government, each with independent powers
19	Which of the following countries is not a federation?	Germany	France	Austria	India	France
20	Which one of these statements best describes a confederal system?	national government has more power than is the case in a federal system	authority is divided between two or more layers of government, each with independent powers	power is shared among groups in divided societies	states come together in a loose political union, using joint institutions with limited authority but leaving most of the power in the hands of the states	national government has more power than is the case in a federal system
21	The most successful example of regional integration to date is.....	The European Union	NAFTA	OPEC	ASEAN	The European Union

22	How many countries belong to ASEAN today?	10	12	15	16	10
23	ASEAN was founded on.....	1956	1967	1968	1969	1967
24	What does ASEAN stand for?	Association of Southwest Asian Nations	Association of Southnorth Asian Nations	Association of Southeast Asian Nations	Association of South Asian Nations	Association of Southeast Asian Nations
25	Which country joined ASEAN in 1999 ?	India	Singapore	Srilanka	Cambodia	Cambodia
26	What is the name of the anthem of ASEAN?	The ASEAN Way	The WTO way	The GATT Way	The FTA way	The ASEAN Way
27	How many colours are there on the flag of ASEAN?	4	5	6	2	4
28	What does the blue colour on the flag of ASEAN represent?	Prosperity	peace	Peace and stability	Economic development	Peace and stability
29	What is the correct motto of ASEAN?	peace	Peace and stability	Prosperity	One Vision, One Identity, One Community	One Vision, One Identity, One Community
30	How many countries in ASEAN does the Mekong River flow through?	4	5	6	2	5
31	When is ASEAN Day celebrated annually?	12-Sep	31-Mar	August 8th	9-Jul	August 8th
32	Which among the following is not a part of UNO?	ASEAN	FAO	IMF	WTO	ASEAN
33	SAARC.....	South Asian Association for Regional Co-operation	South Asian Association for Regional Culture	South Asian Association for Regional Class	South Asian Association for Regional cluster	South Asian Association for Regional Co-operation
34	When was SAARC established?	8-Dec-85	8-Dec-86	8-Dec-87	8-Dec-88	8-Dec-85

35	Where was SAARC established?	Dhaka	New Delhi	Colombo	Pakistan	Dhaka
36	How many countries joined together to form SAARC?	7	5	6	8	7
37	Which country was included as 8th member of SAARC at the 14th SAARC Summit held in New Delhi 2007?	Afghanistan	Japan	Iran	Sri Lanka	Afghanistan
38	Who originally mooted the concept of SAARC?	Abul Ahsan	Ziaur Rahman	Manmohan Singh	Jaimohan	Ziaur Rahman
39	What was the main aim of SAARC?	Non-alignment	Regional cooperation	Non-interference in other's internal affairs	Inter trade	Regional cooperation
40	Where is the permanent secretariat of SAARC situated?	Dhaka	Kathmandu	Colombo	Afghanistan	Kathmandu
41	In which city of India was the second SAARC Summit hosted in 1986?	New Delhi	Bangalore	Chennai	Hydrabad	Bangalore
42	Where was the first SAARC Cultural festival held in 1992?	Colombo	Delhi	Dhaka	Kathmandu	Delhi
43	SAFTA means.....	South Asian Association for Regional Co-operation	South Asian Association for Regional Culture	South Asian Association for Regional Class	South Asian Free Trade Agreement	South Asian Free Trade Agreement
44	SAFTA came into effect from.....	Jan-06	Apr-08	Oct-01	Dec-02	Jan-06

45	Consider the following statements: I. The Agreement of SAFTA came into effect from January 2006. II.As per the agreement terms, India, Pakistan and Sri Lanka have to scale down their customs duties to the level of 0-5 percent by 2013. Which of the statement given below is/are correct?	I Only	II Only	Both I and II	Nether I or II	II Only
46	South Asian Free Trade Area (SAFTA) is an agreement reached on 6 January 2004 at the .....SAARC summit	10	11	12	13	12
47	SAFTA SAARC Summit in.....	Pakistan	India	Srilanka	Afghanistan	Pakistan
48	SAFTA to reduce ..... of all traded goods to zero by the year 2016	Excise Duty	VAT	Custom duties	GST	Custom duties
49	One of the principles of SAFTA.....	encourage trade between Asian Countries	negotiation of tariff reform step by step	reduce custom duties	Prohibit terrorism	negotiation of tariff reform step by step
50	SAFTA to reduce customs duties of all traded goods to zero by the year .....	2014	2015	2016	2013	2016
51	SAFTA agreement by the .....governments	5	6	7	8	7



52	The main objective of the agreement is to promote.....	free trade	competiton	meet demand	supply money	competiton
53	SAFTA aims to benefit the people of the countries by bringing.....	unity	free trade	competition	transparency and integrity	transparency and integrity
54	SAFTA to .....customs duties of all traded goods to zero by the year 2016	reduce	increase	constant	significantly	reduce
55	The instrument involved in SAFTA.....	increase the level of trade	economic cooperation	medium and long term contracts	Institutional Arrangements	Institutional Arrangements
56	The South Asian Free Trade Agreement (SAFTA) has not been a success because of I. narrow export base of countries, II. Lack of bilateral free trade agreements III Political hurdles. Select the correct answer using the codes given below:	I and II only	I and III only	II and III	I, II and III	I and III only
57	India has signed Comprehensive Economic Partnership Agreement (CEPA) with 1. USA, 2. Singapore, 3. Japan Select the correct answer using the codes given below.	1 and 2	3 only	2 and 3 only	1,2, and 3	2 and 3 only
58	The Indo-Sri Lanka Free Trade Agreement (ISFTA), which was signed on 28th.....	Jan-98	Feb-98	Dec-98	Oct-98	Dec-98

59	The 13th amendment has been a point of contention between India and Sri Lanka. The 13th amendment provided for 1. establishment of provisional councils 2, taking action against the human rights violators 3. creation of a second chamber in central legislature. Select the correct answer using the codes given below.	1 only	1 and 2	2 and 3	1,2 and 3	1 only
60	SAFTA to reduce customs duties of all ..... to zero by the year 2016	services	traded goods	manufactured goods	ITES	traded goods