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EDITORIAL

The NALSAR International Law Society functions as a wholly student driven initiative, with our focus primarily on spreading the culture of international law amongst the members of the legal fraternity, both in India, and abroad. Although the Society had concerned itself primarily with international law awareness events in the past, it was the vision of the current Executive Board (2014-15) to begin an International Law Journal. Pursuant to this, and on behalf of the entire Board, Rahul Mohanty and Devarshi Mukhopadhay were instrumental in overseeing the entire publication process and the University nod for the inaugural issue. In addition, the Board is grateful to Rakshanda Deka, for her invaluable assistance in the Journal design.

NALSAR International Law Journal comprises of the most recent developments in the field of both public and private international law, around the world. Being a registered member of the International Law Student’s Association (ILSA, U.S.A), the Society also actively undertakes the activities prescribed by the ILSA, such as essay competitions. The Journal boasts of a highly qualified Peer Review and Advisory Panel, and an extremely efficient student Editorial Board, which has resulted in the timely completion of what seemed to be an uphill initiative.

In this issue of the Journal, we have incorporated a wide range of articles, some dealing in policy questions, some a normative analysis of a contemporary international legal position and some attempt a theoretical and descriptive analysis of contemporary debates in International Law. Prof. James Nedumpara’s article highlights the issue of widening of international law beyond traditional confines of “law of nations” and illustrates the role of networking societies in WTO engagements. Articles by Himanil Raina and Pratik Ranjan Das engage in a debate about a very contemporary issue of great significance—that is scope of Article 2 (4) of UN Charter and prohibition of use of force in light of modern issues like attacks by non-state actors and cyber-attacks. On a similar vein, Abhik Chakraborty’s paper deals with questions of attributability that has become especially important in this age of irregular warfare. Edrine Wanyama’s article examines the theoretical and normative
underpinnings of the Calvo Doctrine and its importance especially for the Third World nations. A similar normative analysis of Odious Debt doctrine and the modern use thereof, has been ably done by Deergha Airen and Sanjana Roy. Bhargav Kosuru and Shlok Bolar have done a thorough analysis of Umbrella Clauses of Bilateral Investment Treaties (BITs), which have remained a contentious area of law despite proliferation of BITs in modern day world. Maithili Pai’s paper on Liability/Immunity of international organisations such as the UN also provides a normative as well as descriptive legal argument for relooking at the immunities of UN—a timely issue keeping in mind the growing presence of such organisations and possible violations such employees or officials and agents of such organisations.

The inaugural issue of the Journal seeks to create the necessary space for further academic dialogue in the field of international law. The Society was encouraged at the response that it received from its contributors across the country and abroad, and intends to serve as a crucial platform for fruitful academic pursuit and international legal dialogue in the near future.

We hope this endeavour succeeds in future to provide as a forum for scholarship in International Law in India, where the need for such Journal was being sorely felt since a long time.
WORLD TRADE ORGANIZATION AND NETWORK SOCIETIES: EVOLVING MODELS OF PUBLIC-PRIVATE PARTNERSHIPS IN INDIA

James J. Nedumpara*

I. INTRODUCTION

The establishment of the World Trade Organization (WTO) in 1995 is one of the significant achievements of the international community in recent history. As an organization, the WTO plays a role which is unparalleled to any other international institution. Take the case of India. The WTO put an end to India’s several decades’ of practice of maintaining quantitative restrictions on balance-of-payment grounds, required India to change its automobile policy and import policy on several agricultural products, and mandated India to institute product patents for pharmaceutical, agricultural and chemical products; on the other hand, the WTO, helped India seek market access in textiles, IT and

* Associate Professor of Law and Executive Director, Centre for International Trade and Economic Laws, Jindal Global Law School, Sonepat, India. I am grateful to Ms. Vandana Gyanchandani for research help.

1 World Trade Organization, India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, WT/DS90.

2 World Trade Organization, India – Measures Affecting the Automotive Sector, WT/DS 146.

3 World Trade Organization, India – Measures Concerning the Importation of Certain Agricultural Products from the United States, WT/DS 430.


5 World Trade Organization, United States – Measures Affecting Imports of Woven Wool Shirts and Blouses from India, WT/Ds DS33; World Trade Organization, Turkey – Restrictions on Imports of Textile and Clothing Products, WT/DS34; World Trade Organization, European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS 246.
pharmaceutical products,\(^6\) challenge protectionist antidumping,\(^7\) subsidies measures\(^8\) in key markets, and impugn various disguised restrictions on trade.\(^9\) These are only a few illustrations.

The WTO administers an intricate system of agreements. These agreements straddle the boundaries of manufacturing and agricultural goods, services and intellectual property issues and an array of interrelated issues such as environment, development, human rights, health, food security and safety, renewable energy, electronic commerce and domestic taxation. In a fast globalizing and shrinking world, upcoming trade arrangements and emerging geometry of trade groupings and negotiations often acquire newer complexities and challenges. In other words, the challenges presented by the new trade arrangements are no longer relevant or confined to the province of central or state governments, but are potentially significant to each one of us.

There are several scholars who argue that the WTO has been epiphenomenal;\(^10\) that the changes happened before it was created and they are largely internally caused by way of responses to changed external market and political contexts. Although this debate is inconclusive, several development scholars have written on the role of WTO in ushering in global economic integration and catalyzing domestic trade-related capacity against the backdrop of rising constraints of legal knowledge, financial endowment and political

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6 European Union and a Member State – Seizure of Generic Drugs in Transit, WT/DS DS408.
7 World Trade Organization, European Communities – Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India, WT/DS141.; United States – Anti-Dumping and Countervailing Measures on Steel Plate, WT/DS 206.; United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, DS345..
8 United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS 436; United States – Continued Dumping and Subsidy Offset Act of 2000, WT/DS 217.
9 United States – Import prohibition of Certain Shrimp and Shrimp Products, WT/DS 58.
power.\(^{11}\) There have been rich and illuminating case studies\(^{12}\) on the reciprocal and often recursive role of the WTO on countries such as Brazil, India, Mexico, and China. Most of these studies eloquently narrate how certain developing countries have been able to establish sustainable and effective mechanisms to identify trade barriers and tear them down through negotiation, consultation and formal dispute settlement.\(^{13}\) In particular, these studies detail how countries that once remained on the sidelines in international trade negotiations started engaging more actively and effectively in the WTO process.

Formally, only sovereign nations or independent customs territories could be constituents of the WTO. International trade and commercial diplomacy were often handled by the Foreign Affairs or Trade/Commerce officials in most countries right since the days of the GATT. But in fact, it is often private parties or non-state entities—individuals, industry bodies and civil society organizations—that play key roles in shaping the WTO. The last twenty years also witnessed a major shift with even the most insulated government agencies and policy mandarins reaching out to the private sector for the purpose of designing more effective and targeted strategies for WTO participation.

Considering the dynamics of international trade negotiations and dispute settlement, developing countries need to pool their resources in defining trade priorities, identifying trade barriers, coordinating negotiating positions and strategies and in effecting compliance of domestic measures with international trade rules. As Peter Drahos mentioned, this is an essential imperative when the weak nations bargain with the strong and powerful players in the international trading system.\(^{14}\) In addition, international trade commitments require a strong and complex process of domestic enforcement, especially for developing countries.


The internal processes to revise legislation, administrative rules, practices, and implement trade commitments require inputs from the concerned stakeholders. In addition to enforcing international obligations at the domestic level, there is a complex mechanism to avoid disputes that may arise out of these international treaties. In many ways, these internal processes to identify negotiating positions and decisions on potential claims against other WTO members take place in discrete ways. It requires a cadre of people who are well versed and familiar with nature of the WTO process and trained in its finer details and operation to suggest specific and concrete steps to leverage their countries’ positions. As Shaffer et al demonstrate, investment in trade law and policy have helped countries such as Brazil to assume a leadership role in WTO governance, dispute settlement and monitoring other Members’ implementation of various WTO commitments. In international trade capacity building literature, the concerned stakeholders who work at the interface with their governments and trade representatives are often referred to as the “third pillar”. The third pillar traditionally involves industry bodies, law firms and consulting firms, think tanks, academia, journalists and a broad array of individuals and civil society groups.

This study is about the role of the so-called third pillar in India in WTO matters. There is an oft-repeated criticism in India that the third pillar has remained outside the negotiating processes for decades together and, more specifically, during the Uruguay Round negotiations. To my knowledge, the extent of civil society participation in the WTO related matter before or after the establishment of the WTO is not well documented. On the contrary, there is a perception, if not an overwhelming belief, that India signed most of these agreements without any public consultation and serious understanding of their implications. This article attempts to shed some light on this accusation, although a proper and adequate examination of this issue may require more research and stakeholder interviews and review of government documents. In short, this article seeks to examine the background of trade policy making in India, the role of the industry bodies and certain civil society organizations in enhancing India’s capacity for international trade negotiations during the Uruguay and Doha Rounds of trade negotiations, and the process of building such capacity. The article seeks to enlist and narrate certain steps taken by India to defend its interests and shape the international trade legal order which is often associated with the WTO. In other words, the article examines the role of the third pillar as India sets out to evolve as a more mature player in the international trading system and assigns new roles and responsibilities for various
public and private actors in the new paradigm of public-private partnership in international trade issues.

II. GATT, India and the Insulated Domestic Industry

Before the 1991 economic reforms in India, India was a closed economy, built on a socialist model of five-year plans, with a maze of restrictions and controls on business, investment and industrial activities. Given its colonial heritage, India was wary of undertaking serious international commitments or engaging with multilateral agencies. While maintaining a protected environment India erected a sclerotic bureaucracy administering what was known as the “License Raj.” Although the term Licence Raj is spoken with derision in current times, even the makers of modern India had serious concerns about the stifling role of the Licence/ Permit Raj. Dr. C. Rajagopalachari, the first Governor- General of India noted more than sixty years ago:

I want the corruptions of the Permit/Licence Raj to go. …. I want the officials appointed to administer laws and policies to be free from pressures of the bosses of the ruling party, and gradually restored back to the standards of fearless honesty which they once maintained. [...] I want real equal opportunities for all and no private monopolies created by the Permit/License Raj.\(^\text{15}\)

The development strategy conceived by India immediately after independence focused on setting up giant heavy industries. However, the focus on erecting giant industrial structures, enhanced by the import- substitution policies, did not succeed in creating the “temples of the future”\(^\text{16}\), but established grossly inefficient public sector. The country, neither its government nor its private sector, had much of a focus on the global, on engaging with foreign markets.\(^\text{17}\) The bureaucracy was closed and non-transparent and the private sector who engaged with it for trade did so, for obvious reasons, to seek quota rents from the complex licensing system. The country made few trade commitments under the WTO’s predecessor, the General Agreement on Tariffs and Trade (GATT) and used exceptions and derogations, for far too long, to administer its complex import licensing system.

\(^{15}\) C Rajagopalachari, Swarajya (July, 1957)

\(^{16}\) Prime Minister Nehru referred to these industries as the “temples of the future”.

\(^{17}\) India’s share in world exports steadily declined from 2 percent in the late 1940s to as low as 0.4 percent in 1980.
The political and economic climate that prevailed in India during 1965-1975, had a significant impact on the policies which India followed for the next two decades. The Indian economy grew at a rate of 4.1 percent during 1951-1965. During 1965-1975, the Indian growth rate declined to 2.3 percent and the population grew at 2.3 percent per annum. This gave rise to the popular expression “Hindu” rate of growth, which was a growth rate around 3.5 percent per year and just 1.9 percent per capita.\(^{18}\) The Industrial Development and Regulation Act of 1951 (for short, “IDRA”) ensured that industries were set up and expanded only with obtaining a license. The government had power over approval of any proposal on capacity, location, expansion of production facility and the foreign exchange required on the import of plant and machinery.

In addition to industrial licensing, the government introduced small-scale industry (SSI) reservation policy in 1967 by creating a list of items which could be exclusively manufactured by small-scale units. Small-scale units by definition were relatively small with an investment of INR 0.75 million or less in plant and machinery. The SSI list included products such as clothing, knitted textiles, shoes, leather products, sports goods, stationary, office products, furniture, etc. Although the rationale for this reservation is not available from any official documents, it appears that labour-intensive nature of the products could have been considered in drawing up the SSI list.

After the second Five Year Plan which was started in 1956, in conjunction with tight import licensing procedures, India applied high levels of tariff protection. In fact, physical import controls were introduced since 1940s to conserve foreign exchange. The substantial foreign exchange balances which were built during the Second World War eroded by 1956 resulting in a substantial real appreciation of the Rupee in relation to the then fixed rates with the Pound Sterling and the U.S. Dollar. Regulation of balance of payments became the central concern of India’s economic policy. The period starting from 1956 to 1966 was

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characterized by comprehensive and tight administration of import controls. Aravind Panagariya notes that by mid-1970s India’s trade regime had become so repressive that the share of non-oil and non-cereal imports in the GDP fell from the already low level of 7 percent in 1957-58 to an even lower level of 3 percent in 1975-76. The tight import licensing conditions opened up significant differences between the domestic and international prices. In order to offset this anti-export bias resulting from increasingly overvalued exchange rate, export subsidies including import of duty free raw materials was provided.

India re-introduced liberalization in the midst of emergency in 1975. In 1978, the P.C. Alexander Committee (for short “Alexander Committee) recommended that products not produced domestically should be freed from licensing through inclusion in the open general licensing (OGL) list. The Alexander Committee also recommended that the imports could be broadly divided into three categories: banned, restricted and OGL list. The OGLs operated on a positive list basis and the items included in the list did not require a license from the Ministry of Commerce. The OGLs did not necessarily mean that imports under this category were free. There were strings attached to this list such as the actual user condition and grant of necessary licenses from the industrial license authority. Furthermore, in 1976 when the OGL list was first introduced, it only had 79 capital goods. The list expanded to 1170 capital goods and 949 intermediary inputs in 1988. The OGL list accounted for nearly 30 percent of the imports by April 1990.

A. Uruguay Round and the negotiations creating the WTO

In the light of the ever increasing categories of protection as outlined above, India had, perhaps, one of the most protected trade regimes during 1970s-1980s. Even in early 1990s, import duty protections were one of the highest in India. The maximum tariff in 1990-91 was 355% and the simple average applied tariff rate was 125%. India’s share in world merchandise export was around 0.4% at this time. In addition, despite its reforms involving a


reduction of tariff rates, India’s import regime was also subject to different types of quantitative restrictions (QRs), which remained in effect at the time India joined the WTO in 1995. These restrictions took various forms as non-automatic licenses, imports through canalized agencies, special import licenses (SIL), and actual user criteria. The government imposed these restrictions on the grounds that India had unfavorable balance of payment (BoP) conditions.\(^{21}\)

India engaged in the Uruguay Round Multilateral Trade Negotiations in this context, involving its trade liberalization reforms, on the one hand, and its continued concerns regarding balance of payment issues and non-competitive domestic sectors, on the other. India had embarked on a path of unilateral trade liberalization by the time the Uruguay Round was coming to a close, but that liberalization remained constrained in scope.\(^{22}\) The liberalization was partly couched as home-spun reforms, but was influenced to a great extent by conditionalities imposed by the International Monetary Fund.\(^{23}\)

The Uruguay Round negotiations were broad in their coverage, encompassing fifteen distinct areas as set forth in the Punta del Este Declaration which launched the round. Although the issues on the agenda remained fairly broad, India was not particularly concerned with a number of issues. In particular, India was most concerned about textiles, agriculture, patents, services and trade-related investment measures. The most controversial issues from India’s standpoint were agriculture and patents.\(^{24}\)

India’s domestic industries which were completely insulated from foreign competition sensed danger and started speaking up. Once the broad contours of the Uruguay Round were identified, there was a vehement reaction in India regarding the government’s alleged capitulation on these issues. Most articles which appeared in the national press and scholarly

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\(^{22}\) Martin Wolf, *India in the World, in India’s Economy: Performance And Challenges* 369, 389 (Shanker Acharya & Rakes Mohan eds., 2010)


journals focused on the implications of the new WTO rules regarding agriculture and pharmaceutical patents. An organization by the name Karnataka Rajya Ryota Sangha (KRSS) organized a protest in Bangalore which attracted a half a million crowd to protest against the Dunkel Draft. The opposition political parties had earlier organized mass movements to protest against the Dunkel Draft, the working text prepared by Sir Arthur Dunkel, the Director-General of the GATT. Effigies of Dunkel were burnt on the streets of Delhi when the proposals came out in 1991. These parties saw the acceptance of the Dunkel draft as a convenient tool to attack the Narasimha Rao Government regarding its economic policies. The perception among the general public was that the Indian government, which had been vociferous in its demands in the early phase of the Uruguay Round in opposing certain new topics on the trade agenda such as intellectual property and services, eventually yielded, in part as a result of ‘pressure’ from the IMF. After the Marrakesh Agreement establishing the WTO was signed, V.M. Tarkunde, a retired judge and a well known social activist, wrote an article in the Economic and Political Weekly (EPW) in September 1994 which captured the sentiment regarding the WTO agreements covering the new areas. Tarkunde argued that while developed countries provide subsidies to their farmers, India provides it to consumers (under the public distribution system) who cannot otherwise buy the product. EPW had earlier carried an article by S P Shukla, former Indian Ambassador to the GATT, where he argued that if national interest (i.e. IP protection for plant varieties and medicinal preparations) required India to opt out of the Final Uruguay Act, India should “face isolation with courage and conviction.” But this view did not find support even among social activists such as Tarkunde, who argued that India should opt to be part of the comity of nations, rather than remain outside of it.

25 Andrew lang, world trade law after neo-liberalism: Re-imagining the global economic order 75 (2011)

26 J.P. Singh, Services and TRIPS during the Uruguay Round, in Negotiating Trade: Developing Countries In The Wio And Nafta 59 (John S. Odell ed.,) at 59.


B. The Government’s Consultation Process during the UR Negotiations

The Uruguay Round negotiations had attracted wide attention in India, although the process of consultation before or after trade negotiations is not well documented. During the negotiating phase (1987-1994), the Indian Parliament created several Parliamentary Committees to advise the government on the negotiating process. The Arjun Singh Committee was appointed by the Parliament in 1992 to examine the issues, although the deliberations of the Committee are not available. A particularly notable committee was headed by Inder Kumar Gujral, who later became the Prime Minister of India in 1997. The Gujral Committee was appointed by the Parliament to solicit views and prepare a report on the impact of the WTO Agreement on India. The committee took up the Dunkel draft proposals for in-depth study. In 1993, the committee held around 24 meetings and invited senior government officials from the Ministries of Commerce, Agriculture, Chemicals and Fertilizers, Science and Technology, and Textiles, Indian negotiators in Geneva, members of industry associations and individuals to elicit their views on each topic under negotiation. The Committee reports were submitted to the Parliament in 1993. In addition to the deliberations before the Committee, the Lok Sabha and Rajya Sabha conducted debates on the Dunkel draft. A special sitting of both houses of the Parliament was convened to discuss the implications of the new treaty. This development was unique since the Government of India was not required to have any new treaty ratified by the Parliament under the Indian Constitution. The overwhelming view in Parliament was that, notwithstanding the imperfections in the existing system and the new draft Dunkel proposals, India should not remain outside the GATT or the new agreements. The Gujral Committee was also of the opinion that with the ratification of the Uruguay Round agreements, trade negotiating countries such as the United States would not be able to adopt unilateral trade sanctions against it, and that it was thus in India’s interest to be part of the new trade regime.

Although the Government had consulted industry and a few key ministries, civil society organizations generally alleged that the Indian government had failed to properly

32 Gujral Committee Report, at 64.
consult with Indian civil society regarding India’s negotiating positions and the agreements’ implications. For example, Bhagirath Lal Das, a former Indian Ambassador to the GATT, wrote:

The Uruguay Round of negotiations has exposed several points of weakness in our preparations and strategies. Some of these are given below as illustration:

…

Though the subjects of the negotiations were to have long term impact on almost all aspects of the economy, there was not enough consultation within the country on the implications and the lines to be taken. These negotiations were to go far beyond the traditional area of market access and would have substantial impact on production process in all three broad spheres of economic activity—agriculture, industry, and services. Besides, they were to cover investment and intellectual property rights, thereby influencing technological development. The seriousness of the coverage of the negotiations required a system of wide-ranging internal consultation within the various wings of the Government as well as between the Government and various interest groups engaged in production and trade. Full public awareness of the implications of the emerging agreements was vital. But, except at the very end, there was hardly any transparency in this whole process with respect to informing and consulting the agencies outside the Government. And even within the Government, there was hardly any serious involvement of various ministries vitally connected with the subjects, except perhaps towards the end.33

There are, however, indications that the Indian civil society was relatively active during this period in challenging the official position taken by the government during the Uruguay Round. Indian civil society activists filed three cases before the Supreme Court of India challenging the Uruguay Round agreements on federalism grounds.34 They contended that Indian State Governments (sub-federal units) were not consulted for purposes of the Uruguay Round negotiations, even though their exclusive Constitutional powers were affected. For example, to meet the obligation of Article 70 of the WTO Agreement on Trade-


34 The Court reasoned that although Agriculture is a state subject, agriculture trade negotiations fell in the domain of trade policy which was a function assigned to the Federal government. Entry 14 of List I of the Seventh Schedule of the Constitution permits legislation to be made in regard to “entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.”
Related Aspects of Intellectual Property Rights (TRIPs Agreement), an ordinance, the Patent Ordinance 1994, was promulgated on December 31, 1995 by the President of India. The Indian Constitution permits the President of India to legislate when the Parliament is not in session and it is considered necessary to take immediate legislative action. A number of State Governments including Maharashtra, Orissa, and Kerala, challenged the ordinance in court, contending that the changes in patent laws were implemented without properly consulting them.

Indian civil society engagement at the time of the Uruguay Round was nonetheless fairly active, although it focused on only a few areas. For example, the Gujral Committee received written comments from a number of Non-Governmental Organizations (NGOs). NGOs such as the National Working Group on Patent Law (NWGPL), Gene Campaign, industry associations such as the Confederation of Indian Industries (CII), ASSOCHAM, Organization of Pharmaceutical Producers of India (OPPI), Indian Drug Manufacturers Association (IDMR), think-tanks such as the Centre for Policy Research (CPR), the Indian Institute of Foreign Trade (IIFT), and leading agricultural economists such as M S Swaminathan, provided substantial technical inputs before the Gujral Committee. The deliberations of the Committee indicate that the Uruguay Round actually witnessed a marked change from the past practice, where civil society engagement was virtually nonexistent. Nonetheless, there were severe reactions in India to the WTO agreements, especially those affecting sensitive sectors.

C. Reaction in India to the Dunkel draft proposals: Textiles and Agriculture

The Indian government saw an opportunity regarding trade negotiations over textiles and clothing, where it considered that its sectors were more competitive. The textiles industry constituted the largest single industry in India, accounting for twenty percent of the country’s total industrial output, and nearly twenty-five percent of India’s merchandise exports in 1990-91. The Multifibre Agreement (MFA), which entered into force in 1974, and which superseded arrangements that had been governing trade in cotton textiles since 1961, permitted developed countries to apply quantitative restrictions on imports in this sector. The phase-out of this regime was thus of considerable interest to India and its textile industry.

India was, nonetheless, concerned that the actual phase-out of the MFA would be ‘back-loaded’ so that the Indian textile industry would have to wait longer to benefit from the sector’s opening. On the whole, the government perceived that the gains for the country from opening trade in textiles and clothing constituted a trade-off for India’s comprehensive commitments under the General Agreement on Trade in Services (GATS) and the TRIPs Agreement. The services sector, which has grown exponentially since the WTO’s creation and is currently the most prominent symbol of India’s emergence as an economic power, was not considered to be India’s strength at the time. For example, receipts on invisibles such as services, investment income, and transfers constituted only 2.4 percent of the GDP in 1990-91 compared to 21 percent in 2012. In particular, the information technology sector, which is the driving force of India’s service exports today, is still developing.

The implications of the WTO agreements on the agricultural sector remained particularly controversial. The Dunkel draft proposals and the resulting WTO Agreement on Agriculture required tariffication of import quotas, reduction of average import tariff equivalents, and reduction of export and domestic subsidies. At least three quarters of the Indian population was dependent on agriculture for its livelihood. Agricultural interests contended that reduction in duties would lead to cheap imports and could potentially disrupt the domestic agricultural sector. Critics of the Dunkel proposals also contended that the aim was not to reduce subsidies on agriculture trade, but to permit the developed countries simply to change the nomenclature of their subsidies from one form to another, thus unfairly maintaining developed country advantages. For example, civil society organizations noted that decoupled income support permitted under the proposals (referring to support that is not linked to greater agricultural production) would not help a developing country like India, which had neither the resources nor the incentives to grant subsidies for limiting agricultural production.

Some discussions in the Indian Parliament suggested that the WTO regime could pave way for the destruction of the Indian agricultural sector. However, a number of econometric


studies conducted at the time of the Uruguay Round indicated that, even if other countries liberalized trade, such policies were unlikely to have an impact on domestic agricultural prices.\textsuperscript{38} According to a study by Pursell and Gulati, the resulting changes in relative world agricultural prices would have a negligible impact on India’s comparative advantage as indicated by the differences between domestic and world agricultural prices in the 1980s and 1993.\textsuperscript{39}

Despite protests and criticisms regarding India’s agreement to liberalize its agricultural sector, the Confederation of the Indian Industry (CII) felt that opening the agriculture sector could present important opportunities. CII, in its submission before the Gujral Committee, maintained that, if developed countries cut their subsidies, both domestic and export prices of food products would increase. There were also reports that some of the internal discussions within the Indian Department of Commerce and independent studies conducted by Indian research think-tanks considered that liberalization of agriculture would be good for the Indian economy. It was, however, difficult to convince the skeptics of liberalization of the benefits of opening this sector.

The key concerns from the Indian government’s viewpoint were whether the government could support the public distribution system for domestic food aid and maintain agricultural subsidies for poor farmers. A number of experts before the Gujral Committee contended that the Dunkel Draft on Agriculture would not deprive India of this flexibility.

\textbf{D. Reactions to Intellectual Property Rights Issues}

The Dunkel draft proposals attracted particular controversy in India on account of its inclusion of intellectual property commitments under what would become the TRIPs Agreement. Most Indian commentators contended that the TRIPs Agreement was biased against India and other developing countries and perpetuated an unequal world economic order.\textsuperscript{40} The objective of the Indian Patent Act of 1970 was to ensure that patents did not lead to monopolization and dominance by foreign companies of the Indian market, resulting in

\begin{itemize}
\item \textsuperscript{39} \textit{Id.}
\end{itemize}
higher prices for medicines and food. The Indian Patent Act of 1970 (the law which existed before the WTO regime became operational) restricted the field of patentability and granted only process and not product patents with respect to agricultural, pharmaceutical, and chemical products. It also restricted the term of patents and created an elaborate system of licenses to ensure that patents were worked in India. The sentiment which prevailed in India regarding the extension of patent protection for pharmaceutical products is well illustrated by a statement of Indira Gandhi, the former Prime Minister of India, which is often quoted in India. Prime Minister Gandhi declared before the World Health Assembly in 1982 that “[t]he idea of a better-ordered world is one in which medical discoveries will be free of patents and there will be no profiteering from life and death”.  

India was an opponent to introducing intellectual property rights in the Uruguay Round negotiations from the very beginning. Muchkund Dubey, a former Indian Foreign Secretary, notes as follows: “India until the last days of the resumed mid-term review session firmly adhered to the position that GATT was not the forum to discuss norms and standards of IPR protection nor could higher level of IPR be part of a liberal multilateral trading system.” According to the Times of India, a major Indian newspaper, India decided against taking a firm stand on the issue at the later stages of the Uruguay Round in large part because of possible trade retaliation by the United States under Section 301 of the 1974 Trade Act. Biswajit Dhar, an India economist, notes as follows, “[t]he pressure put on India remains among the more stark examples of the threatened use of unilateral action of trade retaliation by a major trading country to realize its objectives in the multilateral negotiations.

A wide-ranging debate arose in India on the implications of India’s acceptance of the Dunkel draft texts. During a special sitting of the Lok Sabha, the lower house of the Indian Parliament, to discuss the Dunkel draft, the Indian opposition parties argued that the Dunkel draft would have deleterious consequences for India’s farming interests, drug industry and distribution system. Chitta Basu, a Member of Lok Sabha participating in a debate on the


42 *Times of India*, Apr. 17, 1989 (available with the author). Section 301 of the US Trade Act of 1974 gives the President broad discretionary authority to threaten, impose, or defer a wide range of retaliatory actions based on the USTR’s findings and the country’s broader interests and obligations.

Dunkel draft argued as follows: “[t]he Dunkel Text in relation to TRIPS is totally against all the major elements of the Indian patent regime. It places tremendous hindrances to our domestic enterprises, research and development efforts etc. It would result in the price increase of medicines, pesticides beyond the capacity of the common man.”

Atal Bihari Vajpayee, who later became the Prime Minister in 1997 said, “[t]he proposal is comprehensive enough including all affairs of life. It includes the areas of medicine, cotton cloths, agriculture, industry, services, investment, technology, employment, environment, and culture etc. …The Dunkel Draft text ‘ is such a document that will have to be either accepted in full or will have to be rejected in full.” Vajpayee was referring to the danger of signing on a Single Undertaking which has to be accepted in full or rejected in full.

Interestingly, the public response in India to the inclusion of trade-related intellectual property rights was not one-sided, as sometimes depicted. With the initiation of economic liberalization in 1991, some sections of the Congress Party began favoring changes in patent laws. The Gujral Committee also commented that India was not able to obtain relevant technology due to the absence of India’s recognition of product patents in some sectors.

The stand taken by the Indian industry associations during this time presents further interesting background. ASSOCHAM, the country’s third leading industry association, did not hold the view that drug prices would excessively increase if India accepted the Dunkel Draft. The Organization of Pharmaceutical Producers of India (OPPI), consisting of large international and domestic research companies, held a similar view. CII placed on its ‘wish list’ for the government to pass the patent bill to conform to the TRIPs

45 Id.
46 Lok Sabha Debates, http://parliamentofindia.nic.in/lsdeb/ls10/ses5/1923129202.htm (last visited July 28, 2015); Reflecting on the Single Undertaking, Arvind Panagariya notes, “India remained opposed to the agreement until the end, but was left with no choice but to sign it after all others had done so.” Arvind Panagariya, India: Asia’s Emerging Giant (2008), at 279.
47 Gujral Committee Report.
48 Id. at 42.
49 Id.
In 1997, the Federation of Indian Chambers of Industry and Commerce (FICCI) established the International Institute of Intellectual Property Development (IIPD), seeking to promote a patenting culture amongst the scientific and technical community and the use of intellectual property rights as a strategic tool to advance business interests. Some domestic pharmaceutical firms that had prospered under the old patent structure, believed that they could earn significant revenues from a regime where pharmaceutical product patents are recognized. Dr. Reddy’s Laboratories, a major pharmaceutical firm, had been advocating a change in policy since 1984. A senior official at Ranbaxy, another leading Indian pharmaceutical firm said, “India has a deficient system as far as providing intellectual protection goes, therefore we see the need for a radical change….It is a myopic view that multinationals will dominate the industry, as players are emerging at all levels.”

The initial resistance to contentious issues such as agriculture and IPR issues had become weaker and the Narasimha Rao government had unleashed far reaching economic reforms in 1991, 1992 and 1993. Joining the Marrakesh Treaty in April 1994 was almost an inevitable outcome for India.

II. RISING INDIA, WTO AND THE CIVIL SOCIETY

The WTO became a reality in 1995. The Uruguay Round resulted in commitments that went far beyond the results of the earlier negotiations. One of the new agreements, namely Agreement on Agriculture touched upon sensitive areas of domestic policy such as domestic support, whereas General Agreement on Trade in Services (GATS) introduced a new set of disciplines and commitments on various categories of services and to an extent investment related aspects, and TRIPS, the most controversial of all, introduced disciplines on protection of various categories of intellectual property rights. The WTO also brought in separate agreement covering various aspects of trade in goods and binding duties on broader categories of commodities.


The breadth of new commitments was potentially overwhelming for a country that assumed few commitments in its nearly 50-year participation in the GATT. India had bound a mere 6% of its tariff lines before the Uruguay Round.\(^{53}\) From 6 percent, India increased its tariff commitments to almost 65 percent as part of its Uruguay Round commitments. To be precise, India bound its tariff for 3375 tariff lines at the 6-digit level. Out of the 3375 tariff lines, 683 tariff lines belonged to the agriculture sector. Tariffs were non-agricultural products were bound at 40 percent for finished goods and 25 percent for intermediate goods. On agricultural goods, India bound its rates at 100 percent on primary goods, 150 percent on processed goods, and 300 percent on edible oil products. However, India had bound its rates on certain agricultural products during the previous trade rounds at zero.\(^{54}\)

India has made commitments in 33 activities, as compared to an average of 23 activities for all developing countries. India’s objective in the service negotiations was to offer entry to foreign service-providers in cases considered to be most advantageous in terms of capital inflows, technology, and employment.\(^{55}\) Although, India was conservative in offering commitments in the GATS negotiations, India had embarked upon a process of unilateral liberalization. India had also joined the Information Technology Agreement (ITA).

**A. India’s response to joining the WTO**

Since joining the WTO, India has adapted to play a more constructive role in the WTO system. It could not do so under its internal arrangements under the GATT. India rather had to create new linkages with stakeholders and liaison more regularly with them in a more transparent way. WTO documents were to be regularly shared with the private sector and legal opinions regularly sought from non-governmental lawyers and other trade experts. The government also realized that seeking legal opinions from government empaneled lawyers

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54 PIIE, *India in the GATT and WTO* (Citation details). India renegotiated the tariffs on several agricultural products whose tariffs were historically bound at very levels by recourse to Article XXVIII negotiations of the GATT 1994.

need not work in specialized areas such as WTO, and the Department of Commerce sought the help of private lawyers.56

Joining the WTO also meant that India had to implement a number of WTO commitments. The reduction of import duties had been initiated in 1991 and the subsequent years. The Foreign Trade Regulation Act, 1992 created the Directorate-General of Foreign Trade (DGFT) which was responsible for administering import licensing and tariff quotas. Implementation of trade remedy legislations required strong and capable domestic institutions. In order to implement the trade remedy legislations, the Customs Tariff Act 1975, was amended by the Customs Tariff (Amendment) Act 1995, and specific rules were created.57 Enquiry points were notified for TBT and SPS Agreements. India had to eliminate several localization and domestic use requirements which fell in the category of prohibited trade related investment measures (TRIMS). A number of IPR legislation also required changes to comply with the WTO regime. While conforming to the WTO obligations was a challenge, there was an increasing awakening that participation in the WTO was not a zero sum game. The Indian bureaucracy realized that if India has to play a key in negotiations, India has to be a demandeur of market access in export markets and pursue offensive interests in several areas and products. Furthermore, India’s loss in a few disputes such as India-Patents and India-QR helped India realize the importance of preserving and zealously safeguarding the concessions it received in several products and sectors. As India realized from its participation in various disputes, WTO was way too different from the GATT in terms of its uncompromising nature of its process and functioning.

B. Hybridized Processes and their Effects in India: Involvement BUSINESS TRADE ASSOCIATIONS, THINK TANKS AND RESEARCH INSTITUTIONS

India has revised its laws and institutions so as to comply with WTO law while doing so with some leeway in ways that continue to protect its interests. Although the WTO treaty stresses on “compliance,” recent liberal trade and development scholars stress on the


importance of engaging in hybrid policymaking within constraints, imitating while inventing, adapting while adopting. Despite the presence of restrictions and positive obligations, there is flexibility to carve out policy space for regulatory autonomy. To give an example, in implementing the TRIPs agreement following a famous WTO complaint against it, India was forced to provide patent protection for pharmaceutical patents. It did so after a long internal study in a way that came up with innovative definitions of the key requirements, namely that a patent must claim must be novel and an inventive step. It thereby can narrow the scope of patent claims recognized. It also made it considerably easier to challenge patents, including both pre- and post-grant challenges (while countries including the US only provide for post-grant challenges), and it permits these challenges to occur before an administrative body than the traditional courts in India. India implemented this framework after several rounds of consultations and internal discourses and deliberations with the concerned stakeholders.

The major attitudinal change initiated within the government was to get rid of the non-transparent image. In the place of a few bureaucrats making decisions, the trade policy making process became much broader involving government officials in other departments and more importantly outside actors. The launch of Doha Round of Trade Negotiations was a critical moment in mobilizing the various interest groups and other private and public stakeholders in WTO affairs. The government invited the industry and the civil society for consultations. Industry associations such as the Federation of Indian Chamber of Commerce and Industry (FICCI) and the Confederation of Indian Industry (CII) conducted various stakeholder consultations during the launch of the Doha Round of trade negotiations and various other WTO ministerial conferences. There are also other industry organizations such as ASSOCHAM and PHD Chamber that used to conduct industry wide consultations on WTO matters before and after key events such as Ministerial conferences and closure of free trade agreement (FTA) negotiations.


The feeling that change in global rules could adversely affect their business drove the interest, while a few other emerging sectors such as pharmaceutical and information technology companies saw an opportunity in global markets. Organizations such as CII started the ‘India Everywhere’ campaign with a view to showcasing India to the outside world.\(^{61}\) Indian business heads and political leaders became a regular feature at the annual meeting of the World Economic Forum in Davos. CII opened an office in Geneva in 2003 in order to regularly monitor the developments in the WTO negotiations and update the industry of the developments.

Most of the leading business trade associations are supported by the Industry through member subscriptions. FICCI has over 2,50,000\(^{62}\) members whereas CII has over 7400 members, from private as well as public sectors, including SMEs and MNCs and an indirect membership of over 100,000 enterprises from around 250 national and regional sectoral industry bodies\(^{63}\). These are the two largest business trade associations in India and work as umbrella associations. Organizations such as the FICCI and the CII have large secretariats and separate divisions including economic analysis units. FICCI established a WTO, FICCI and Foreign Trade Division with Manab Majumdar as its head. The CII too established a Trade Policy Section, which is currently headed by Pranav Kumar.

The apex industry associations operated as a hub for knowledge dissemination and information gathering. The apex organizations were networked with smaller industry associations and promptly passed on requests from the MoCI on specific issues of consultation to concerned industry stakeholders. The sector specific industry partners, in turn, consulted the business enterprises and provided their feedback. The apex organizations relied upon the skills and sector familiarity of industry participants in apprising the MoCI of the feedback received. Such consultations were more helpful in the context of the non-agricultural market access (NAMA) negotiations at the WTO as well as in preparing

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the product lists for liberalization in the FTA negotiations. Importantly, such consultations also provided an opportunity for affected sectors and stakeholders to articulate their views better.

The capacity of the apex industries and sector specific industries in offering informed feedback to the MoCI was a matter of priority to the government. In the run up to the Doha Ministerial, FICCI and CII organized a number of stakeholder consultations. The consultations were used by Department of Commerce to explain the technical issues to the stakeholders and, in return, to elicit the views of the domestic industry. As a matter of practice, the consultative process built-in two essential facets -- a pre WTO Ministerial Conference consultation and a post Ministerial Conference briefing. These events are generally mega events attended by a wide spectrum of stakeholders and even delegates and representatives from other governments. Another recent initiative is the standard conclave initiated by CII on product and services standards. The standards conclaves have in the past attracted several sectoral experts in India and abroad and is widely believed to provide the Indian industry a platform to discuss the opportunities and challenges presented in the post-tariff regime where non-tariff measures care considered as the major obstacles to international trade. In addition to these mega events, the Department of Commerce also organizes smaller events which are attended by senior level government officers. In short, the industry bodies works in tandem with the government in establishing a viable and sustainable mechanism for public consultation. A list of such consultations, based on available data, is included in Annex I.

The role played by the UNCTAD, MOCI and DFID Project on “Strategies and Preparedness for Trade and Globalisation in India” (for short, “Capacity Building Project”) merits special discussion. The Capacity Building Project was started immediately after the launch of the Doha Round and continued until 2010. This project had two interrelated components: Component I and Component II. Component II was primarily focused at outreach activities and in strengthening human and institutional capacities in responding to trade issues. UNCTAD and the project partners conducted a series of stakeholder consultations in several cities in India. The Capacity Building Project conducted three

national level consultation meetings at the time of Cancun Ministerial conference; six consultation meetings prior to the Hong Kong Ministerial and another fifteen consultation meetings after the Hong Kong Ministerial. It also held thirteen consultation meetings on India-Thailand FTA negotiations, ten consultation meetings on India-ASEAN FTA, seven consultation meetings on India-EU Trade and Investment Agreement negotiations, seven consultation meetings on India- Japan FTA negotiations, five consultations meetings on SAFTA and six meetings on India-EFTA FTA negotiations. The Capacity Building Project also held sector specific meetings on steel, fisheries and antidumping and subsidies issues. These consultation meetings were held either alone or in conjunction with apex level parties such as FICCI and Textiles Committee and a number of regional partners. Through a network of partners, the Capacity Building Project was able to mobilize farmers, fisher folks, small producers, producers, etc to articulate their interests and concerns in shaping India’s approach to WTO/FTA negotiations. The process of seeking inputs helped in identifying the problems and constraints faced by various industries and agriculture in accessing export markets.

### Box I: Network Community under UNCTAD-MoCI-DFID Project

<table>
<thead>
<tr>
<th>Sectors</th>
<th>Tier I partners</th>
<th>Tier II partners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>APEDA and CITA</td>
<td>72 partners</td>
</tr>
<tr>
<td>Small and Medium Enterprises</td>
<td>FICCI and FISME</td>
<td>111 partners</td>
</tr>
<tr>
<td>Textiles and Clothing</td>
<td>Textiles Committee and India Merchants Chamber</td>
<td>181 partners</td>
</tr>
<tr>
<td></td>
<td>MPEDA and Seafood</td>
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</tr>
</tbody>
</table>

Marine Exporters Association of India (SEAI) 50 partners


After 2001, the MoCI worked with various state governments in establishing WTO cells in various states. The objective of the WTO cells is to provide awareness of the WTO Agreements and to provide direct feedback to the MoCI. WTO cells were established at the state level in Kerala, Punjab, Andhra Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, Orissa, Karnataka, West Bengal, Madhya Pradesh, and Delhi.


67 Brief on WTO Cell Industries, Commerce & Investment Department, Government of the Punjab (on file with author).


69 Id.

70 Id.

71 Id.

72 Id.

73 Id.

74 Id.


76 Id.

77 Id.
Tripura, Nagaland, Haryana and the Union Territory of Dadra and Nagar Haveli. Generally, the WTO cells are headed by junior level officials and have found it difficult to make a difference. However, some of the more active WTO cells such as the one in Karnataka, Kerala and Punjab have been able to provide training to a number of state level officials on WTO matters.

In addition to opening the door for stakeholder consultations, the Indian government started using research think tanks for analytical work. In a way, commissioning research work to domestic think tanks and agencies was necessary to reduce the over-dependence on multilateral institutions such as the World Bank which had its own neo-liberal perspective on trade liberalization. Component I of UNCTAD Capacity Building Project had one of its objectives the strengthening of the capacity of India’s policy makers and other research organizations in conducting technically sound and analytically rigorous research work on trade matters. A few organizations such as ICRIER, RIS and NCAER had already been involved in WTO work and continue to consider it as a core area of focus. ICRIER’s WTO initiative is headed by Anwarul Hoda who was a Member of the Planning Commission and was a former Deputy Director General at the WTO from 1995 to 1999. ICRIER has published series of research papers on international trade issues; its website has listed ten substantive research projects, sixty working papers, various policy papers, edited books and newsletters on trade matters during the period 2002-2012.

The use of academically driven think tanks and research organizations had a serious handicap. In most cases an understanding of trade policy and negotiating dynamics were crucial in yielding practically useful reports for the MoCI. The creation of the Center for

78 Id.
79 Id.
80 Id.
81 Id.
83 Id.
WTO Studies (CWS or the Centre) was to an extent aimed at bridging this gap. The Centre consists of academics and those seconded to it from government, primarily the Department of Commerce to which the Centre reports. For example, the two senior most staff of the Centre were career civil servants and their exposure to the ‘real world’ issues help them to guide and direct the work of the Centre in an effective way.

The Centre was established with a three-fold mission: (1) research for the MoCI; (2) liaison between the MoCI and industry and civil society; and (3) general capacity building and information diffusion through organizing workshops and publishing newsletters and reports. The Centre plays a key role in providing carefully considered responses to various queries raised by the Department of Commerce. The Centre has also in recent times tied up with the reputed World Trade Institute in Bern to provide highly subsidized tailored courses in key WTO topics for India law students and young legal professionals with the help of some renown experts in trade law and policy including former Ambassadors and a former Appellate Body Member. These initiatives of the Centre contribute in a significant way to the development of an epistemic community in WTO law.

Through acting as a liaison with the private sector, the Centre aims to build consensus for negotiations. The Centre thus provides a platform where government and domestic stakeholders can come together to discuss the government’s positions and the reasons for them, backed by the Center’s research. The Centre also publishes annotated versions of the WTO disputes which are published within a fortnight of the publication of the WTO panel and Appellate Body reports. As the WTO panel and Appellate Body reports get longer and complicated, the Center seeks to provide edited versions of the report free of cost. The Centre also commissions various independent studies to outside consultants and researchers. As of June 2015, the Centre’s website indicates that it has completed around 45 study projects for the Ministry, and around 50 capacity building programs. Of late, the Centre has started engaging a number of student interns from various National Law Schools and other premier private law schools in India round the year.

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84 The interviewee referred to this latter aspect as capacity building but in fact what was done was the diffusion of information.

The legal capacity building in various law schools in India has been steadily improving. When Ramakrishna Hegde was the Union Commerce Minister, a WTO Chair was instituted at the National Law School of India University (NLSIU) in Bangalore in 1996. However, the endowment for this Chair is roughly around $60,000, and will have to be administered with the help of the interest accumulation. Although MoCI wanted to establish Chairs in premier law schools, it has not received the support it needed. NLSIU had also started one of the first student edited Journal on international trade law entitled *The Indian Journal of International Economic Law*. The National Law University in Jodhpur is also offering a special stream in International Trade and Investment Law and has been running a Journal entitled *Trade, Law and Development* since 2009.\(^86\) The Jindal Global Law School where I am teaching has been running special streams on international trade law and trade remedy law to the LL.M students. Jindal Global Law School also runs a research center on international trade and economic law (CITEL) where students from students from the leading law schools in India and abroad are offered a paid internship under the Global Research Internship Program (GRIP). The Gujrat National Law University (GNLU) has been hosting one of the popular trade law moot court competitions in India since 2011. Despite these admirable examples of public-private capacity building networks in India, it is evident that the extent of trade related capacity building in Indian law schools is considerably less when compared to other institutions in China or some other South East Asian countries.\(^87\)

It is also a matter of fact that the government or private sector support in creating capacity is WTO and related matters is significantly less when compared to certain other areas such as IPR law. The Ministry of Human Resources Development (MHRD) has instituted 18 intellectual property Chairs in various Universities across the country. Five National Law Schools in India have MHRD sponsored Chairs. In addition, the Indian


\(^87\) Interview with Henry Gao, Associate Professor, Singapore Management University (May 27, 2015).
government provides an opportunity for technical and management training institutions in India for participating in the WIPO Worldwide Academy’s Distance Learning courses.88

Among the research think tanks in the field of international law, the Indian Society of International Law (ISIL) occupies a central position. In addition to running one of the oldest journals in India in the field of international law namely the Indian Journal of International Law, ISIL conducts various training programs for the officers of the Indian Foreign Service (IFS) and the Indian Economic Service (IES).89 ISIL also conducts a one year diploma course on international trade law and offers refresher courses to University teachers and students in India on topics including international trade law.

There are very few institutions outside Delhi working the field of international trade economics or trade law. The Administrative Staff College of India (ASCI) in Hyderabad offers occasional training programs in trade law and has on its rolls Ambassador S. Narayanan who served as India’s Ambassador to the WTO between 1995 and 2001. Organizations such as ASCI focus on conducting training programs and workshops to state level officials. The Centre for Development Studies (CDS) in Thiruvananthapuram has established a Chair on plantation issues with the support of the Ministry of Commerce, which also addresses issues relating to the plantation sector and the WTO. In 2008, CDS organized a series of lectures on international trade issues with the support of UNCTAD.90

While discussing the role of non-governmental organizations, organizations such as CUTS International play a key role in taking the debate on trade issues to the masses. CUTS has established a Centre for International Trade, Economics and Environment (CITEE) which is headquartered in Jaipur with presence in Nairobi, Lusaka and Hanoi and Geneva. CUTS-CITEE has around 20 professional staff and more than a dozen fellows and routinely conduct studies, stakeholder meetings and conferences on international trade and WTO matters. In addition to CUTS International, civil society organizations such as Third World Network,
Oxfam and Global Development Network (GDN) work on certain specific aspects of trade policy.

The emergence of civil society organizations in the aftermath of the creation of the WTO was a noticeable change in India. The establishment of the WTO has led, in a remarkable way, in the diffusion of capacity at multiple levels and in fostering of public-private partnerships in India. The central and as well as the state governments that had conducted limited consultations with the industry or affected citizens in the past has established WTO cells or other coordinating mechanisms to elicit the views of the industry and the stakeholders. In other words, creation of network societies and the deepening of the consultative process between the government and the private sector and individuals has been one of the remarkable contributions of the WTO legal order.

III. CONCLUSION

As this study indicates India has followed a pluralist model of trade related capacity building right since the days of the Uruguay Round trade negotiations. The controversial nature of topics such as agriculture and intellectual property rights forced the Indian government to reach out to industry bodies and other stakeholders even during the Uruguay Round. The setting up of Committees under the chairmanship of I.K. Gujral and Arjun Singh during the final phase of the Uruguay Round led to broad-based stakeholder consultations.

The substantial difference during the post-Uruguay Round is the qualitative improvement in the nature of engagement between the government and the so-called third pillar. Progressively, there is a deep level of engagement between the government and other industry bodies on negotiating issues and concerns as evidenced by the number and periodicity of consultations after the establishment of the WTO. As some of the stakeholders have confirmed, the feedback received in the ongoing Doha Round stakeholder consultations fed into the negotiating agenda of the Government of India and has resulted in meaningful intervention by India in the international trade negotiations and enforcement of international obligations at the domestic level. For example, the views of the civil society were crucial in implementation of product patent for pharmaceutical products and the preparation of various product lists in the FTA negotiations. In addition, the views of the Indian industry were taken
into consideration during the NAMA negotiations under the WTO and preferential and bilateral trade agreements. As a result, the Government of India has been able to successfully conclude a number of comprehensive economic treaties such as the India-ASEAN, India-Singapore, India-Korea and India-Japan agreements in the few years. Although this study has referred to only a few national industry apex bodies and think tanks, it is unmistakable that there is a bottom-up coordination and participation from the Indian industry associations to proactively shape the trade policy agenda of the government of India. Empirical evidence has also confirmed that the pluralist model of public-private partnership has also significantly helped in diffusion of capacity at multiple levels and has also helped the Indian negotiators in securing domestic support for sensitive issues such as Trade Facilitation and Information Technology-II agreements.

ANNEX I: STAKEHOLDER CONSULTATIONS BY INDIAN INDUSTRY BODIES AND RESEARCH ORGANIZATIONS

<table>
<thead>
<tr>
<th>S. no.</th>
<th>Organization(s)</th>
<th>Date</th>
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<tbody>
<tr>
<td>1.</td>
<td>CII, Seminar on “China’s Accession to WTO: Impact on Indian Industry”</td>
<td>15 March 2002</td>
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<tr>
<td>2.</td>
<td>FICCI, Roundtable on “WTO Negotiations on Industrial Tariffs and Market Access”</td>
<td>29 November 2002</td>
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<tr>
<td>3.</td>
<td>FICCI, Stakeholder Consultation Workshop on “India-Japan Free Trade Agreement and Economic Partnership Agreement”</td>
<td>20 March 2004 (Mumbai)</td>
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<tr>
<td>4.</td>
<td>FICCI, RIS and IUCN, Regional Conference on “Agenda for WTO Hong Kong Ministerial: Challenges for South Asia”</td>
<td>20 August 2004</td>
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<td></td>
<td>Event</td>
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<tr>
<td>5.</td>
<td>FICCI, Seminar on “India-Singapore Comprehensive Economic Cooperation Agreement (CECA): Opportunities for Indian Business”</td>
<td>20 August 2005</td>
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<td>6.</td>
<td>FICCI, Industry Consultation Session on “India-ASEAN Free Trade Agreement”</td>
<td>25 January 2006</td>
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<td>7.</td>
<td>FICCI and SAARC Chamber of Commerce and Industry (SCCI), Stakeholder Consultation on “SAFTA: Opportunities and Challenges”</td>
<td>13 March 2006</td>
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<td>8.</td>
<td>FICCI and CENTAD, National Consultation on “WTO and India: Strategising Beyond Hong Kong”</td>
<td>20 March 2006</td>
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<td>9.</td>
<td>FICCI and SRC, National Seminar on “Making Globalisation Work: An Indian Perspective” with Nobel laureate Professor Joseph E. Stiglitz</td>
<td>18 December 2006</td>
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<td>10.</td>
<td>FICCI and MOIC, Industry Consultation Session on “BIMSTEC Free Trade Agreement”</td>
<td>7 July 2007</td>
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<tr>
<td>11.</td>
<td>FICCI, Workshop on “India-EU Free Trade Agreement Negotiations: Identifying Products of Concern to India”</td>
<td>24 August 2007</td>
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<td>12.</td>
<td>FICCI, MOIC and CWS, IIFT, Stakeholder Consultations on “India-EU Free Trade Agreement in Services”</td>
<td>29 November 2007</td>
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<td>13.</td>
<td>FICCI, Regional Conference on “Deepening South Asian Economic Integration”</td>
<td>24 July 2008</td>
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<td>14.</td>
<td>CII and CWS, IIFT, Stakeholder consultations on “NAMA Sectoral negotiations”</td>
<td>September-October 2008</td>
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<td>15.</td>
<td>FICCI and CWS, IIFT, Interactive Meeting on “WTO Proposals for Sectoral Tariff Negotiations”</td>
<td>3 October 2008</td>
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<td>16.</td>
<td>CWS, IIFT, Consultations with Industry on “India – EC FTA on Trade in Services”</td>
<td>28 November 2008</td>
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<td>17</td>
<td>CWS, IIFT, Consultations with Industry on “India-EC FTA on Trade in Services”</td>
<td>16 February 2009</td>
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<td>18</td>
<td>FICCI, India Infrastructure Summit 2009</td>
<td>20-21 March 2009</td>
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<td>19</td>
<td>MOIC, FICCI and CWS, IIFT, Sensitive list of India for “Indo-EFTA FTA in collaboration with UNCTAD”</td>
<td>3 May 2009 (New Delhi); 4 May 2009 (Ahmedabad) and 27 May 2009 (Kolkata)</td>
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<td>20</td>
<td>FICCI and CWS, IIFT, Stakeholder Consultation on “India’s FTAs with EU and EFTA Countries”</td>
<td>27 May 2009</td>
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<td>21</td>
<td>FICCI, Global SMEs Summit 2009</td>
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<td>22</td>
<td>MOIC, FICCI and CWS, IIFT, Consultations with Domestic Industry on “India EFTA-FTA and India-EU FTA”</td>
<td>31 July 2009 (Hyderabad) and 4 August 2009 (Mumbai)</td>
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<td>23</td>
<td>FICCI, MOIC, CWS, IIFT and UNCTAD, Stakeholder Consultations on “India’s FTAs with EU and EFTA Countries”</td>
<td>4 August 2009</td>
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<td>24</td>
<td>FICCI, Seminar on “Enhancing Trade and Investment India- Thailand”</td>
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<td>25</td>
<td>FICCI, CWS, IIFT and MOIC, Stakeholder Consultation on “India’s FTAs with EU and EFTA Countries”</td>
<td>20 August 2009 (Mumbai)</td>
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<td>26</td>
<td>CII and CWS, IIFT, Capacity Building Programme on “WTO Agreements &amp; SPS/TBT database”</td>
<td>27 August 2009</td>
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<td>27</td>
<td>CII, CWS, IIFT and MOIC, Workshop on “SPS/TBT Database and WTO Agreement”</td>
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<td>28</td>
<td>FICCI, National Stakeholder consultation on “WTO negotiations”</td>
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<td>29</td>
<td>CWS, IIFT, FICCI and MOIC, National Stakeholder Consultation on</td>
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<td>30</td>
<td>FICCI, Seminar on “India-ASEAN Free Trade Agreement in Goods: Implementation and Operational Issues”</td>
<td>16 February 2010</td>
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<td>31</td>
<td>FICCI and CUTS, Programme on “Strategic Trade Regulations and Practices for Indian Hi-Tech Industry”</td>
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<td>32</td>
<td>FICCI, Roundtable with Mr. R.P. Singh, Secretary, DIPP on “National Manufacturing Policy”</td>
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<td>CWS, IIFT and MOIC, Consultation with Indian Industry on “EU REACH Regulation”</td>
<td>30 April 2010 (Mumbai); 6 May 2010 (Kolkata) and 22 May 2010 (Ahmedabad)</td>
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<td>34</td>
<td>FICCI, Seminar on “Proposed Anti-Counterfeiting Trade Agreement (ACTA) and TRIPs: Issues and Implications”</td>
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<td>FICCI, Stakeholder consultation on “India-Turkey FTA”</td>
<td>28 July 2010</td>
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<td>36</td>
<td>FICCI, Industry consultation on “India’s Free Trade Agreement with EU, Japan and EFTA”</td>
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<td>37</td>
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<td>CWS, IIFT, Meeting on “Carve-out in Agriculture negotiations”</td>
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<td>39</td>
<td>FICCI, Industry Consultation on “Sectoral Tariff Negotiations in WTO”</td>
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<td>40</td>
<td>FICCI, Roundtable on “Strengthening Regulatory Framework and Enhancing Capacity in India’s Accountancy Services Sector”</td>
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<td>41</td>
<td>FICCI and CWS, IIFT, Seminar on “Trade Facilitation and Dissemination of the Study on Trade Facilitation Gap Analysis”</td>
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<td>42.</td>
<td>FICCI, Facilitating Trade in South Asia: Sharing Best Practices and Exploring Regional Solutions</td>
<td>12-13 June 2012</td>
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<td>43.</td>
<td>FICCI, ICRIER and Konrad Adenauer Stiftung (KAS), Stakeholders’ Consultation on “Enhancing India-EU Bilateral Trade, Investment and Collaboration in Services”</td>
<td>7 July 2012</td>
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<td>44.</td>
<td>FICCI, Roundtable on “India-Singapore CECA”</td>
<td>11 July 2012</td>
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<td>45.</td>
<td>CITEL, JGLS and CWS, IIIT, International Conference on “Managing Growth in a Changing World: What Lessons can the BRICS learn from each other”</td>
<td>6-8 December 2012</td>
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<td>46.</td>
<td>CII Partnership Summit 2013 on the theme: “Global Partnership for Enduring Growth”</td>
<td>27-29 January 2013</td>
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<td>47.</td>
<td>FICCI, MSME Summit 2013 on “Integrating MSMEs with the Global Value Chains”</td>
<td>14 May 2013</td>
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<td>49.</td>
<td>FICCI, Industry consultations on the theme “Rules on Origin in India’s FTAs”</td>
<td>26 July 2013</td>
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<td>50.</td>
<td>CII and MOIC, India’s International Trade Strategy and Industry Consultation on “WTO Bali Ministerial and FTA Challenges”</td>
<td>29 July 2013</td>
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<td>51.</td>
<td>FICCI, Industry consultations on the theme “Trade in Environmental Goods”</td>
<td>26 November 2013</td>
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<td>53.</td>
<td>CII &amp; MOIC, Standards Conclave 2015 on the theme “Role of Standards”</td>
<td>21 May 2015 and 16-17</td>
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<td>55.</td>
<td>FICCI, Industry Consultation on “Rules of Origin in Regional Comprehensive Economic Partnership Agreement”</td>
<td>6 June 2014</td>
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<td>57.</td>
<td>CII and WEF, Indian Economic Summit</td>
<td>5 November 2014</td>
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<td>58.</td>
<td>CII and MOIC, 2nd India-CMLV Business Conclave “ASEAN – India Economic Engagement”</td>
<td>12 December 2014</td>
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<td>59.</td>
<td>CII Partnership Summit, 2015 on “Partnership for Shared New Realities”</td>
<td>15-17 January 2015</td>
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<td>60.</td>
<td>CII, National Conference on “India’s Domestic Reforms Need for Factor Changing Global Trade Regime through Mega-Trade Blocks”</td>
<td>7 April 2015</td>
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<td>61.</td>
<td>CII, Seminar on “Services Sector: Strengths &amp; Opportunities b/w India and Gulf/Middle East/West Asia/North Africa (MEWANA)”</td>
<td>23 April 2015</td>
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<td>64.</td>
<td>CII, SEPC and MOIC, Global Exhibition on Services 2015</td>
<td>24 August 2015</td>
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**Source:** *FICCI, CII & CWS, IIFT*