INDIA AND THE WORLD TRADE ORGANIZATION: CHARTING A NEW MODEL OF TRADE LAW CAPACITY BUILDING

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1.1 Introduction

India's story in building capacity in international trade law is worth restating. There have been several well analyzed articles on this topic in recent times.[1]However, there have been fresh challenges and new methods; in particular, emerging economieshave carved out their own prototypes for developing capacity to deal with WTO and other economic treaties. The quest for trade law capacity building may be borne out of necessity and precipitated by the apparent turgidities of the issues, unusually tight deadlines and perhaps, the irreversibility of the dispute settlement process. It may also bea fact that most of the emerging economies treat active participation in WTO matters as an important feature of playing a key role in institutions of global governance. This chapter will focus on India's reinvigorated rolein playing a crucial role in institutions of global governance, especially the WTO dispute settlement system.

Participating in WTO or investment dispute settlement is often challenging. Picking one's battles, especially in monitoring and choosing trade measures for dispute resolution, evaluating the political, economic and legal costs and benefits of such actions, and identifying and selectingthe right personnel to pursue these matters to their logical conclusion requires a good understanding of the system and deep engagement with several stakeholders. In short, it requires commitment, strategizing and planning. Of late, the launch of international trade disputes has been unexpected and has caught many countries

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[1] Gregory Shaffer, James Nedumpara and Aseema Sinha, 'State Transformation and the Role of Lawyers: the WTO, India and Transnational Legal Ordering' 49 (3) Law and Society Review (2015) 595; Gregory Shaffer, James Nedumpara, Aseema Sinha and Amrita Bahri, 'Equalizing Access to the WTO: How Indian Trade Lawyers Build State Capacity', in David B Wilkins, Vikramaditya S Khanna, David M Trubek (eds.), *The Indian Legal Professionin the Age of Globalization*, (Cambridge University Press, 2017) 631; Mihaela Papa and Aditya Sarkar, 'Rising India in Investment Arbitration: Shifts in the Legal Field and Regime Participation', in David B Wilkins, Vikramaditya S Khanna, David M Trubek (eds.), *The Indian Legal Profession in the Age of Globalization*, (Cambridge University Press, 2017) 705; Amrita Bahri, *Public Private Partnership for WTO Dispute Settlement: Enabling Developing Countries* (Edward Elgar, 2018) 147; James Nedumpara, 'WTO, State and Legal Capacity Building: An Indian Narrative', Judging the Sate in International Trade and Investment Law, (Springer, 2016) 33; Abhijit Das and James Nedumpara (eds.), *WTO Dispute Settlement at Twenty: Insider's Reflections on India's Participation,* (Springer Singapore, 2016) 1; Amrita Bahri, 'Pubic Private Partnership: Enabling India's Participation at WTO Dispute Settlement Mechanism', 8 (2) Trade, Law & Development 151 (2016) 157.

off-guard. The recent developments in the field of international trade only underlie the importance of having a strong domestic trade law bar and other supporting institutions.

This study provides one of the most practically-informed and empirically grounded analysis of how India has strengthened its dispute settlement participation in trade law through capacity building with the help of cost-effective strategies employed at the domestic level. In particular, this chapter examines the steps that India has taken to transform its domestic institutions and key participants by responding proactively to the demands of the WTO legal system.

Methodologically, this chapter draws from several interactions and interviews the authors have made with a large number of key public and private sector participants working on trade policy matters. The authors of this chapter in their course of work have interacted with multiple stakeholders cutting across government, industry, law firms and the civil society. One among us (Nedumpara) is currently heading a think tank established by the Government of India for building trade and investment law capacity within the Department of Commerce and other allied government agencies. The second author (Bahri)is the co-chair of WTO for Mexico and has spent several years researching this topic with an empirical approach. She hasrecently published a comprehensive work on dispute settlement capacity building from the perspective of developing countries.[2] The insights and inferences that we have drawn based on our previous studies inform and guide our analysis and conclusions in this chapter.

The organization of this chapter is as follows: Sections 1.2 and 1.3 examine the importance of WTO and its dispute settlement for India. This part also narrates India's major contributions in enriching and embellishing WTO jurisprudence. Section 1.4 looks in particular at the various initiatives taken by the Indian government and other public and private institutions in developing trade law capacity and creating a demand for trade law in India. A major focus of this chapter is on the role of law schools in harnessing trade law capacity in India through initiatives such as moot courts and similar competitions. The discussions in this part also examine the areas where the government can play an active role in synergizing the participation of stakeholders such as law firms, law schools and the industry. Section 1.5 provides certain conclusions of this study.

1.2 The WTO Dispute Settlement Mechanism: Relevance for India

The WTO dispute settlement system is a remarkable example of an international 'rule of law' and multilateral adjudication.WTO grants several rights to its Members, and WTO DSU provides a rule-oriented consultative and judicial mechanism to protect and enforce these rights in cases of WTO-incompatible trade actions. It empowers its Member States to

[2] Amrita Bahri, *Public Private Partnership for WTO Dispute Settlement: Enabling Developing Countries* (Edward Elgar, 2018).

protect and expand their trade market access by challenging foreign trade practices and defending its measures through a time-defined procedure of consultation, litigation and implementation.[3]

Open markets and an increase in foreign trade activities can create more employment and investment opportunities, and thereby contribute to a country's better living standards and overall development.[4]More particularly, WTO dispute settlement experience can enhance the Member States' understanding of, and expertise in, international trade law, which the governments can utilize in identifying WTO-incompatible foreign trade practices and invoking WTO DSU provisions. With the experience, expertise and confidence to 'play with [WTO] rules'[5], the governments can develop bargaining strategies which they can employ to amicably resolve (and defuse) trade conflicts and thereby protect their industries' trade interests in the 'shadow of a potential WTO litigation'.[6]Galanter refers to this process as 'litigotiation', as he observes that 'the career of most cases does not lead to full-blown trial and adjudication but consists of negotiations and maneuvers in the strategic pursuit of settlement through mobilization of the court process.'[7] In this manner, developing countries can strengthen their negotiating abilities once they have strengthened their litigation skills.With better bargaining and litigation strategies, and with the consequentially enhanced capacity to raise credible litigation threats, Member States can improve the terms on which they can trade with other member countries.[8]

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[3] Understanding on Rules and Procedures Governing the Settlement of Disputes ('Dispute Settlement Understanding') (15 April 1995) LT/UR/A-2/DS/U/1, https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm , visited 5 May 2015

[4] Thomas W Hertel and Alan Winters (eds.), *Poverty and the WTO: Impacts of the Doha Development Agenda*, (co-publication of the World Bank and Palgrave Macmillan UK, 2006) 3, 4, 427; World Trade Organization, 'The WTO and the Millennium Development Goals' (MDG 8: A Global Partnership for Development), 3-4, https://www.wto.org/english/thewto_e/coher_e/mdg_e/mdg_e.htm, visited 7 June 2015. This argument has been a subject of academic debate, and some authors have vehemently argued that free trade may not have a positive impact on living standard, economic growth and poverty reduction in a country. See for example, Sarah Joseph, 'The WTO, Poverty, and Development', *Blame it on the WTO: A Human Rights Critique* (Oxford Scholarship Online, 2011).

[5] Gregory C Shaffer, 'How to Make the WTO Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies' International Centre for Trade and Sustainable Development (ICTSD) Resource Paper No 5 (2003), http://ictsd.org/downloads/2008/06/dsu_2003.pdf, visited 18 July 2012.

[6] Galanter has called this process 'litigotiation'. He describes it in the following words: '[T]he career of most cases does not lead to full-blown trial and adjudication but consists of negotiation and manoeuvre in the strategic pursuit of settlement through mobilization of the court process.' [M Galanter, 'Contract in court; or almost everything you may or may not want to know about contract litigation', 3 Wisconsin Law Review 577 (2001), at 579]. Marc Busch & Eric Reinhardt, 'With a Little Help from Our Friends? Developing Country Complaints and Third-Party Participation', in Chantal Thomas and Joel P Trachtman (eds.), *Developing Countries in the WTO Legal System* (Oxford University Press, 2009) 247, 248; Gregory C Shaffer, 'Developing Country Use of the WTO Dispute Settlement System: Why it Matters, the Barriers Posed' Minnesota Legal Studies Research Paper No. 08-50 (2008), at 173.

[7]Marc Galanter, 'Contract in court; or almost everything you may or may not want to know about contract litigation', 3 Wisconsin Law Review 577 (2001), at 579

[8]SeeShaffer, 'How to Make the WTO Dispute Settlement System Work', n 5, at 10-11.

As a founding member of GATT 1947 and an original member of WTO, India has played a defining role in shaping the WTO jurisprudence through negotiations and litigation. It has actively participated in the WTO dispute settlement process ever since its establishment. From January 1995 to January 2018, India has acted as a complainant in 24 cases, as a respondent in 25 cases, and as a third party in 130 cases.[9] Cumulatively, India has participated (actively or passively as a third party) in over 33 per cent of the cases filed at the WTO in this period of time.India's engagement with the WTO DSU can also be evidenced from the number of times it has filed complaints against its major trading partners (such as the US and the EU). Out of 24 complaints India has filed at the WTO, 11 have been against the United States and 7 against the European Union.[10]

India has not only been a subject of many WTO disputes, it has also been the leading WTO Member in launching trade remedy actions to protect its domestic industry. India has initiated 839 anti-dumping investigations between the period of 1 January 1995 to 31 December 2016 – that makes India the world's most active user in terms of anti-dumping initiations.India is followed by the United States (with 606 anti-dumping initiations) and the European Union (with 493 anti-dumping initiations) during the same period of time.[11]India has also initiated as many as thirty-seven safeguard actions until 2017.[12] The very high use of anti-dumping and safeguard measures by India may onone hand come across as a protectionist approach, but India has its own justifications for using this measure as a legitimate means of protecting its domestic industry against import competition. Use of trade remedy instruments presupposes the existence of a very active and a knowledgeable domestic industrycapable of mobilizing support for getting various price and cost data and ultimately the industry standing to file an application. Heavy use of trade remedy provisions has significantly enhanced the amount and scope of career opportunities for trade lawyers in India. It has contributed in making India's domestic trade law bar as one of the most proactive one.[13]

India has also participated actively at WTO committee meetings. Look at the case of TBT and SPS committee meetings for instance.Specific trace concerns (STCs) can be raised

[9]World Trade Organization, 'Disputes by Member', https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, visited 22 January 2018.
[10] Ibid
[11] World Trade Organization, 'Anti-dumping', https://www.wto.org/english/tratop_e/adp_e/adp_e.htm, visited 22 January 2018.
[12] Information and findings can be accessed at Directorate General of Safeguards (under Ministry of Finance, Government of India), http://www.dgsafeguards.gov.in/details.aspx?MenuId=MFHxTw4ouYPg0OVW0U33Hw, visited 22 January 2018.
[13] Interview with Mukesh Bhatnagar, former Joint Director General of Foreign Trade and currently Professor, Centre for WTO Studies, IIFT (New Delhi, April 30, 2018). Bhatnagar has recounted to us that the Indian trade remedy case handlers and the trade remedy bar are, perhaps, the most astute and knowledgeable that he has seen among developing or emerging economies. Bhatnagar is the coordinator for a WTO sponsored Trade Remedy Regional workshop that is being held in New Delhi and his views are widely borne out from his interactions with the staff of the WTO Rules Division and case handlers from different jurisdictions.

before the Committee to consult on proposed or adopted measures of other Members on technical regulations, standards or conformity assessments. Out of a total of 495 SPS related special trade concerns raised at the Committee Meetings, 20 concerns have been raised against Indian measures and India has raised 19 trade concerns against foreign measures. Out of a total of 554 TBT concerns raised at the Committee Meetings so far, 27 concerns have been raised against Indian measures and India has raised 6 trade concerns against foreign measures.[14]The committee system is not, strictly speaking, a forum for the resolution of trade conflicts and disagreements. But in practice, it has contributed to "defusing trade tensions" in its respective trade disciplines. India has used the committee system as an expert-driven forum for discussing and resolving trade conflicts.

This high level of participation in various multilateral and bilateral forums can be linked to India's level of trading stakes. India's share of trade to GDP (sum of exports and imports of goods and services measured as a share of gross domestic product) has shot up from around 6 percent in the 1970s to 40 percent in 2016. Interestingly, India's share of trade to GDP at 49.6 percent in the year 2014 was higher than that of the United States and China.[15]Today, this figure stands close to 40 percent.[16] Hence, what happens in international trade and how it is regulated multilaterally as well as bilaterally have significant ramifications for Indian economy.

Bohanes and Garza observe that 'larger WTO members trade greater volumes of more diversified trade to a greater number of trading partners, which in turn leads to a greater number of potential trade frictions and greater propensity to bring disputes'.[17] Shaffer and Sutton have also observed a positive correlation between the size of market and the capacity to participate and power to retaliate or negotiate.[18] They observe that '[power] in the international trading system roughly corresponds to the size of a country's market – measured in terms of the ability of a country to exercise leverage by offering market access, or threatening to withdraw access, for foreign goods and services'.[19]

These studies suggest that there is a positive correlation between a country's participation in multilateral trading system and its overall trading stakes. In the case of India, high aggregate trading stakes, export-oriented economic structure and a wealth of DSU experience has promptedthe country to develop its dispute settlement capacity in this field. However, a mere look at thequantitative aspects of India's participation may not fully

[14] World Trade Organization, 'The New Dataset on TBT Specific trade concerns', http://www.wto.org/english/res_e/publications_e/wtr12_dataset_e.htm, visited 22 January 2018.
[15] World Bank 'Indicators', https://data.worldbank.org/indicator/, visited 22 January 2018.
[16] Ibid.
[17] Jan Bohanes& Fernanda Garza, 'Going Beyond Stereotypes: Participation of Developing Countries in WTO Dispute Settlement', 4 (1) Trade Law and Development 45 (2012), at 57.
[18] Gregory Shaffer & Charles Sutton, 'The Rise of Middle Income Countries in the International Trading System', inRandall Peerenboom, Tom Ginsburg (eds), *Law and Development of Middle-Income Countries: Avoiding the Middle-Income Trap* 59 (Cambridge University Press, 2014), at 64.
[19]Ibid.

justify why India's participation experience is worth sharing and learning from. It is also important to look at the way India has handled and prepared for the dispute settlement procedures at the domestic level and how it has litigated these disputes at the WTO. The following section provides a bird's-eye view of certain landmark litigations where India's involvement has been instrumental in shaping the WTO jurisprudence.

1.3 India's Engagement with WTO DSU: Landmark Contributions

India has played an important role in shaping the WTO jurisprudence through its proactive involvement in dispute settlement. India's contributions lie in identifying novel causes and making innovative claims and arguments. The Appellate Body ruling in *US – Shirt and Blouses*[20], a case decided in the early days of the WTO, still stands as the most authoritative proposition of law on the burden of proof requirements in WTO dispute settlement. *US – Shrimp*[21] remains till date as one of the seminal cases in the history of the WTO, especially in connection with the relationship between the WTO regime and environmental concerns.[22]India was one of the complaining countries in this case in challenging the United States' regulations on importation of shrimp products purportedly taken for protecting sea turtles. As Appleton notes, *US – Shrimp* laid down the foundations for importation, under very limited conditions, on another Member's compliance with the regulating Member's environmental rules and other concerns based on how a product is produced—a debate centering the acronym "PPM" in WTO terminology. The outcome in this dispute is credited by many to have "saved the WTO".[23]

Turkey – Textiles[24] is a unique case in the history of the WTO. It examined, for the first time, whether a GATT inconsistent measure can be justified for the formation of a Customs Union. In *EC – GSP*[25], the WTO Panel and the Appellate Body had the opportunity to clarify the interpretation of the Enabling Clause and whether a GSP granting country can differentiate between developing countries based on certain conditionalities. In *EC – Bed Linen*[26], the concept of 'zeroing'—a practice of ignoring negative margins in dumping calculations— was given a definitive rejection. That the concept of 'zeroing' has consumed

[20]Appellate Body Report, *United States – Measures Affecting Imports of Woven Wool Shirts and Blouses form India (US – Wool Shirts and Blouses)*, WT/DS33/AB/R, adopted 23 May 1997
[21]Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products (US - Shrimp)*, WT/DS58/AB/R, adopted 6 November 1998
[22] Appleton, 'The US-Shrimp Appeal, 20 Years On', in Das and Nedumpara, *WTO Dispute Settlement at Twenty*, n 1, at 93.
[23] John Jackson, *Sovereignty, the WTO, and Changing Fundamentals of International Law* (Cambridge University Press, 2006).
[24] Appellate Body Report, *Turkey – Restrictions on Imports of Textile and Clothing products (Turkey - Textiles)*, WT/DS34/AB/R, adopted on 19 November 1999
[25] Appellate Body Report, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries (EC – Tariff Preferences)*, WT/DS246/AB/R, adopted on 20 April 2004
[26]Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India (EC – Bed Linen)*, WT/DS141/AB/R, adopted 12 March 2001

a significant amount of time and has posed major systemic challenges to the WTO is another matter.

More recently in the case of*US – Carbon Steel*[27], the Appellate Body made important clarifications on the definition of 'public body' under the SCM Agreement. In the landmark *US – AD/CVD (China*[28]*),* the Appellate Body laid out the general principle that a public body is an entity that "posses, exercises or is vested with governmental authority". India's appeal in *US – Carbon Steel* provided the much needed clarity on the legal evidentiary elements necessary fordemonstrating these characteristics. Again, in the *US – Customs Bond*[29], the Appellate Body had the opportunity to examine the operations of the customs bonds requirements in anti-dumping proceedings in legal systems following the retrospective system of duty collection in anti-dumping, for instance, the United States. More recently in *India – Solar Cells*[30], India invoked the general exception under Article XX(j) of the GATT 1994, which contributed to a better understanding of this exception in WTO.

There is no denying the fact that each of the above decisions made its indelible impact on the WTO legal system. Almost all the above decisions have been frequently cited in WTO panel and Appellate Body decisions. These path breaking decisions would not have been possible without an active domestic industry, responsive government officials and the country's willingness to engage in long, time-consuming and resource intensive dispute settlement process.

1.4 Participation Capacity and Developing Countries: India as an Exemplar

Academics, lawyers, economists and political scientists have written extensively about the participation challenges that developing countriesin general face at WTO DSM.[31]Bohanes and Garza observe that the main challenges which various developing countries have faced in the process of enforcing international trade rights are the lack of legal capacity, weak domestic governance, insufficient retaliatory powers and fears of political consequences

[27]Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (US – Carbon Steel (India))*, WT/DS436/AB/R, adopted 19 December 2014

[28] Appellate Body Report, *United States— Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, para 317, adopted 11 March 2011

[29] Appellate Body Report, *United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties (US – Customs Bond Directive)*, WT/DS345/AB/R, adopted 1 August 2008; Appellate Body Report, *United States – Measures Relating to Shrimp from Thailand (US – Shrimp (Thailand))*, WT/DS343/AB/R, adopted 1 August 2008

[30] Appellate Body Report,*India - Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456, adopted 16 September 2016

[31] For details, see Michael Ewing-Chow, 'Are Asian WTO Members Using the WTO DSU "Effectively"?' 16 (3) Journal of International Economic Law 669 (2013); Shaffer, 'Developing Country Use of the WTO Dispute Settlement System', n 6, at 182–185.

and pressures.[32] Shaffer succinctly describes these challenges as '…constraints of legal knowledge, financial endowment, and political power, or, more simply, of law, money, and politics.'[33]

Multiple participation challenges, as listed above, are central to the most common problem that developing countries have faced—the problem of capacity constraint. The term 'capacity' in this chapter has a broad connotation as it includes a country's political, legal and financial power, and it generally refers to a country's overall ability to utilise the WTO dispute settlement provisions. Capacity, in the context of WTO DSU, should not be measured on purely economic indicators (such as a country's per capita income) as a country can have low per capita income but large export markets and, therefore, advanced expertise and experience of participation at WTO DSU.

India, for example, has low indexed per capita income, but it is a major emerging economy which has participated actively at WTO DSU and has demonstrated the capacity to mobilise the required resources to monitor and enforce its WTO rights. Hence, the dispute settlement capacity should be measured by taking systemic account of a country's ability to mobilise resources, as and when required, for monitoring and enforcing its WTO rights. The problem of 'capacity constraint' refers to a situation where a country is unable to effectively and fully utilize the WTO DSU provisions due to lack of required resources and expertise. Insufficient capacity therefore impedes a country's ability to utilize the remedies available under WTO DSM, be it in litigating or defending a dispute, conducting formal or bilateral consultations with foreign governments, or ensuring proper implementation, monitoring and compliance. This chapter, in the following section, will address a pertinent question: How has India– a developing yet a very reticent player during the GATT days– overcome capacity-related challenges and has enhanced its capacity to resolve disputes at WTO DSM?

Most of the capacity-related challenges faced by developing countries are deeply rooted in the domestic context of these countries and therefore solutions can best be found at the domestic level. For example, paucity of lawyers and government officials trained and experienced in WTO law has, to some extent, necessitated hiring expensive overseas lawyers. Lack of this capacity could be attributed to the absence of educational or training institutions in the field of trade or investment law.Likewise, lack of information and evidentiary documents with a complaining or responding government could be due to the absence of inter-ministerial coordination and the presence of disengaged private stakeholders. Dispute settlement activity often forces the concerned government agencies go helter-skelter to look for data or evidence which mayotherwise either remain uncollected or unnoticed in hidden troves. It is therefore important that these constraints are directly

[32]Bohanes& Garza, 'Going Beyond Stereotypes', n 17, at 69.
[33] Gregory C Shaffer, Marc Busch & Eric Reinhardt, 'Does Legal Capacity Matter? A Survey of WTO Members' 8 (4) World Trade Review 559 (2009), at 572.

dealt with at the domestic level. In line with this argument, this chapter will focus on how India has builtits in-house WTO participation capacity by introducing changes at the domestic level.

1.4.1 *Dispute SettlementCapacity Building: Domestic Strategies*

1.4.1.1 Evolution of Trade Law Bar in India

India comes across as a prominent example of a developing country that has increased its trade law expertise at the domestic level. The Government of India has encouraged domestic law firms to develop their international trade law expertise. There was a deliberate effort to enhance the capacity of the domestic law firms and other legal institutions. This has especially been the trend since 2011. Sometimes, the capacity of the empaneled law firms to handle complex trade law matters might have appeared somewhat suspect. However, the absence of prior experience was not negatively viewed against any of the chosen law firms in awarding work. A trade lawyer working for an Indian law firm observes the following:

> India has started to build its domestic legal capacity by following a unique approach. The government has hired various local law firms which had some trade law expertise and it has thrown them into a deep end, as if the government was telling them to 'learn to swim or sink'. We were, and we are being encouraged by the government to gain knowledge and expertise over international trade laws.[34]

The lawyer states that the government had, in the past, hired law firms based in India that had no previous WTO experience, and had asked them to prepare and present a case at the WTO Panel on their own. The same interviewee comments that this strategy 'enhances the potential and brings out the best in domestic law firms',[35] which suggests that the selection process works sufficiently well. The Ministry of Commerce in India has started to hire more and more India-based trade lawyers to manage foreign trade disputes on behalf of the government. This practice applies not only in WTO matters, but also in investment treaty arbitrations and trade remedy investigations such as countervailing duty investigations. Until the year 2002, India mainly hired Geneva- or Brussels-based lawyers for litigating

[34] Interview with a trade lawyer, Luthra & Luthra (Delhi, 21 June 2013) [Name withheld]. The interviewee further observes the following: 'With more number of cases being litigated by and against India mainly from the year 2001, the government decided to expand its legal expertise. It was not feasible anymore to hire expensive Geneva based lawyers, especially in the cases where India was challenged. It was also not wise to exclusively rely on a sole trade lawyer in India [Mr Krishnan Venugopal]. The government therefore started to hire other Indian lawyers from different law firms based in India.'.

[35] Ibid.

WTO cases,[36] and until the year 2005, a single Indian lawyer was repeatedly hired for preparing defences.[37]However, most noticeably from 2006 onwards, the government has started engaging a high number of domestic trade lawyers.[38] At the same time, whenever additional expertise has been required, the Indian government has not shied away from engaging international law firms or agencies such as ACWL. For example, in *India-Agricultural products* case, the Indian government engaged the services of ACWL and a private U.S. based consultant in defending India in an Article 22.6 (of the DSU) proceeding. ACWL also provides need-based legal advice to the Trade Policy Division of the Ministry of Commerce as well as India's Permanent Mission in Geneva on various WTO matters.

Over the past few years, the procedure for the selection of trade lawyers has become somewhat 'systematic' in nature. The Ministry of Commerce issues a call of interest to the Government of India empaneled law firms that have expertise in the relevant subject matter. The law firms that respond to the call are asked to analyse a given trade matter and make a presentation on their legal analysis. They are simultaneously asked to provide information about their team of trade lawyers and their relevant experience in the subject matter. The Trade Policy Division of the Ministry of Commerce examines their credentials and takes into account the novelty and thoroughness of their oral and written opinions before taking a decision on hiring the law firms.[39]

Despite the remarkable increase in trade law work in India, International trade law is not entirely a stand-alone field of practice for most of the law firms. Most trade lawyers often get involved in tax, competition and commercial arbitration matters. Hitherto, International Trade Law is a small market with a limited number of professionals, and trade disputes are hardly available outside the WTO dispute settlement system. However, the future looks certainly more promising. There is scope of work for lawyers in areas such as bilateral investment treaty arbitration and disputes relating to regional trade agreements, where the Government and the industry are increasingly looking for assistance. This has been a drastic shift from the traditionally seasonal nature of trade dispute settlement activity.

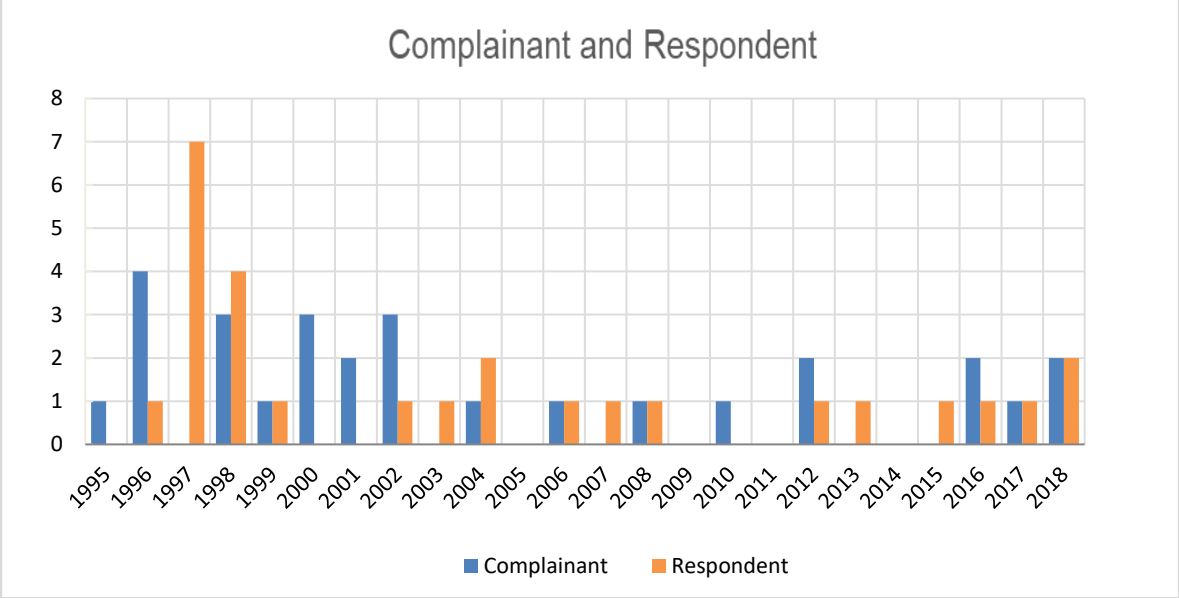
[36] The foreign lawyers hired by India in the years before 2000 were Frieder Roessler, Edwin Vermulst and FolkertGraafsma. ArtherAppleton appeared for the complainants in *US- Shrimp.* Scott Anderson was also involved on behalf of India in a steel dispute, namely DS 206.

[37] Krishnan Venugopal was the sole lawyer hired by the Government of India for disputes challenging Indian trade measures from the year 1996 to 2000. Venugopal worked alongside other international lawyers such as Frieder Roessler.

[38] The new generation of trade lawyers hired by the government after 2005–2006 include: ACWL lawyers, Krishnan Venugopal, Lakshmkumaran and Sridharan, Economic Laws Practice, Luthra & Luthra, and Claras Law Firm

[39] Interview with an official representative, Ministry of Law & Justice, Government of India (Delhi, India, 3 June 2013) [Name withheld]

It is pertinent in this context to discuss the statistics on India's trade disputes. The following chart provides a snap shot of India's trade disputes (as a complainant and respondent) after joining the WTO.



Source: WTO (1995-2017) (Updated as of 31 July 2018)

This chart shows that the high points for India as a complainant as well as respondent were in the years 1995 to 1998.The spike during this time could be in view of the possible double counting of multiple complaints in *India – QR* as separate disputes, but there is no denying the fact that from 2005 until 2012, India had fairly low dispute settlement activity. As explained by Rajeev Kher, former Commerce Secretary, India was pursuing a "dispute avoidance" strategy during this period.[40]During this period, India had resolved a number of trade issues with its trading partners without escalating these matters to full-fledged dispute settlement. It is clear that India had negotiated for settlement and resolution of disputes under the shadows of the WTO framework during this period. The WTO disputes involving India have picked up after 2012. More recently, especially in 2017-18, there has been anescalation in disputes in view of global tit-for-tat trade measures. India is involved in at least five cases (compliance or fresh disputes) with the United States as of writing this chapter.[41]

[40] Interview with Rajeev Kher, former Commerce Secretary, (New Delhi, 15 December 2017)

[41] These cases include, Recourse to Article 21.5 of DSU by India, *India - Measures Concerning the Importation of Certain Agricultural Products (India - Agricultural Products)*, WT/DS430/21; Recourse to Article 21.5 of DSU by India, *India – Certain Measures Relating to Solar Cells and Solar Modules (India – Solar Cells)*, WT/DS456/20; Request for Establishment of Panel, *United States – Certain Measures Relating to the Renewable Energy Sector (United States - Renewable Energy)*, WT/DS510/2; *India – Export Subsidies* (Consultations); *United States — Certain Measures on Steel and Aluminum Product*s (Consultations).

The statistics show that there was a high demand for trade lawyers with expertise and experience in WTO law somewhat until 2005, however, that momentum did not pick particularly well after 2005-06. As a result, WTO law enthusiasts in India have struggled to get roles in law firms exclusively dedicated to WTO law practice or any WTO law related work for that matter. Hence, most lawyers with specialization in WTO law often find themselves working in anti-dumping investigations or they often migrate to other fields of practice such as competition law, tax law or commercial arbitration.[42]

The seasonal nature of WTO practice serves as a major discouragement for young trade law enthusiasts and lawyers. The law firms focusing on trade remedy work continued to deepen their practice in this area, whereas non-trade remedy focused boutique law firms depended on government work on WTO to remain in this field. These disciplines of trade law are often distinct and demand separateand different type ofskill sets. For example, a trade lawyer focusing on anti-dumping is encouraged to learn cost accounting, finance or indirect taxation.

To succeed in the field of international trade law, law firms need more than just legal expertise and familiarity trade law. They should have some skills in business strategy, organizational aspects and marketing, so they can reach out to their domestic and foreign clients proactively. In our interaction with business firms, it appeared fairly clear that business managers are unlikely to take the lead in initiating trade cases. Either external or inhouse lawyers will have to take the lead. For instance, a major India company used to regularly organize sessions with business managers and lawyers to discuss the implications of trade agreements on their businesses.[43]

There are still major impediments in transnational engagement of lawyers and law firms. The closed nature of India's legal profession has not facilitated formal engagements, best friend arrangements or tie-ups between Indian and international law firms dealing with trade law. Several Indian firms formally or informally consult with international law firms or trade lawyers, but the nature of collaboration is limited. As Shaffer and Gao observe, a Chinese company will be at ease to work with a fellow Chinese lawyer working in India in an anti-dumping investigation.[44]However, the lack of liberalization in legal services has served as an impediment to facilitating these arrangements.

International trade law is increasingly becoming multi-disciplinary. It cannot be practiced in isolation from other substantive areas. The multi-disciplinary nature of WTO matters

[42] Co-author of this chapter, Dr. Amrita Bahri, who graduated as a trade law specialist from London School of Economics in 2009, spent years working in the field of international commercial arbitration amidst lack of opportunities to practice in the field of trade law.

[43] Interview with Rajnish Jaiswal, General Manager, [Company's name withheld] in Delhi, 6 April, 2018.

[44] China's experience on law firms with country-desks is discussed in Gregory Shaffer and Henry Gao, 'China's Rise: How it Took on the US at the WTO', UC Irvine School of Law Research Paper No. 2017-15 115 (2017), at 140-141.

demands familiarly with other areas such as economics, accounting, sociology and political science, to name a few. The following section explores certain ideas on how India can further its dispute settlement capacity through International Trade Law teaching at university level.

1.4.1.2 The Changing Landscape of International Trade Law Education in India

International trade law (ITL) is slowly emerging as an area of interest in Indian Law schools. WTO lawis not a mandatory course in most of the law schools and is often offered as an elective course.[45]However, several steps have been taken at the university and government levels that have impacted the landscape of WTO academia in India. Despite not being designated as an elective course, ITL is increasingly being taught as a core subject in a handful of law schools in India. It has indeed become a trend among some new generation national (e.g., NLSIU, Bangalore; NLU, Jodhpur; GNLU Gandhinagar; NLU Delhi) and private (e.g., Jindal Global Law School, Sonipat; Symbiosis Law School, Pune; Amity Law School, Noida) law schools to prescribe ITL as either a mandatory or an electivecourse. In addition to this, several Indian universities offer LL.M. courses with specialization in international trade law and related subjects.[46]

Considering the importance of WTO laws and the influence that they might have on the domestic legal system, the Indian Government in the year 1996 established a WTO chair at the National Law School of India University, Bangalore.[47] A few years later, the Ministry of Human Resource development also established intellectual property right (IPR) chairs in various national law schools and other academic institutions in India.[48] Some of these Chairs are very active in conducting various capacity building activities, brainstorming sessions and national seminars in the field of international trade and IPR law.

In April 2017, the Department of Commerce established a flagship internship program with four leading law schools in India. These law schools include: National Law University, Jodhpur, National Law School, Delhi, National Law School, Bhopal, and Jindal Global Law School. This initiative has been taken by the Department of Commerce to generate interest in international trade and investment law among law students and to create a cadre of young competent lawyers in this emerging area of law. This paid internship program is run by the Centre for WTO Studies (CWS) and the Centre for Trade and Investment Law (CTIL) established at the Indian Institute of Foreign Trade, an agency run by the Ministry of Commerce and Industry. It can clearly be seen that the Government of India has taken

[45] There are many universities in China for example that have made the courses on ITL and WTO law mandatory for law students. More details in Shaffer and Gao, 'China's Rise', n 44.

[46] Examples of Indian Universities providing LL.M. in International Trade Law include NLU Jodhpur, NALSAR Hyderabad, and Amity University, Noida.

[47] National Law School of Law University, https://www.nls.ac.in/index.php?option=com_content&view=article&id=95%3Amr-govindraj-g-hegde&catid=8%3Afaculty&Itemid=58, visited 22 May 2018

[48] Copyright Office, Government of India, http://copyright.gov.in/frmlistiprchair.aspx, visited 22 May 2018

conscious decisions to develop capacity in academic institutions. However, a lot more needs to be done.

The teaching pedagogy of courses related to ITL in India is heavily based on theoretical underpinnings.Traditionally in India, academicians do not generally come from legal practice and are often discouraged to do both at the same time. A course on WTO law that involves students to analyse legal principles in the light of actual WTO cases can prepare practice-ready trade lawyers.The use of case-based explanations can therefore be a very effective classroom technique for ITL courses.

The lack of practice oriented learning in most Indian law schools stands in the way of India fully utilizing its talent pool and potential in various aspects of law. There are various ways to address this problem. Following lectures, students can be asked to solve hypothetical problems by applying legal principles and jurisprudence. In seminar discussion sessions, students can be presented with factual scenarios based on a trade dispute. In these sessions, they can be required to: (i) understand the facts, (ii) identify the most applicable legal provisions (ideally taught in classes preceding these discussion sessions), (iii) describe and analyse them in light of case laws, (iv) analyse the law to see if its elements are factually satisfied, (v) and provide a tentative opinion as a panelist deciding this case or convincing arguments as a lawyer representing complainant or respondent.

In an online WTO law course delivered at Koç University in Istanbulby one of the authors, the students are provided one lecture for each topic (where they are explained the legal provisions and case laws), followed by a discussion seminar (where students are presented with a factual scenario that they have to resolve).[49] Students during these seminar discussions are asked to analyse the given factual scenario in three steps: the *first* step is where they examine the issue as a complainant's lawyer, the *second* step is where they analyse it as a respondent's lawyer, and *finally* they are asked to analyseboth sides of the arguments objectively and deliver a decision as a judge. This three-step analysis enablesthem to appreciate the arguments from different point of views. Students tend to enjoy courses that are taught with such a practice-based approach. A pragmatic approach based on case analysis and problem solving can attract more law students into studying this discipline.

While India´s elite national law schools have been graduating outstanding lawyers, most of these institutions have not been at the forefront in undertaking cutting edge research in the field of trade and investment law.While an increasing focus on national and international ranking is encouraging law schools to devote more resources for research, the conventional focus on teaching is likely to remain unchanged, at least for the near term future. An ITL course taught with such a research-led and practically-informed approach can serve to

[49] The course outline and content are on file with the authors.

enhance the students' experience, learning and overall interest and enthusiasm in this field of law.

During our interactions with academics in some of the top rated Indian Law schools, we were surprised to know the teaching workload young faculty members. "Teaching takes a bulk of the time, with teaching load often exceeding sixteen hours a week. This is in addition to the time devoted for student mentoring and other additional University work".[50] Such an exacting teaching schedule may not be conducive for encouraging original and time consuming research initiatives. However, some of the new generation and globally oriented law schools are trying to put the focus back on research. For example, Jindal Global Law School founded a Centre on International Trade and Economic Law in 2009. The research centre conducted several studies for the Government of India. One of the studies conducted by the Centre culminated in India filing a dispute against the United States on renewable energy.[51]

It is equally notable that some other Law schools such as National Law School, Delhi (NLU Delhi) have undertaken research initiatives with leading global corporations to develop research and capacity in areas such a technology, digital trade and intellectual property rights. NLU Delhi and especially its Centre for Innovation, Intellectual Property and Competition (CIIPC) has been undertaking a major initiative with Qualcomm in research and technical discussions on the interface between trade, innovation, IPR and competition related issues. CIIPC had also partnered with the WTO Appellate Body in organizing the WTO@20 Conference in New Delhi in February, 2017.[52]

In addition to research units, Indian law schools can establish ITL clinics for imparting substantive knowledge with a problem-solving approach. For example, Jindal Global Law School, where one of the authors is affiliated to, is partnering with the Georgetown University Law Center, in the TradeLab clinics initiative.Tradelab is a global network of students, economists and legal practitioners seeking to empower countries and small stakeholders in effectively participating in and taking the full advantage of the global trading system.[53]The students working in these clinics could also work internationally with other clinics or group of students at foreign universities through TradeLab clinics initiative.[54]The TradeLab project allowed Jindal students to work in pairs with students from Georgetown University Law Center and TRAPCA on ITL related projects under the supervision of academic and practising mentors.The project also provides an opportunity

[50] Interview a professor based in India (April 27, 2018) [Name and place withheld]
[51] Request for Establishment of Panel, *United States – Certain Measures Relating to the Renewable Energy Sector (United States - Renewable Energy)*, WT/DS510/2
[52] WTO@20 Conference, Program, http://www.law.uci.edu/faculty/full-time/shaffer/WTO-at-20-Delhi-Draft-Program_External.pdf, visited 22 May 2018
[53]Tradelab, https://www.tradelab.org/about, visited 22 May 2018
[54]Tradelab, Pilot Clinics, https://www.tradelab.org/pilot-clinics, visited 18 June 2018

for students to learn from the experiences of students from various partner institutions located in other jurisdictions.

The TradeLab clinics initiative enabled the students to work on a range of practical trade law oriented tasks. For example, they can conduct research and analysis for a treaty negotiation or compliance assessment of existing or proposed foreign trade laws and measures. They can draft advocacy positions and assess legal claims or defense strategies in the context of existing multilateral or bilateral agreements. They can also work on the research and drafting of third party submissions, legal memoranda or amicus curiae briefs for assistance in WTO disputes.

Clinical learning environment can have sustainable capacity-building impact as it can attract young law enthusiasts in this field of study and students can learn this area not just by listening but by doing activities or solving problems. These clinics can also help law students develop and sharpen their problem-solving, research, drafting and argumentation skills – all of which are essential traits of a being a successful lawyer. Law schools can also impart international lawyering skills through moot court competitions and debates.Through this skill-based pedagogy, students can be "practice-ready" as they graduate from their universities.

Following the TradeLab clinics' model, these university-level clinics can recruit small groups of students that have already taken an introductory ITL course. The students in these clinics can be assigned trade disputes and disagreements (from existing WTO cases), and they can be asked to work on a variety of tasks including research, drafting and presentation of arguments. ITL faculty, in association with trade lawyers and other trade law professionals in India, can design semester-wise roadmap of projects and supervise the work of students on a regular basis. PhD students and research assistants can run the day-to-day operations of these clinics as instructors or coordinators. In short, the possibilities of these clinical learning programs are immense.

Indian Law schools have been at the vanguard in promoting and supporting moot court activities, at the national and international levels. The moot court competition on international trade law organized by the Gujarat National Law University (GNLU) since 2009 is one such example. This moot court attracts participation from several institutions from India and abroad and is one of the leading moot court competitions in the field of trade law. Previous editions of this moot court had attracted teams such as Duke University, National University Singapore and George Washington University.[55] As Ashish Chandra, a trade lawyer with a prominent law firm in Delhi confided to us, "this was by and large a

[55] For details, see 11th GNLU International Moot Court Competition, https://gnlu.ac.in/GIMC/Home, visited 12 June 2018

student initiative. Nobody realized its potential."[56] Some of the students who have successfully participated in this competition have eventually gone on to work at the WTO and in international law firms.

The European Law Students' Association (ELSA) organizes a moot court competition on issues related to International Trade Law.[57] This event attracts not only law students from all over the world, but also eminent Trade Law experts, academics and WTO legal officers in the roles of team coaches, judges and mentors. This competition seeks to advance the understanding of WTO law and its jurisprudence amongst the young academic community of various Member States, and train young law students and lawyers for future trade disputes and negotiations. In this manner, it contributes in the enhancement of countries' legal capacity through training of budding trade lawyers and negotiators in a cost-effective manner.

Indian law students, with strong legal culture of case law based legal reasoning in India - which is predominantly a common law jurisdiction - tend to perform quite well at mooting competitions. Indian law students have been very active participants in ELSA since 2002. In fact, Indian law schools have outcompeted several leading Asian teams and have often found a berth in the World Rounds. Teams from the National University of Juridical Sciences, Kolkata (NUJS) have won two ELSA moot court competitions in 2009 and 2014 respectively. Jindal Global Law School was a semi-finalist in the Final round held in 2011. NLU Jodhpur was the runners up in 2015. Teams from Australia has won this competition on four occasions(in 2005, 2006, 2008 and 2010).The teams from the UK have won thrice (in 2002, 2003 and 2004).

A cursory look at the legal background of these winning teams lends credence to the view that grounding in common law reasoning and concepts provides a sound footing in the field of public international law. It is also a testimony to the rich traditions of legal culture in India and how investing in Law could enable countries such as India to play a leading role in institutions of global governance such as the WTO.With the largest young population in the world, well ahead of China, and the vast number of law schools and universities focused on teaching and researching law in a common law setting, the emerging legal profession in India is poised to make a global impact. With growing opportunities available within India, the new generation of Indian lawyers can play a significant role in ensuring a greater participation in international dispute settlement, especially in economic treaties. The dependence on foreign law firms and lawyers is bound to diminish in the future.

It is a well-known fact that for a law student, learning takes place not only throughthe classroom instructions but also through practical experience.Internships have become quite popular in the field of international trade law. The Government of India, as explained in the

[56] Interview with Ashish Chandra, Luthra and Luthra Law Offices in New Delhi, May 25, 2018.
[57] For details, see ELSA, https://emc2.elsa.org/, visited 12 June 2018

previous section, plays a vital role in this aspect. By outsourcing trade law work to a number of empaneled law firms, the Government has provided avenues for ITL practice in private law firms. As stated above, several Indian law firms have desks in international trade and investment law.Examples include APJ-SLG Law Offices, Economic Laws Practice, Lakshmikumaran&Sridharan, Seetharaman Associates, PLR Chambers, Clarus Law Asscociates, Cyril AmarachandMangaldass, Dua Associates and Luthra and Luthra Law Offices. The increasing trade related work given to the private law firms based in India keeps them busy and motivated. The fact that more than 100 law studentswork with these law firms as interns during their summer and winter breaks on an annual basis is extremely encouraging and portrays a promising future for trade and investment law in India.[58]

1.4.1.3 Creating a Demand for Trade Law: Third Party Participation in WTO Disputes

Countries with substantial interests in a matter can participate as a third party in the consultation and litigation of that dispute without having to pay the litigation costs. Mere observation of dispute settlement proceedings can help them get more familiar with how the overall dispute settlement process works, how documents are drafted and substantiated with evidence, and how arguments and counterarguments are made and presented during the hearings. Third party participation also enhances a WTO Member's opportunity to influence outcomes in areas in which it has systemic interests. Many developing countries such as China, Brazil, Mexico and Argentina have observed these benefits and have hence utilized third party participation option to build-upon their dispute settlement capacity.[59]

In the early years of WTO, India was not a frequent third party participant in WTO disputes. It might be surprising, for example, to notice that India did not participate as a third party in some of the important cases such as the *US-Tuna II*[60]case. From 1995-2000, India joined in nearly ten percent of disputes filed at DSU as a third party. However, that number has increased drastically as India has joined in more than fifty percent of disputes filed between the years 2012 and 2017.[61] India has, in the more recent years, actively participated and submitted written submissions as a third party in several WTO disputes. By observing the dispute settlement proceedings as a third party,India has enhanced its legal expertise and dispute settlement experience. This 'learning by observation' approach has greatlyimprovedthe WTO DSU experience of government officials and domestic law firms.

[58]Careers 360, https://www.careers360.com/news/8857-all-about-law-internship, visited 18 June 2018.

[59] China has participated in 142 cases, Brazil in 114 cases, India in 91 cases, Mexico in 84 cases, and Argentina in 60 cases. For details, see World Trade Organization, Understanding the WTO: The Organization, Members and Observers, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm, visited 3 December 2017

[60]Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, adopted 13 June 2012

[61]World Trade Organization, Disputes by Member, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, visited 12 June 2018

A prominent India law firm noted that its involvement in preparing third party submissions for India in disputes such as *US – COOL*[62] and *Canada – Renewable Energy*[63], enabled it to closely track the judicial approach in some of the topical areas of WTO such as TBT and clean energy disputes. This experience shows that handling third party disputes is a way of anchoring in this field before taking up more substantive engagements such as a full-fledged dispute. As noted by a senior official in the Department of Commerce, advisory opinions and third party submissions help the government to "gauge the level of preparedness" of the interested law firms. In a way, working in such less remunerative, yet professionally demanding work is one way of breaking into this practice.[64] However, there is no denying of the fact that preparation of third party briefs are not always financially rewarding for law firms or lawyers in India.

Frequent third party participation could also be used as a sustainable and cost-effective tool to attract young legal professionals and law students in the field of ITL. This can be done by inviting law students and fresh graduates to join the team that observes and intervenes as third party at Geneva. The prospect of observing multilateral proceedings at one of the most renowned international organizations set in an exciting location can kindle their interest and enthusiasm in this field of practice. This experience of observing dispute settlement proceedings can subsequently strengthen the know-how and understanding of the process at law firms, government offices or trade entities which these students and graduates may eventually join.

1.4.1.4 Developing Monitoring Capacity

International law firms, on their own initiative, have started the practice of monitoring foreign policies and their implications on market access. Without receiving an instruction from a corporate client or a government, these international law firms identify and examine potential barriers, gather information and approach the affected business and government entities with their findings and analysis. The firms carry out this exercise with the hope that they will be able to generate new clients. In this arrangement, they normally propose to share the information concerning market access and violations in exchange for an agreement with the receiving client that the supplying law firm will be hired for further monitoring, investigation or litigation of the potential dispute.[65]

This practice could be a useful tool for developing countries that cannot afford to have their own specialized monitoring institutions. At present, the law firms engaging in 'ambulance

[62]Appellate Body Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R / WT/DS386/AB/R, adopted 23 July 2012

[63]Appellate Body Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/AB/R / WT/DS426/AB/R, adopted 6 May 2013

[64] Interview with a Joint Secretary, Government of India (Delhi, 7 May, 2018) [name withheld]

[65] Chad P. Bown, *Self-Enforcing Trade: Developing Countries and WTO Dispute Settlement* (Brookings Institution Press, 2009) 124.

chasing' are mostly Geneva-, Brussels- or Washington-based international law firms, and hiring their services could be an unaffordable option for many developing countries. Hence, domestic law firms in developing countries can perform these 'ambulance chasing' practices. The practice of 'in-house ambulance chasing', as it could be termed, would enhance domestic legal expertise, provide additional monitoring services, and reduce the overall cost of dispute settlement, all of which would benefit the government and industry of the country concerned.

Engagement at an early stage of a dispute could be a possible route for a Law firm to be empanelled at a subsequent stage, essentially in consultation or panel process. Luthra & Luthra, an Indian law firm, was hired by the Government of India in the *India – Agricultural Products*[66] case after the law firm had provided the initial information and legal analysis concerning the measure to the Ministry of Commerce. A trade advisor to the Ministry of Commerce confirms that Luthra & Luthra provided the initial analysis and informational support and that its initial assistance was the main reason for its subsequent engagement in this case.[67] This instance shows that active monitoring and surveillance can help the government, the affected business entities and even the law firms to forge a "win-win" situation.

With such practices in place, the private sector and the governments can have enhanced access to monitoring services and legally marshalled information and evidence at a comparatively affordable rate. On the other hand, domestic law firms in developing countries with small trade law expertise (mainly due to shortage of business and/or lack of professional or internship opportunities) will be able to generate more business and expand their expertise and experience. More ITL related work for law firms can also increase the enthusiasm and demand for ITL courses at universities.

1.4.1.5 Dispute Settlement Partnerships: Engaging Industries for Settlement of Disputes

In the area of international trade, business entities are the frontrunners as cross border transactions of goods and services are mainly carried out by profit-motivated business groups. Hence, some form of coordination between government and industry, in most cases, is embedded in the nature of WTO dispute settlement proceedings as the violation of WTO rules directly affects business interests of exporters, importers, manufacturers and producers, which in most cases are private companies. Moreover, industries are a vital source of information and evidential documents.

For the aforementioned reasons, the Indian Ministry of Commerce has coordinatedclosely with business stakeholders during the settlement of several trade disputes. In various

[66] Appellate Body Report, *India – Measures Concerning the Importation of Certain Agricultural Products from the United States (India - Agricultural Products)*, WT/DS430/AB/R, adopted 19 June 2015.

[67] Interview with an official, Ministry of Commerce, Government of India (Delhi, 12 June 2013) [name withheld]

landmark disputes, including *the EC – Bed Linen*, *EC – Tariff Preferences* and *US – Carbon Steel*, the business entities in India have supplied information and evidence that was required to investigate foreign measures or prepare legal submissions. In certain cases, they have financed the hiring of specialists including trade lawyers and economic consultants for the analysis of barriers and preparation of sound arguments. For example, in the case of *US-Carbon Steel (India)*, Essar Steel was the company that was most affected by the imposition of countervailing duties by the United States on imports of certain hot rolled carbon steel flat products from India. To restore their trade interests, Essar Steel provided most of the information and evidential support to the government officials for the successful conduct of this case.[68]This steel giant in Indiawas forthcoming and active in assisting the government during the settlement of disputes as it had high stakes in the matter and was anticipating substantial gain from the removal of the trade barrier.[69]

With the help of dispute settlement partnership approach, the government has utilizedprivately-owned resources to successfully protect its WTO rights. It has used the information, evidence, finances and subject-matter expertise provided by the affected industries in investigating trade barriers, launching bilateral discussions and WTO consultations, and litigating formal disputes at the WTO. The constitutional authority of the government has been indirectly invoked by the affected industries (as they do not have any direct rights under WTO DSU) by virtue of their participation through timely technical inputs, data and possible arguments.Generally, at stake in such arrangementsare the exporting and national interests of the industry and the government, and they are dependent on each other's resources for the protection of their respective overlapping interests. Their respective interests can be protected with the help of a reciprocal exchange of resources through an ad-hoc partnership formed between the two. Such partnership arrangements have enabled the Ministry officials in India to mobilise resources at the domestic level and thereby strengthen their performance and participation at WTO DSU.[70]

1.5. Conclusion

The chapter demonstrates how international law shapes domestic laws and practices, and more importantly, the formation of public-private networks in a major emerging economy like India. It also shows how development and changes in domestic policies and approach can mould the performance and participation of a developing country at international institutions such as the WTO. After Brazil and China, India is the most active developing country user of DSU. India has developed its dispute settlement capacity with the help of various in-house strategies which have proved to be cost-effective. It has formed dispute settlement partnerships as it has worked with institutions and industries for the settlement

[68] Ibid.
[69] See Bahri, 'Public Private Partnership', n 2, at 167.
[70] Ibid, at 147-175.

of trade disputes. In addition to direct participation, India has gained litigation experience through observation as a third party participant in multiple trade disputes. With Indian law firms and think tanks offering information-gathering and consulting services in a cost-effective manner, the government has had a wider access to the trade barrier monitoring and their investigation and analytics. It has also improved its academic landscape by increasing the focus on ITL-related courses in Indian law schools. However, a lot remains to be done to increase the enthusiasm and interest in WTO related themes amongst young professionals and students in India. This is not going to be an easy task, especially in wake of these challengingtimes for free trade and multilateralism.

The example of India demonstrates the role of the government, law schools, law firms, think tanks and other industry stakeholders in developing trade law capacity. India's model of legal capacity building is also unique in the sense that the government has relied upon the local capacity to frame development policies and harness the domestic talent and resources to defend India's interests even in high-stake cases.India's dispute settlement journey has shown how developing countries can prepare "lemonade" out of "lemons" through a process of repeat participation and constant engagement.[71]Other developing countries should follow suit.

[71] A maxim used for the first time by Writer Elbert Hubbard.