Equalizing Access to the WTO:
How Indian Trade Lawyers Build State Capacity

by

Gregory Shaffer, James Nedumpara, Aseema Sinha and Amrita Bahri[1]

Introduction

The law of the World Trade Organization (WTO) is not autonomous. It shapes and is shaped. It affects not only countries' trade and tariff policies, but also shapes their laws, regulations and institutions. In particular, it creates new accountability mechanisms with particular normative frames, and opens markets creating new demand for professional expertise, such as legal expertise. The WTO institutionalizes capitalism, and thus provides opportunities directly and indirectly for business lawyers. Yet it does not do so in a uniform manner. Rather, nation-states, working with private constituents, negotiate the terms of WTO law and shape its meaning, whether directly through engagement, or indirectly through lack of engagement.

The WTO should not be viewed as static and deterministic, autonomously affecting states. Rather, the WTO legal order is shaped by those who negotiate its terms and who participate in their interpretation, affecting how WTO law is understood and applied. The negotiation and interpretation of WTO law, in turn, affects countries' policy space for social and developmental initiatives as well as their ability to challenge foreign countries' trade restrictions affecting their exports. The scope of the WTO legal order entails not only formal disputes, which are of great interest and generate reams of scholarship, but also the shadow effects of law on claims that are settled and never known and on domestic regulatory policy initiatives that are advanced, not considered, or are shelved.[2]

Participating in the construction and interpretation of WTO law, however, is not free, not for governments, nor for private parties. Its interpretation has become highly complex and evolving, with its jurisprudence exceeding 70,000 pages of panel and Appellate Body decisions issued through mid-2012.[3] Not all are in the position to participate in shaping the WTO legal order and its effects. Thus a rule-based system such as that of the WTO can favor those members

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[1] Gregory Shaffer is Melvin C Steen Professor of Law and Affiliated Professor of Political Science at the University of Minnesota; James Nedumpara is Associate Professor and Executive Director, Centre for International Trade and Economic Laws, Jindal Global Law School; Aseema Sinha is Wagener Chair in South Asian Politics and George R. Roberts Fellow, Associate Professor at Claremont Mckenna College; Amrita Bahri is a PhD candidate and a Teaching Associate at the Birmingham Law School, University of Birmingham.

[2] See Gregory Shaffer, How the WTO Shapes Regulatory Governance, in Francesca Bignami and David Zaring, eds, The Elgar Research Handbook on Comparative Law and Regulation, Edgar Elgar (forthcoming 2014).

[3] This figure was calculated from the database at *WTO Dispute Settlement Reports* (Cambridge, U.K.: Cambridge University Press) 1996-2010, available at http://www.cambridge.org/aus/series/sSeries.asp?code=DSR).

that have significant legal capacity (such as the United States and European Union) over those that do not (such as most developing countries).

For India, the negotiation and interpretation of WTO law affects multiple policy issues, from the contours of intellectual property (IP) law and its implications to the right to health, to the export of generic drugs, to the development of industrial policy, to the regulation of labor and the environment, to restrictions on imports and exports. All of these issues have been directly or indirectly the subject of WTO disputes, and all of them involve disputes in which India has been a party. Formal WTO disputes, however, only begin to reflect the implications of WTO law.

This study examines the growing role of Indian lawyers in the transformation of Indian trade policy through the development of trade-related legal capacity. By trade-related *legal capacity* we mean, broadly, the ability of a country to use law to engage proactively in the development and defense of international and domestic policy. Such capacity is critical for the drafting and interpretation of international legal agreements, the adaptation of domestic regulation within those agreements' constraints, the monitoring of foreign commitments, and the development of legal arguments in formal international litigation and informal dispute settlement. Through developing legal capacity, public and private actors work together to open export opportunities abroad and defend domestic policy measures at home. While others have written of the legalization of international trade through the increased role of the WTO legal secretariat and the emergence of the WTO Appellate Body in international dispute settlement,[4] this chapter addresses the growing role of lawyers in the development of trade policy at home in one of the world's rising emerging economies, India.

The study builds from years of field research in India and Geneva, involving semi-structured interviews with over fifty (plus 13) Indian officials and stakeholders.[5] The interviewees included former Ambassadors, members of the bureaucracy, WTO Mission officials, private lawyers, private trade association and industry representatives, representatives from international organizations and NGOs, researchers in think tanks, academics, and news reporters. We complemented these interviews with participant observation in Geneva and in New Delhi, and reviewed our findings against primary and secondary documents. In addition, we filed Right to Information Applications with the MoCI, Government of India to further confirm our findings.[6]

I. Terrain of the Debate and Theoretical Context

Our arguments and findings resonate with and contribute to three interrelated literatures and debates that implicate the role of law and lawyers in emerging economies. They are: the creation of transnational legal orders, the rise of the new developmental state, and the building of

[4] Joseph Weiler, The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement, 13 *American Rev Int'l Arbitration* 177 (2002).

[5] We respectively conducted distinct field work on Indian trade law and policy for around a decade, from 2003-2012. We identify some sources only by interview number pursuant to their request for confidentiality.

[6] Applications were filed by Amrita Bahri to seek and confirm information under the Right to Information (RTI) Act, 2005 (Act No. 22 of 2005). The applications were filed on 17 September 2013. Written responses were received on 5 December 2013 vide Document No. 1/27/2013-TPD. [Documents are on file with the authors].

legal capacity to engage with and shape such transnational legal orders and their implications for the developmental state.

First, this study documents the increasing role of transnational legal ordering and its implications for law and lawyers in nation states.[7] The study of transnational legal ordering places the relationship between international, transnational, and domestic legal processes in tension that gives rise to the potential institutionalization of legal norms, and in particular within nation states. Transnational legal ordering involves both top-down and bottom-up processes that operate recursively and dynamically, shaping the meaning of legal norms. This article addresses how India has engaged lawyers to enhance its ability to participate and shape the WTO legal order, and in the process also changed, in part, itself. It examines the reciprocal transformations entailed in the WTO legal order, about how a country transforms itself in order to engage with the WTO and, in turn, shape it, giving rise to transnational legal ordering.

Second, our findings contribute to an emergent revisionist argument about the developmental state across regions and issue areas.[8] We find that the Indian state has not withdrawn from global and transnational influences (as per the developmental state model of the 1950s), but rather been transformed and enhanced. The WTO catalyzes the building of new state capacity, including legal and regulatory capacity, even though its *raison d' être* is to free markets and liberalize trade among nations. As Aseema Sinha writes, the "globalization of trade rules… creates pressures to strengthen national state agencies and trade policy processes."[9] We find that the WTO and WTO law have spurred, and should continue to spur, the Indian developmental state to enhance its legal capacity in relation to both international economic law and the law's implications for domestic law reform and policy by expanding coordinated linkages with the private sector.

Third, because of the implications of transnational legal ordering for the developmental state, states invest in the building of legal capacity so as to engage in the shaping of global rules and assess alternatives for their implementation in order to protect policy space.[10] This study contributes to our understanding of how developing countries build legal capacity so as to better participate in the construction of the WTO legal order and its implications for the developmental state. India is pressed to adapt to WTO legal norms, and at times uses them to facilitate policy reforms. But it also seeks to shape and modify the understanding of the rules for its own ends. To do so, it must build legal capacity, in particular through opening the state bureaucracy to engage

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[7] Gregory Shaffer, Transnational Legal Ordering and State Change (2013); Terrence Halliday and Gregory Shaffer, Transnational Legal Orders (2014 forthcoming).

[8] David M. Trubek, ed., Law and the New Developmental State: The Brazilian Experience in Latin American Context (Cambridge University Press 2013; Richard Stubbs, "The East Asian Developmental State and The Great Recession," Contemporary Politics, Vol: 17, No. 2, pp. 151-166 (June 2011).

[9] Aseema Sinha, "Global Linkages and Domestic Politics: Trade Reform and Institution Building in India in Comparative Perspective," *Comparative Political Studies*, Vol. 40, 1, 2 (Oct. 2007).

[10] See Gregory Shaffer, Michelle Ratton Sanchez, & Barbara Rosenberg, *Winning at the WTO: What Lies Behind Brazil's Success*, 41 CORNELL INTERNATIONAL LAW JOURNAL 383-501 (2008); Gregory Shaffer and Ricardo Ortiz Melendez, *Dispute Settlement at the WTO: The Developing Country Experience* (2011); and Alvaro Santos, *Carving out Policy Autonomy for Developing Countries in the World Trade Organization: The Experience of Brazil and Mexico*, 52 VIRGINIA JOURNAL OF INTERNATIONAL LAW 123 (2012).

with the private sector and private lawyers. It must build a specialized bar comprising industry and government hired lawyers who can work in coordination with the bureaucracy, think tanks and industries in India.

II. India and the GATT Years: Little Role for Law and Lawyers

Before the creation of the WTO, India was a closed economy, built on a socialist model of five-year plans, wary of international economic commitments in light of its colonial heritage, erecting a centralized bureaucracy and administering what was known as the "License Raj." The Indian bureaucratic system was viewed as sclerotic in that decision making could be time and resource-consuming, slowing entrepreneurial endeavor, although it also demanded a certain nimbleness for businesses to navigate.[11] Firms were preoccupied with obtaining licenses to import, and subsidies to export, as part of complicated government policies to manage Indian balance of payments, for which they had little need for lawyers. The result was considerable rent seeking by Indian businesses. Their primary market was domestic. They felt unable to compete internationally. As the development economist I.M.D. Little wrote in a widely read text in the early 1980s, "developing countries never expected to be able to export manufacturers to the developed countries."[12]

The political and economic climate that prevailed in India before 1975 (the time of the "Emergency" declared by Indira Gandhi) had a significant impact on the policies which India followed for the next two decades. The Indian economy, which grew at a rate of 4.1 percent during 1951-1965, declined to a rate of 2.3 percent from 1965-1975 at the same time as the population rate also grew at 2.3 percent per annum—a net impact of zero percent per capita growth for that decade. This performance gave rise to the popular expression "Hindu rate of growth," a growth rate that totaled just 3.5 percent per year between 1960-1985, and leaving a significant percentage of Indians in extreme poverty. The phrase captured a sense of inevitability, of predestination, a mix of sober acceptance and incapacitating despair.[13]

The socialist-oriented government engaged in four forms of policy that left little room for law, and thus for business and trade lawyers. First, it heavily regulated the private sector in terms of technology choices, location, and prices, while relying on the state-funded public sector for investment in capital goods. Second, it promoted small businesses with policies that were biased against capital development and investment. Third, it created an import licensing system where government approval was needed to trade. And, finally, it adopted high tariffs and quantitative restrictions to segregate its internal market from international competition. Arvind Panagariya notes that by the mid-1970s, India's trade regime had become so repressive that the share of non-

[11] ASEEMA SINHA, THE REGIONAL ROOTS OF DEVELOPMENTAL POLITICS IN INDIA: A DIVIDED LEVIATHAN (2005).

[12] I M D LITTLE, ECONOMIC DEVELOPMENT: THEORY, POLICY AND INTERNATIONAL RELATIONS 61 (1982).

[13] Indian economist Rajkrishna coined the term "Hindu rate of growth" in 1978. See JEFFREY SACCHS, THE END OF POVERTY 177 (2005). According to Jagdish Bhagwati, this expression "suggests predestination and thus captures the sense of despair that we felt about our capacity to reform and improve our performance." JAGDISH BHAGWATI, INDIAN IN TRANSITION: FREEING THE ECONOMY 3 (1993).

oil and non-cereal imports to the GDP fell from the already low level of 7 percent in 1957- 58 to 3 percent in 1975-76.[14]

In 1951, India adopted the Industrial Development and Regulation Act (IDRA) that ensured that companies were formed and expanded only through obtaining a license. The government wielded discretionary power over the approval of any proposed change in capacity, location, expansion of production facility, or obtaining foreign exchange for the import of plant and machinery. In 1967, the government introduced a small-scale industry (SSI) reservation policy, creating a list of items that could be manufactured only by small-scale units. The regulations defined small-scale units as those with an investment of no more than INR 750,000 (approximately US$ 13,750) in plant and machinery. The SSI reserved list included clothing, shoes, leather products, sports goods, stationery, office products, and furniture. As late as 1991, the small-scale industry reservation applied to 830 goods as classified under the international harmonized customs system.[15] Economic policies at this time had a dual-pronged structure: public sector investment led by the state, and labor-intensive employment encouraged in diverse ways through reservation policies for small-scale producers. In addition, the government reserved production of coal, power, telecommunications, insurance, mining, and oil to the public sector. As a result, India had one of the most controlled investment regimes in the world. Such policies gave rise to inefficiency, a lack of technical innovation, and low productivity.

In conjunction with tight import licensing procedures, India applied import controls and high levels of tariff protection. It introduced import controls in the 1940s to conserve foreign exchange.[16] It introduced high tariffs in Nehru's second Five Year Plan in 1956 as part of an import substitution policy and out of balance-of-payments concerns.[17] The substantial foreign exchange balances that India built during the Second World War had eroded by 1956, resulting in a substantial real appreciation of the Rupee in relation to the British Pound Sterling and the U.S. Dollar. Regulation of balance of payments became the central concern of India's economic policy, giving rise to comprehensive and tight import controls.[18] In the 1970s, the government liberalized slightly by creating an open general licensing (OGL) list, but this list was also subject to bureaucratic control. Essentially, India was a small inward-oriented economy incapable of affecting international trade and largely uninterested in shaping international trading rules and their application.

The tight import licensing conditions, combined with an overvalued Indian exchange rate, created significant differences between domestic prices and lower international ones. This difference, in turn, created a bias against Indian exports. In order to offset that bias, the

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[14]Arvind Panagariya, *India's Trade Reforms,* India's Trade Reform (2004).

[15]ARVIND PANAGARIYA, INDIA: THE EMERGING GIANT (2008), at 65. This was out of around 5,100 goods classifications to the six-digit level.

[16]Jagdish N. Bhagwati and T. N. Srinivasan, Foreign Trade Regimes and Economic Development: India (1975).

[17] Id.

[18] Garry Pursell et al, Manufacturing Protection in India Since Independence, Australia South Asia Research Centre Working Paper 2007/07, *available at* http://econpapers.repec.org/paper/pasasarcc/2007-07.htm (last visited March 16, 2014). For a comprehensive account and analysis of India's trade regime during the 1960s and 1970s, see JAGDHISH BHAGWATI AND T.N. SRINIVASAN, FOREIGN TRADE REGIMES AND ECONOMIC DEVELOPMENT:INDIA (1975).

government provided export subsidies.[19] Many Indian businesses were not so much interested in obtaining the subsidies to gain market share in international markets, than to use the funds to obtain price advantages in the more important, but profit-squeezed, domestic market.[20]

As a result, neither the government nor the private sector had much of a focus on international trade, so that India paid little attention to the GATT (General Agreement on Tariffs and Trade), the predecessor to the WTO, and made few legal commitments under it. At the time that the Uruguay Round negotiations were in full swing in 1990-91, India's maximum tariff rate was 355 percent and its simple average applied tariff rate was 125 percent. Only six percent of Indian tariff lines were bound, meaning that India could raise tariff rates for ninety-four percent of its tariff lines at any time. India complemented the tariff regime with different types of quantitative restrictions. These restrictions took various complicated forms, such as those administered through non-automatic licenses, through canalized agencies, through special import licenses, and subject to different conditions.[21] They were imposed on the grounds that India had to monitor continually its unfavorable balance-of-payments situation.[22]

The administrative system for import restrictions required a bureaucracy, creating delays, uncertainty, and opportunities for corruption. The bureaucracy was insular and non-transparent and the private sector that engaged with it did so to obtain quota rents from the licensing system.[23]As an example of such non-transparency, a former Commerce official told us that the first shredder provided to a service within the Indian Ministry of Commerce went to the trade division handling the GATT.[24] In such a closed, non-transparent system, law and trade lawyers had little role to play.

III. Catalysts of Building Indian Capacity in Trade Law

The Indian development model changed in the 1990s. With the fall of the Berlin Wall in 1989 and the socialist model discredited, Indian officials eyed with envy the rise of East Asian economies with their export-oriented growth models. While East Asia grew, India in 1991 was struck by a severe economic crisis from the Gulf War oil shock and India's dependence on petroleum imports. The government went to the International Monetary Fund for emergency credits of US $ 2.3 billion dollars, and, to its shame, even exported gold to the vaults of Great

[19]Shaffer interview # 26 in 2010; T.N.SRINIVASAN, EIGHT LECTURES ON INDIA'S ECONOMIC REFORMS (2000).
[20]Shaffer interview # 26 in 2010.
[21] For administrative reasons, products were divided into consumer, capital, and intermediate goods. Most of the capital goods fell into the OGL category, while intermediate goods fell in the banned, restricted and OGL list, with the severity of restriction declining in that order. While most of the consumer goods were banned, certain limited items that were judged essential were permitted. The main feature of this import policy was that imports of several items remained the exclusive monopoly of the government through the canalizing agencies. Crude oil and petroleum products were canalized through the Indian Oil Corporation; iron and steel, non ferrous metals, and fertilizers through the Minerals and Metals Trading Corporation; edible oils, natural rubber, newsprint, cement, and sugar through the State Trading Corporation; cereals through the Food Corporation of India; and cotton through the Cotton Corporation of India.
[22] Rajesh Mehta, *Removal of QRs and Impact of India's Import*, ECON. & POL. WEEKLY, VOL. 35, NO. 19 (May 6- 12, 2000), at 1667.
[23]Shaffer interview # 26 in 2010.
[24]Shaffer interview # 26 in 2010.

Britain as the value of the rupee plunged and the country could not meet its debts.[25] As a condition to IMF financing (a conditionality, in the IMF's terms), the IMF called for reforms of the Indian system, including an opening to foreign trade. Under duress, the Indian government of Prime Minister Narasimha Rao and its Finance Minister Manmohan Singh responded. They later spun these reforms as homegrown, known as the "1991 reforms," which is how the reforms are conventionally discussed within India to this day.[26] Yet as a former high level member of the Indian Administrative Service (IAS) confirmed to us, "the IMF and international institutions helped to provide an excuse to do what otherwise was more difficult to do politically, as change was otherwise very difficult to obtain."[27] The reforms had a significant impact, as India engaged with a globalizing economy. The proportion of trade (imports and exports) to India's GDP was 8% in 1970, but expanded six-fold to 46% by 2010.[28]

The United States (U.S.) and European Union (E.U.) dominated the Uruguay Round negotiations, and India was pressed to respond to U.S. and E.U. initiatives. Although the Indian government consulted with the private sector and civil society, civil society activists roundly critiqued the government for insufficient consultations. The most controversial issues for civil society activists were agriculture and pharmaceutical patents, although much of the industrial sector was also concerned about the implications of the agreements for their competitiveness.

The Uruguay Round negotiations and the resulting WTO agreements that became effective on January 1, 1995 were broad in their coverage, encompassing nineteen distinct multilateral agreements, affecting market access in manufacturing, agriculture and textiles, intellectual property, services, and trade-related investment measures. Joining the WTO meant that India had to implement these WTO commitments, opening its economy to competition, and, in the process, providing new opportunities for business lawyers, directly and indirectly.

Under the WTO, India bound almost 65 percent of its tariff lines.[29] It significantly reduced import duties. In practice, India lowered its applied tariff rates much beyond its actual WTO commitments to an average of around twelve percent by 2010.[30] India also joined the new Information Technology Agreement in 1996 that a subset of WTO members finalized at the WTO Ministerial Meeting in Singapore, which binds tariff rates at zero percent on information technology products. India, in addition, made market access commitments regarding services for the first time under the General Agreement on Trade in Services (GATS), involving thirty-three services sectors. Pursuant to the transparency provisions of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), India also created new administrative enquiry points for all technical

[25] Vijay Joshi and Little state that "[f]or the first time India was nearly forced to the prospect of defaulting on its international financial commitments." VIJAY JOSHI & I M D LITTLE, INDIA'S ECONOMIC REFORMS 1991 (1998).
[26] Manmohan Singh, Finance Minister, Budget Speech to the Indian Parliament (July 24, 1991).
[27] Shaffer interview # 1, Jan. 16, 2012.
[28] Data calculated from World Development Indicators at: http://data.worldbank.org/data-catalog/world-development-indicators. Use Indicators Tab to get data for India. See India's Trade (% of GDP) in 1970, WORLD BANK.
[29] World Trade Organization, Trade Policy Review: India (1998).
[30] World Trade Organization, *Trade Policy Review: India* 43, WT/TPR/S/249 (Aug. 10, 2011).

regulation and sanitary and phytosanitary protection measures and committed to new publicity, transparency, and due process requirements.

With the advent of new multilateral trade agreements, the Ministry of Commerce undertook the responsibility of coordinating with business communities to apprise them of the developments and changing conditions in international trade and national policies.[31] The Ministry therefore organized discussions and training programs with the help of Export Promotion Councils in different regions. The main purpose of this outreach exercise was to prepare business communities for changes taking place in international trade conditions and their potential impact on businesses in India.[32] The outreach exercise was carried out throughout the country for approximately three years.[33]

However, the Indian government and businesses did not engage in legal capacity building immediately in response to the WTO's creation. Rather, they responded to the WTO law-in-action, and in particular to politically sensitive complaints brought against India by the U.S..What spurred India's development of legal capacity, as in the case of Brazil and China, was being placed on the defensive.[34] The U.S. and E.U. brought a series of critical cases against India in the WTO's first years that pressed the Indian bureaucracy to develop new partnerships with the private sector and private lawyers. The key disputes were *India-Patents* involving a U.S. and E.U. challenge to India's implementation of the TRIPS agreement;[35]*India-QR* involving a U.S. challenge against India's use of quantitative restrictions on balance-of-payments grounds;[36] and *India-Autos* involving a U.S. challenge of Indian measures to favor the development of a domestic auto sector.[37] The U.S. itself worked through public-private partnerships involving government and private U.S. lawyers,[38] a model that India would soon take into account.

In *India-Patents,* the U.S. and E.U. challenged India's implementation of its commitment under the TRIPS Agreement to create a transitional "mail-box system" where patent applications could be filed to establish priority and obtain exclusive marketing rights on a transitional basis until India provided patent protection for pharmaceuticals and chemical products used in agriculture, such as fertilizers and pesticides. In defense, India contended that it had fulfilled its commitments through administrative instructions, but it was unsuccessful before the panel and Appellate Body. Within India, the case was called a "shot over the bow of a Hobbesian essence

[31] Bahri interview # xx, 3 June 2013.
[32] For details on these workshops and consultation meetings, see Centre for WTO Studies, 'India, WTO and Trade Issues', Bi-monthly Newsletter of the Centre for WTO Studies, IIFT (July-August 2008) 1(1) at 4-5 <http://wtocentre.iift.ac.in/NewsLetters/NewsLetter_01.pdf> last visited 20 September 2013.
[33] Bahri interview # xx, 3 June 2013.
[34] See Shaffer & Melendez, supra note…. (chapters on Brazil and China).
[35] Appellate Body Report, *India- Patent Protection for Pharmaceuticals and Agricultural Chemical Products*, WT/DS 50/R and WT/DS 50/AB/R , adopted on 19 December, 1997[hereinafter *India- Patents*]
[36] Appellate Body Report, India – *Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS/AB/R (adopted Sep. 22, 1999) [hereinafter *India- QR*].
[37] Appellate Body Report, *India- Measures Relating to Trade and Investment in the Motor Vehicle Sector*, WT/DS 175/AB/R(adopted May 15, 2000) [hereinafter *India-Auto*].
[38]*See* GREGORY SHAFFER, DEFENDING INTERESTS: PUBLIC-PRIVATE PARTNERSHIPS IN WTO LITIGATION(2003).

of sovereignty."[39] The case nonetheless triggered significant legal debate regarding how India could ultimately comply with the TRIPS Agreement in a way that would make use of the flexibilities provided in the agreement in light of India's development and social policy objectives.[40]

The most broad-reaching case affecting Indian industry and agriculture was the *India-QR* decision that implicated the reform of India's import licensing regime. India had experienced a major balance-of-payments crisis in 1990-1991 and it had to go to the IMF to receive U.S.$ 2.3 billion dollars in credit. As a condition to the credit, India agreed to a series of reforms, including the removal of quantitative restrictions and import licensing on most goods.[41] India nonetheless maintained import licensing and quantitative restrictions on consumer goods that accounted for 2,714 tariff lines, nearly 30 percent of its total number. In *India-QR,* the United States challenged India's invocation of quantitative restrictions on balance-of-payments grounds for these remaining tariff lines. The case was a "wake up" call for India given its systemic importance for India's import controls. India had wished to keep the measures in effect until at least 2006, and invoked its status as a developing country in defense. But India did not prevail. Rather, an IMF representative reported that India no longer faced a balance-of-payments crisis, and the panel and Appellate Body cited the IMF report as critical support of their decision against India.

The case exhibited the role of judicialization of WTO dispute settlement in comparison with that under the GATT. Under the GATT, disputes over balance of payments had been addressed politically within the GATT committee system.[42] India contended that preexisting practice under GATT precluded the dispute settlement panel from hearing the case, but it again failed in this defense.

The WTO decision spurred fears in India that foreign products would flood the Indian market, and, in particular, marine and dairy products, confectionary items, and fruits and vegetables.[43] The Commerce Ministry promised to establish a "war room" to keep a vigil on some 300 sensitive products, and it constantly assured stakeholders that it had put adequate monitoring mechanisms in place.[44] The government appointed a Committee headed by the

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[39] See Ulrich Camen and Charles Norchi, *Challenging Sovereignty: India, TRIPS and the WTO, in* SOVERIGNTY UNDER CHALLENGE: HOW GOVERNMENTS RESPOND 167, 184 (John D. Montgomery & Nathan Glazer eds., 2002).

[40] Amy Kapczynski, *Harmonization and Its Discontents: A Case Study of TRIPS Implementation in India's Pharmaceutical Sector*, 97 CALIF. L. REV. 1571 (2009); K M Gopakumar, *Product Patents and Access to Medicine in India: A Critical Review of the Implementation of the TRIPS Regime*, 3THE LAW & DEVELOPMENT REVIEW. 326, 338 (2010) (Indian Patents Act has limited the scope of patentability by defining patentability criteria on novelty, inventive step and industrial applications, as well as by excluding certain types of inventions).

[41] ARVIND PANAGARIYA, INDIA: THE EMREGING GIANT (2006), p106.

[42] Richard Eglin, "Surveillance of Balance-of-Payments Measures in the GATT." *The World Economy* 10: 1-26 (1987).

[43] Sukumar Muralidharan, *Opening the floodgates*, Frontline Vol. 18 (April 2001).

[44] Shaffer Interview #11, in New Delhi (Jan 11, 2012). The government set up an inter-ministerial monitoring body consisting of the Secretaries for Commerce, Revenue, Agriculture, Small Scale Industries, Animal Husbandry, and the Director-General of Foreign Trade to monitor surges on imports of products where QRs were eliminated, and potentially take action under India's new import relief laws.

Commerce Secretary and the Secretaries of Agriculture and of Small-Scale Industries to identify any safeguards required and to forewarn industries and trade bodies if any action was needed.

Shortly later, the United States challenged India's policy to support the development of a national auto sector in *India-Autos*, which involved India's use of local content, foreign exchange, and trade balancing requirements as conditions for imports and investment in the auto sector. The *India-Autos* dispute was in part a "mopping up" operation to eliminate the remaining vestiges of the import-licensing regime that India was required to modify in the *India-QR* decision.[45] In addition, however, the Memorandum of Understanding ("MoU") that the government required from auto companies included commitments both to meet local content requirements in their manufacturing operations and to ensure that the value of their exports balanced the value of their imports. India lost this case as well, but, in practice, was able to use the dispute settlement system to continue its requirements for a number of years to help develop local manufacturing know-how and enhance competitiveness.[46] Government officials contend that the policy was successful, as India now exports autos to the Middle East, South Asia and Central Asia, creating a new hub in competition with Thailand and Indonesia in the region.[47]

In each case, India had to defend its system in a losing case, but, in the process, learned the importance of developing legal capacity, including the need to adapt its domestic measures to protect development objectives. The Indian media covered these politically sensitive cases against India in the WTO's early days, raising awareness about the implications of the WTO dispute settlement system for India. As Atul Kaushik, the lawyer in the government who handled WTO dispute settlement in Geneva from 2003-2006, states, "these disputes were of high visibility for India. The government felt it needed to build capacity regarding WTO law."[48]

With the launch of the Doha Round in 2001, the government and business realized that they needed to invest more resources in trade law-related capacity. As a representative of the Indian chamber of commerce FICCI states, FICCI realized that it was "imperative" that business become more involved "because of our sense of failure to do so in the Uruguay Round."[49]Although the Doha Round collapsed, India engaged in a growing number of bilateral and plurilateral trade negotiations for which private sector collaboration was needed, and continued to engage in periodic multilateral trade negotiation initiatives. By late 2006, advocates of a "new India" saw the country as part of a global shift of economic power away from the U.S. and E.U. and toward larger developing countries, namely the BRICs. Yet to be a global leader, India needed to continue to enhance its legal capacity in the public and private sectors, giving rise to public-private partnerships. While economists traditionally have been most important for Indian policymaking analysis within and outside of the government, and they continue to be so today, the bureaucratic establishment and economists were pressed to gradually recognize the importance of law and lawyering.[50] Since legal capacity was not built into the traditional Indian

[45] Kyle Bagwell and Alan Sykes, India- Measures Affecting Automotive Sector, American Law Institute, 2004.
[46]Shaffer interview #24, Jan. 18, 2010.
[47]Shaffer interview #24, Jan. 18, 2010.
[48]Shaffer interview, Atul Kaushik, July 9, 2010.
[49]Shaffer interview # 3, Jan. 19, 2010.
[50]Shaffer interview # 41, Jan. 2010 (an Indian lawyer who worked with economists in think tanks).

government service, new methods were needed that could work with India's bureaucratic context.

IV. Reforming the State and the Creation of Public-Private Partnerships for Trade Law and Policy

India responded to the challenges of the WTO by significantly investing in greater expertise in the Indian bureaucracy that, in turn, became an interlocutor with the private sector and private legal counsel. The government reformed the state, investing in state capacity within the Ministry of Commerce and Industry (MoCI) as a node of trade law and policy, opening the state bureaucracy to build and tap into legal capacity in the private sector. The reorganization of the governmental set-up took place in India through several institutional and procedural reforms.

First, the government designated MoCI as the nodal ministry for WTO negotiations and policy and the ministry grew in prominence within the Indian bureaucracy.[51] Within MoCI, the government created three new specialized agencies to handle matters implicated by WTO law: a *Department of Industrial Policy and Promotion* (DIPP) that manages, among other affairs, intellectual property rights administration, a new Tariff Commission, and a reorganized Directorate General of Antidumping and Allied Duties (DGAD). In 1996, K.M. Chandrasekhar became Joint Secretary at the Department of Commerce and reconstituted the Trade Policy Division (TPD) to enhance government competence on trade matters and support the India mission to the WTO in Geneva.[52] The ministry increased staff strength from nine to forty officials within a few years.[53] The status of trade positions, moreover, increased within the Indian bureaucracy, so that officials increasingly sought them. This trend complementarily increased the qualitative capacity of Commerce ministry officials in trade law and policy.[54]

Second, the government concurrently more than doubled the size of its mission in Geneva for WTO matters and enhanced coordination between the Geneva mission and the Commerce Ministry in New Delhi. In 1995, when the WTO started, the Indian mission in Geneva had one ambassador and three officers. By 2010, the mission had six to eight officers, including one dispute settlement specialist.[55] As a former Ambassador of India to the WTO noted, "in the old days, the Geneva mission received no meaningful inputs from the capital," a situation unlike today.[56] Today, the Mission and the MoCI function hand in hand in issues relating to multilateral trade. The Mission is now expected to assist the MoCI during multilateral negotiations, consultations and WTO litigations. The law officers at the Mission are also, at times, engaged in interacting with the concerned ministries and business entities in India and abroad. 'We receive

[51] Sinha, Global Linkages, supra note..,
[52] A senior official noted, "It was important to get around the system, and that it was almost unheard of to have two Additional Secretaries" in a department, which Chandrasekhar was able to obtain. Shaffer interview #13 (May 24, 2012). Chandrasekhar later became the Indian Ambassador to WTO and eventually the Cabinet Secretary of India
[53] Sinha, Global Linkages, supra note..,
[54] Traditionally, generalist administrators have been more dominant within the Indian civil service, but this ratio was reversed in the MoCI and agencies associated with international trade negotiations.
[55] Shaffer interviews #2 (Jan. 2012, New Delhi) and #11 (Jan. 2010, New Delhi).
[56]Shaffer interview #1, India (Jan 16, 2012).

regular updates and inputs from the MoCI' are the words which affirm this change in the government's initial approach.[57]

Third, with the import-substitution and export-promotion policy coming to the forefront during the 1960s and 1970s, the Government established its first institutional interface between itself and the exporting communities in India. It created Export Promotion Councils (EPCs) in the form of export-oriented sectoral-based organizations. EPCs were established (under the administrative control of and sponsorship from the Ministry of Commerce) to provide a channel of interaction between exporting communities in India and the government. Since then, EPCs have approached the government on behalf of their exporting members to seek export promotion assistance in the form of cash compensatory schemes, export subsidies, fixation of export prices and other financial and development benefits. In addition, EPCs have provided professional advice and information to their respective exporting members to facilitate and improve their exporting performance.[58] EPCs therefore serve as negotiating and advisory intermediaries between sector-specific exporting communities and the government.[59] Their functions are supported by various other private sector representatives, such as trade associations, trade unions and the chambers of commerce.[60]

Fourth, the government in 2004 established a Council of Economic Advisers under the MoCI. The Council comprised several subject-specific groups of experts which were individually responsible for handling claims and concerns emerging from the fields allocated to them. The Council is now known as the Economic Advisory Council.[61] For a WTO-focused approach, the government concurrently established a Cabinet Committee on WTO Matters (CCWTO).[62] The Committee received recommendations from the expert advisory groups and utilized them to make decisions on important trade disputes, negotiations and other multilateral trade issues. It is uncertain whether the CCWTO still functions as a key decision-maker in WTO-related matters as the important foreign trade issues in India are frequently referred to the Cabinet Committee on Economic Affairs.[63]

Fifth, the government created country-specific divisions, under the Ministry of External Affairs, to handle trade relations with important trade partners. For example, the Europe West

[57] Bahri interview # xx 13 April 2013.
[58] Bahri interview # xx 3 June 2013.
[59] The current list of Export Promotion Councils under the Department of Commerce, Ministry of Commerce & Industry, Government of India is available at Ministry of Commerce & Industry website <http://commerce.nic.in/epc.htm> last visited 8 May 2014.
[60] Bahri interview # xx 3 February 2013.
[61] Details can be found at the Prime Minister of India: PM's Committees and Councils <http://pmindia.gov.in/committeescouncils_details.php?nodeid=11> last visited 20 September 2013.
[62] The CCWTO was constituted on 9 June 2004 with the Prime Minister of India as its Chairman. See Prime Minister of India: Press Releases, 'Cabinet Committee on WTO Matters constituted' (9 June 2004) <http://pmindia.nic.in/press-details.php?nodeid=11> last visited 20 September 2013.
[63] Bahri interview # xx, 25 September 2012 (The official told us that the CCWTO is somewhat dysfunctional today as strategically important decisions are mostly taken by the Cabinet Committee on Economic Affairs). However, it is still a functional committee as per the official records of the government. Its composition is listed at Cabinet Secretariat: Cabinet Committees <http://cabsec.nic.in/showpdf.php?type=council_cabinet_committees> last visited 20 September 2013

Division was one of such units created to monitor the trade relations of India with the countries in West Europe. The Division is obliged to investigate and recommend appropriate courses of action to resolve trade disagreements arising with these countries.[64]

Sixth, during the years 1999 to 2005, the Commerce Secretary could normally approve recommendations and sign the decisive files relating to trade disagreements and WTO disputes. The recommendations were made by the subject-specific and country-specific advisory groups. The recommendations for appropriate actions are now prepared by TPD officials and provided to the Cabinet Minister of Commerce. In cases of high importance, the file can travel further up to the Cabinet Committee on Economic Affairs for final approval or dismissal of actions suggested by TPD officials.[65]

Seventh, the Government of India became a member of the ACWL and has since sought its legal assistance in various WTO disputes.[66] The subsidized legal fee of the ACWL came as an interim cost-effective solution to the soaring demand of trade law expertise in India during the initial years of the WTO. Since then, the government's traditional practice of hiring expensive overseas lawyers has decreased substantially.[67]

Despite these developments and the relative growth in the capacity of trade officials at the Commerce Ministry in Delhi and Geneva, the government still faced challenges given the scope of WTO issues. It realized that it needed to spur the development of complementary private sector capacity building, and to open itself to greater private sector and civil society input. The government obtained critical external support for domestic capacity building through a capacity building project led by UNCTAD and supported by India's Commerce Ministry and Britain's Department for International Development (DFID), named "Strategies and Preparedness for Trade and Globalisation in India" (UNCTAD Capacity Building Project). The UNCTAD Capacity Building Project lasted eight years, from January 2003 to December 2010, and was first led by Veena Jha, an Indian trade economist whose husband, Harsha Singh was one of the four Deputy Director Generals at the WTO.[68] Aiming to strengthen human and institutional capacity for responding to trade issues, the project organized a series of broad-based and sector-specific stakeholder consultations in India. Through developing a new network of stakeholders, the UNCTAD Capacity Building Project was able to mobilize farmers, fishermen, and small producers to articulate their interests and concerns to inform the government's approach to WTO and new free trade agreement (FTA) negotiations for the first time. The aim was both to facilitate their providing input to the government, and to enable them to develop better strategies to adapt to economic globalization processes. The UNCTAD project also helped to spur MoCI to work with various state governments to establish WTO cells in order to enhance awareness of the

[64] Details can be found at the Ministry of External Affairs, Government of India, EW Division <http://meatel.nic.in/?690210> last visited 20 September 2013.
[65] Bahri interview # xx 13 June 2013.
[66] For details, see 'The ACWL at Ten: Looking Back, Looking Forward' (Conference held at the WTO, Geneva, Switzerland, 4 October 2011) <http://www.acwl.ch/e/documents/reports/ACWL%20AT%20TEN.pdf> last visited 20 September 2013; Also see Annexure 2 and 3.
[67] See Annexure 2 and 3.

[68]Shaffer interview with Abhijit Das, January 21, 2010 when he worked in the UNCTAD project. Nedumpara, one of the co-authors of this chapter, also worked in the project.

WTO and provide feedback to MoCI from state governments, which govern populations larger than most WTO members.[69]

Given the difficulty of changing the bureaucracy from within, the Ministry decided to outsource research and the building of public-private collaboration to government-sponsored think tanks, and, in particular, the Centre for WTO Studies (which directly reports to MoCI), and private lawyers that contract with MoCI or the Centre. MoCI created the Centre for WTO Studies in 1999.[70] The last head of the UNCTAD project, Abhijit Das, son of B L Das, former Indian ambassador to the GATT, became the head of the Centre for WTO Studies, which continues the networking initiatives begun in the UNCTAD Capacity Building Project. Das formerly worked in the division of the Commerce Ministry handling WTO disputes and so understood the need for home-grown legal capacity in light of the implications of WTO law.

The mission of the Centre for WTO Studies is three-fold: (1) to conduct research for MoCI; (2) to act as a liaison between MoCI and industry and civil society; and (3) to assist in capacity building and information diffusion through organizing workshops and publishing newsletters and reports.[71]As of December 2012, the Centre had eight members, one of whom is a lawyer. The Ministry of Commerce refers questions to the Centre relating to international trade negotiations, domestic policy that may be affected by international trade law, and potential claims against trading partners' measures that affect Indian exports. The Centre then outsources some of this work to private contractors, such as private lawyers and academics. One of the authors of this study, James Nedumpara, has served as a consultant.

As it develops, the Centre aims to become a node for trade policy analysis and capacity building in the Asia-Pacific region. In 2011, the WTO awarded the Centre a three-year contract to conduct a WTO regional trade policy course (RTPC) for the Asia-Pacific. The RTPC is a three-month training program that was attended by 25 participants from 19 countries in 2011. In conjunction with the program, visiting experts also offer short-term courses and seminars on WTO issues at Indian universities and other institutions.

As part of its outreach program, the Centre for WTO Studies has established regional divisions in different states of India. Nodal officers are appointed as the head of each regional division; these divisions are officially known as 'focal points' and 'nodal agencies'. They are largely responsible for coordinating with the business entities in their respective regional

[69] 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, Delhi, Tripura, Nagaland, Haryana and the Union Territory of Dadra and Nagar Haveli. Suprita Jayaram, Functioning of WTO Cells in India: A Critique, CUTS International (2006), *available at* http://www.cuts-citee.org/pdf/BP06-DI-9.pdf (last visited March 16, 2014).
[70] The Centre is housed in the Indian Institute of Foreign Trade (IIFT), a public management school in Delhi See http://wtocentre.iift.ac.in/.
[71]Shaffer interview #24, Jan 18, 2010; Details of the outreach and training program provided by the Centre can be found at the Centre for WTO Studies: Indian Institute of Foreign Trade <http://wtocentre.iift.ac.in/ORP6.asp> and <http://wtocentre.iift.ac.in/SHC.asp> last visited 19 September 2013.

jurisdictions.[72] In order to discharge their functions effectively, these nodal officers receive regular trainings in international trade and legal aspects at the Centre for WTO Studies, New Delhi.[73] These nodal agencies are therefore functioning as contact points between private sector, the advisers at the Centre and the MoCI.

Over time, the government has felt more freedom to work with the private sector,including skilled private Indian lawyers regarding WTO legal issues, whether directly or through the Centre, instead of trying to do everything in-house. As a result, today "there is a small industry of [legal] consultants growing around the Department of Commerce that helps to fill the government's needs."[74] As Abhijit Das, Head of the Centre for WTO Studies, states, trade policy making became both much more "participatory" and was "based on stronger empirical foundations."[75] Today, for all major WTO dispute settlement rulings, Commerce tries to organize a session with the help of the Centre for WTO Studies where a private consultant makes a presentation to the Department of Commerce and other ministries.[76] The lead coordinator of such public-private consultation is one of the leading chambers of commerce or federation of industries in India, i.e., Federation of Indian Chambers of Commerce and Industry (FICCI)[77], Confederation of Indian Industry (CII)[78], the Associated Chambers of Commerce and Industry of India (ASSOCHAM)[79], Federation of Indian Export Organisations (FIEO)[80] or Federation of Indian Micro and Small & Medium Enterprises (FISME)[81].[82] The lead coordinator decides the date and place of the meeting, in consultation with the TPD, and is responsible for making other administrative and organisational arrangements.[83] Other participating private sector representatives can be other chambers of commerce, export promotion councils, trade associations, affected private entities, concerned NGOs and consumer organisations.[84]

For example, following the *China-Raw Materials* case, the Commerce Ministry identified twenty affected Indian ministries and invited all of them to hear a presentation of the findings to "raise awareness."[85] Another example is the consultation on *EU Reach Regulation* where

[72] A list of Nodal Agencies and Focal Points can be accessed at the Centre for WTO Studies, Indian Institute of Foreign Trade: Nodal Agencies and Focal Points <http://wtocentre.iift.ac.in/outreach.asp> last visited 17 September 2013.
[73] Bahri interview # xx 5 June 2013.
[74] Shaffer interview Kaushik, July 9, 2010.
[75]Shaffer interview, Das, Jan 21, 2010.
[76]Shaffer & Nedumpara interview with Amar Sinha, Joint Secretary of MoCI, Jan. 13, 2013;
[77] For details, see FICCI: About FICCI <http://www.ficci.com/about-ficci.asp> last visited 20 September 2013.
[78] For details, see CII: About Us <http://www.cii.in/About_Us> last visited 20 September 2013.
[79] For details, see ASSOCHAM India: About Us <http://www.assocham.org/about/aboutus.php> last visited 21 September 2013.
[80] For details, see FIEO <http://www.assocham.org/about/aboutus.php> last visited 21 September 2013.
[81] For details, see FISME: About Us <http://www.fisme.org.in/aboutus.php> last visited 21 September 2013.
[82] See Centre for WTO Studies: Indian Institute of Foreign Trade <http://wtocentre.iift.ac.in/SHC.asp> last visited 18 September 2013.
[83] Bahri interview with Rajan Sudesh Ratna, Ministry of Commerce, Government of India, 3 May 2013.
[84] Further details on recent consultations held with private stakeholders, their lead coordinators, the venues and dates for the consultative meetings held in the past years, and the ones planned for the future, can be found at the Centre for WTO Studies: Indian Institute of Foreign Trade <http://wtocentre.iift.ac.in/SHC.asp> last visited 18 September 2013.
[85]Shaffer & Nedumpara interview with Amar Sinha, Joint Secretary of MoCI, Jan. 13, 2013.

meetings were held at Mumbai, Kolkata and Ahmadabad.[86] These venues were chosen on a sector-wise basis as these cities had the largest concentration of concerned businesses, SMEs and the affected manufacturers. The export promotion councils were instrumental in bringing in the key exporters for discussions. Officials from the TPD, the Department of Pharmaceuticals, Drugs and Petrochemicals, advisers from the Centre for WTO Studies, and the officials from the concerned export promotion council were the key participants.[87]

The Centre's initiatives exemplify how the WTO has helped to catalyze major changes in government relations with affected stakeholders and with private lawyers, giving rise to a trade law variant of public-private partnerships.[88] The Indian system remains rather top-down where the private sector plays a much more limited role than in comparison with the U.S.. Nonetheless, the change constitutes a major one in India, one that appears to be here to stay. As Professor Bipin Kumar of the National Law University Jodhpur told us, "the new mantra in India is public-private partnerships. The old mentality regarding government is changing."[89]

The traditional mindset of the government officials in India, who viewed international trade matters as absolute matters of public international law and therefore resisted any intervention from industrial entities, has undergone a significant change.[90] The following words of a public sector official working at the Trade Policy Division, MoCI lends their support to this change.

> The model of PPP is inherent in almost every dispute we litigate. The government will finally consult the industry before making a determination on the initiation of a dispute. There will rarely be a case where the government will proceed to the formal stages of settlement without engaging in active consultations with the private sector.[91]

This change is also evident from the public-private partnership procedures employed by the government in several WTO disputes which were investigated and litigated through active coordination with industrial entities including trade associations, exporting firms and export promotion councils.[92] The government therefore has clearly recognized the importance of

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[86] Details can be found at the Centre for WTO Studies: Indian Institute of Foreign Trade <http://wtocentre.iift.ac.in/SHC.asp> last visited 18 September 2013.

[87] Bahri interview with Rajan Sudesh Ratna, Ministry of Commerce, Government of India, 3 May 2013.

[88] SHAFFER, DEFENDING INTERESTS, supra note…

[89] Shaffer interview with Bipin Kumar, Jan 9, 2012.

[90] Bahri interview with an official, Government of India, 12 April 2013; Bahri interview with an official representative, TEXPROCIL, 27 June 2013.

[91] Bahri interview # xx, 12 June 2013.

[92] See Annexure 2; Some examples of WTO cases where significant coordination between the government and industry was observed are: European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries (WT/DS246, 5 March 2002) [where TEXPROCIL financed the dispute and provided information and commercial evidence for litigation]; United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties (WT/DS345, 6 June 2006) [where SEAI and MPEDA provided the required informational and evidentiary inputs to the government]; European Communities – Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India (DS141, 3 August 1998) [where TEXPROCIL financed the dispute and managed each stage of dispute settlement jointly with the Ministry of Commerce]; Turkey – Safeguard Measure on Imports of Cotton Yarn (Other Than Sewing Thread) (DS428, 13 February 2012) [where TEXPROCIL actively participated with the Government during formal consultation meetings and provided legal and informational support to the Government] This information is gathered by interviews with government officials and private sector

industries' participation for the efficient management and settlement of foreign trade disputes. It has accordingly reacted by introducing central and regional channels of communication between its departments and industries.

V. New Role for Economists in Trade Policy Networks

International trade negotiations demand economic expertise, since they have large economic implications. Such expertise must complement legal know-how. Indian officials began to feel the need for enhanced economic expertise as international trade negotiations intensified in the 2000s and the negotiations became more complex and technical. Although India has many world-class economists, the civil service was traditionally quite insular and relied on "in-house research" through the Indian Economic Service, whose officials were considered much lower in seniority to the generalist officials of the Indian Administrative Service.[93] Most of the research conducted within the Indian civil service was poor, and not used in a significant way. This began to change after India lost the *India-QR* and *India-Patent* cases in the late 1990s, and the government sought external economic expertise in a more systematic, rigorous, and sustained way.

The government began to consult many external research agencies and institutions while also enhancing the funding of state research institutions, such as the Research and Information System for Developing Countries (RIS), which were asked to expand their mandates to international economic issues. The government created a new Centre for WTO Studies in 1999, and allocated to it a significant budget for economic research. The Indian Ministry of Commerce and Industry also extensively consulted with and hired independent research institutes, such as ICRIER (the Indian Council for Research and International Economic Relations), the Madras Institute of Development Studies, the Centre for Management in Agriculture, and the Indian Institutes of Management, among others.[94] In 2002-2003 alone, it commissioned eleven new studies at a cost of 8 million rupees.[95] This funding, in turn, catalyzed new investment in expertise within universities and think tanks, which hired economists to work on the commissioned studies, creating a recursive feedback loop for capacity building across the policy community. Universities, and research institutions began to generate a large quantity of research reports, analysis, and commissioned studies, funded by the Indian state. The state's cognitive capacity for international trade negotiations significantly increased.

VI. The Field of Private Indian Trade Lawyers and their Role

Over the last decade, a small group of private Indian lawyers have developed trade law expertise and served the government on a variety of trade law matters. These lawyers perform three types of work. They advise the government on its policies for purposes of its negotiating positions (negotiating work). They provide input on the drafting of legislation and regulation and the consideration of policy in light of WTO law (internal policy work). They assist the government in evaluating WTO cases for and against it (litigation work). And they represent the

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representatives. [Bahri interview with an official representative, TEXPROCIL, 27 June 2013; Bahri interview # xx, 12 September 2012] All interview transcripts are on file with the authors.

[93] Sinha, Global Linkages, supra note…

[94] Anwarul Hoda, Deputy Director General at the WTO from 1995 to 1999, heads ICRIER's WTO initiatives. See ICRIER website, at http://www.icrier.org/page.asp?MenuID=3&SubCatId=172.

[95] Sinha, Global Linkages, supra note..,

private sector in import relief cases, such as antidumping, countervailing duties, and safeguards cases (import relief work).

The number of lawyers working on trade law matters is relatively small in light of the primarily intergovernmental nature of the WTO legal system. These highly skilled lawyers have a particular passion for this area of law. They largely work within boutique firms, although such firms can have over one hundred attorneys overall. The largest elite law firms generally have not developed a major international trade law practice, though a partner in Luthra & Luthra (Moushami Joshi) works on trade matters as part of her portfolio, and the founder of Clarus Law Associates (R.V. Anuradha), a small boutique firm, was formerly a partner at India's largest law firm, Amarchand & Mangaldas & Suresh A Shroff & Co.. A list of the law firms working on international trade law matters, noting the type of law firm and the type of trade law work, is listed in *Annex 1*.

The private lawyers working in India on trade issues often received some graduate legal education in the U.S. or Europe. The leading Indian lawyer experienced in WTO cases, Krishnan Venugopal, went to Harvard Law School where he received an LLM and started an SJD, and practiced with the U.S. law firm, Paul Weiss. Suhail Nathani, who started the boutique firm Economic Laws Practice (ELP) based in Mumbai and Delhi, received a BA from Cambridge and an LLM from Duke Law School. Samir Gandhi, who was earlier with ELP went to the London School of Economics for his LLM.R.V. Anuradha who founded Clarus Law Associates received a masters at SOAS at the University of London and was a global law scholar at NYU Law School. Moushami Joshi, a partner at Luthra & Luthra, received her LLM from George Washington University Law School. As Joshi says regarding her experience in the U.S., "I had an interest in international trade and it just got strengthened when I was in DC. And DC being an international place, you get to attend so many conferences; you are constantly going to all these meetings that think tanks have, which was great because I think it just opened up my mind to this whole new world of law and legal practice."[96]

The government facilitated the rise of talented, elite lawyers through its investment in the development of highly selective national law schools. Most directly regarding trade law, in 1996, just after the WTO's creation, the government funded a WTO Chair at the leading Indian law school, the National Law School of India University (NLSIU) in Bangalore. The government's funding of a specific chair in trade law signaled the government's view of the growing importance of the subject, and the hope that the government would indirectly benefit from new talent among young legal professionals.[97] As K.M. Chandresekhar, who was instrumental in the chair's creation when he was Joint Secretary in the Trade Policy Division, informed us, "the idea was to get young lawyers who can follow and provide expertise on WTO matters. The idea was to create new structures within the Indian context."[98]

Students at these elite law schools have taken a number of independent initiatives that

[96]Shaffer interview with Moushami Joshi, Luthra & Luthra, Jan. 20, 2010.
[97]Shaffer interview with Atul Kaushik, July 9, 2010. The endowment for this Chair is only roughly around $60,000, but it was nonetheless viewed as a coup by Indian trade law officials. Shaffer interviews #1 and #13.
[98]Shaffer interview with Chandrasekhar, Jan 16, 2012.

further spurred knowledge building in international trade law in India. For example, NLSIU started one of the first student edited journals on international trade law, *The Indian Journal of International Economic Law*. The National Law University in Jodhpur followed by creating a specialization in International Trade and Investment Law and publishing a journal founded by a student in 2009 entitled *Trade, Law and Development*. A young generation of academics at Jindal Global Law School organized a concentration on international trade law and trade remedy law for LL.M students, and run a research center on international trade and economic law (CITEL) where students from leading law schools in India and abroad are offered a paid internship under the Global Research Internship Program (GRIP). Annual awards are offered by prestigious law schools and law firms in India to reward students with outstanding academic performance in international economic law and WTO legal studies.

A number of Indian international trade lawyers came out of the national law schools, such as R.V. Anuradha who graduated from Bangalore National Law School in 1995 and Samir Gandhi and Moushami Joshi who respectively graduated from there in 1998 and 2001. As Joshi told us, she had three graduates from the national law schools working for her on trade law matters in 2012.[99] Similarly, within the Centre for WTO Studies, Shailaja Singh joined as a legal consultant following receiving a degree from the West Bengal National University of Juridical Sciences, Kolkata, followed by an LLM at Cambridge University.[100]

Building from an earlier Brazilian model,[101]MoCI has also created an internship program for law students, which is overseen by the India Institute of Foreign Trade.[102] In parallel, other Indian public and private institutions have run internship programs for students in trade law as well, including the Centre for WTO Studies, CUTS International, and law firms such as Luthra & Luthra Law Offices, APJ-SLG Law Offices, Dua Associates, Lakshmikumran & Sridharan, Economic Laws Practice, Seth Dua & Associates, Clarus Law Associates, and Amarchand & Mangaldas & Suresh A Shroff & Co.. Placement in these internships is highly competitive, and law graduates have opted for them even when they have had an opportunity to work full-time in the more lucrative corporate law sector. The internships reflect a radical shift in the previously closed Indian state bureaucracy.

1. Trade Negotiations Support

With the launch of the Doha negotiating round in 2001, India adapted in order to play a more engaged role in the WTO system. To do so, the government created new linkages with stakeholders and consulted with them more regularly and transparently. While the trade division was previously known for being remote and non-transparent, now the government began to more proactively and regularly share analysis and documents with the private sector and seek legal opinions from Indian law firms. The government did so because of a sense that it would embarrass itself if the administration did not become more proactive and effective in tapping into

[99]Shaffer interview with Moushami Joshi, Luthra&Luthra, Jan. 12, 2012.
[100]Shaffer interview with Shailija Singh, Centre for WTO Studies, Jan. 10, 2012.
[101] See Shaffer et al, Winning, supra note…
[102] Indian Institute of Foreign Trade, Internships, *available at* http://cc.iift.ac.in/docs/iift/Intern_27122011.pdf

and making use of the information and expertise of the private sector and a new generation of professionals engaged with global issues.[103]

Perhaps most significantly, India worked with Brazil to respond at the 2003 Cancun Ministerial meeting to a Joint E.U.-U.S. proposal on agriculture that failed to reflect the interests of Brazil and India. In practice, Brazil had strong export interests and India protectionist ones (respectively reflecting the situations of the U.S. and E.U.). Indian politicians are particularly concerned about the impact of opening India's market to increased agricultural imports because of the huge percentage of its population still employed in agriculture—about one-half —and the Maoist/Naxalite insurgencies threatening many Indian rural areas. The U.S.-E.U. proposal, however, managed to account for U.S. and E.U. interests while alienating both Brazil and India. Brazil and India responded by developing a counter proposal that accommodated their differing interests and by organizing a new group of developing countries known as the G-20, which notably included China, to co-sponsor it.[104] The Brazilian and Indian governments worked with think tanks in their respective countries to develop their new modalities for WTO agricultural negotiations. Many consider this proactive developing country stance on negotiating modalities to be a "defining moment of change for the WTO" and its negotiating system.[105] It was the first time that developing countries had come together to submit an integrated, detailed proposal on modalities that reflected their development concerns.[106] The think tanks' analyses provided the analytic heft for the G-20 in the Doha Round agricultural negotiations.[107] Following this initiative, commentators referred to a new Quad as being central for WTO negotiations, one in which India and Brazil joined the U.S. and E.U. as members.[108]

In order to enhance its capacity, the Indian trade policymaking process became more inclusive.[109] As one senior Indian official observed, the new Trade Policy Division decided to "open its doors" to the private sector and civil society during the Doha Round of negotiations.[110] The government increasingly invited industry and civil society representatives for consultations. Industry associations such as the Federation of Indian Chamber of Commerce and Industry

[103]Shaffer interview #26, in 2010.
[104] JOB (03)/162 (restricted)
[105] Shaffer discussed in interview with K.M. Chandrasekhar, India's ambassador to the WTO from 2001-2004 who was central to the Cancun ministerial meeting, in Trivandrum, India (Jan. 16, 2012). See also DAVID DEESE, WORLD TRADE POLITICS: POWER, PRINCIPLES AND LEADERSHIP 155 (2007) (noting that in 2004, "the Brazilian and Indian ministers established themselves as co-leaders in the most contentious issue area, agriculture, because they were able to gradually press the US and EC for substantial agricultural reforms they would not offer on their own"). India's Ambassador Ujjal Singh Bhatia (to the WTO from 2004-2010) calls this a "watershed moment" in the history of the WTO. Ujjal Singh Bhatia, *G-20- Combining Substance with Solidarity and Leadership, in* REFLECTIONS FROM THE FRONTLINE: DEVELOPING COUNTRY NEGOTIATORS IN THE WTO 239, 245 (Pradeep S. Mehta ed, 2012) (arguing that the formation of G-20 challenged the hegemony of the U.S. and E.U. in agenda setting at the WTO).
[106]Ujjal Singh Bhatia, *G-20- Combining Substance with Solidarity and Leadership, in* REFLECTIONS FROM THE FRONTLINE: DEVELOPING COUNTRY NEGOTIATORS IN THE WTO 239, 245 (Pradeep S. Mehta ed, 2012).
[107] Gregory Shaffer & Charles Sutton, *supra* note …
[108]DAVID DEESE, WORLD TRADE POLITICS, supra note...
[109]Aseema Sinha, *When David Meets Goliath: How Global Markets and Rules are Shaping India's Rise to the Power*, p. 14 (working draft).
[110]Shaffer interview #1, Jan. 2012.

(FICCI) and the Confederation of Indian Industry (CII) responded. FICCI established a new WTO, FTA and Foreign Trade Division and CII a new Trade Policy Section. They, in turn, conducted their own stakeholder consultations with their members.[111] Other industry organizations such as ASSOCHAM and PHD Chamber did as well, conducting industry-wide consultations on trade negotiation matters before and after key events such as Ministerial conferences and free trade agreement negotiations. The government shared the cost of these industry consultations and provided technical support,[112] recognizing its ultimate dependence on private sector support.[113]

Organizations such as CII started an 'India Everywhere' campaign with a view to showcasing India to the outside world.[114] Indian business and political leaders became a regular feature at the annual meeting of the World Economic Forum (WEF) in Davos. In November 2012, the WEF organized a session entirely on India in New Delhi. CII opened an office in Geneva in 2003 to regularly monitor the developments in the WTO negotiations and update industry of developments.

Although the WTO Doha Round of negotiations stalled since 2008,[115] trade negotiations remained active in bilateral and regional forums, and continued in a less ambitious manner within the WTO itself. Bilateral and regional trade negotiations give rise to competition among countries to gain market access. These competitive processes have spurred India to enter a slew of bilateral and regional trade negotiations and agreements. India has signed trade agreements with Japan, South Korea, Thailand, Singapore, Malaysia, ASEAN (separately from its members), Sri Lanka, Chile, Afghanistan, Mercosur, South African Customs Union (SACU), Gulf Cooperation Council, and an Agreement on South Asia Free Trade Area (SAFTA) involving Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.[116] India has also launched negotiations for free trade agreements with the E.U., EFTA, Canada, Australia, New Zealand, Indonesia, Egypt, Israel, and a Regional Comprehensive Economic Partnership with the countries of Asia. Developments in these bilateral and regional forums potentially could trigger momentum for broader multilateral negotiations.

The government consults a group of trade lawyers regarding the legal texts being negotiated in these trade agreements, as well as other international law agreements implicated by trade law. The government hires private Indian attorneys for specialized assistance in specific legal areas, such as intellectual property, services, standards, import relief, and government procurement. For example, the government hired the Strategic Law Group (now part of the APJ-

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[111] Interview by Gregory Shaffer interview #3 in New Delhi (Jan 2010);12, 2012); Interview by Gregory Shaffer interview # 6 in New Delhi (Jan. 12, 2012).

[112] Id.

[113] Shaffer interview # 7, India (Jan. 9, 2012).

[114] Delhi in Davos: How India Built its Brand at the World Economic Forum, available at http://knowledge.wharton.upenn.edu/article/delhi-in-davos-how-india-built-its-brand-at-the-world-economic-forum/ (last visited March 16, 2014)

[115] Negotiations effectively stopped when the Geneva ministerial meeting collapsed without agreement on modalities in July 2008. See Sungjoon Cho, *The Demise of Development in the Doha Development Round*, 45 TEXAS INTERNATIONAL LAW JOURNAL573 (2010).

[116] See the MoCI website for more details on these bilateral agreements: http://commerce.nic.in/trade/international_ta.asp?id=2&trade=i.

SLG Law Offices) to help in the preparation of India's proposal for a lesser duty rule under the Rules Negotiations in the Doha Round.[117] For FTA negotiations, firms such as Economic Laws Practice and Lakshmikumaran and Sridharan have also provided the government with advice.[118] At times, the lawyers work with economists who address the economic implications of particular negotiating positions and modalities, whether for trade in goods or trade in services.[119]At times, other government departments have engaged these attorneys for international law-related work that may be indirectly implicated by WTO law, such as the Ministry of Environment and Forests regarding climate change.

Indian business also increasingly recognized the implications of WTO trade negotiations. As Kaushik states, as India opened up its economy to international trade, "there was recognition of industries that they need to get to a higher competitive level vis-à-vis their competitors. Those industries recognized the need for internal capacities to deal with international trade matters."[120] The process started with the creation of WTO cells within Indian trade associations and large companies in the late 1990s and early 2000s. These cells were created across sectors, from auto components to financial services to textiles. They handle different aspects of trade law and policy, including market access issues in trade negotiations, as well as (more broadly) export and import issues, export control matters, trade remedy matters such as antidumping, countervailing duty and safeguard investigations, technical regulations and standards and other regulatory matters. For example, Tata Iron and Steel Company (TISCO), the largest Indian steel maker, engaged a senior consultant to advise the company and the consortium of Indian steel companies in the OECD steel subsidies negotiations.

2. WTO Implementation and Policy Space

The WTO system has significant implications for national law and policy. As illustration, WTO rules and dispute settlement affected the substance and timing of India's dismantling of its license raj and system of quantitative restrictions, India's adoption and implementation of a new patent law, and the rise of Indian import relief laws and administrative actions. Yet WTO law and its implementation are also subject to legal interpretation, potentially creating work for lawyers.

The government and business have engaged private lawyers to assess government policy options in light of existing trade law. The Commerce Department receives a large number of questions from other Indian departments on WTO compatibility of legislation and regulation and it at times outsources such questions to private consultants. Regarding Indian legislation generally, the Joint Secretary in MoCI informed us that it "gets references about every single day" regarding the WTO implications for proposed legislation, regulation or policy.[121]

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[117] Although this proposal did not receive sufficient support among WTO Members, it was an innovative proposal under the Rules Negotiations. James Nedumpara during his employment at the UNCTAD program in New Delhi organized the review process. where the proposal was revised and submitted to the WTO negotiating committee.

[118]Shaffer interview # 9, in New Delhi, Jan 12, 2012.

[119] Shaffer interviews with Indian attorneys, economists in think tanks, and government officials, January 2010 and January 2012.

[120]Shaffer interview with Atul Kaushik, July 9, 2010.

[121]Shaffer & Nedumpara interview with Amar Sinha, Joint Secretary of MoCI, Jan. 13, 2013.

As other government departments become aware of the implications of WTO agreements, they also have contacted private attorneys for consultations. WTO law affects industrial policy choices, such as the use of subsidies and domestic content requirements, and thus implicates many Indian ministries. For example, the powerful Indian Planning Commission has contacted private attorneys regarding choices over building power infrastructure, including options for increasing or reducing tariffs and applying local content requirements to build domestic manufacturing capacity.[122] In the past, we were told, the Planning Commission would never have consulted outside lawyers, much less regarding international trade law, so this development is a significant one in indicating the broader implications of WTO law for Indian law and policy. The government likewise engaged consultations from private law firms regarding the implications of the GATT and WTO agreements on India's emerging renewable energy policies, including consideration of renewable energy requirements for utilities.[123] These government departments have also worked with private attorneys who initially worked with the Department of Commerce on trade law matters, and who now also provide consultations regarding Indian legislation in relation to other international law.[124] The WTO can be seen as a catalyst, and part of a broader trend, for the government becoming aware of the need to integrate outside legal counsel in understanding the international law implications of Indian legislative and administrative policy initiatives.

The WTO cells in private companies and trade associations, addressed above, also provide analysis of trade policy initiatives and regulatory issues. Large Indian companies, more generally, have hired in-house lawyers to reduce the dependence on law firms, including for work that may require knowledge of WTO law. For example, a Commerce official told us he saw that a "textile fashion designer recruited three lawyers with terms of reference regarding how much WTO law they know."[125] Small and medium sized Indian companies (SMEs), in parallel, have used the services of specialists within industry and trade associations, such as Texprocil, Confederation of India's Textile Industry (CITI),[126]Automotive Component Manufacturers Association of India(ACMA),[127] Federation of Indian Export Organization (FIEO),[128] Society of Indian Manufactures (SIAM),[129] Automobile Components Manufacturers Association of India

[122]Shaffer interview with Moushami Joshi, Luthra & Luthra, Jan. 12, 2012.
[123]*Id*.
[124]Shaffer interview with #31, Jan. 10, 2012.
[125]Shaffer interview #26, 2010.
[126] For example, CITI organized a series of awareness programs during the phase out period of the Multi-Fiber Agreement (1995-2004) and published a newsletter entitled "FocusWTO" to educate its subscribers of the various challenges faced by the India Textile industry.
[127] ACMA attended the Fifth WTO Ministerial Conference in Hong Kong and had opposed the proposal for sectoral approach under the NAMA negotiations in the Doha Round. See http://expressindia.indianexpress.com/story_print.php?storyId=87113 (last visited Oct. 24, 2013).
[128] Website of Indian Federation of Export Organizations, seehttp://www.fieo.org (last visited Oct. 24, 2013).
[129] Society of Indian Manufacturers, http://www.siamindia.com/scripts/EconomicAffairs.aspx (last visited Oct. 24, 2013) ("[I]n the Trade Policies section we have given write-ups on India's engagements in various Trade Negotiations, Indian Preferential Trade agreements and NAMA negotiations in WTO and Indian Automobile Industry").

(ACMA), Association of Synthetic Fiber Industry (ASFI) and the National Association of Software & Services (NASSCOM).[130]

WTO law grants countries some flexibility in interpreting its provisions so that India had some leeway in determining how to revise its laws and adapt its institutions. Although international lawyers and international relations scholars tend to focus on the issue of "compliance" as a binary issue, and commentators like Thomas Friedman refer to the "golden straitjacket" of global markets,[131] countries retain flexibility to engage in hybrid policymaking within constraints. In implementing, they may invent; in adopting, they may indigenously adapt. Such a mindset is critical for development.[132] India, for example, radically revised its patent law, expanding protection to pharmaceutical and agricultural chemical products pursuant to the TRIPS Agreement. Yet the government did so in an innovative manner after a long internal study and consultations with stakeholders. It created new definitions of what a patent must show in terms of novelty and an inventive step, thus narrowing the scope of patent claims.[133] In parallel, India made it considerably easier to challenge patents than under U.S. and E.U. models by including both pre- and post-grant challenges, and permitting these challenges to occur before an administrative body that is more efficient in processing them than a court.[134] Similarly, as we see below, India has indigenized its antidumping law in light of its institutional capacities.

The WTO has created work for lawyers beyond traditional trade law work, as exemplified by intellectual property law. As the World Intellectual Property Organization (2013) reports, "[f]rom 1997 to 2011, patent filings increased … in India by 605 percent." Major litigation over intellectual property rights is taking place in India in the shadow of the TRIPS Agreement, such as *Novartis v. Union of India* in2007, *Novartis Ag v. Union of India* in 2013,and *Bayer v. Union of India* in 2010.[135]Norms in India have shifted regarding patents. As a former Indian Ambassador to the WTO quipped to us, "now one speaks of patent or perish; whereas before the mantra was no patents or perish."[136] These developments reflect the important, but indirect, ways in which the WTO has affected law and lawyering in India in subject-specific areas.

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[130] Website of NASSCOM, seehttp://www.nasscom.in/global-trade-development (last visited Oct. 24, 2013).
[131] Thomas Friedman, The Lexus and the Olive Tree (1999).
[132] See e.g. Ricardo Hausmann, DaniRodrik, and Charles F. Sabel, Reconfiguring Industrial Policy: A Framework with an Application to South Africa (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1245702.
[133]Kapycznski, supra note….
[134] Id.
[135]World Intellectual Property Organization (2013).Statistical Country Profiles. Available at URL: http://www.wipo.int/ipstats/en/statistics/country_profile; Ellen Hoen, A Victory for Global Public Health in the Indian Supreme Court, *Journal Of Public Health Policy* 1-5 (2013); Sudip Chaudhuri, Chan Park and Gopakumar K.M. *Five years into the Product Patent Regime: India's Response*. UNDP, New York (2010).
[136]Shaffer interview with former Ambassador to the WTO, India, Dec. 14, 2013; Bahri Interview with former Ambassador to the WTO, India, 9 April 2010. See also Tricia Olsen and Aseema Sinha, "Linkage Politics and the Persistence of National Policy Autonomy in Emerging Powers: Patents, Profits, and Patients in the Context of TRIPS Compliance" Business and Politics, 15: 3 (2013).

3. WTO Dispute Settlement

A small group of Indian lawyers in the private sector have become increasingly important for providing counsel to India on potential and actual WTO trade disputes. The GATT dispute settlement system was slow and weak compared to the WTO's, and India participated little. In GATT's roughly fifty-year history, India was a party in three minor cases, of which only one resulted in a formal GATT report.[137]

With the commitments that India and other countries made in the Uruguay Round, and with the rise of the WTO's legalized and judicialized dispute settlement system, this situation changed. India has become one of the leading users of the WTO dispute settlement system, along with Brazil and China among non-OECD countries. Through October 2013, India was a complainant in 21 disputes and a respondent in 22 disputes.[138] It was a third party in 91 additional ones. A complete list of disputes where India has been involved as a complainant or respondent is provided in *Annexes2 and 3*, together with the lawyers who assisted the government in these disputes.

The government's approach of selecting lawyers for WTO dispute settlement has largely depended on several factors, including the nature of a case, availability of relevant expertise, availability of finances with the government, and their past experiences of dealing with the available legal experts.[139] A TPD official states that 'in some cases, we may bank upon the expertise of new trade lawyers, and in other cases, we may prefer lawyers with whom we have had some previous experience'.[140] In cases where private sector is involved and helping the government, this decision can also be made in consultation with the participating private entities.[141]

Over the past decade, the procedure for the selection of trade lawyers in India has become somewhat 'systemic' in nature.[142] The Ministry of Commerce issues a call of interest to the government empanelled law firms with expertise in the relevant subject. The law firms which respond to the call are asked to provide a legal opinion on the matter at hand. They are also asked simultaneously to provide information about their team of trade lawyers and their relevant experience in the subject matter. The TPD examines their credentials, along with the

[137] The first and only case that resulted in a decision was a complaint filed by Pakistan against India for not granting excise rebates goods exported to Pakistan while providing this benefit for goods destined for other countries in violation of the most-favored-nations clause. The second case was a complaint by India against the United States for imposing countervailing duties on certain dutiable products, which was settled. The three complaints were: Complaint by India, *Pakistan- Export fees on Jute*, GATT/L/41 (1952) (resulting in GATT report); GATT, *United States Countervailing Duty Without Injury Finding*, Complaint by India, BISD, 28th Supplement (1982), p. 113. The third case was a complaint by India regarding certain Japanese restrictions on leather, which also was settled.113; GATT, *Japanese Import Restrictions on Leather*. Complaint by India under special Article XXIII procedure for developing countries , See, GATT Document L/5653 (1984).

[138] World Trade Organization, Dispute Settlement: Dispute by Country, *available at* http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. (last visited Nov. 2, 2013)

[139] Bahri interview an official representative, Ministry of Commerce, Government of India, 12 June 2013.

[140] Ibid.

[141] Ibid.

[142] Ibid.

extensiveness of their legal analytical work reflected in their written opinion.[143] On the basis of this examination, and based on other specified factors, the decision of engaging an appropriate legal expert is taken by the officials at the TPD.[144] The selection is formally approved by the Department of Legal Affairs. At times, the empanelled law firms are also hired on the basis of rotation. 'As a practice, the Panel stage work generally is allocated to the same law firm who assisted at the time of the consultation. The same sequence of action is envisaged at the Appellate stage as well, if any.'[145]

The selection procedure is slightly different where India is on the defensive side. In 2010, the Department of Commerce, together in consultation with the Department of Legal Affairs, enlisted 17 law firms for defending India's interest in the WTO disputes.[146] The work is allocated to these empanelled law firms on a rotation basis which is subject to the expertise required in the matter.[147] Normally, the same law firm is hired for initial investigations, consultation meetings and litigation proceedings.

This selection process is described by Moushami Joshi as a 'learn to sink or swim' strategy.[148] It is because the government has in the past hired Indian law firms with no previous WTO experience, and has asked them to prepare and present a case at the WTO Panel on their own. The system has seemed to work as it is believed that this strategy 'enhances the potential and brings out the best in domestic law firms'.[149]

India has brought systemically important claims before the WTO system, in addition to those in which it has been a respondent. The *US-Shrimp* dispute is arguably the most referenced WTO case regarding the interpretation of the GATT exception clause, Article XX, addressing the interaction of trade rules with environmental protection measures. The *EC-GSP* case is central for understanding legal requirements under the General Systems of Preferences. The *Turkey-Textiles* case establishes the jurisdiction of the WTO dispute settlement body in assessing the legality of measures taken for the formation of regional trade agreements under GATT Article XXIV. The *EC-Bed Linen* case was the first to challenge the practice of zeroing used by the E.U. and U.S., which creates biased calculations of dumping margins against imports.[150] And in the early case, *US-Shirt and Blouses*, the Appellate Body clarified the burden of proof in WTO cases.[151] To bring cases, however, is not enough, given the systemic implications of these decisions. A country's aim is not only to win a case, but also to shape the understanding of WTO law in line with its broader economic policy objectives.

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[143] The MoCI's written reply to the Right to Information Application filed by Bahri, supra note…
[144] Ibid.
[145] The MoCI's written reply to the Right to Information Application filed by Bahri, supra note…
[146] The MoCI's written reply to the Right to Information Application filed by Bahri, supra note…
[147] Ibid.
[148] Bahri interview with Moushami Joshi, Luthra and Luthra, 21 June 2013.
[149] Ibid.
[150] James J Nedumpara, *Antidumping Proceedings and 'Zeroing' Practices: Have We Entered the Endgame?*, 7 (1) GLOBAL TRADE & CUSTOMS JOURNAL 15, 20-21 (2012) (provides a list of all 'zeroing' cases adjudicated by the WTO panels and the Appellate Body).
[151] *United States- Measures Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS 33/AB/R, (April 25, 1997), p. 16.

After the *India-Patents* case, the government initially outsourced work to foreign lawyers, but then increasingly worked with a cadre of Indian lawyers, sometimes working with or sometimes without foreign ones. The government first turned to Frieder Roessler, the former head of the GATT legal secretariat, initially in his private capacity, and then as the first Executive Director of a new Advisory Center on WTO Law (ACWL) in Geneva in 2002. India quickly became the ACWL's most active user. Roessler worked for India in the *India-QR* and *India-Auto* disputes in his individual capacity, and in the *EU-GSP* and the *US-Rules of Origin* disputes as part of ACWL.[152] The government also periodically works with foreign lawyers in cases involving foreign application of import relief laws against Indian imports, such as with the Brussels based law firm *VermulstWaer* & *Verhaeghe (VWV)* in the *EC-Bed Linen* dispute which had represented the country in the underlying antidumping case in Brussels.[153]

In parallel, however, the government began to work with an Indian attorney, Krishnan Venugopal, on WTO cases, starting with the *India-Patents* case when Venugopal was attached to the Attorney General's office of India (from 1996-1998).[154] Venugopal would continue to work with the government in future disputes on an ad hoc basis as he established an important Supreme Court practice, following the path of his father, one of India's most renowned lawyers before the Indian Supreme Court. Venugopal worked on the *India-Patents, India-QR, India-Autos*, *EC-GSP*, and *US-Customs Bond Directive* cases, either alone or jointly with other lawyers.[155] The *U.S.-Customs Bond* case was the first in which Venugopal worked with the government where it was not also assisted by Roessler and the ACWL. This move reflected the government's growing confidence in being able to work with Venugopal, individually, and with Indian attorneys more generally.[156]

As a new generation of WTO-specialized legal talent developed in India, the government worked with a broader cadre of Indian law firms. The government hired Economics Laws Practice (ELP) in the *India-Additional Duties* case, in which the Indian attorneys Suhail Nathani and Samir Gandhi worked,[157] Luthra & Luthra Law Offices in the *India-Agricultural products* case,[158]

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[152] The MoCI's written reply to the Right to Information Application filed by Bahri, supra note…

[153] The MoCI's written reply to the Right to Information Application filed by Bahri, supra note….(confirms the lawyers hired in the matter)

[154] The MoCI's written reply to the Right to Information Application filed by Bahri, supra note....(confirms the lawyers hired in the matter)

[155] See http://www.itechlaw-india.com/2009/KrishnanVenugopal.html (last visited May 21, 2012); The MoCI's written reply to the Right to Information Application filed by Bahri, supra note….(confirms the lawyers hired in the matter)

[156]Shaffer interviews with Indian attorneys, 2010.

[157] See http://www.whoswholegal.com/profiles/34478/0/Nathani/suhail-nathani/ (last visited March 16, 2014); the MoCI's written reply to the Right to Information Application filed by the author, supra note…..(confirms the lawyers hired in the matter); Appellate Body Report, *India- Additional and Extra-Additional Duties on Imports from the United States*, WT /DS 360/AB/R, (adopted Oct. 30, 2008)

[158] See the MoCI's written reply to the Right to Information Application filed by Bahri, supra note…..(confirms the lawyers hired in the matter); Request for the Establishment of a panel by the United States, *India- Measures Concerning the Importation of Certain Agricultural Products*, WT/DS 430/3 (May 14, 2012).

Lakshmikumaran & Sridharan in the *US-Steel Plate* case,[159] and Clarus Law Associates, a Delhi-based boutique firm, in the *India-Solar Cells* case.[160] To explore a potential claim, the Department of Commerce also engaged Clarus Law Associates to examine the legal issues behind a WTO challenge against restrictive U.S. Visa requirements under the Southwest Border Protection Act and the James Zadroga Act.[161] In addition, Indian law firms increasingly provide legal analysis and drafting support for India's third party submissions in WTO cases.[162] Third party submissions are important because decisions in WTO cases involving other countries can have systemic implications for the understanding and future application of WTO law, and India has increasingly asserted third party rights in WTO cases. The Indian government's work with the affected private sector in *US-Custom Bond Directive* provides an example of a successful Indian public-private partnership.[163] In this case, India successfully challenged an enhanced bond requirement applied by the U.S. in an antidumping proceeding involving frozen warm water shrimp from India and other developing countries. Indian seafood exporters saw their exports decline by almost one-third following the imposition of U.S. antidumping duties in 2004. The government worked with the private sector, which is generally small and unorganized, through the government's Marine Products Exporters Development Authority (MPEDA) and the Seafood Exporters Association of India (SEAI). These two public agencies work to enhance foreign market access for Indian seafood products, including in antidumping proceedings abroad. Mr Bhatia, the former Ambassador to the Permanent Mission of India to the WTO told us that:

> The [sic] case brought by India against the United States on the CBD requirement (DS345 C Bond case) on shrimp imports can be cited as a good example of [sic] coordination. The industry represented by Seafood Exporter's Association presented detailed facts and figures about the problems it was facing to MPEDA, a Government sponsored Body acting as an interface between the government and the industry....This example reflects the emerging pattern of consultation and collaboration in India in pursuing dispute cases in the WTO.[164]

Further discussions with private sector representatives confirmed that the MPEDA and SEAI covered most of the legal fees and expenses in the case.[165] SEAI contributed more than

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[159] Request for the Establishment of a panel by India, *United States - Countervailing Measures onCertain Hot-Rolled Carbon Steel flat Products from India*, WT/DS436/3 (July 13, 2012)

[160] Request for the Consultations by the United States, *India — Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456/1 (Feb. 6, 2013).

[161] *India to take US visa complaint to the WTO,* FINANCIAL TIMES, Apr. 10, 2012, available at http://www.ft.com/intl/cms/s/0/d477c0a6-830e-11e1-929f-00144feab49a.html; see also Shaffer interview # 4, in Geneva (May 21, 2012).

[162] Shaffer Interview # 9, in New Delhi (Jan 12, 2012).

[163] Appellate Body Report, *US- Custom Bond Directive, supra* note [?]

[164] Email from Ujal Singh Bhatia, Former Ambassador/WTO Permanent Representative of India to Bahri (9 April 2010).

[165] Telephone Interview by James Nedumpara with Sandu Joseph, Secretary, SEAI (May 12, 2011) (on file with author). The funding, we understand, was provided from the Market Access Initiative of the Marine Product Export Development Authorities (MPEDA), viewed at: http://www.mpeda.com/HOMEPAGE.asp.

50% of the total costs from its internal resources and the rest from member contributions as a function of the value of their respective exports.[166] Seafood exporters are on MPEDA's Management Board, which facilitated the cost-sharing agreement.

India and its seafood exporters paid a high price (from an Indian perspective) in the underlying U.S. antidumping investigations, spending nearly U.S. $12 million (around INR 65 crores) from 2003-2010.[167] Challenging the measure at the WTO, in contrast, was much less costly, demonstrating the potential benefit of building WTO-related legal capacity. The Indian shrimp exporters also successfully pushed the government to join a group of countries that successfully challenged the U.S. Byrd Amendment (known in the WTO as the *US-Offset Act*) under which the U.S. distributed the revenue obtained from U.S. antidumping and countervailing duty proceedings to the petitioning U.S. domestic industry, thereby subsidizing it.

India also worked closely with the private sector in successfully settling its WTO claim against the E.U. in the *EC-Drug Seizure* case.[168] India challenged the seizure of Indian generic drugs at various airports in Europe (and, in particular, the Netherlands) when the planes were being refueled before taking the generics to other developing countries, such as Brazil. A number of Indian industry associations, including Pharmaxil and FICCI, worked with the government to assess the facts, legal claims, and negotiating strategies before the government commenced consultations with the E.U.. The MoCI consulted the Permanent Mission of India to the WTO while it was considering to hire an overseas legal expert in the matter. Concurrently, the MoCI compared the credentials and expertise of Indian law firms in intellectual property related matters. The Department of Commerce shortlisted the overseas and Indian legal experts and sought the final approval from the Department of Legal Affairs for their engagement, payment arrangement and terms.[169]Krishnan Venugopal, U.S. law professor Frederick Abbott and Uday Nath Tiwari were hired by the government to negotiate a favourable settlement in this matter with the E.U..[170] Moushami Joshi at Luthra & Luthra provided the initial opinion relating to the legal viability of launching a formal dispute..[171] *4. Import Relief Work.*

WTO rules cabin the way governments may legally provide economic protection. The WTO creates binding obligations not to increase tariffs above bound rates, and not to use quotas and other quantitative restrictions. It further provides that economic protection may be provided (beyond bound tariffs) exclusively through three mechanisms — antidumping, countervailing

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[165] See http://www.whoswholegal.com/profiles/34478/0/Nathani/suhail-nathani/May 27, 2011); see also B. Battacharyya, The Indian Shrimp Industry Organizes to Fight the Threat of Antidumping Action *in* MANAGING THE CHALLENGES OF WTO PARTICIPATION: 45 CASE STUDIES, 241 (Peter Gallagher et al. eds., 2007) (this study notes a figure of 70 million Indian Rupees for defending this case).

[166] *Id.*

[167] Telephone Interview by James Nedumpara with Sandu Joseph, Secretary, SEAI (May 14, 2011) (on file with author).

[168] Request for Consultation by India, European Union- Seizure of Generic Drugs in Transit, *available at*

[169] This procedure is explained in the written response given by the Trade Policy Division, MoCI to the RTI application filed by Prashant Reddy T. (Advocate) vide document F.No.1/13/2012-TPD, Government of India, Ministry of Commerce & Industry (New Delhi, 6 March 2012). Response can be found at: <https://docs.google.com/file/d/0Bxi2TzVXul5ZRTF3N3pQb05RMWktbXFRbUFoMTR3QQ/edit> last visited 17 September 2013.

[170] The MoCI's written reply to the Right to Information Application filed by Bahri, supra note…

[171] Shaffer interviews #6, #9 and #16 in New Delhi (Jan. 2012).

duties, and safeguard regulations. These rules affect not only national law, but spur the creation of entirely new national institutions and new professional specializations, which enhances the role of executive agencies, courts, lawyers, and accountants. Although these rules can be used for purely protectionist purposes, they also offer safety valves that can "provide Indian corporations with the 'breathing space' to become competitive," as Mark Wu shows in his discussion of the Indian telecommunications equipment company M/s Sterlite Industries, which after an antidumping award became one of the ten fastest growing Indian technology companies and a leading exporter of optical fibers.[172]

Before the WTO's creation, India had import relief laws on the books but felt no need to use them because of its high tariffs and other import restrictions. Following India's binding and significant reduction of tariffs under the WTO, and the removal of its quantitative restrictions after the *India-QR* case, India updated its trade remedy legislation and practice in a way that requires greater legal analysis both within government and the private sector.[173] It reorganized the Indian bureaucracy for import controls, and reformed the Directorate-General of Foreign Trade (DGFT) within the Department of Commerce. In 1998, India reorganized its antidumping agency and established a Directorate of Antidumping and Allied Duties (DGAD) with greater expertise and autonomy to consider antidumping cases. India, however, did not simply copy the practices of the world's leading users of import relief procedures at the time, the U.S. and E.U., because it lacked the administrative personnel and experience to engage in their costly and time-consuming procedures. It rather indigenized its antidumping law in the context of WTO rules,[174] just as it did so regarding patent law in light of the WTO TRIPs agreement.[175]

For these import relief procedures to be used, however, government officials had to reach out to Indian industry. Government officials within the Commerce ministry did so through organizing numerous workshops and seminars for Indian corporations and trade associations.[176] They also wrote books and brochures. For example, in 1996, RK Gupta who was a Customs Commissioner and the first Director-General of the Specific Safeguards directorate general, wrote an extensive book of almost 300 pages on antidumping and countervailing duty law, which was "the first guide written specifically for Indian corporations on trade remedies."[177]The petitions followed these efforts. Although India did not initiate its first antidumping investigation until 1992, which was a fallout of the 1991 economic crisis,[178] it soon became the world's most

[172] Mark Wu, Indian Corporations, the Administrative State and the Rise of Indian Trade Remedies 15 (2013 draft on file).
[173] See The Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995. See also Mark Wu, Antidumping in Asia's Emerging Giants. *Harvard International Law Journal* 53 (2012); and Wu, Indian Corporations, supra note…
[174] Wu, Indian Corporations, supra note…, at 24. India implemented the lesser duty rule, according to which the lower of the dumping or injury margin is considered for determining the amount of antidumping duty protection. For determining the injury margin, India uses a 22% return on capital employed (ROCE), which results in a higher target price, and consequently a higher level of potential protection for the domestic industry. India also applies lower thresholds for the domestic industry to file antidumping petitions. *See* Aradhana Aggarwal, *Antidumping Law and Practice: An Indian Perspective* 29–31 (Indian Council for Res. on Int'l Econ. Rels. Working Paper No. 85, 2002).
[175] See Kapczynski, supra note…
[176] Wu, Indian Corporations, supra note…, at 20.
[177] Wu, Indian Corporations, supra note…, at 21.
[178] Wu, Indian Corporations, supra note…

active user. From 1995-2012, India initiated 668antidumping investigations, more than any other WTO member.[179]

Such investigations have required increasing legal and accounting expertise, creating work both for government and the private bar. Under WTO antidumping and countervailing duty law, national courts or administrative tribunals are to review executive agency decisions. The agency may retain considerable authority, but judicial authority can be enhanced as a complement. The courts of India have become quite active and they reference WTO law even though India is a dualist system in which international law formally has no direct effect.[180]By the end of 2011, it is estimated that lawyers had filed over 254 appeals before the Customs Excise and Service Tax Appellate Tribunal (CESTAT), a specialized court that hears antidumping matters, as well as 56 writs before the State High Courts and 25 writs before the Supreme Court of India.[181]The Indian Supreme Court alone issued twelve decisions on anti-dumping cases between 2000 and 2006, "more than any other Supreme Court in the world," and invalidated a number of Commerce ministry practices.[182] Law gradually and increasingly encroached on administrative discretion.

WTO law and national judicial review advance the role of technocrats within national administrations regarding the criteria for providing protection based on import relief laws. They, in parallel, enhance the role of lawyers in these domains. The laws create demand for legal representation on both sides. Some lawyers specialize in defending respondents, some in representing claimants, and some act for both. They work with accountants to analyze price differentials and sometimes economists to develop causal arguments regarding injury. Their activation places pressure on investigating authorities to develop legal and factual justifications of agency findings. The government, government officials, and private practitioners respectively write brochures and books to educate industry and attract clients. Expertise pits against expertise in developing the law that becomes ever more demanding, requiring further investment in expertise. Lawyers work within and outside of national administrations. When outside, they work with officials as consultants and against them for private clients. They most frequently work for private parties against other private parties before administrative bodies and courts.

Some government officials see the potential gains to be made from leaving government service and developing their own private practice. In India, many of the leading lawyers came from government service, moving to private practice because it was much more lucrative. For example, the three largest practitioners in the antidumping field, V. Lakshmikumaran, Sharad Bhansali, and A.K. Gupta all came from government services. More recently in 2012, Neeraj Varshney left his position as director within the Ministry of Commerce's anti-dumping directorate to join the accounting firm Ernst & Young to establish trade remedy practice with

[179] Chad Bown, Global Antidumping Base, *The World Bank*, available at http://econ.worldbank.org/ttbd/gad/ (2012).
[180]MÜSLÜM YILMAZ, DOMESTIC JUDICIAL REVIEW OF TRADE REMEDIES: EXPERIENCES OF THE MOST ACTIVE WTO MEMBERS (2013).
[181]Madhurendra Nath Jha, India: a three-tier judicial review system, in Yilmaz, supra note, 287, 291.
[182] Wu, Indian Corporations, supra note…, at 28.

Tashi Kaul, a former trade economist at White & Case LLP..Varshney earlier published a treatise in 2007 that covered both WTO antidumping rules and Indian antidumping jurisprudence.[183]

A specialized import relief practice has developed, as a result, which is the most active area of trade law practice in India. The participating law firms range from India's largest, Armachand Mangaldas, which has around 600 lawyers, to boutique specialized firms. Pallavi Shroff, the wife of Armachand Mangaldas' lead senior partner and the niece of renowned trade economist Jagdish Bhagwati, developed its practice that was among the first in India.[184] The firm of Lakshmikumaran & Sridharan was another early leader, soon joined by Economic Laws Practice and others. TPM Consulting, the firm started by Gupta, which initiates the largest number of antidumping petitions in India, claims to have handled at least 200 antidumping investigations in the last ten years.[185]For trade liberals that wish to curtail import relief laws, it should now be more difficult to do so given how the professional stakes of private lawyers and administrative officials have developed. This vibrant legal practice was catalyzed by the WTO's creation and India's commitments under the WTO agreements.

VII. The Limits of International Trade Law Work

Because of the government's constraints on fees, a WTO law practice is far from lucrative for Indian lawyers. Many large Indian firms thus do not engage in WTO law work. Others, such as Luthra & Luthra Law Offices, Economic Laws Practice, and Lakshmikumaran & Sridharan, complement their WTO work with a tax, customs, competition, and antidumping law practice. The bulk of trade law practice for most Indian law firms is under India's import relief laws, and, in particular, antidumping work. At times, domestic antidumping work can lead to WTO work as well, especially since antidumping measures and other trade remedies have constituted around one-third of WTO dispute settlement cases.[186] Some firms aim to build a complementary competition law practice, which somewhat overlaps with antidumping law-type analysis, such as regarding the definition of an industry, injury from unfair competition, and causation. They include such familiar names in Indian trade law as Krishnan Venugopal, Suhail Nathani, Samir Gandhi, R.V. Anuradha, Moushami Joshi, Sharad Bhansali, S.Seetharaman, and Atul Dua. Those firms that engage in WTO-related legal work often do so for the reputational benefits of representing the country in international dispute settlement, which, in turn, can support their domestic practice.

These practices would be helped if Indian corporations and trade associations were to hire them more frequently for WTO-related work. Although the government has sought to work more closely with the business sector, the government has generally had to cover all of the costs for legal analysis and litigation, unlike in other countries such as Brazil.[187] This reliance on

[183] See NEERAJ VARSHNEY, ANTI-DUMPING MEASURES UNDER THE WTO REGIME: LAW, PRACTICE, AND PROCEDURE (2007).
[184] Wu, Indian Corporations, supra note…, at 22.
[185] See http://tpm.in/about-us.aspx.
[186] From 2001-2009, the WTO Dispute Settlement Body spent nearly one-third of its time on cases involving trade remedies. Chad P. Bown and Thomas J. Prusa, *U.S Antidumping: Much Ado About Nothing* 1-55, The World Bank Development Research Group, Trade and Integration Team, Policy Research Working Paper 5352, June 2010.
[187] Cf. Shaffer et al, Winning, supra note…; The MoCI's written reply to the Right to Information Application filed by Bahri, supra note… [notes that in majority of WTO cases, 'lawyers were hired by the Government of India…'

government funds reflects, in part, an attitude in the Indian private sector that international trade relations are the government's responsibility. Many in the government, as well as private lawyers, hope that this attitude will change.

VIII. Conclusion

The WTO may be a rules-based system, but it is not static. It is dynamic, and those that engage it, shape it. Since engaging law is not without costs, a rules-based international system, such as that of the WTO, will tend to favor large and wealthy developed countries unless developing countries build indigenous legal capacity to use and thereby shape the construction and interpretation of international trade law in light of their needs. The building of legal capacity in developing countries has profound normative implications for the fairness of the international trading system. This article presents original fieldwork that engages the critical issue of how a developing country may build legal capacity to defend its interests in an international system otherwise characterized by asymmetric power, including the power of financial and legal resources.

The article examined India's reciprocal relationship with the global trading system, since countries must often transform themselves to effectively engage the system. On the one side, the article assessed India's efforts to build legal capacity for trade negotiations, dispute settlement, and domestic policy in order to defend its interests. On the other side, it showed the impact of the international trade law system on domestic institutions and stakeholders in India.

The WTO privileges the value of legal and economic expertise to a much greater extent in national trade and regulatory policy than before. It catalyzed the development of new legal capacity within the Indian state and pressed the Indian bureaucracy to become more transparent and open to greater input from the private sector and civil society. In the process, trade law-related expertise diffused outside the state's administrative services. The government outsourced work to the Indian private sector to help prepare and defend WTO claims, analyze potential claims, provide the analytic backdrop to assess and develop negotiating positions, tailor the implementation of WTO requirements, and consider new domestic policy initiatives in light of them. The Indian state better positioned itself to participate in the shaping of the international trade legal order by transforming itself within the constraints of its own institutional heritage.

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and 'no financial assistance has been taken from the industry' for a number of WTO cases mentioned in the response].

Annex 1: Indian law firms engaged on trade matters

Among the large law firms in India, only Luthra & Luthrahas been involved in WTO dispute settlement. Firms such as Amarchand Mangaldas and J. Sagar Associates handle trade remedy work (mainly antidumping), but they have never been engaged by the government for WTO dispute settlement. We do not list firms engaged in legal practices significantly implicated by WTO law, such as intellectual property law.

WTO Litigation/consultation

Law Firm (WTO dispute settlement)	Number of Lawyers	Typology
Luthra&Luthra	>300 lawyers	Elite
Economic Laws Practice	>150 lawyers	Boutique
Lakshmikumaran&Sridharan	~150 lawyers	Boutique
Clarus Law Associates	~10 lawyers	Boutique
Law Offices of Krishnan Venugopal	Senior Advocate, Supreme Court(Litigation)	Focused

In addition to WTO work, the above firms also work on trade remedy, export control, and other trade issues, including in relation to bilateral and plurilateral free trade agreements (FTAs) and their negotiation.

The following lists of firms present a sampling of those engaged in the specialized field of trade remedy law, export control, customs, and trade-related consulting practice, which (to our knowledge) have yet to directly engage in WTO litigation or consultation.

Trade Remedy (Antidumping, Countervailing Duty (Anti-Subsidy), Safeguards) Practice

Law firm	Number of Lawyers	Typology
AmarchandMangaldass	~600 lawyers	Elite
J. Sagar	>200 lawyers	Elite
APJSLG	~ 50 lawyers	Boutique
Joseph Vellapally	Senior Advocate, Supreme Court(Litigation)	Focused

Customs, Customs valuation, export control, FTAs/Trade Agreements and Trade Remedies

A K Gupta	Accounting and Consulting Firm
Ernst and Young	'Big 4' (Accounting and Consulting Firm)

Annex 2. India as a Complainant in WTO Disputes

Title of the case	Dispute Number	Year of Consultation	Panel Established	Appellate Body	Status	Sector Concerned/ Trade Association	Lawyers who represented India
Poland-Automobile	19	1995	No	No	Withdrawn, mutually agreed solution	Automobile	
US-Women's and Girl's Wool Coats	32	1996	Yes	No	Withdrawn, mutually agreed solution	Textiles and Clothing (Texprocil)	Mr. Frieder Roessler
US-Wool Shirts & Blouses	33	1996	Yes	Yes	US withdrew measures after the DSB and AB report	Textiles and Clothing (Texprocil)	Mr. Frieder Roessler
Turkey-Textiles	34	1996	Yes	Yes*	Turkey withdrew measures after the DSB and AB report	Textiles and Clothing (Texprocil)	Mr. Frieder Roessler
US- Shrimp	58	1996	Yes	Yes*	Compliance proceedings completed without	Fisheries/Marine (SEAI)	Arthur Appleton/ Lalive Lawyers

					finding of non compliance		
EC- Rice	134	1998	No	No	Settled during consultations	Agriculture	
EC- Unbleached Cotton Type Bed Linen	140	1998	No	No	Settled during consultations	Textiles and Clothing	Vermulst Waer & Verhaeghe (VWV)
EC-Bed Linen	141	1998	Yes	Yes*	Compliance proceedings completed with finding of non compliance	Textiles and Clothing (Texprocil)	Vermulst Waer & Verhaeghe (VWV)
South Africa- Pharmaceuticals	168	1999	No	No	Settled during consultations	Pharmaceuticals	
US- Steel Plate	206	2000	Yes	No	Implementation notified by respondent	Steel (SAIL)	Sidley and Austin /Folkert Graafsma?

US-Byrd Amendment	217	2001	Yes	Yes**	Authorization to retaliate granted	n/a*** (MPEDA/SEAI)	Wilkie Farr & Gallagher (Advised MPEDA/SEAI)
Brazil- Jute Bags	229	2001	No	No	Settled during consultations	Textiles and Clothing (JMDC)	
Argentina-Pharmaceuticals	233	2001	No	No	Settled during consultations	Pharmaceuticals	
US- Textiles Rules of Origin	243	2002	Yes	No	Report Adopted, no further action required	Textiles and Clothing (Texprocil)	ACWL
EC- GSP	246	2002	Yes	Yes	Implementation notified by respondent	Textiles and Clothing (Texprocil)	ACWL/Krishnan Venugopal
EC- Steel Products	313	2004	No	No	Withdrawn, mutually agreed solution	Steel	Squire Sanders
US-	345	2006	Yes	Yes	Implementat	Fisheries/M	Krishnan

Customs Bond Directive					ion notified by respondent	arine (MPEDA/SEAI)	Venugopal/Clarus/Wilkie Farr and Gallagher
EU-Expiry Review of AD/CVD on PET	385	2008	No	No	Settled during consultations	Chemicals and Plastics (Chemplast)	(Consultation stage Krishnan Venugopal/ ACWL / Steptoe & Johnson assisted some of the Indian exports
EU- Seizure of Generic Drugs	408	2010	No	No	Settled during consultations	Pharmaceuticals	Consultation stage Krishnan Venugopal/ Frederick Abbot/ Uday Nath Tiwari/ Luthra & Luthra (provided initial opinion)
Turkey-Transitional Safeguards	428	2011	No	No	Settled during consultations	Textiles (Texprocil)	Lakshmikumaran and Sridharan/Venugopal
US- CVD on Carbon Steel	436	2012	Yes	no	Panel Composed	Steel (Companies: Essar Steel, Tata Iron and Steel, Jindal Steel)	Lakshmikumaran and Sridharan/Venugopal

**Article 21.5 panel established and the findings were appealed to the AB.*
***Authorization for suspension of concession further to Arbitrator's findings.*
**** Not available. Multiple sector have been affected*
Source: Compiled from information on the WTO website and interviews.

Annex 3. India as a Respondent in WTO Disputes

Title of the case	Dispute Number	Year of Consultation	Panel	Appellate Body	Status	Sector concerned/ Association	Lawyers who represented India
India- Patents (US)	50	1996	Yes	Yes	Implementation notified by respondent	Pharmaceuticals and Chemicals	Friedler Roessler/ Krishnan Venugopal
India- Patents (EU)	79	1996	Yes	No	Implementation notified by respondent	Pharmaceutical and Chemicals	Friedler Roessler/ Krishnan Venugopal
India- QRs	90, 91, 92, 93, 94, 95 and 96	1997	Yes	Yes	(DS 90) Implementation notified by respondent (DS 91-96) Withdrawn, mutually agreed solution	Agricultural, Textiles and Industrial Products	Friedler Roessler/ Krishnan Venugopal
India- Certain Commodities	120	1998	No	No	Settled during consultations	Agriculture, Leather	

India- Auto (EC)	146, 175	1997	Yes	Yes	(DS 146 and 175) Implementation notified by respondent	Automobile	Friedler Roessler (ACWL)/ Krishnan Venugopal
India- Import Restrictions (EC)	149	1998	No	No	Settled during consultations	n/a**	
India- Customs Duties (EC)	150	1998	No	No	Settled during consultations		
India- EXIM Policy EC)	279	2003	No	No	Settled during consultations	Agriculture and Chemicals	
India- Antidumping on Certain Products (EC)	304	2003	No	No	Settled during consultations	n/a*	
India- Lead Acid Batteries (Bangladesh)	306	2004	No	No	Settled during consultation	Chemicals	

					s		
India-Antidumping Measures(Chinese Taipei)	318	2004	No	No	Settled during consultations	n/a*	
India- Import Measures on Wines (EC)	352	2006	No	No	Authority for Panel Lapsed	Agriculture/Wine and Spirits	Economic Laws Practice/ Edwin Vermulst
India-Additional Duties (U.S)	360	2006	Yes	Yes	Report adopted, no further action required	Agriculture/Wine and Spirits	Economic Laws Practice
India-Taxes on Wine and Spirits	380	2010	No	No	Settled during consultations	Agriculture/Wine and Spirits	Economic Laws Practice
India- Import Measures on Agriculture products (US)	430	2012	Yes	No	Panel composed	Agriculture	Luthra & Luthra Law offices
India- Solar Cells and Solar Modules	456	2013	No	No	In Consultation	Renewable Energy	Clarus Law Associates

**Involved challenges against antidumping actions against various products*
*** Not available. Multiple sector have been affected*
Source: Compiled from information on the WTO website and interviews.