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Presents

INTERNATIONAL TRADE LAW

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INTERNATIONAL TRADE LAW

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1. Historical Background of International Trade in India

a) India entered into planned development era in 1950's

b) In 1950s India's share in total world trade was 1.78% which reduced to 0.6% in 1995.

c) India ranks 30th in the world's largest exporter nations list.

We all know that international trade has been vogue for centuries and all civilizations carried on trade with other parts of the world.

The need for trading exists due to the variation in availability of resources and comparative advantage

In the present context where technology and innovation in all fields have thrown open borders to globalization.

International trade has a rich history starting with barter system replace by mercantilism in the 16th and 17th centuries.

The 18th Century saw the shift towards liberalism, all the economic thoughts and principles have influenced the international Trade policies of each country.

Countries have entered into several pacts and signed several treaties to move towards free trade where tariffs in terms of import duties are not imposed by countries.

India's foreign trade began to gain importance during 19th Century. There was a significant growth in India's foreign trade between 1900-1914.

1.1. FOREIGN TRADE IN 2ND AND 3RD FIVE YEAR PLANS:

Certain restrictions were placed on the import policy during the year 1957. These restrictions include limited quotas for essential commodities and discontinuation of open general licensees.

The condition for issue of capital goods was made hard, import of consumer's goods was discouraged and raw materials import was restricted to the amount necessary for production. Export duties on certain goods were reduced and export quota was liberalized.

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1.2. DEVELOPMENT OF MULTI FACETED REGIME:

Post 1970, Indian trade was dependent on complex system of licensing. India's trade policy heavily relied on trade quotas rather than tariffs.

There were two conditions to import goods, viz:

1) Firms must prove that these were essentials for productions

2) Also there was no domestic production of that imported good regardless of the price and quality

There was a significant increase in growth rate of exports but couldn't catch up to imports.

1.3. LIBERALISATION OF TRADE:

The LPG was introduced in 1991. They relaxed restricted imports licensing on most equipment and products used for manufacturing. The main focus of this policy was

liberalization of capital goods for encouraging domestic industry and to increase growth with the help of exports.

2. Role of GATT in establishing WTO

2.1. GATT INTRO:

- The general Agreement on Tariffs and Trade (GATT) was the first worldwide multilateral free trade agreement.
- It came into effect on June 30, 1948 until January 1, 1995.
- It ended when it was replace by the more robust World Trade Organization (WTO)

2.2. PURPOSE OF GATT (Page 35 Dr. SRM):

The purpose/ objectives of GATT were as follows:

1) Raise the standard of living.
2) Better utilization of resources of the world
3) Expansion of production and International trade
4) Eliminate harmful trade protectionism

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By remaining tariffs, GATT boosted International Trade.

2.3. GATT NEGOTIATION ROUNDS (Page 36 Dr. SRM)

- Including the inception round of GATT, 8 rounds of Negotiations were held, and they were all intended to reduce the tariffs and non-tariff barriers in the trade.
- The 8th round of Negotiation was the URUGUAY ROUND (SPETEMBER 1986 DECEMNER 1993)
- The worsening trade environment led to the need for a ministerial level conference to settle discriminatory trade practice living held within GATT
- Trade ministers launched the GATT Round at Punta de Este, Uruguay on 28th January 1987.

- Ministers met at Massakesh, Mosocco (April 12-15, 1994) to satisfy the results of Uruguay Round.

- The WTO came into existence on January.

- The Uruguay Final Act strings together 25 Agreements, declarations and decisions in the goods sector alone, including the agreement on TRIPS, GATS and establishing WTO. (Page 37 Dr. SRM)

2.4. AGREEMENT OF ESTABLISING THE WTO (Page 52 Dr. SRM):

- The setting up of the WTO was agreed to by 125 countries in April 1994, at a conference in Massakesh which concluded the strenuous Uruguay Round of GATT Negotiations after more than seven years of hard bargaining.

- The New WTO which replaces GATT came into effect on January 1, 1995, with the backing up of at least 85 founding members, including India and at present there are 164 members as on today.

- The WTO comes as the 3rd Economic Pillar of worldwide dimensions along with the World Bank and International Monetary Fund (IMF).

- The Members of Uruguay Round Talks concluded to establish WTO by recognizing that their relations in the field of economic endeavor should be conducted with a view to raising standards of living.

- Ensuring full employment and large and steadily growing volume of real income and effective demand.

- Expanding production and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development.

- Seeking both to preserve and protect the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns.

- The members being desirous of contributing these objectives by entering into mutually advantageous arrangements resolved to establish the WTO to develop an integrated more viable and durable multilateral Trading System.

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3. Organizational Structure, Scope, Function and Objectives of WTO

3.1. WORLD TRADE ORGANISATION (Page 52 Dr. SRM):

World Trade Organization (WTO) replaced General Agreement on Tariffs and Trade (GATT) had come to effect on January 1, 1995 with the backing of at least 85 founding member. Including India at present there are 164 members states.

3.2. FEATURES OF WTO:

1) It's a LEGAL ENTITY
2) Unlike the IMF and World Bank it is not an agent of the UNO
3) Free Trade
4) Stability in the Trading System
5) Promotion of fair competition
6) Market access commitment
7) Decision at the ministerial level meeting
8) Wider Range of Issues.

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3.3. SCOPE OF WTO ARTICLE II (Page 52 Dr. SRM):

The WTO shall provide the common institutional frame work for the conduct of trade relations among its member in matters related to the agreements and associated legal instruments.

The agreements and associated legal instruments included in multilateral Trade Agreements, are binding on all members.

The Plurilateral Trade Agreements are binding on those members that have accepted them.

3.4. OBJECTIVES OF WTO:

The purpose and objectives of the WTO are spelled out in the Preamble to the Mamakesh Agreement.

1. To ensure the reduction of tariffs and other barriers to trade.

2. To eliminate discriminatory treatment in International Trade relations

3. To facilitate higher standards of living, full employment, a growing volume of real income and effective demand.

4. To make positive effect especially the least developed countries secure a level of share in growth of International Trade.

5. To facilitate the optimum use of the world's resources for sustainable development.

6. To promote an integrated, more liable and durable trading system.

3.5. POWERS OF WTO

1. To lay down a substantive code of conduct at reducing trade barriers including tariffs.

2. To provide the institutional frame work for the administration of the substantive code.

3. To provide an integrated structure of administration to facilitate implementation, fulfillment of the objectives of WTO.

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4. To ensure the implementation of the substantive code.

5. To act as forum for the negotiation of further trade liberalization.

6. To settle trade related disputes.

3.6. FUNCTIONS OF WTO (Page 53 Dr. SRM):

1) The WTO shall facilitate the implementation, administration and operation of this agreement and of the Multilateral Trade agreement (MTA) and the Plurilateral Trade agreement (PTA)

2) The WTO shall provide the forum for Negotiation among its members concerning their multilateral trade relations in matters dealt with under the agreements.

3) The WTO shall administer the understanding on Rules and Procedures Governing the settlement of disputes.

4) The WTO shall also administer the Trade Policy Review Mechanism (TRPM)

5) The WTO shall cooperate with the IMF and with World bank and its affiliated agents to achieve greater coherence in global economic policy making.

3.7. ORGANISATIONAL STRUCTURE OF WTO (ARTICLE IV; Page 53 Dr. SRM)

As per the Article IV of the WTO, it consists of the following bodies:

1. Ministerial Conference
2. General Council
3. The Dispute settlement Body
4. Trade Policy Review Body
5. Subsidiary Bodies

1. **MINISTERIAL CONFERENCE (MC)** is at the top of the structural organization of the WTO. It is the supreme governing body which takes ultimate decision on all matters, and it is held at least once in every two years.
2. **GENERAL COUNCIL (GC)** is composed of the representatives of all the members. There are three councils that will operate under the general council. These three committee are:
   a) Committee/Council on trade in goods and services and for trade related aspects of IPR (TRIPS)
   b) Committee/Council on Trade and Development, Balance of Payments and a committee on budget, finance and administration. (MC shall establish these).
   c) Bodies provided for under the plurilateral trade agreement (PTA)
3. **DISPUTE SETTLEMENT BODY:** It is convened by the general council to discharge the responsibilities of the Dispute settlement body provided for the dispute settlement understanding (DSU). It has its own chairman.
4. **TRADE POLICY REVIEW BODY:** The general council convenes it to discharge the responsibilities of the trade policy review mechanism (TRPM)

   It may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfillment of those responsibilities.

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5. **SUBSIDARY BODIES (Page 53 Dr. SRM):** The Council for Trade in Goods, the Council for Trade in Services, the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective councils.

3.8. THE SECRETARIAT (ARTICLE VI'; Page 54 Dr. SRM):

The administration of the WTO is conducted by the secretariat which is headed by the Director General appointed by the Ministerial Council (MC) for a tenure of 4 years. The responsibility of the secretariat shall be exclusively international in character.

4. Most Favoured Nations (MFN)

a) Discuss the principles of MFN and its exceptions.

b) Explain the concept of MFN

c) Do you agree that MFN clause in WTO agreements is the basic principle from promotion of international trade?

4.1. INTRODUCTION:

In International economic relations and international politics, MFN is a status or level of treatment accorded by one state to another in international trade.

MFN Status is an economic position in which a country enjoys the best trade terms given by its trading partner. That means it receives the lowest tariffs, the fewest trade barriers, and the highest import quotas. In other words, all MFN trade partners must be treated equally.

4.2. MEANING:

Under the WTO agreements, countries cannot normally discriminate between their trading partners, Grant someone a special favour (such as a lower customer duty rate for one of their products) and you have to do the same for all other WTO members.

The principles are known as Most Favoured Nation (MFN) treatment. It is the First Article of GATT which is also a priority in GATS mentioned in Article 2 and also in the Article 4 of TRIPS agreement.

4.3. DEFINITIONS:

MFN is one of the cornerstones of WTO. The MFN principle of the WTO state that each of the WTO members equally as "most- favoured" trading partners

"MFN Treatment - requires Members to according the most favorable tariff and regulatory treatment given to the product of any one member at the time of import or export of "like products" to all other members.

4.4. LEGAL FRAME WORK:

GATT PRACTICE REGARDING MFN TREATMENT AS STIPULATED IN GATT ARTICLES I, XIII, AND XVII

4.5. GATT ARTICLE I:

Provides for contracting parties to access most favoured nation treatment to like products of other contracting parties regarding tariffs, regulations on exports and imports internal taxes and charges and internal regulations.

Non Discriminatory Administration of Quantitative Restrictions

GATT article xiii stipulates that quantitative. Restrictions as tariff quotas on any product must be administered in a non - discriminatory fashion regarding like products and that in administering import restrictions and tariff quotas, contracting parties shall aim to allocate shares close to that which night be expected in their absence.

4.6. EXCEPTIONS TO THE NFN:

THE GATT provides for certain exceptions to the most favoured nations rule explained above:

A. Regional integration (GATT Article XXIV)

B. Generalized system of preferences (GSP)

C. Non - application of the agreement b/w specific contracting parties (GATT ARTICLE XXXV)

D. Other Exceptions.

A. Regional integration liberalizes trade among countries within the region, while allowing trade barriers with outside countries. If therefore leads to results that are Contrary to the MFN principles because countries inside and outside the region are

treated differently. This may have a negative effect on countries outside the region, and thus lead to results contrary to the liberalization of trade.

B. The GSP is a system that grants products originating in developing countries lower tariff rate than those normally enjoyed under MFN status, as a special measure in tariffs for developing countries in order to increase their export earnings and promote their development.

C. Non Application of the Agreement b/w specific contracting parties (GATT Article XXXV): GATT article XXXV allows for the entire agreement, as alternatively article II, to not be applied when either of the following conditions is met:

1. That 2 countries have not entered into tariff negotiations with each other.

2. that either of the contracting parties at the time either becomes a contracting party doesn't consent to application of either entire agreement or alternatively article II.

In the case of non-application, benefits enjoyed by other contracting parties are not provided to the country of non-application which leads to results that are contrary to the MFN principle.

D. Other Exceptions peculiar to the MFN principle include;

- Article XXVI: 3) Regarding frontiers traffic with adjacent countries
- Article I: 2) regarding preferences which were in force at the signing of the GATT such as the British Commonwealth.

General Exceptions:

1) To protect public Moral life + health.

2) Waiver to the obligations (EXCEPTIONAL CIRCUMSTANCES)

5. National Treatment: Concept, Importance & Exceptions

5.1. INTRODUCTION: TREATING FOREIGNERS AND LOCALS EQUALLY

Imparted and locally produced goods should be treated equally at least after the foreign goods have entered the market,

The same should apply to foreign domestic services, and to foreign and local trade markets, Patents and copyrights.

This principle of NT (giving others the same treatment as one's own nationals) is also found in all three main WTO agreements: Article 3 of GATT, Article 3 of TRIPS and Article 17 of GATS.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on any impart is not a violation of national treatment even if locally produced products are not charged an equivalent tax.

5.2. MEANING:

National Treatment (GATT Article III) stands alongside MFN treatment as one of the central principle of the WTO agreement.

Under the NT Rule, Members must not accord discriminatory treatment between imports and "like" domestic products (with the exception of the imposition of tariffs, which is a border measure).

5.3. LEGAL FRAMEWORK: GATT ARTICLE III

GATT Article III requires that WTO Members provide national treatment to all other members.

Article 3(1) stipulates the general principle that members must not apply internal taxes as other internal charges, laws, regulations and requirements affecting imported or domestic products so as to afford protection to domestic production.

Article 3(2) stipulates that WTO members shall not apply standards higher than those imposed on domestic products between imported goods and "like" domestic goods, or between imported goods and "a directly competitive or substitutable product,"

Article 3 (4) provides that members shall accord imported products treatment no less favourable than that accorded to "like products" of national origin.

5.4. EXCEPTIONS TO GATT ARTICLE III

National Treatment Rule: Although NT is a basic principle under the GATT, the GATT provides for certain exceptions Outlined below:

A. Govt. procurements
B. Domestic subsidies.
C. Other exceptions.

A. Govt. procurement: Article 3(8) permits govts to purchase domestic products preferentially, making govt procurement one exception to the national treatment rule.

This exception is permitted because WTO members recognise the role of government procurement in national policy.

B. Domestic Subsidies: Article 3(8) (b) allows for the payment of subsidies exclusively to domestic subsidies as an exception to the NT rule, under the condition that it is not in violation of other provisions in article III and the agreement on subsidies and countervailing measures.

The reason for this exception is that subsidies are recognised to be an effective policy tool, and are recognised to be basically within the latitude of domestic policy authorities.

C. Other Exceptions to National Treatment: Exceptions peculiar to NT include the exception on screen Quotas of cinematographic films under Article III (10) and Article IV.

- Security exceptions (Article XXI)
- WTO Article IX on waiver also applies to the National treatment rule.

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6. Tariffs and Non-Tariff Barriers & Bound and Limitations of Tariff Bindings

6.1. INTRODUCTION (Page 5 Dr. SRM):

Free trade ruled the world for a long time. It enabled the industrially developed countries to expand their trade throughout the world and enriched them. But some countries, especially Germany, later favoured the strategic protective measures in their national interest by restricting free trade by imposing trade barriers.

The barriers refer to the govt policies and measures which obstruct the free flow of goods and services across national borders.

6.2. TRADE BARRIERS

The GATT is intended to reduce. The tariff and non - tariff barriers in the trade in goods, they restrict free trade. Trade barriers refer to the govt policies and measures which obstruct the free flow of goods and services across national borders.

6.3. OBJECT OF TRADE BARRIERS (Page 6 Dr. SRM):

The main object of trade barriers are:

1. To protect domestic industries from foreign competition;
2. To guard against dumping
3. To promote indigenous research and development
4. To conserve the foreign exchange resources of the country.
5. To make the balance of payment position more favourable;
6. To curb conspicuous consumption and mobilize revenue for the Govt.

6.4. TYPES:

The trade barriers may be broadly divided into two groups namely:

A) Tariff barriers; and
B) Non-tariff barriers.

A. TARIFF BARRIERS OR FISCAL CONTROLS (Page 6 Dr. SRM):

Tariff is a financial levy imposed by the importing country on goods. This is done by countries in order to prevent/protect their domestic industry producing the same goods or for any other reason in the interest of domestic economy.

Tariff is generally regarded as less restrictive than other methods of protection like quantitative restrictions.

Therefore organisations like GATT prefer tariff over non- tariff - barriers.

It is most common instrument used for controlling imports and exports.

TYPES OF TARRIF (Page 6 Dr. SRM):

1) IMPORT TARIFF: It is the custom duty imposed by the importing country, that is, the tax imposed on imported goods. It is levied to raise revenue and protect domestic industries.

2. EXPORT TARIFF: It is the duty imposed on goods by the exporting country on its exports. Generally certain mineral and agricultural products are taxed.

3. TRANSIT DUTIES: It is levied on commodities that originate in one country, cross another and are consigned to another. Transit duties are levied by the country through which the goods pass.

4. SPECIFIC DUTY: A specific duty is a flat sum per physical unit of the commodity imported or exported.

5. AD- VALOREM DUTY: They are levied as fixed percentage of the value of the commodity imported or exported.

6. COMPOUND DUTIES: when the commodity is subject to both specific and ad-valorem duties, the tariff is generally referred to as compound duty.

7. REVENUE TARIFF: Some time the main intention of the govt in imposing tariff may be to obtain revenue.

8. PROTECTIVE TARIFF: It is intended primarily, to accord protection to domestic industry from foreign countries.

9. COUNTERVAILING AND ANTI - DUMPING DUTIES: Countervailing duties may be imposed on custom imports, when they have been subsidised by foreign Govts. Anti - dumping duties are applied to import which are being dumped on the domestic market at price either below their cost of production or substantially lower than their domestic price. They are penalties / penalty duties as an addition to the regular rates.

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B. NON - TARIFF BARRIERS (NTBS) OR QUANTITATIVE RESTRICTIONS (Page 7 Dr. SRM)

Non - tariff barriers (NTBS), which are considered as now protectionism measures, have grown considerably since the beginning of 1980s,

They fall in two categories:

a) First, includes those which are generally used by developing countries to prevent foreign exchange outflows or those which result from their chosen strategy of economic development.

b) Second, are those which are mostly used by developed economics to protect domestic industries which have lost international competitiveness and which are politically sensitive for governments of these countries.

6.5. TYPES OF NTBS (Page 7 Dr. SRM):

1) VOLUNTARY EXPORT RESTRAINT (VERs): They are bilateral arrangements instituted to restrain the rapid growth of exports of specific manufactured goods.

2) ADMINISTRATIVE PROTECTION: Administered encompasses a wide range of bureaucratic govt action. They are;

a) Safeguards: safeguard actions which under GATT Article XIX enable countries to undertake temporary restrictions against influxes threating the viability of domestic industries, have become a common form of administered protection.

b) Health and Product standards: Several health and product standards under the agreements of trade barriers to trade of GATT are imposed by developed countries and they hinder the exports of developing countries.

c) Custom's procedures: certain customs procedures of many countries become trade barriers. (Page 7 Dr. SRM)

d) Consular Formalities: A numbers of countries insist on certain consular formalities like certification of export documents by the respective consulate of the importing country, in the exporting country.

e) Licensing: Many countries regulate foreign trade by licensing to restrict imports.

f) Govt procurement: These often tend to hinder free trade. The GATT therefore formulated an agreement on the govt procurement with a view to secure greater international competition in govt procurement.

g) State trading: Hinders free trade because of the counter trade practices, canalization etc.

h) Monetary controls: In addition to foreign exchange regulations, the monetary controls are sometimes employed to regular trade, particularly imports.

i) Environmental protection laws: The growing concern for environment protection has led to the extension of environmental protection regulation to the imports.

j) Foreign exchange regulations: Important way of regulating imports in a member of countries.

k) Quotas: They are important means of restricting imports and exports.

A quota represents a ceiling on the volume of imports or exports quota regulations are generally administered by means of licensing.

The Non - Tariff Barriers will also have the following effect:

1. Balance of payment effect

2. Price effect

3. Consumption effect

4. Protective effect.

5. Redistribution effect

6. Revenue effect.

6.6. MERITS OF NTQ (Page 8 Dr. SRM):

Non-tariff barriers in the form of quotas are superior to tariffs because:

1. Quotas are more effective than tariffs,

2. Quotas are much more precise and their effects much more certain.

3. Quotas that to be more flexible, more easily imposed and more easily removed instruments of commercial policy than tariffs.

4. Quotas may also be employed as measure to prevent the international transmission of severe recession.

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6.7. DEMERITS OF NTQ:

1. The effects of quotas are more vigorous and arbitrary and they tend to distort international trade much more than tariffs.

2. Quotas tend to restrict competition much more than tariffs by helping importers and exporters to acquire monopoly power.

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UNIT 2

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1. Technical Barriers to Trade

a) What are technical barriers to trade? Explain the measures provided by WTO to remove it.

1.1. INTRODUCTION:

The phrase "Technical barriers to trade" refers to the use of the domestic regulatory process as a means of protecting domestic producers.

1.2. TECHNICAL BARRIERS TO TRADE AGREEMENT (TBTA)

The Uruguay round TBTA, which came into force on January 1, 1995 bears resemblance to the Tokyo standards code.

However much was learned from the Tokyo round experience, and some of the weakness of the Tokyo Round Agreement were remedied in the WTO's TBTA.

First the TBTA is a multilateral as opposed to a plurilateral agreement; meaning it applies to all WTO members- it forms a part of Uruguay Rounds "single undertaking"

Second, the TBTA has a much stranger enforcement mechanism, being subject to the WTO's DSU.

1.3. OBJECTIVE:

The TBT Agreement seeks to assure that:

1) Mandatory product regulations,
2) Voluntary product standards,
3) Conformity assessment procedures, (procedure designed to test products conformity with mandatory regulations or voluntary standards)
4) Do not become unnecessary obstacles to international trade and are not employed to obstruct trade.

The TBT Agreement seeks to balance two competing policy objectives:

1) The preventions of protectionism,
2) The right of a members to enact product regulations for approved (legitimate) public policy purposes (i.e., allowing members sufficient regulatory autonomy to pursue necessary domestic policy objectives)

1.4. MEASURES TO PREVENT TRADE BARRIERS:

2. Sanitary and Phyto sanitary Measures.

a) Discuss the agreement on the application of sanitary and phyto sanitary measure.

b) Explain the right to take sanitary and phyto sanitary measures.

2.1. INTRODUCTION:

The Agreement on Application of sanitary and Phyto sanitary Measures (SPS Agreement) was entered into, and came into force with the establishment of the WTO's on 1st January 1995.

It concerns the applications of food safety and animal and plant health regulations.

2.2. AGREEMENT ON THE APPLICATION OF SPS MEASURES:

- Sanitary and Phyto sanitary Measures (SPSM) have potential to create barrier for exports from the developing countries.
- The WTO Agreement on the Application of SPS agreement has facilitated trade from the developing countries by improving transparency, promoting harmonization and preventing the implementation of the SPS Measures that cannot be justified scientifically.
- Sanitary and phyto sanitary measures by their very nature, may result in restrictions on trade. All governments accept the fact that some trade restrictions may be necessary to ensure food safety and animal and plant health protection.
- However, govts are sometimes pressured to go beyond what is needed for health protection and to use sanitary and phyto sanitary restrictions to shield domestic producers from economic competition.
- Such pressure is likely to increase as other trade barriers are reduced as a result of the Uruguay Round agreements.
- The Agreement on sanitary and phyto sanitary measures builds on previous GATT rules to restrict the use of unjustified SPS measures for the purposes of trade protection.
- The basic aim of the SPS agreements is to maintain the sovereign right of any govt to provide the level of health protection it deems appropriate, but to ensure that these sovereign rights are not used for protectionist purposes and don't result in unnecessary barriers to international trade.
- All countries maintain measures to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants.

- These SPS Measures can take many forms, such as requiring products to come from a disease free area, inspection of products, specific treatment or processing to products, setting of allowable maximum level of pesticide residues or permitted use of only certain additives in food.

- Sanitary (human and animal health) measures apply domestically produced food or local animal and plant diseases, as well as to products coming from other countries.

2.3. OBJECTIVES

a) Protect human, animal or plant life/health and expanding trade by utilizing a variety of means to address and seek to resolve SPS issues.

b) Reinforce and build on the SPS Agreement.

c) Strengthen communication, consultation between the parties.

d) Ensure that SPS measures implement by a party do not create unjustified obstacle to trade.

e) Enhance transparency in an understanding of the application of each party's measures.

f) Encourage the development and adoption of international standards.

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2.4. ARTICLE 2: BASIC RIGHTS AND OBLIGATIONS

1) Members have the right to take SPSM necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this agreement.

2) Members shall ensure that any SPSM is applied only to the extent necessary to protect human, animal or plant life or health is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in Paragraph 7 of Article 5.

3) Members shall ensure that their SPSM do not arbitrarily or unjustifiably discriminate between members where identical/similar conditions prevail, including between their own territory and that of other members. SPSM shall not be applied in a manner which would constitute a disguised restriction on international trade.

4) SPSM which confirm to the relevant provisions of the Agreement shall be presumed to be in accordance with the obligations of the members under the provisions of GATT 1994 which relate to the use of SPSM in particular the provisions of Article XX (b).

3. Antidumping measures

(II) a) What is anti-Dumping? What is its purpose in International trade?

b) Explain the Uruguay Round of Anti-Dumping Code.

3.1. INTRODUCTION:

- "Dumping" is defined as a situation in which the export price of a product is lower than its selling price in the exporting country.
- A bargain sale, in that sense of ordinary trade is not dumping
- Dumping is said to have taken place when an exporter sells a product to India at a price less than the actual value/normal value of that article as completed to the value at which it is sold in the domestic market of the exporter country.
- This is an unfair trade practice which can have distortive effect on international trade.

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3.2. ANTI DUMPING MEASURE:

- Anti- Dumping is a measure to rectify the situation arising out of the dumping goods and its trade distortive effect.
- Thus, the purpose of anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade.
- Anti-dumping is an instrument for ensuring fair trade and is not a measure of protection pre-re for the domestic industry.

3.3. PARAMETERS TO ASSESS DUMPING OF GOODS:

- Dumping means export of goods by one country territory at a price lower than the normal value.
- If the export price is lower than normal value, it constitutes dumping.

- There are two fundamental parameters used for determination of dumping, namely: the normal value and the export price.

  a) **Normal Value:** It is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country.

  b) **Export Price:** It is the price at which the goods are allegedly dumped into the India means the price at which it exported to India.

3.4. ANTI DUMPING DUTY

Where any article is exported from any country to India, at less than its normal value, then upon the importation of such article into India the Director General may by notification in the official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Margin of dumping means the difference between its exports price and its normal value.

3.5. Rule 10 of AD Rules

DUMPING MARGIN = NORMAL VALUE- EXPORT PRICE

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where,

Normal Value:

a) Domestic price for the like product in the exporting country;

b) Representative price of the like product when exported to any appropriate third country;

c) Cost production + SGA + Profit.

Export Price: Price of the article exported from the export country or territory.

3.6. EXTENT OF ANTI DUMPING DUTY

Under the WTO Arrangement, the National Authorities can improve duties upto the margin of dumping I.e., the difference between normal value and the export price.

India law also provides that the anti-dumping duty to be recommended/levied shall not exceed the Dumping Margin.

3.7. THE URUGUAY ROUND OF ANTIDUMPING CODE

a) Basic Principles

b) Committee on Anti-Dumping Practices

c) Dispute Settlement.

3.7.1. BASIC PRINCIPLES:

Dumping is defined in the Agreement on the implementation of Article VI of GATT 1994 (Anti-Dumping Agreement) as the introduction of a product into commerce of another country at lesser rate than its normal value.

Under Article VI of GATT 1994, and the Anti-Dumping Agreement, WTO members can impose anti-dumping measures, if after investigation in accordance with the Agreement, a determination is made:

a) That dumping is occurring.

b) That the domestic industry producing like product in the importing country is suffering material injury.

c) That there is a casual link between the two.

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The agreement further, sets forth detailed procedural rules for the initiation and conduct of investigations, the imposition of measures and the duration and review of measures.

3.7.2. COMMITTEE OF ANTI DUMPING PRACTICES:

The Committee which meets at least twice a year, provides members of the WTO the opportunity to discuss any matters relating to the Anti-Dumping Agreement (Article 16).

The Committee has undertaken the review of National Legislation notified to the WTO. This offers the opportunity to raise questions concerning the operation of national anti-dumping laws and regulation, and also questions concerning the consistency of national practice with the Anti-Dumping Agreement.

3.7.3. DISPUTE SETTLEMENT:

Disputes in the anti-dumping area are subject to binding. Dispute settlement before the Dispute settlement body of the WTO, in accordance with the provisions of the DSU (Article 17).

4. Subsidy

a) Define subsidies. Discuss different types of subsidies

(II) b) Agricultural subsidies- Objectives and impact

(II) c) Subsidies (SN)

d) Trade related subsidy (SN)

4.1. INTRO:

Subsidies are kind of incentive which play an important role in economic development of developing countries.

4.2. DEFINITION:

In the subsidies Agreement, a subsidy shall be deemed to exist if: "there is a financial contribution (i.e., fiscal burden) by a govt or any public body within the territory of a member" or "there is any form of income or price support in the sense of Article XVI of GATT 1994" and "a benefit thereby conferred".

Subsidies bring out desired changes by effecting optimal allocation of resources, stabilizing the price of essential goods and services, redistributing income in favour of poor people thus achieving the twin objectives of growth and equity of nation.

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4.3. MEANING:

The word subsidy is derived from the Latin word "subsidium" meaning "troops stationed in reserve", and essentially implies "coming to assistance"

In common parlance, subsidy means grant, the grant may be in the form of either cash or kind and is generally give to promote an economic policy or social policy.

4.4. ESTIMATION OF SUBSIDIES:

It is done by the standard classification into public, Merit, Non-Merit Goods.

4.4.1. Public Goods: It is a good that individuals cannot be effectively excluded from use and where use by one individual doesn't reduce availability to others.

Examples: Fresh Air, National Defence, flood control systems, public transport and street lighting.

Since these services are available to all citizens, they do not exclude anyone.

4.4.2. Merit Goods: Merit goods whose consumption leads to positive externalities. This implies that when a merit good is consumed, the public benefit is greater than the private benefit.

Example: Vaccination against a contagious disease is a merit good, environmental protection, primary education.

The social benefit resulting from these goods/services is much greater than the sum of private benefits to individual consumers.

4.4.3. Non Merit Goods: The Non merit goods are those consumption leads to negative externalities. In case of non-merit goods the cost of providing the commodity/service to the society is higher than the price fixed for providing it to the consumer.

These subsidies result in the transfer of benefits to the individual consumer in a number of ways as follows:

a) **Cash Subsidies:** Providing food or facilities to the consumer at prices lower than those at which the govt procures the commodities.

b) **Interest/Credit Subsidies:** Loans given at rates lower than market rates.

c) **Tax Subsidies:** Tax exemption of medical expense, postponing collection of tax arrears.

d) **In kind Subsidies:** Provision of free medical services through govt dispensaries, provision of equipment to handicap persons.

e) **Regulatory Subsidies:** Fixation of prices of goods produced by the public sector at less than the cost with a view to provide inputs to industry or help certain other categories of consumers.

f) **Procurement Subsidies:** Purchase of food grains at an assured price which is intended to be lower than the prevailing market price.

4.5. TYPES OF SUBSIDIES:

- There are six primary categories of subsidies follows, divided by purpose:

a) Export subsidies

b) Subsidies contingent upon the use of domestic over imported goods.

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c) Structural adjustment subsidies

d) Industrial promotion subsidies

e) Regional development subsidies

f) R & D subsidies

- By beneficiary, there are 2 primary categories.
  - ✓ Subsidies that are not limited to specific business or industries (non-specific subsidies)
  - ✓ Subsidies those are limited to specific business and industries (specific subsidies)
- Budgetary Subsidies.
- Direct and Indirect subsidies.

5. Dispute Settlement Process:

5.1. INTRODUCTION:

The WTO's procedure is a mechanism which is used to settle trade dispute under the Dispute Settlement Understanding (DSU). A dispute arises when a member govt believes that another member govt is violating an agreement which has been made in the WTO.

The DSU advanced out the ineffective means used under the GATT for setting disagreement among members. Before DSU, under the GATT procedure for settling disputes were ineffective and time consuming.

The DSU was designed to deal with the difficulty of reducing and eliminating non-tariff barriers to trade. In the early years of GATT, most of the progress in reducing trade barriers focused on trade in goods and in reducing the tariff level on those goods.

5.2. OUTLINE OF THE DISPUTE SETTLEMENT UNDERSTANDING

- The DSU officially known as rules and procedure governing the settlement, established rules and procedures that manage various dispute arising under the covered agreements of the final act of Uruguay Round.

- It provides strict time frames for the Dispute settlement process (DSP) and establishes an appeal system to standardize the interpretation of specific clauses of the agreement.

- The basis stages of dispute resolutions covered in the understanding include: Consultation, A panel proceeding; Appellate Body Review and Remedies

5.3. STAGES OF WTO:

5.3.1. Consultation (Article 4)

The DSU permits WTO members to consult any other member regarding "Measures affecting the operation on any covered agreement taken within the territory" of the latter.

If a WTO member requests consultation with another member under a WTO agreement, the latter member must enter into consultation with the former, within 30 days.

If the dispute isn't resolved within 60 days the complaining party may request a panel.

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5.3.2. Establishing a Dispute Panel (Article 6,8)

A panel request, which must be made in writing, must identify the specific measures at issue and provide a brief summary of the legal basis for the complaint sufficient to present the problem clearly.

The Panel is ordinary composed of 3 persons. The WTO secretariat purposes the name of panelists to the disputing parties, who may not oppose them except for "compelling reason".

If there is no agreement on panelists within 20 days, either disputing party may request the WTO Directors- General to appoint to panel members.

5.3.3. Good Offices, Conciliation and Mediation

Unlike consultation in which "a complainant has the power of force the respondent to reply and consult or face a panel", good offices, conciliation and mediation "are undertaken voluntarily if the parties to the dispute so agree" No requirements on form, time or procedure for them exist. Any party may initiate or terminate them at any times. The complaining party may request the formation of panel", if the parties

to the dispute jointly consider that the Good Offices, Conciliation or Mediation process has failed to settle the dispute.

5.3.4. Panel Proceedings (Article 12, 13)

After considering written and oral arguments, the panel issues the descriptive part of its report to the disputing parties. After considering any comments, the panel submits this portion along with its findings and conclusions to the disputants as an interim reports.

5.4. Appellate Body Review:

The Dispute settlement Body (DSB) establishes a standing Appellate Body that will hear the appeals from panel cases. The Appellate Body shall be composed of 7 persons, three of whom shall serve on any one case.

Those who are serving on the Appellate Body are experts in law, International Trade and the subject matter of the covered Agreements generally.

5.5. Remedies:

There are consequences for the member whose trade practice is found to violate the covered agreements by a panel or Appellate Body.

The dispute panel issues recommendation with suggestions of how a nation has to come into compliance with the trade agreements. If the members fail to do so within prescribed period of time, the complaint may request negotiations for compensations is not agreed the complaining may request the DSB to suspend the application to the member concerned of concessions or other obligations under the covered agreement.

* * * * *

UNIT 3

TOPICS COVERED

1. Vienna Conventions on sale of Goods (II)
2. Frustration of contracts and conditions. (II)
3. Rules relating to the rejection of goods in contracts under international trade of goods.
4. Concept of state sovereign and International Trade Agreements.

SHORT NOTES

1) Product liability (II)
2) Invoices and Packaging
3) Obligation of seller (II)

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1. Vienna Conventions on sale of Goods (II)

1.1. THE VIENNA CONVENTION ON THE INTERNATIONAL SALE OF GOODS (GISG)

This convention sponsored by the United Nations Commission on International Trade Law (UNCITRAL) came into force in 1988 and has now been adopted by over 89 states. The CISG plays an important role in the globalization of contract and trade law by increasing predictability.

It was designed to replace two unsuccessful conventions on sale and the formation of contracts of sale concluded at the Hague Convention in 1964 and brought into force in the UK.

1.2. WHEN IS A SALE INTERNAIONAL?

The CISG applies only to international sales defined in either of the following ways (Article (1)):

1.2.1. DIFFERENT CONTRACTING STATES

First, where buyer and seller reside in different states (contracting states)

1.2.2. DIFFERENT STATES

Second, where the parties are resident in different states (neither of which need be a contracting state) and the forums conflict rules lead to the law of contracting state.

1.3. WHICH CONTRACTS OF SALE ARE INCLUDED?

The CISG (Contracts for International Sale of Goods) has a narrower coverage than sale of Goods Act 1979. It doesn't apply to all contracts of sale of goods but is limited to commercial, in the sense of non-consumer sales (Article 2 (a)).

The CISG can apply to contracts where the seller manufactures goods to the buyer's special order. (Unless the buyer provides a substantial part of the material) and can also apply to work and material contracts. (Article 3)

In general the CISG applies only to the sale of goods. If the counter parties to an agreement for the sale of goods decide to apply the law of the country of one of the parties, in general, that is the law will apply.

Since the CISG is uniform law, designed to be applied in the same way in all contracting states, there is a paramount need for national courts to adopt the same approaches to interpretation and to interpret its provisions the same way.

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1.4. STRUCTURE OF CISG:

PART I : Sphere of Application and general provisions (Article 1-13)

PART II : Formation of the Contract (Articles 14-24)

PART III : Sale of Goods (Article 25-88)

PART IV : Final provisions (Article 89-101)

2. Frustration of Contract and Conditions for Frustration of Contract:

2.1. INTRODUCTION:

The doctrine of frustration comes into play when a contract becomes impossible of performance, after it was made, on account of circumstances beyond the control of parties.

2.2. THE CONCEPT OF FRUSTRATION:

- Contracts entered into between parties impose contractual obligations on both the parties for the performance of such contract.
- However, many times unforeseen or unforeseeable supervening events occur which make the performance of the contracts impossible due to no fault of their part.
- In such cases, the contract is said to be frustrated.

Frustration of contract results in involuntary extinction of the contractual obligations of both parties and consequently, the parties are relieved from their rights and liabilities.

2.3. GENESIS OF FRUSTRATION OF CONTRACT:

The doctrine of frustration was initially used by the English Courts in 1863 in the case of **Taylor VERSUS Cardwell**, In this case, an opera house, which was rented for holding concerts, was destroyed by fire. The court held that the contract was frustrated because the very thing on which the contract depended on ceased to exist.

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2.4. FACTORS OF FRUSTRATION OF CONTRACT:

Conditions/Factors for frustration of contract:

1) Impossibility of performance
2) Change of circumstances
3) Loss of object

2.4.1. Impossibility of Performance:

Doctrine of Frustration of contract arises from the impossibility to do and act. But the principle is not confined to physical impossibilities. It was held in the case of **Satyabrata Ghose VERSUS Mugneesam Bangum and Co and Ans**, that **"impossible"** hasn't been used in section 56 of the Act in the sense of **physical or literal impossibility**. The performance of an act may not be literally impossible but it may be impracticable and useless, and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can be very well said that the promises finds its impossible to do the act which he

promised to do. Therefore, if the object of the contract is lost, the contract is frustrated.

2.4.2. Change of Circumstances:

Courts declare frustration of a contract on the ground of subsequent impossibility when its finds that the whole purpose or basis of a contract was frustrated by the intrusion or occurrence of an **unexpected event** or change of circumstances which was beyond what was contemplated by the parties at the time when they entered into the agreement. The changed circumstances make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform and impossibility.

2.4.3. Loss of Object:

The impossibility contemplated by section 56 of Act is not confined to something which is not humanly possible, as held in the case of **Sushila Devi VERSUS Hari Singh**. The court stated that if the performance of a contract becomes impracticable or useless having regard to the object and purpose of the parties, then it must be held that the performance of the contract became impossible. But the supervening events should take away the very basis of the contract and it should be of such a character that it strikes at the root of the contract.

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2.5. CONCLUSION:

Frustration of a contract makes the contract void, and discharges the parties of the contractual obligations. Frustration of a contract occurs without the fault or control of either party, or therefore, a party should not be made to compensate in such an event.

3. Critically evaluate the concept of: (a) State Sovereignty; and (b) International Trade Agreement.

3.1. STATE SOVEREIGNTY

3.1.1. INTRODUCTION:

Sovereignty refers to the powers of a state to make and apply its own laws and control its affairs without the interference of other states.

In International Affairs, the idea of state Sovereignty is that nations can control their external and internal affairs that other countries should not interfere with another country's internal matters.

This principle was developed in the Peace of Westphalia that ended the 30 years' war in 1648.

3.1.2. MEANING:

State Sovereignty is the ability of the state to be independent and have autonomy and control over itself and its decisions.

Historically, Sovereignty has been associated with four main characteristics:

- First, a sovereign state is one that enjoys supreme political authority and monopoly over the legitimate use of force within its territory.
- Second, it is capable of regulating movements across its borders.
- Third, it can make its foreign policy choices freely.
- Finally, it is recognized by other govts as an independent entity entitled to freedom from external intervention.

These components of Sovereignty were never absolute, but together they offered a predictable foundation for the world order.

"What is significant today is that each of these components internal authority, border control, policy autonomy, non-intervention is being challenged in unprecedented ways".

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3.2. INTERNATIONAL TRADE AGREEMENTS:

Trade agreements regulate international trade between two or more nations. They determine the tariffs and duties that countries impose on imports and exports. All trade agreement affect international trade.

- **IMPORTS** are goods and services produced in a foreign country and bought by domestic residents. It includes anything shipped into the country even if it is by the foreign subsidiary of a domestic firm. The consumer is inside the country's boundaries and the provider is outside, then the good or a service is an import.
- **EXPORTS** are goods and services that are made in a country and sold outside its borders.

That includes anything shipped from a domestic company to its foreign affiliate or branch.

3.2.1. TYPES OF TRADE AGREEMENTS:

There are three types of trade agreements.

1) Unilateral trade agreements
2) Bilateral trade agreements
3) Multilateral trade agreements.

1. **UNILATERAL TRADE AGREEMENTS:** It occurs when a country imposes trade restrictions and no other country reciprocates. A country can also unilaterally loosen trade restrictions, but it rarely happens as it would put the country at a competitive disadvantage.

2. **BILATERAL TRADE AGREEMENTS:** Made between two countries. Both countries agree to loosen trade restrictions to expand business opportunities between them.

3. **MULTILATERAL TRADE AGREEMENTS:** made between three countries or more these agreements are most difficult to negotiate. The greater the number of participants the more difficult the negotiations are.

   - ✓ They are also more complex, since each country has its own needs and requests.
   - ✓ Once negotiated, multilateral trade agreements are very powerful. They cover a large geographic area. That confers a great competitive advantage on the signatories.
   - ✓ All countries also give each other MFN status and agree to treat each other equally.

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3.2.2. IMPACT OF TRADE AGREEMENTS ON STATE SOVEREIGNTY

International Trade Agreement can impact state legal authority and prohibit a state from regulating in area or field authorized under its constitution.

Trade agreements also may undermine the ability of states to regulate the environment, healthcare, agriculture and professional regulations among other fields.

4. Rules Relating to Rejection of Goods in Contract under International Trade of Goods

4.1. BUYERS RIGHT OT REJECT

With the economic globalization, the trades between countries are more and more frequent. These transactions are referred to as export transactions and are divided into two categories: Those based on contract for the International sale of goods; and those which involve the supply of services.

The most important obligations of the seller are to deliver the goods in Conformity with the contract or at least duty to furnish the buyer the requisite shipping documents within the stipulated time.

4.2. OBLIGATIONS/DUTIES OF THE SELLER

a) Delivery of the goods in conformity with the contract.

b) Duty to furnish the buyer the requisite shipping documents within stipulated time.

c) Procurement of contracts of carriage an insurance

d) The seller may be required to nominate the vessel

e) To tender the buyer; three conforming documents:

   i) Bill of lading

   ii) A policy of Insurance

   iii) An Invoice

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4.3. THE BUYERS RIGHT TO REJECT IN CONTRACTS UNDER INTERNATIONAL TRADE OF GOODS

- Most issues are usually caused by the documents to the transaction
- An examination of the shipping documents is central to any other of the performance of the contracts under International Trade of goods; it includes the Bill of Lading and the insurance document and the invoice, which should provide continuous cover from the port of shipment to the port of discharge.

4.4. DOCUMENTS OF CONTRACT OF INTERNATIONAL SALE OF GOODS

4.4.1. **A bill of lading:** A type of document that is used to acknowledge the receipt of shipment of goods. The bill of lading must be clean without empty promise.

4.4.2. **Insurance Cover:** The value of insurance cover must be obtained by the seller. The marine insurance certificate should provide cover against the risks which is customary in the particular trade to cover with respect to the cargo and voyage in question.

An effective insurance policy has to be obtained to cover the goods when in transit is an essential condition to refuse the acceptance of uncertain goods even when they arrived sound at the destination.

4.4.3. **Invoice:** The Invoice must be completed in strict agreement with the terms of contract; Attention should be paid to proper linkage of the invoice with other documents tendered.

In addition to these documents the shipping documents must include the other documents, namely:

1) Certificate of Origin
2) Certificate of Quality and Inspection

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Failure to do so can be considered as non-conforming documents.

4.5. DELIVERY OF GOODS CAUSED ISSUES IN TRANSACTION TOO

Three issues must be considered with regard to the same:

1) Delivery of goods
2) Passing of the property
3) Passing of the Risk.

1) Delivery of Goods: It means the voluntary transfer of possession from one person to another. The goods are deemed to be delivered when the bill of lading is delivered to the buyer.

2) Passing of the property: The condition is that the goods are in accordance with the contract and such guarantee can be given by as standby letter of

credit by a reputable bank, the intention being, the property in the goods shall pass when the banks issues the credit.

3) Passing of the risk: The risk of accidental loss of the goods sold passes when the property passes. As per the Vienna conventions on CISG*, the risk shall pass on the delivery of goods.

4.6. BUYER CAN REJECT ON THE FOLLOWING GROUNDS:

1) Buyer lost the payment of goods but didn't received any goods
2) The buyer didn't receive the goods
3) The buyer didn't receive the goods on time.
4) The buyers received the goods whose quality, quantity or packaging is not in conformity with/ to the contract.
5) The buyer received the documents not in conformity to the contract
6) Defects exists in the documents
7) Defect exists in the goods
8) Defect exists in the documents as well as the goods.

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UNIT 4

TOPICS COVERED

1. Explain the law relating to export and import license in India (III) SN.
2. Explain different kinds of letters of credit (III) SN.
3. Explain various kinds of marine Insurance (III) SN.
4. Discuss the responsibility of the seller under Free on Board (FOB) Contract (II) 04.
5. Explain the rules relating to Bill of lading International (II) 05.
6. Explain the law relating to carriage of goods by Air.
7. What are the liabilities of carriers of goods by sea under the Hague Visby Rules?

SHORT NOTES

1) Pre shipment Inspection
2) Suitable Ship
3) Export Transaction
4) Freight
5) Consignment Note
6) Carriage by Rail

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1. Vienna Conventions on sale of Goods (II)

1.1. THE VIENNA CONVENTION ON THE INTERNATIONAL SALE OF GOODS (GISG)

This convention sponsored by the United Nations Commission on International Trade Law (UNCITRAL) came into force in 1988 and has now been adopted by over 89 states. The CISG plays an important role in the globalization of contract and trade law by increasing predictability.

It was designed to replace two unsuccessful conventions on sale and the formation of contracts of sale concluded at the Hague Convention in 1964 and brought into force in the UK.

2. Explain the law relating to Export and Import License in India (III) SN

In India Import and Exports is governed by the Foreign Trade (Development and Regulation) Act of 1992 and Export Import Policy (EXIM).

2.1. DEFINITION: IMPORT/EXPORT LICENSE

Import/Export License are the permissions or license required for doing business with companies/organization which is present in other countries. i.e., to import international goods within your country or the export local goods to international markets, import and exports license is required.

IMPORT LICENSE is a license that permits a merchant to acquire a predetermined period (Typically 1 year). Import Licenses are utilized:

1) As method for confirming out pouring of outside cash to enhance a nations equalization of installments position.

2) To control section of unsafe things.

3) To shield the domestic business from foreign rivalry.

EXPORT LICENSE is an export control permit/documents issued by a govt or an appointed agency to screen the export of sensitive innovations. Import and export of all goods are free except for the items regulated by the EXIM policy or any other law currently in force. Registration with regional licensing authority is a pre requisite for the import and export of goods.

The customs will not allow for clearance of goods unless the importer has obtained an import exports code (IEC) from regional authority.

2.1.1. IMPORT LICENSE

It is a document issued by a national govt authority the importation of certain goods into its territory. Import license are considered to be non-tariff barriers to trade when used as a way to discrimination against another country's good in order to protect a domestic industry from foreign competition.

Each license specifies the volume of imports allowed, and the total volume allowed should not exceed the quota.

License can be sold to importing countries at a competitive price, or simply a fee. Govt may put certain restrictions on what is imported as well as the amount of imported goods and services.

Examples: If a business wishes to import agricultural products such as vegetables, then the govt may be concerned about the impact of such importations of the local market and thus impose a restriction.

2.1.2. EXPORT LICENSE

Export control documents issued by a govt agency to monitor the export of sensitive technologies (such as advanced computer chips, encryption decryption software), prohibited materials (drugs, genetically modified plants), dangerous materials (explosives, radioactive substances), strategic materials (Uranium, advanced alloys), or goods in short supply in the home market (food, raw materials).

3. Different kinds of Letter of Credit

3.1. INTRODUCTION

A letter of credit is an important financial tool in trade transactions both domestic as well as international market, traders use the letter of credit to facilitate the payments and the transactions.

A bank or a financial institution acts as a third party between the buyer and the seller and assures the payment of funds on the completion of certain obligations.

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3.2. DEFINITION:

A letter of credit is a financial document provided by a third party (with no direct interest in the transaction), mostly a bank or a financial institution, that guarantees the payment of funds for goods and services to the seller once the seller has submitted the required documents.

A letter of credits has three important elements:

- The beneficiary/ seller who is paid the credit.
- The buyers/applicant who buys the goods or services.
- The issuing bank that issues the letter of credit on the buyer's request.

3.3. TYPES OF LETTER OF CREDIT

3.3.1. Various types of letters of credit (LC):

a) **COMMERCIAL LC:** It is a standard letter of credit also called as documentary credit.

b) **Export/Import LC:** The same letter of credit can be called export or import depending on who uses it. The exporter will term it as an exporter letter of credit where as an importer will term it as importer letter of credit.

c) **Transferable LC:** This LC enables the seller to assign part of the letter of credit to other party lies. This LC is beneficial in those cases when the seller is not a sole manufacturer of goods and purchases some parts from other parties as it eliminates the necessity of opening several LC's for other parties.

d) **Un-transferable LC:** It doesn't allow transfer of money to any third parties. The beneficiary is the only recipient of the money and cannot further use the letter of credit to pay anyone.

e) **REVOCABLE LC:** A letter of credit can be altered any time by the issuing bank or the buyer without any notification to the seller/beneficiary. The beneficiary is not provided any protection.

f) **IRREVOCABLE LC:** A letter of credit that doesn't allow the issuing bank to make any changes without the approval of the beneficiary.

g) **STAND BY LC:** This letter of credit is closes to the bank guarantee and gives more flexible collaboration opportunity to seller and buyer. The bank will honor the LC when the buyer fails to fulfill payment liabilities to seller.

h) **Confirmed LC:** In addition to the bank guarantee of the LC issues, this LC type is confirmed by the seller bank or any other bank.

i) **Unconfirmed LC:** Only the bank issuing the LC will be liable for payment of this LC

j) **Revolving LC:** A letter of credit used for served payments instead of issuing letter for each leg of the transactions.

k) **Back to Back LC:** This letter of credit type considers issuing the second LC on the basis of the first letter of credit.

l) **Payment at sight LC:** As per this letter of credit, payment is made to the seller immediately (max within 7 days) after the required documents have been submitted.

m) **Deferred Payment LC:** This letter of credit the payment to the seller is not made when the documents are submitted, but instead at a later period defined in the letter of credit. The payment in favor of seller under this LC is made upon receipt of goods by the buyers.

n) **Red Clause LC:** The seller can request an advance for an agreed amount of the LC before shipment of goods and submitted of required documents.

o) **Green Clause LC:** A letter of credit that pays advance to the seller just not against the written undertaking and a receipt, but also a proof of warehousing the goods

p) **Direct Pay LC:** A letter of credit where the issuing bank directly pays the beneficiary and then asks the buyer to repay the amount. The beneficiary may not interact with the buyer.

3.4. CONCLUSION:

As mentioned above, the LC can be of various types depending on its purposes.

4. Various Kinds of Marine Insurance

4.1. INTRO:

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The subject of Marine Insurance is very wide and encompassing, which is why there is a definite categorization of various types of Marine Insurance Policies

4.2. TYPES OF MARINE INSURANCE

The different types of marine insurance can be elaborated as follows:

4.2.1. Hull Insurance: It mainly caters to the torso and the hull of the vessel along with all the articles and pieces of furniture on the ship. This type of insurance is mainly taken by the owner of the ship to avoid any loss to the vessel in case of any mishaps occurring.

4.2.2. Machinery Insurance: All the essential machinery is covered under this insurance and in case of operational damages, claims can be compensated.

These two insurance come as one under Hull and Machinery (H&M) Insurance.

4.2.3. Protection and Indemnity (P&I) Insurance:

- Risks which are connected to ownership of the vessel. Eg: Crew related claims.

- Risks which are related to the hiring of the ship. Eg: Cargo related Claims.

4.2.4. **Liability Insurance:** Where compensation is sought to be provided to any liability occurring on account of a ship crashing or colliding and on account of any other induced attacks.

4.2.5. **Freight Demurrage and Defence (FD&D) Insurance:** This insurance provides claims for handling assistance and legal costs for a wide range of disputes which are not covered under H& M or P& I Insurance.

Freight Insurance offers and provides protection to merchant vessels corporations which stand a chance of losing money in the form of freight in case the cargo is lost due to the ship meeting with an accident.

4.2.6. **Marine Cargo Insurance:** Cargo Insurance caters specifically to the marine cargo carried by ship and also pertains to the belongings of ships voyages. It protects the cargo owners against damage or loss of cargo due to ship accident or due to delay in the voyage or unloading.

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Marine Cargo Insurance has third party liability covering the damage to the ports, ship or other transport forms (rail/truck) resulted from the dangerous cargo carried by them.

In addition to these types of Marine Insurance there are also various types of Marine Insurance policies that are detailed below:

1) Voyage Policy
2) Time Policy
3) Mixed Policy
4) Open or Unvalued Policy
5) Valued Policy
6) Port risk Policy
7) Wages Policy
8) Floating Policy

9) Single vessel Policy

10) Fleet Policy

11) Block Policy.

1) **Voyage Policy:** Marine Insurance which is valid for a particular voyage.

2) **Time Policy:** Marine Insurance which is valid for a specified time period.

3) **Mixed Policy:** Marine Insurance which offers the benefit of both time and voyage policy.

4) **Open (or) Unvalued Policy:** The value of the cargo and consignment is not put down in the policy beforehand.

5) **Valued Policy:** The value of the cargo and consignment is ascertained and mentioned in the policy documents beforehand.

6) **Port Risk Policy:** Policy taken out in order to ensure the safety of the ship which it is stationed in a port.

7) **Wages Policy:** No fixed terms for reimbursements mentioned. If the insurance company finds the damages worth the claim then the reimbursement events are provided, else there is no compensation offered. It's not a written policy and isn't valid in a court of law.

8) **Floating Policy:** Policy where only the amount of claim is specified and all other details are omitted till the time ship embarks on its journey. Most ideal and feasible policy for frequent trips of cargo.

9) **Single Vessel Policy:** For owners having only one ship in different fleets.

10) **Fleet Policy:** Several ships belonging to one owner are insured under same policy.

11) **Block Policy:** Comes under Maritime Insurance to protect the cargo owner against damage or loss of cargo in all modes of transport through which his/her cargo is carried i.e., covering all the risks of rail, road and sea transport.

5. Responsibility of the seller under FOB Contract

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5.1. FOB (FREE ON BOARD) CONTRACT:

A contract whereby the seller of goods agrees to absorb the costs of delivering the goods to the purchaser's transporter of choice.

The term FOB is a frequent feature of contracts for the sale of goods, especially when the goods are to be delivered to a foreign destination.

5.2. RESPONSIBILITIES OF THE SELLER UNDER FOB CONTRACT

5.2.1. Provisions of goods in conformity with the contract

The seller must provide the goods and the commercial invoice, or its equivalent electronic message, in conformity with the contract of sale and any other evidence of conformity, which may be required by the contract.

5.2.2. Licenses authorizations and formalities.

The seller must obtain at its own risk and expense any export license or other official authorization and carryout, where applicable, all customs formalities necessary for the Export of goods.

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5.2.3. Contract of Carriage and Insurance.

No obligation.

5.2.4. Delivery

The seller must deliver the goods on the date or within the agreed period at the named port of shipment and in manner customary at the part on board the vessel nominated by the buyer.

5.2.5. Transfer of Risks

The seller must bear all risks of loss or damage to the goods until such time as they have passed the ship's rail at the named port of shipment.

5.2.6. Division Of Costs

All costs relating to the goods until such time as they have passed the ship's rail at the named port of shipment, and where applicable, the costs of customs formalities. Necessary for export as well as all duties, taxes and other charges payable upon export.

5.2.7. Notice to the Buyer

The seller must give the buyer sufficient notice that the goods have been delivered in accordance with the agreed period.

5.2.8. Proof of Delivery, Transport document Or Equivalent Electronic Message

The seller must provide the buyer at the seller's expense the usual proof of delivery, transport document and details of the buyer and sellers communication via electronic message.

5.2.9. Checking - Packaging - Marking

The seller must pay the costs of those checking operations (such as checking quality, measuring, weighing, counting) and packaging and marking appropriately.

5.2.10. Other Obligations

The seller must render, at the buyer's request the risk and expense, every assistance in obtaining any document or equivalent electronic message. The seller must provide the buyer with necessary information for procuring insurance and invoice.

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6. Explain the international rules relating to Bill of lading

6.1. MEANING:

A bill of lading (sometimes abbreviated as B/L or BOL) is a document issued by a carrier (or their agents) to acknowledge receipt of cargo for shipment.

A bill of lading must be transferable and serves three main functions:

- It is a conclusive receipt, i.e. an acknowledgement that the goods have been loaded.
- It contains or evidences the terms of contract of carriage; and
- It serves as a document of title to the goods, subject to the nemo dat rule.

Bills of lading are one of the three crucial documents used in international trade to ensure that the exporters receive payment an importers receive merchandise.

The other two documents are a policy of insurance and an invoice.

Whereas bill of lading is negotiable, both a policy and an invoice are assignable.

Bill of lading is a multi - purpose document; it acts as contract of carriage of goods by sea, as a formal receipt for the goods shipped and as a document of title.

- Bill of lading is said to be formal receipt by the ship owner of the goods.
- Second, bill of lading is the formal receipt for goods shipped.
    - It must contain the detailed information about quantity, packing and apparent good order and condition.
- Article 3 (3) of "Hague Visby Rules" states that if the shipper demands, the carrier would issue "Bill of lading" containing above mentioned details regarding the goods
- The carrier must write the accurate information regarding quantity, packaging & leading mark. It is important as a legal and a practical point.
- According to section 4 of sea act 1999, Bill of leading prima facie evidence whereas bill of lading in the hands of third party is conclusive evidence.
- Bill of lading is a document of title enabling the goods to be disposed of by endorsement and delivery of it.

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7. Law Relating to Carriage of Goods by Air

7.1. CARRIAGE OF GOODS BY AIR.: INTRODUCTION

- The Warsaw convention was signed in Warsaw in 1929. It stepped to unify specific rules relating to international carriage of goods by Air.
- The convention covers all international carriage of persons, luggage or goods performed by air crafts where consideration has been paid.
- The Warsaw convention as amended by the Hague protocol of 1955, exemplifies still another legislative approach to problems raised by the carriage of goods.
- It constitutes a major step toward international unification of the rules governing carriage of goods by air.
- It applies whether the aircraft is owned by private persons or by public bodies; but, as to aircraft owned by a state directly, application of the convention may be excluded by appropriate reservation.

- According to the convention, there is an international carriage where the points of departure and destination are located within different contracting states or within the same contracting state, but stepping has been agreed upon in another state, even if that state is not a member of that convention.
- The convention applies only during the time the goods are in charge of the carries in any aircraft, airfield, or other facility.
- It doesn't apply when the goods are carried by land, sea or inland water carries.
- Most nations including the United States and Great Britain are members of the convention.
- Although, the convention applies to international carriage only, a great number of contracting states including France and Great Britain have made its rules applicable to domestic carriage of goods as well.
- The air carries is liable under the convention for delay and for the loss or damage to the goods, provided that the occurrence that caused the prejudice took place during the carriage by Air.
- The carries is relieved from liability if he proves that he had taken all the necessary measures to avoid the damage or that it was impossible for him to take such measures
- Unlike carriers by land / water the air carrier is not bound to prove the actual cause of the damage and that the damage wasn't attributable to his fault.
- If the cause of the damage remains unknown there is no recovery.
- Contractual provisions tending to relieve the carrier from liability are null and void, except those covering limitation of liability for loss or damage attributed to the inherent vice of the goods.
- In other words, these can be no provision that tends to relieve the carrier from his/her liability.
- There can only be contractual provisions to the extent concerning the limitation of liability for the loss or damage of goods.
- Provisions tending to increase the liability of the carrier, however, are valid.

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- The convention contains provisions as to the jurisdiction of courts in care action is brought against the carrier and establishes a two year period of limitation for the bringing of actions.

- No provision is made for liability of the carries in case of deviation for a carrier's lien, or for stoppage in transit, as this term is understood at common law.

Accordingly, these matters are governed by the municipal law of the contracting states.

7.2. THE DOCUMENTS OF CARRIAGE

7.2.1. Air waybill

The air consignment note/Air way bill will contain the place and date it was issued. It is the prima facie evidence of the conclusion of the contract. It will also include the place of departure, destination and intended stoppages. It will signify the receipt of cargo in carriage and of the conditions of carriage.

7.2.2. Passenger ticket

The carriage involving passengers must deliver a passenger ticket which contains the place and date of issue, place of departure and destination along with the stops.

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8. What are the liabilities of the carriers of goods by sea under the Hague Visby Rules?

8.1. INTERNATIONAL RULES FOR CARRIAGE OF GOODS BY SEA

- The widespread dissatisfaction among the shippers and their insurers.

- Arbitrary restrictions imposed by carriers to limit their liability in case of loss of, or damage to cargo resulted in Hague Visby rules.

- Hague rules were drafted in Brussels 1924 and it was later amended in 1968, now known as Hague Visby Rules.

8.2. LIABILITIES OF THE CARRIERS OF GOODS BY SEA UNDER HAGUE VISBY RULES

The Carrier has three basic obligations:

a) To ensure the vessels sea worthiness;
b) To care for the cargo;

c) To issue a bill of lading where the shipper requests one.

8.3. OBLIGATION IN RESPECT OF SEA WORTHINESS

Article III paragraph 1 provides that the carrier must, before and at the beginning of the voyage (i.e. up to the moment of sailing exercise due diligence to:

- Make the ship seaworthy;
- Properly man, equip and supply the ship
- Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage & preservation.

8.4. SEAWORTHY:

- In this context means that the hull must be in sound condition, the vessel must be mechanically sound, equipped with charts, etc. and crewed by a properly trained crew.

- She need only be sea worthy at the commencement of the voyage, which usually means when she leaves the berth, whether under her own power or with the aid of tags.

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8.5. EXCERCISING DUE DILIGENCE:

It means taking all reasonable precautions to see that the vessel is fit for the voyage contemplated.

The carries is not obliged to give an absolute guarantee of seaworthiness.

- The carrier may delegate his duty to exercise due diligence, but he will be liable if his servants/contractors fail to exercise due diligence in carrying out their work.

- The holds must be fit and safe for the receptions carriage and preservation of the cargo, in particular, the hatch covers must be tight and there must be no instability of the vessel through improper stowage.

8.6. CARRIER'S OBLIGATION IN RESPECT OF THE CARGO

Article III paragraph 2 provides that subject to the provisions of article IV, the carrier must "properly and carefully load, handle, stow, carry, keep and care for and discharge any goods carried."

- Unlike seaworthiness, this duty extends throughout the voyage & implies a greater degree of care than exercising "due diligence"

- The courts do not expect perfection, but it has been held that the stowage was improper where:

    - Contamination of other goods occurred;

    - There was inadequate or no ventilation;

    - Vehicles were secure only by their own brakes.

- The carrier must have a proper system for looking after the cargo when stowed.

- He has the duty to use all reasonable means to ascertain the nature & characteristics of the cargo and care for it accordingly.

- Although, the shipper should give instructions where special care is required.

8.7. OBLIGATION TO ISSUE A BILL OF LADING

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Article III paragraph 3 provides that after receiving the goods into his charge, the carrier, the master or the carrier's agent must, if the shipper demands, issue a bill of lading to the shipper showing, amongst other things:

- All leading marks for identification of the goods, as stated by the shipper before loading, provided there are visible on the goods and their covering.

- Either the number of packages or pieces, or the quantity, or weight as stated by the shipper in his shipping note.

- The apparent order & conditions of goods,

- The carrier, master or agent need not insert any inaccurate statements on the bill of lading or give any details which he cannot reasonably check.

- Any bill of lading thus issued will be prima facie evidence of the receipt of the goods by the carrier as described, but proof to the contrary will not be admissible if the BOL is transferred to a third party acting in good faith.

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