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Tariff and Non-Tariff Restrictions in International Trade: Legal Framework and Challenges

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ABSTRACT
International trade is regulated through a combination of tariff and non-tariff measures that determine the conditions under which goods enter and compete in domestic markets. Tariffs remain an important instrument because they influence the price of imported goods, generate government revenue and provide protection to domestic industries. However, the reduction of conventional tariffs through trade liberalisation has increased the importance of non-tariff measures, including quantitative restrictions, import licensing, technical regulations, sanitary and phytosanitary requirements, subsidies, anti-dumping duties and safeguards. These measures may serve legitimate objectives such as protecting public health, consumers, the environment and economic stability. Nevertheless, they may also create unnecessary barriers or operate as disguised protectionism when applied discriminatorily or without sufficient justification. Indian constitutional jurisprudence further recognises the State's authority to regulate economic activity through taxation, fiscal incentives and other policy measures, while requiring such measures to remain within legal and constitutional limits. Thus, effective trade regulation requires a balance between market access, domestic economic interests and legitimate regulatory objectives.

KEYWORDS: Tariffs; Non-Tariff Measures; WTO; Trade Restrictions; International Trade Law

1. INTRODUCTION

International trade is an important part of modern economic relations. It enables countries to access goods, technology and resources, while promoting competition, investment and economic integration. Governments, however, retain the authority to regulate trade for economic, social, environmental and public-health objectives.

The tariff is a traditional trade restriction imposed as a customs duty on imported goods. It can protect domestic industries, regulate import competition and generate government revenue. The post-war trading system, particularly the General Agreement on Tariffs and Trade (GATT), sought to reduce excessive tariffs through negotiation and non-discrimination. The establishment of the World Trade Organization (WTO) in 1995 further developed this framework through agreements regulating technical barriers, Sanitary and Phytosanitary Measures (SPS) measures, subsidies, anti-dumping and safeguards.[1]

India's 1991 economic reforms significantly reduced import tariffs and gradually removed quantitative restrictions, marking a major shift from the earlier protectionist regime.[2] However, the reduction of tariffs did not eliminate barriers to trade. Instead, Non-Tariff measures (NTMs) such as licensing requirements, technical standards, certification, SPS measures, anti-dumping duties and safeguards became increasingly important.

NTMs are not inherently unlawful, as governments have a legitimate right to protect health, safety, consumers and the environment. The difficulty arises when such measures are discriminatory, unnecessarily trade restrictive or designed to protect domestic producers.[3]

This issue is particularly significant because tariff liberalisation was accompanied by increased reliance on anti-dumping and safeguard measures.[4] The WTO framework

[1] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, Annex 1A, 1867 U.N.T.S. 154; Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization* (4th ed. 2017).

[2] Arvind Panagariya, *India: The Emerging Giant* 90–123 (Oxford Univ. Press 2008).

[3] John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (2d ed. MIT Press 1997).

[4] Chad P. Bown & Patricia Tovar, *Trade Liberalization, Antidumping, and Safeguards: Evidence from India's Tariff Reform*, 96 J. Dev. Econ. 115–25 (2011).

therefore seeks to balance trade liberalisation with Members' regulatory autonomy. This study examines this balance, with particular focus on tariffs, non-tariff restrictions and Indian trade practice.

2. OBJECTIVES OF THE STUDY

1. To examine the nature and significance of tariff and non-tariff restrictions in international trade.
2. To distinguish legitimate regulatory measures from disguised protectionism.
3. To examine important WTO decisions concerning quantitative restrictions, technical regulations and health-related trade measures.
4. To analyse India's experience with tariffs, quantitative restrictions and trade remedies.
5. To identify challenges faced by developing countries in accessing international markets.
6. To suggest measures for improving transparency, fairness and predictability in international trade regulation.

3. RESEARCH QUESTIONS

1. What legal principles govern tariff and non-tariff restrictions under WTO law?
2. Under what circumstances can a non-tariff measure constitute an unlawful restriction?
3. What lessons can be drawn from India's experience with tariff liberalisation and non-tariff measures?
4. What reforms are necessary to ensure that legitimate regulations do not become disguised protectionism?

4. LEGAL FRAMEWORK

A. GATT 1994

The GATT 1994 constitutes the principal legal framework governing trade in goods. Its fundamental principles include most-favoured-nation treatment, national treatment, tariff bindings and restrictions on quantitative barriers.

MFN Principle: Requires WTO Members to extend trade advantages granted to one Member to like products of other Members, subject to recognised exceptions.[5]

Tariff Concessions: Establishes bound tariff commitments. Members may generally apply tariffs below the bound rate but cannot ordinarily exceed their commitments.[6]

National Treatment: Prevents discrimination against imported products through internal taxes or regulations that favour domestic products.[7]

Quantitative Restrictions: Generally, prohibits import and export restrictions such as quotas and certain licensing systems, subject to recognised exceptions.[8]

General Exceptions: Permits certain measures necessary for legitimate objectives, including the protection of human, animal, or plant life and the conservation of natural resources, provided that the requirements of the Article XX chapeau are satisfied.[9]

B. Agreement on Technical Barriers to Trade

The TBT Agreement regulates technical regulations, standards and conformity assessment procedures.[10]

Members may adopt measures for legitimate objectives, but such measures should not create unnecessary obstacles to international trade.

Different national standards can increase compliance costs, particularly for developing-country exporters.[11]

C. Sanitary and Phytosanitary Measures (SPS)

The SPS Agreement covers measures protecting human, animal and plant life or health.[12]

[5] General Agreement on Tariffs and Trade art. I, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187.

[6] RAJ BHALA, MODERN GATT LAW: A TREATISE ON THE GENERAL AGREEMENT ON TARIFFS AND TRADE (Sweet & Maxwell 2005).

[7] General Agreement on Tariffs and Trade art. III, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187.

[8] General Agreement on Tariffs and Trade art. XI, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187.

[9] General Agreement on Tariffs and Trade art. XX, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187.

[10] Agreement on Technical Barriers to Trade art. 2.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120.

[11] Aaditya Mattoo and Arvind Subramanian, *Regulatory Standards in International Trade: A Developing Country Perspective*, 17 **WORLD BANK RES. OBSERVER** 335 (2002).

[12] Agreement on the Application of Sanitary and Phytosanitary Measures arts. 2.1-2.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493.

SPS measures should generally be based on scientific principles and sufficient scientific evidence.

Food-safety, quarantine and disease-control requirements can significantly affect agricultural market access

D. Anti-Dumping Agreement

Anti-dumping measures address imports sold below their normal value that cause material injury to domestic industry.[13]

WTO law regulates the circumstances in which anti-dumping duties may be imposed. India is a significant user of anti-dumping measures.

Increased use following tariff liberalisation raises concerns about whether trade remedies may partly replace tariff protection.

E. Agreement on Subsidies and Countervailing Measures

The SCM Agreement regulates government subsidies and countervailing measures.[14]

Subsidies may distort competition by reducing production costs or providing financial advantages.

WTO rules distinguish between prohibited and actionable subsidies, while recognising certain legitimate governmental support.

F. Agreement on Safeguards

Safeguards provide temporary protection where increased imports cause or threaten serious injury to domestic industry.[15]

Unlike anti-dumping measures, safeguards do not require evidence of unfair pricing. Their justification is based on the increase in imports and resulting serious injury.

[13] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 arts. 1-3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201.

[14] Agreement on Subsidies and Countervailing Measures arts. 1–3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14.

[15] Agreement on Safeguards art. 2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 154.

5. ANALYSIS OF THE TOPIC

A. Tariffs and Their Economic Function

Tariffs are transparent trade instruments because their rates can generally be identified before importation. They serve three main functions: revenue generation, protection of domestic industries and regulation of import competition.[16]

B. Non-Tariff Measures

Non-tariff measures (NTMs) include regulations that may affect trade without directly imposing tariffs. Although safety and quality standards may pursue legitimate objectives, they can increase compliance costs for foreign exporters.[17]

C. India's Quantitative Restrictions

India historically maintained extensive quantitative restrictions on imports. In India-Quantitative Restrictions, the WTO found that several restrictions could not be justified under WTO rules and required their removal. The dispute demonstrated that WTO membership limits the use of quantitative import controls.[18]

D. Anti-Dumping and Safeguards

Following tariff liberalisation, India increasingly relied on anti-dumping and safeguard measures. These instruments are permitted under WTO law, but their growing use raises the question of whether reduced tariff protection may encourage greater reliance on trade remedies as alternative forms of protection.

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E. Technical Barriers and Product Standards

Technical regulations can create significant market-access difficulties where foreign exporters must meet different testing, certification or production requirements. The TBT Agreement permits legitimate regulation while encouraging transparency and the use of international standards.[19]

[16] Arvind Panagariya, *India: The Emerging Giant* 90–123 (Oxford Univ. Press 2008).

[17] Roy Santana & Lee Ann Jackson, *Identifying Non-Tariff Barriers: Evolution of Multilateral Instruments and Evidence from the Disputes (1948–2011)*, 11 World Trade Rev. 1, 1–30 (2012).

[18] *India- Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, Appellate Body Report, WTO Doc. WT/DS90/AB/R (adopted Sept. 22, 1999).

[19] Agreement on Technical Barriers to Trade arts. 2.2, 2.4, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120.

F. SPS Measures and Agricultural Trade

Sanitary and phytosanitary measures concerning food safety, plant pests, animal diseases and contamination can significantly affect agricultural trade. The SPS Agreement requires such measures to be based on scientific principles and not used as arbitrary protectionism.[20]

G. Environmental Measures

Environmental measures concerning climate change, emissions and sustainable production increasingly influence international trade. US- Shrimp demonstrates that environmental objectives can be reconciled with WTO obligations, provided measures are implemented consistently and without unjustifiable discrimination.[21]

H. Protectionism Disguised as Regulation

The key challenge is distinguishing legitimate regulation from disguised protectionism. WTO disputes such as EC- Asbestos demonstrate the importance of public-health objectives,[22] while US- Clove Cigarettes shows that even legitimate public-health measures remain subject to WTO disciplines concerning discriminatory treatment.[23]

6. IMPORTANT CASE LAWS

1. K.T. Plantation Pvt. Ltd. v. State of Karnataka[24]

The Supreme Court examined the relationship between economic regulation and constitutional property rights. Although the case did not directly concern WTO obligations, it establishes that governmental regulation affecting commercial interests must operate within constitutional and legal limits.

2. Gujarat Ambuja Cement Ltd. v. Union of India[25]

The Supreme Court considered taxation and legislative competence in the context of economic regulation. The decision demonstrates that fiscal measures must have lawful

[20] Agreement on the Application of Sanitary and Phytosanitary Measures arts. 2.2, 5.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493.

[21] *United States- Import Prohibition of Certain Shrimp and Shrimp Products*, Appellate Body Report, WTO Doc. WT/DS58/AB/R (adopted Nov. 6, 1998).

[22] *European Communities- Measures Affecting Asbestos and Asbestos-Containing Products*, Appellate

Body Report, WTO Doc. WT/DS135/AB/R (adopted Apr. 5, 2001).

[23] *United States- Measures Affecting the Production and Sale of Clove Cigarettes*, Appellate Body Report, WTO Doc. WT/DS406/AB/R (adopted Apr. 24, 2012).

[24] *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1, 25–30.

[25] *Gujarat Ambuja Cement Ltd. v. Union of India*, (2005) 4 SCC 214, 224–29.

legislative authority. This is relevant to customs duties and other trade-related fiscal measures, which must comply with domestic law and India's international commitments.

3. Union of India v. Azadi Bachao Andolan[26]

The Supreme Court recognised the importance of economic policy and international economic relations and adopted judicial restraint in reviewing economic policy decisions. This principle is relevant to tariff rates, import policies and trade agreements, while recognising that executive discretion remains subject to constitutional and statutory limits.

4. R.K. Garg v. Union of India[27]

The Supreme Court held that economic legislation generally deserves greater judicial latitude because it involves complex policy choices and experimentation. This principle is relevant to tariff and trade regulation, where governments may modify policies in response to changing economic conditions.

5. State of Rajasthan v. J.K. Udaipur Udyog Ltd.[28]

The Supreme Court considered taxation and fiscal incentives affecting industrial activity. The decision illustrates the importance of legislative policy in determining the treatment of industries and economic activities. It is relevant to understanding the State's role in regulating economic activity through fiscal measures.

7. INDIAN POLICY EXAMPLES

1. India's Removal of Quantitative Restrictions

- India historically maintained extensive quantitative restrictions on imports. These restrictions formed part of a highlIndia's Quantitative Restrictions
- India historically maintained extensive quantitative restrictions as part of its controlled import regime before the 1991 economic reforms.
- Following liberalisation and WTO commitments, India progressively removed many quantitative restrictions.

[26] *Union of India v. Azadi Bachao Andolan*, (2004) 10 SCC 1, 38–42.

[27] *R.K. Garg v. Union of India*, (1981) 4 SCC 675, 687–88.

[28] *State of Rajasthan v. J.K. Udaipur Udyog Ltd.*, (2004) 7 SCC 673, 683–85.

- The WTO dispute in India- Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products was significant in this process.[29]
- The dispute confirmed that India's import policies had to comply with its obligations under GATT 1994.
- The removal of quantitative restrictions marked a shift from direct administrative controls towards a more tariff-oriented trade regime.

2. India's Anti-Dumping Policy

India is a significant user of anti-dumping measures.

- The use of anti-dumping investigations increased following tariff liberalisation, indicating a shift towards WTO-permitted trade remedies.[30]
- Anti-dumping measures allow domestic industries to obtain protection against imports alleged to be dumped and causing material injury.
- The Directorate General of Trade Remedies (DGTR) administers anti-dumping, countervailing-duty and safeguard investigations.
- Such measures must comply with WTO rules and Indian legal procedures.
- Authorities must establish dumping, material injury and a causal relationship between dumped imports and injury.
- Anti-dumping measures therefore represent a legally recognised but regulated form of trade protection.

3. India's Foreign Trade Policy

- India's Foreign Trade Policy (FTP) provides the principal policy framework for regulating imports and exports.
- The Foreign Trade Policy 2023 focuses on facilitating trade, improving export competitiveness and reducing transaction costs.
- India's trade policy has gradually moved away from quantitative restrictions and towards:

[29] *India-Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, Appellate Body Report, WTO Doc. WT/DS90/AB/R (adopted Sept. 22, 1999).

[30] Chad P. Bown & Patricia Tovar, *Trade Liberalization, Antidumping, and Safeguards: Evidence from India's Tariff Reform*, 96 J. Dev. Econ. 115–25 (2011).

  - tariffs;
  - regulatory standards;
  - trade facilitation; and
  - targeted trade-remedy measures.

- The overall approach reflects India's increasing integration with the global trading system while protecting legitimate domestic economic interests.

8. MAJOR WTO DISPUTES AND INDIA'S TRADE LIBERALISATION

A. India- Quantitative Restrictions on Imports

- The United States challenged India's quantitative restrictions on agricultural, textile and industrial products.
- The Appellate Body rejected India's justification under the GATT balance-of-payments provisions.
- The dispute contributed to the removal of several quantitative restrictions.

B. EC- Asbestos

- France prohibited asbestos and asbestos-containing products on health grounds.
- The WTO recognised protection of human health as a legitimate regulatory objective.

C. US- Clove Cigarettes

- Indonesia challenged the United States' prohibition of clove cigarettes while allowing menthol cigarettes.

- The dispute examined non-discrimination under the TBT Agreement.
- It demonstrated that legitimate public-health regulation must still comply with WTO non-discrimination requirements.

D. US- Shrimp

- The United States restricted shrimp harvested using methods harmful to sea turtles.
- The Appellate Body recognised environmental protection as a legitimate objective under GATT Article XX.
- The case emphasised the importance of non-discriminatory implementation of environmental measures.

E. India's Post-1991 Trade Liberalisation

- India reduced tariffs and progressively removed quantitative restrictions after 1991.
- India became increasingly integrated into the global trading system.
- Anti-dumping and safeguard measures subsequently became important instruments for protecting domestic industries.

9. FINDINGS

The study finds that tariffs remain important for protecting domestic industries, generating revenue and regulating import competition, but their relative importance has declined due to trade liberalisation. Consequently, governments increasingly rely on non-tariff measures such as technical standards, licensing, SPS requirements, certification and trade remedies. Thus, there has been a gradual shift from traditional tariff protection towards regulatory and non-tariff forms of trade intervention.

10. SUGGESTIONS

Greater transparency should be maintained in the adoption of tariff and non-tariff measures so that traders can clearly understand applicable requirements. WTO Members should promote regulatory cooperation and harmonisation by using international standards and mutual recognition of testing and certification procedures.

Health, safety and SPS measures should be science-based, proportionate and non-discriminatory, ensuring that legitimate regulations do not become disguised protectionism. Developing countries should receive greater technical and financial assistance to improve testing, certification and customs infrastructure.

India should strengthen stakeholder consultation before introducing major trade regulations and ensure that anti-dumping and safeguard measures are applied transparently and only where WTO requirements are satisfied. Finally, digitalization and trade facilitation should be promoted to reduce administrative delays and unnecessary compliance costs.

11. CONCLUSION

The study concludes that international trade regulation has gradually shifted from reliance on traditional tariffs towards a broader combination of non-tariff and regulatory measures. Tariffs continue to serve important functions, particularly in revenue generation, protection of domestic industries and regulation of imports. However, the increasing use of technical standards, SPS requirements, licensing, anti-dumping measures, safeguards and subsidies demonstrates the growing importance of regulatory trade measures.

The analysis further shows that such measures are not inherently protectionist, as WTO law recognises the right of Members to pursue legitimate objectives such as public health, environmental protection and economic stability. However, their application must remain consistent with WTO principles of non-discrimination, transparency and fair competition. India's experience since the 1991 reforms illustrates the movement from quantitative restrictions towards tariff-based and regulatory mechanisms, while Indian judicial decisions recognise considerable governmental discretion in economic policy subject to constitutional and legal limits.

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