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COMPARATIVE ANALYSIS OF INTERNATIONAL TRADE LAW AND INDIAN TRADE LAW

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ABSTRACT

Trade is crucial for a country's economic growth. Countries establish relations with other nations through multilateral or bilateral agreements. Imports and exports are crucial because they contribute to a country's economic development and provide citizen's products that are not available in the country. Not every country has resources that supply all the necessities, and that is why trade is important. It also increases competition and drives innovation. Trade also helps customers to buy commodities at lower prices because companies try to win customers by offering products at a lower price. It also promotes peaceful cooperation as countries try to build trust through trade. Every country has its own domestic trade law that governs its trade activity. On the other hand, International trade law is governed by agreements and organisations such as the WTO. When a country is engaged in International trade, it has to follow the relevant agreements and principles, and if it violates them, countries can impose sanctions on that particular state. In this article, we will analyze International and Indian trade law, how they are governed and what are the similarities and differences between them.

Keywords: International trade law, Indian Trade law, WTO, GATT, Export, Import.

INTRODUCTION

Trade means the exchange of goods and services between people, countries, companies or other forms of business like partnership, sole proprietorship, etc. For instance, India imports raw materials from Australia and exports goods and services to other countries. Import means bringing goods and services into the country, and exports refer to sending goods and services out to countries in the international market.

Trade can be classified into two types:-

(I) **Domestic Trade**- It means exchanges of goods and services within the country. Here, goods are sold domestically, and there is no role of international trade. Further, it can also be subdivided into two types.

1. **Wholesale Trade**- It means buying goods in bulk from manufacturers and then selling them to retailers or small businesses.

2. **Retail Trade**- Here, a retailer buys goods from a wholesaler and acts as a link between the wholesaler and the consumers. Consumers buy goods directly from the retailers.

(II) **International Trade**- It refers to the exchange of goods and services across countries. A particular country can have trade relations with many countries. For instance, India exports various goods and services to various countries, such as oil from Russia, rare raw materials from China or Defence equipment from the USA.

Trade helps buyers to fulfil their demands and promotes economic growth. Countries can earn foreign income by exporting goods that are produced (domestically) to maintain their status quo in the global economy. On the other hand, by importing goods, countries can make low-cost products available to their citizens that are scarcely available domestically. Thus, economies engaged in free trade can benefit from the law of comparative advantage and trade in suitable goods¹. International trade is governed by International framework like WTO GATT, and India's domestic trade is governed by its own legislation. Below we will examine these two and how they differ from each other.

International Trade Law

¹ Trade: *Meaning, Types and Working*, TICKERTAPE (Oct. 12, 2023) <https://www.tickertape.in/glossary/trade-meaning-types-and-working/>

International trade law deals with customs and regulations that govern exchanges of goods, services and intellectual property across international borders. The post-World War II period saw a significant increase in trade at the international level, and during this time various multinational companies were also incorporated, which promoted trade. Below will analyse how international law functions and who governs it.

GATT (The General Agreement on Tariffs and Trade)

The General Agreement on Tariffs and Trade (GATT) was a treaty formed after the post- world war-II, which aimed to facilitate international trade and remove barriers. It was signed in 1947, regulating trade among 153 countries. It functioned as an organisation and had eight rounds of talks addressing various trade issues and resolving international trade disputes.

GATT had eight rounds of talks addressing various trade issues and resolving international trade disputes. After seven years of negotiation, the Uruguay Round was completed on December 15, 1993, signed by 117 countries and agreeing to reduce trade barriers and to boost economic recovery after World War II.

This agreement also created the **World Trade Organisation** (WTO), signed by 125 nations, which came into being on January 1, 1995 and absorbed the organisation to implement GATT.

The articles of GATT contain provisions that promote trade and prevent illegal trade practices such as:-

- Article VI deals with anti-dumping and countervailing duties, which are taxes on imported goods to protect local business from unfair foreign competition.
- Article XI- General Elimination of Quantitative Restrictions means governments cannot limit the goods they import or export. Governments can impose tariffs and taxes on goods and services but not quantitative restrictions, and Article XIII says that if the government limits the physical quantity of goods, that limit must apply to all trading nations without showing any kind of bias.
- Article XVI talks about subsidies, where it prevents the government from providing financial support to the domestic market, helping them to export goods at a price no one else can match.

These are among the few articles that promote equal trade practices and prevent any kind of discrimination in the global market.

WTO (World Trade Organisation)

WTO is the only global organisation that deals with rules of trade between nations. It has over 160 members representing 98 per cent of world trade. All the major decisions are made by the members or ministers-either their ambassadors or delegates. The WTO has many rules such as:-

- It operates a global system of trade rules.
- It acts as a forum for negotiating trade agreements.
- It settles trade disputes between its members, and it supports the needs of developing countries.
- The primary purpose of the WTO is to open trade for the benefit of all.²

GATT was replaced by the WTO because it lacked institutional structure, and trade in services and intellectual property rights were not covered. It also had lack of dispute settlement mechanism, and because of these shortages, the WTO incorporated GATT principles and provided a better institutional framework.

GATS, which is the General Agreement on Trade in Services, is a treaty by the WTO that created rules for International trade in services as a result of the Uruguay Round negotiations, and it deals with service sectors like banking, telecommunications, education, and tourism.

TRIPS refers to the Agreement on Trade-Related Aspects of Intellectual Property Rights; it is also another WTO treaty and deals with intellectual property rights such as trademarks, copyrights, Patents, Geographical Indications, designs, and protects the rights of authors, performers, innovators, artists, etc.

So, the WTO is an organisation that provides a framework for international trade and provides a mechanism to resolve trade-related disputes.

UNCITRAL (United Nations Commission on International Trade Law)

UNCITRAL is a legal body of the United Nations, established by the General Assembly in 1966, and it's a core legal body of the UN system in the field of international trade law. In establishing the Commission, the General Assembly recognised that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the

² *The WTO in Brief*, WORLD TRADE ORGANIZATION (last visited Sept. 10, 2026)
https://www.wto.org/english/thewto_e/thewto_e.htm

Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles.³

UNCITRAL includes conventions, rules, and model laws to harmonise international law and to prevent and resolve cross-border disputes. These categories include: International Commercial Arbitration, International Commercial Mediation, Investor-State Dispute Settlement, Online Dispute Resolution, International Transport of Goods and related matters, Insolvency, International Sale of Goods (CISG) and Related Transactions, Payment and Trade Finance, Electronic Commerce, etc.

Besides the procedural framework, UNCITRAL countries can have bilateral, multilateral agreements regarding trade and these agreements have their own rules and regulations that govern the trade between them.

INDIAN TRADE LAW

Indian trade law is governed by its own laws made by the legislature and institutional framework, including the Foreign Trade (Development and Regulation) Act, 1992, Customs Act, 1962, and agencies such as DGFT and DGTR, which operate independently of any international bodies, and these laws are administered under the Ministry of Commerce and Industry. Under this section, we will discuss how domestic law is structured and how they govern the Indian trade law.

Ministry of Commerce and Industry

The ministry is responsible for regulating trade, promoting economic growth and regulating the market. Department of Commerce is divided into different divisions such as Administrative and General Division, Trade Policy Division, Foreign Trade, Territorial Division, Finance Division, etc. and is responsible for multilateral and bilateral commercial relations, export promotion measures, and formulating and implementing foreign trade policy.

The subjects under the administrative control of the department include:-

- International trade
- Foreign Trade
- State trading

³About UNCITRAL, United Nations Comm'n on Int'l Trade Law (last visited Sept. 10, 2026).
<https://uncitral.un.org/en/about>

- Management of Indian Trade Services
- Special Economic Zones ⁴

Department for Promotion of Industry and Internal Trade is responsible for the growth of the Industrial sector, keeps priorities of national and socio-economic development, and is also in charge of overall industrial policy.

It is also responsible for Intellectual property rights such as trademarks, copyright, patents, Designs, and geographical indications, and for providing protection and promotion.

DGFT (Directorate General of Foreign Trade)

It is an agency attached to the Ministry of Commerce and Industry, responsible for formulating and implementing the Foreign Trade Policy. Its main purpose is to promote exports from India and is also a licensing authority for export and import businesses in India. It also has the authority to prohibit and regulate imports and exports.

DGTR (Directorate General of Trade Remedies)

It also comes under the Ministry of Commerce and Industry, an apex national authority which deals with trade remedial measures such as Anti-dumping, Countervailing duties and other safeguard measures. It also provides trade defence support to our domestic industry and exporters in dealing with increasing instances of trade remedy investigations instituted against them by other countries. DGTR provides a level playing field to the domestic industry against the adverse impact of unfair trade practices like dumping and actionable subsidies from any exporting country, by using Trade Remedial methods under the relevant framework of WTO arrangements, Customs Tariff Act & Rules and other relevant laws and International agreements, in a transparent and time-bound manner.⁵

Foreign Trade (Development and Regulation) Act, 1992

The Act replaced the Import and Export (Control) Act, 1947 and is the main law, which gives power to the central government to regulate, control and develop India's foreign trade. The Act

⁴ Dep't of Commerce, Gov't of India, *Subjects Under Administrative Control*, Ministry of Commerce and Industry (last visited Sep. 10, 2026)

https://web.archive.org/web/20081219201038/http://www.commerce.nic.in/aboutus/aboutus_subject.asp?id=2

⁵ Directorate General of Trade Remedies, *About the Department*, Ministry of Commerce and Industry, Government of India (last visited Sept. 11, 2026).

<https://www.dgtr.gov.in/en/about-department>

provides a basis for regulating Foreign Trade Policy, penal actions for violations, to promote trade, restrictions or prohibiting certain goods, etc.

The object of the Act is:-

- To facilitate India's foreign trade
- To support economic growth
- To promote import-export activities
- To empower the government to respond to global trade developments.
- To ensure trade rules are being followed.

Customs Act, 1962

The Customs Act, 1962 deals with charging and collecting customs duties, imports, exports and related issues. It gives power to the customs officials to:-

- Control goods crossing borders.
- Prevent smuggling, and to search, seize, or confiscate goods for violations of rules.
- To ensure that International Trade agreements and principles are being followed.
- To restrict or prohibit goods on the grounds of health concern, national security or environmental protection.

The primary objective of Custom Act is to levy and collect duties, facilitate legitimate trade, prevent smuggling, regulation of import and exports.

Although these frameworks govern India's trade domestically, they should be aligned with international trade commitments.

Comparative Analysis: International Trade Law and Indian Trade Law

Although India's trade law follows the principle of International trade law and is influenced by it, Indian domestic law differs from International trade law in several aspects, and these differences can be examined on the following basis:-

1. Source of Authority

International trade law is governed by agreements like GATT and WTO, which are agreements between the nations, and on the other hand, Indian domestic trade law is made by the Parliament, such as the Foreign Trade (Development and Regulation) Act, 1992, Customs Act, 1962, etc.

India follows a “dualist” approach, which means India considers international and Domestic law as distinct legal systems, and International trade law can only be enforced if Parliament makes it law. This means India has power over which international law to follow and which not, in the country.

2. Dispute Settlement

Disputes can arise between countries if an agreement is violated, and the WTO has its own framework for resolving these disputes. UNCITRAL also has its own mechanism, where disputes can be resolved through arbitration and mediation. A contract between the states can also mention how the disputes can be resolved, if any arise.

On the other hand, India trade disputes will be resolved by India’s courts, depending upon the nature of the dispute and issues. So, it will be dealt with through its own domestic legal mechanism.

3. Import and Export

International trade agreements provide rules that every country needs to follow, but India also has its own rules and regulations regarding trade law and can make rules regarding what goods to restrict, prohibit or freely allow.

4. Restriction on Trade and Tariffs

International trade laws were made to reduce unnecessary barriers and to promote trade among the countries.

India has customs, duties and other measures to boost its own economic growth, but it also needs to consider WTO obligations while making such rules.

5. Sovereignty

India is a sovereign country and can make rules regarding trade laws. But by joining organisations like the WTO, it is also bound to follow their principles too. So, India needs to balance both its national and international commitments.

6. Enforcement

International disputes between countries are resolved by the WTO through its own dispute settlement mechanism. But at the domestic level, courts resolve disputes that arise between the government and any individual or company.

Indian and International trade law have similarities, such as both regulating import-export, trade restrictions and tariffs. They aim to promote trade and to create an organised and stable trade system. However, differences arise in their sources and institutions. International trade law comes from agreements, while India's trade law comes from its own legislation. Both of them are administered by different institutions. For instance, International trade law is governed by the WTO and India's trade law is administered by customs authorities and DGFT. Although India has its own domestic trade law, it also works within the wider international trade system.

Conclusion

International trade law and Indian trade laws are different but similar too. Both aim to promote trade and prevent illegal trade practices. International trade law is followed at the international level, but Indian trade law works within its own domestic territory, and also India follow Dualist approach, which means that to implement any International trade law nationally, it needs to be passed by legislation first. The main challenge for India is to follow international obligations and, along with that, to protect its own economic growth, its national interest and national policy objectives.