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# **LIBERALISATION, PRIVATISATION, AND GLOBALISATION IN INTERNATIONAL TRADE LAW: A LEGAL STUDY OF INDIA'S FOREIGN TRADE EVOLUTION**

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## **Abstract**

The emergence of liberalisation, privatisation, and globalisation (LPG) as central economic doctrines since the early 1990s has fundamentally reshaped India's foreign trade policy and legal landscape. As the country transitioned from a protectionist, state-led model to a globally integrated market economy, Indian trade law has undergone structural and institutional reforms to align with the rules-based multilateral trade system, notably under the World Trade Organization (WTO). This paper examines the legal implications of the LPG framework on India's foreign trade regime, analysing the evolution of statutory instruments, the role of key regulatory bodies like DGFT and CBIC, and the judiciary's role in interpreting trade-related laws. It further explores how India has navigated international trade obligations while safeguarding its economic sovereignty. The study also evaluates persistent legal challenges and policy inconsistencies that hinder the full realisation of liberalised trade benefits. Finally, the paper offers reform-oriented recommendations aimed at achieving a balanced, legally sound, and internationally compliant trade regime.

**Keywords:** Liberalisation, Privatisation, Globalisation, WTO, Indian trade law, DGFT, FEMA, international trade law, customs, tariff rationalisation

## **1. Introduction**

The globalisation of commerce and the increasing interdependence of economies have driven nations to adopt reforms that integrate them into the international trade system (Krugman et al., 2018). For India, the early 1990s marked a turning point: a severe balance of payments crisis necessitated the adoption of a New Economic Policy (NEP), which introduced structural reforms under the three pillars of liberalisation, privatisation, and globalisation (Ahluwalia, 2002; Panagariya, 2004). These reforms were not only economic but profoundly legal in character, demanding a systematic overhaul of India's trade laws and administrative

mechanisms to meet new global realities (Bhagwati & Panagariya, 2013).

Historically rooted in protectionism, India's trade regime relied heavily on import substitution, high tariffs, and restrictive licensing systems (Kumar, 2007). However, global integration required India to open its markets, simplify trade procedures, encourage private and foreign investment, and adhere to international legal norms, especially those of the WTO (Bhatia, 2011).

This research paper aims to critically analyse how the LPG framework has transformed India's foreign trade legal regime. It discusses the statutory frameworks, institutional dynamics, judicial precedents, and international obligations that underpin India's contemporary trade policy. Special attention is given to the Foreign Trade (Development and Regulation) Act, 1992; Customs Act, 1962; FEMA, 1999; and India's obligations under WTO agreements. The paper also evaluates the challenges of policy inconsistency, legal ambiguity, and enforcement bottlenecks that continue to plague India's trade environment.

## **2. Historical and Legal Evolution of India's Trade Regime**

### **2.1 Protectionist Foundations (1947–1990)**

India's post-independence trade policy was guided by the principles of **self-reliance and import substitution industrialisation (ISI)**. The Industrial Policy Resolution of 1956 and the Import and Export (Control) Act, 1947 established a framework of tight state control over foreign trade. Quantitative restrictions, licensing requirements, and high import tariffs were tools of economic sovereignty intended to protect domestic industries and conserve foreign exchange (Kumar, 2007).

The **Foreign Exchange Regulation Act (FERA), 1973**, further restricted foreign investment and capital mobility. Combined with bureaucratic licensing delays (the so-called "License Raj"), India's trade environment was widely seen as inward-looking and inefficient (Ahluwalia, 2002).

### **2.2 1991 Crisis and the Turn Towards Liberalisation**

The **1991 balance of payments crisis** acted as a catalyst for sweeping reforms. Under the leadership of then Finance Minister Dr. Manmohan Singh, India introduced its New Economic Policy aimed at deregulation, reduced government control, and outward economic engagement (Panagariya, 2004). The reforms were legal as well as economic:

- The **Foreign Trade (Development and Regulation) Act, 1992** replaced older licensing laws and empowered the central government to develop a formal Foreign Trade Policy (FTP).
- The **Customs Act, 1962** was progressively amended to align with GATT/WTO norms.
- **FERA was repealed and replaced by FEMA in 1999**, shifting from regulation to management of foreign exchange, thus liberalising current and capital account transactions.

### 2.3 WTO Accession and Harmonisation (1995–Present)

India's accession to the **World Trade Organization in 1995** marked its formal integration into the global rules-based trade system. This had major legal implications:

- India became subject to **binding commitments under WTO agreements**, including GATT, GATS, TRIPS, AoA, and TBT.
- It was compelled to rationalise tariffs, eliminate quantitative restrictions, and reform subsidy regimes (Bhatia, 2011).
- WTO disputes involving India—such as *India — Quantitative Restrictions* (WT/DS90)—highlighted the need for greater consistency between domestic policies and international obligations.

The resulting phase saw a spate of legal reforms in tariff policy, licensing, export incentives, and customs procedures, as well as the development of export promotion zones (e.g., SEZs under the **SEZ Act, 2005**).

## 3. Legal Framework for Trade Liberalisation in India

### 3.1 Foreign Trade (Development and Regulation) Act, 1992

The **Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act)** serves as the principal legislation governing India's trade policy post-liberalisation. It empowers the central government to:

- Formulate the **Foreign Trade Policy (FTP)**
- Regulate imports and exports through notifications
- Issue and revoke Importer-Exporter Codes (IECs)
- Administer export promotion schemes

Legal reforms post-1992 significantly reduced licensing burdens, moving most items to the **Open General Licence (OGL)** category. This represented a shift from a restrictive to a facilitative trade regime (Chaturvedi, 2015).

### 3.2 Customs Act, 1962 and Tariff Rationalisation

The **Customs Act, 1962** forms the basis of India's import-export taxation system. Post-1991, the Act has been amended multiple times to:

- Reduce average tariff rates (from over 100% in 1990 to under 15% in the 2000s)
- Simplify classification and valuation procedures under the **Customs Tariff Act**
- Introduce **anti-dumping, safeguard and countervailing duties** in compliance with WTO norms (Aggarwal, 2007)

The legal rationale for tariff rationalisation was to improve competitiveness and attract foreign investment while preserving safeguards for vulnerable sectors.

### 3.3 FEMA, 1999: Liberalising Foreign Exchange

The **Foreign Exchange Management Act (FEMA), 1999**, replaced the draconian FERA and marked a paradigm shift from control to management. FEMA:

- Legalised foreign exchange dealings related to current and capital account transactions
- Empowered the **Reserve Bank of India (RBI)** to regulate external payments
- Supported the liberalisation of **foreign direct investment (FDI)** and external commercial borrowings (ECBs)

FEMA was essential in removing legal hurdles for cross-border trade and investment, supporting India's global economic integration (Bhagwati & Panagariya, 2013).

### 3.4 Institutional Reforms: DGFT, CBIC, SEZ Authorities

Liberalisation also brought changes in institutional structure:

- **Directorate General of Foreign Trade (DGFT)**: the key regulator for FTP, licensing, and incentive schemes
- **Central Board of Indirect Taxes and Customs (CBIC)**: restructured for efficiency and digitisation in customs
- **Special Economic Zone (SEZ) Authorities**: created under the **SEZ Act, 2005**, to provide simplified compliance and fiscal incentives

### 3.5 Judicial Engagement and Liberalisation

Judicial interpretation has shaped the liberalisation process:

- In *Tata Consultancy Services v. Union of India* (2005), the Supreme Court broadened the interpretation of "goods" to include software, aiding services exports.

- In *CCE v. DLF Limited* (2011), the court interpreted tax liabilities in trade facilitation disputes.

Judiciary has generally supported liberalisation, subject to constitutional safeguards and due process.

## 4. Privatisation and Its Legal Impact on Indian Foreign Trade

### 4.1 Meaning and Legal Basis of Privatisation

**Privatisation** refers to the transfer of ownership or management of public enterprises to the private sector. In India, privatisation gained legal support through:

- **Disinvestment Policy Guidelines**
- **Companies Act and Competition Act**
- Judicial pronouncements upholding the validity of strategic disinvestment

### 4.2 Sectoral Privatisation and Trade Efficiency

Key trade-related sectors affected by privatisation include:

- **Ports and Logistics:** The PPP model under the **Major Port Authorities Act, 2021** has improved cargo handling capacity and turnaround time
- **Telecom and Infrastructure:** FDI-friendly legal frameworks have enhanced trade-enabling infrastructure (Mukherjee, 2018)

Privatisation has helped integrate India into global value chains by improving logistics and reducing transaction costs.

### 4.3 Regulatory Oversight and SEBI/RBI

Regulatory institutions like **SEBI and RBI** ensure compliance in cases of:

- Foreign investment
- Cross-border M&A
- Sector-specific investment caps

Legal clarity provided by **FDI Policy (consolidated annually by DPIIT)** and automatic approval routes has been crucial for trade-related foreign investments.

### 4.4 Labour and Constitutional Concerns

Privatisation has often triggered labour disputes and constitutional challenges:

- In *Balco Employees Union v. Union of India* (2002), the Supreme Court upheld

disinvestment as a policy matter beyond judicial interference unless it violated fundamental rights.

The judiciary has balanced economic liberalisation with protections under **Article 14 and Article 21** of the Constitution (Baxi, 2005).

## 5. Globalisation and India's International Trade Law Commitments

### 5.1 WTO Accession and Treaty Obligations

India's **accession to the WTO in 1995** marked a fundamental shift in its trade law:

- It bound India to **tariff ceilings, non-discrimination (MFN/National Treatment)**, and **dispute settlement**.
- Agreements such as **TRIPS, GATS, and SCM** required alignment of domestic statutes. India's trade laws have since been interpreted in light of WTO jurisprudence.

For example:

- *India – Quantitative Restrictions (DS90)*: WTO ruled against India's licensing system, prompting liberalisation
- *India – Solar Cells (DS456)*: WTO ruled that domestic content requirements violated TRIMs and GATT provisions

### 5.2 Trade in Services and Digital Trade

India has been a vocal advocate for liberalising **Mode 1 and Mode 4 services** (cross-border supply and movement of professionals). However, challenges remain in:

- **Visa restrictions in developed countries**
- **Barriers to data transfer and e-commerce** (Chander, 2021)

India's current **Foreign Trade Policy 2023** addresses digital trade facilitation and regulatory convergence for e-commerce exports.

### 5.3 Intellectual Property and TRIPS Compliance

India's compliance with **TRIPS** was ensured via:

- Amendments to the **Patents Act, 1970** (notably in 2005)
- **Geographical Indications of Goods (Registration and Protection) Act, 1999**
- Clarification on **Section 3(d)** of the Patents Act in *Novartis AG v. Union of India* (2013), where the Supreme Court upheld a narrow interpretation of patentability to

protect public health

## 6. Key Challenges and Legal Inconsistencies in India's Trade Regime

### 6.1 Policy Reversals and Tariff Uncertainty

One major challenge facing India's trade regime is the **lack of predictability in tariff and trade policies**. Frequent revisions to customs duties—for example, on electronics and agricultural products—create an unstable business environment (World Bank, 2020). Such ad hoc tariff changes:

- Disrupt supply chains
- Affect compliance with WTO's **bound rates**
- Undermine the credibility of India's long-term trade policy

### 6.2 Overlapping Regulatory Jurisdictions

Trade regulation in India involves multiple agencies:

- **DGFT** (policy formulation and licensing)
- **CBIC** (tariff enforcement and customs)
- **MOEF, FSSAI, and BIS** (standards, certification)

This institutional overlap results in **regulatory fragmentation**, delayed clearances, and conflicting guidelines, especially for SMEs and exporters of perishables (NITI Aayog, 2022).

### 6.3 Infrastructure and Procedural

#### Bottlenecks

Despite trade liberalisation, India's **trade facilitation environment** remains inefficient:

- High dwell times at ports
- Ineffective risk management systems
- Inadequate last-mile logistics

The **Trade Facilitation Agreement (TFA)** under WTO obligates India to simplify and digitalise trade processes, but full implementation remains incomplete (WTO, 2023).

### 6.4 Compliance Issues with WTO Obligations

India has faced several **WTO dispute settlement proceedings**:

- *India – Solar Cells (DS456)*
- *India – Export Related Measures (DS541)*
- *India – Sugar Subsidies (DS579)*

These disputes highlight non-compliance with WTO rules on subsidies, trade remedies, and localisation. Domestic schemes like **MEIS and RoDTEP** have been scrutinised for violating **SCM Agreement** provisions (Chadha, 2020).

## 7. Judicial Review and Dispute Resolution in Trade Law

### 7.1 Role of Indian Judiciary

The Indian judiciary, especially the **Supreme Court and High Courts**, has played an instrumental role in shaping trade jurisprudence:

- Ensuring legality and reasonableness of DGFT notifications
- Balancing constitutional rights with trade liberalisation
- Providing clarity on classification and taxation disputes

#### Key Cases:

- *Mafatlal Industries Ltd. v. Union of India* (1997): Refund of duties under Customs Act
- *Vodafone International Holdings v. Union of India* (2012): Extraterritorial tax jurisdiction and investment protection
- *United Phosphorus Ltd. v. Union of India* (2013): Interpretation of import licensing laws

### 7.2 Role of CESTAT and Quasi-Judicial Bodies

The **Customs, Excise and Service Tax Appellate Tribunal (CESTAT)** handles appeals on classification, valuation, and exemptions. However, case backlogs and inconsistency in rulings remain challenges (CESTAT Annual Report, 2021).

Dispute redressal also involves:

- **Trade notice appeals through DGFT**
- **Arbitration clauses in international trade contracts**
- **WTO's Dispute Settlement Body (DSB)** for cross-border issues

## 8. Recommendations for Legal and Policy Reform

To enhance India's trade law framework, the following reforms are suggested:

### 8.1 Codify a National Trade Code

Develop a **comprehensive Trade Code** that consolidates customs, export-import policy, and

compliance requirements—similar to the **US Trade Act**—to eliminate contradictions and simplify legal navigation.

### 8.2 Predictable Tariff Framework

Adopt a **5-year rolling tariff policy**, reviewed annually, to ensure stability and help businesses plan better. Bound rates under WTO commitments must be transparently adhered to (CUTS, 2023).

### 8.3 Institutional Streamlining

Establish a **single-window digital trade governance platform** integrating:

- DGFT
- CBIC
- RBI
- Port and logistics agencies

This aligns with the **National Logistics Policy** and **Digital India** initiatives.

### 8.4 WTO-Compatible Export Incentives

Reform export promotion schemes to align with WTO's **SCM Agreement**, focusing on:

- Infrastructure subsidies (SEZs)
- Research and design support
- Skill development for export sectors

Schemes must avoid “prohibited subsidies” and be time-bound, transparent, and WTO-notified.

### 8.5 Strengthen Judicial Capacity

Introduce **specialised trade law benches** in High Courts and train judicial officers in WTO law, digital trade, and economic interpretation.

## 9. Conclusion

India's transition from a protectionist to a liberalised, globalised economy has been legally transformative. Legislative changes post-1991, WTO accession, and judicial interpretation have forged a more open, rules-based trade regime. However, inconsistencies in policy execution, regulatory overlaps, and procedural delays continue to impede the benefits of liberalisation.

Global trade is evolving—driven by digitalisation, climate imperatives, and shifting geopolitical equations. India’s trade laws must now pivot toward **predictability, compliance, and technological integration**. With institutional reforms, WTO-aligned policies, and a robust legal framework, India can position itself as a trade powerhouse while upholding its sovereign developmental objectives.

## References

- Aggarwal, A. (2007). Impact of Special Economic Zones on Employment, Poverty and Human Development. ICRIER Working Paper.
- Ahluwalia, M. S. (2002). Economic reforms in India since 1991: Has gradualism worked? *Journal of Economic Perspectives*, 16(3), 67–88.
- Baxi, U. (2005). Rule of Law in India. Eastern Book Company.
- Bhagwati, J., & Panagariya, A. (2013). Why Growth Matters. PublicAffairs.
- Bhatia, G. (2011). India's Engagement with WTO Law. *Indian Journal of International Law*, 51(1), 25–38.
- Chadha, R. (2020). WTO Disputes and India’s Export Subsidy Schemes. RIS Discussion Paper.
- Chander, A. (2021). The E-commerce Trade Agenda. *Journal of International Economic Law*, 24(1), 103–118.
- Chaturvedi, S. (2015). India's Foreign Trade Policy: Objectives and Challenges. Observer Research Foundation.
- CUTS International. (2023). India’s Trade Policy in the Post-COVID World. Jaipur: CUTS.
- Directorate General of Foreign Trade (DGFT). (2023). Foreign Trade Policy 2023–28. Government of India.
- Economic Survey of India. (2023). Ministry of Finance, Government of India.
- FEMA, 1999. Foreign Exchange Management Act. Ministry of Law and Justice.
- GATT/WTO. (1994). General Agreement on Tariffs and Trade.
- Government of India. (2005). Special Economic Zones Act.
- Kumar, N. (2007). Liberalisation and India’s Trade Performance. *Economic and Political Weekly*, 42(10), 861–867.

- Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536.
- Mukherjee, A. (2018). Infrastructure and Trade Competitiveness. ICRIER Report.
- NITI Aayog. (2022). Logistics and Trade Facilitation. Strategy Paper.
- Novartis AG v. Union of India, (2013) 6 SCC 1.
- Panagariya, A. (2004). India in the 1980s and 1990s. IMF Working Paper.
- SEBI. (2022). Regulatory Framework for Foreign Investment. Securities Exchange Board of India.
- Tata Consultancy Services Ltd. v. Union of India, (2005) 1 SCC 308.
- United Phosphorus Ltd. v. Union of India, (2013) 3 SCC 692.
- Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613.
- WTO. (1995). Agreement on Subsidies and Countervailing Measures.
- WTO. (2023). Trade Policy Review: India. World Trade Organization.
- WTO DSB. (1999). India – Quantitative Restrictions, DS90.
- WTO DSB. (2016). India – Solar Cells, DS456.
- WTO DSB. (2019). India – Export Related Measures, DS541.
- World Bank. (2020). Doing Business 2020: India Country Profile.



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