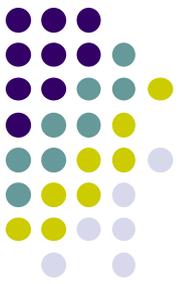


*WTO, State, and Legal Capacity Building:
A Unique Indian Model*

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Lawyers on Tap

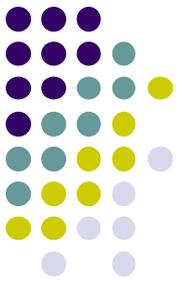


Lawyers on Tap



- Compulsion of an on demand economy
- Unbundling of services
- Challenges of globalisation and the legal profession
- Study in the context of WTO regime

Transnational Legal Order and the WTO

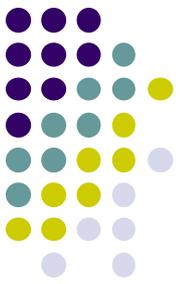


- WTO legal order as a separate domain existing above the nation state.
- WTO is part of a broader transnational legal order
- How the WTO TLO induces the state transformation?

Transnational Legal Order



- There are some who contend that the world is moving towards a post national order where the state has been weakened
- Our finding indicates that India's enmeshment in the TLO has spurred the strengthening of state capacities through engagement with private stakeholders and professionals



TLO and WTO system

- State parties bargain and compete for norm making through negotiation and dispute settlement.
- That way, legal norm-making at the transnational, national, and local levels enmeshes and interacts recursively over time.

TLO and WTO



- Developing countries need legal capacities for the construction of WTO transnational legal order and its implications for developmental state.
- The state bureaucracy must engage with private sector and private players. The WTO not only affects the tariff and import policies, but also affects domestic laws, regulations and institutions. The WTO law is affected by those who negotiate its terms and interpret its provisions.



Lawyers as Intermediaries

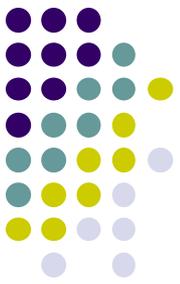
- Lawyers represent India and act as interface with the WTO legal system, internationally and domestically
- **Internal Role:** promoting liberalization reforms; avoiding disputes; preserving policy space
- **External Role:** market access; shaping rules through negotiation, interpretation & practice

Moving Toward a New World Order



- All these things did not exist before
- Closed Economy: BOP restrictions; license Raj; pessimistic growth prospects.
- Little focus on foreign markets, or the global
- Non-transparent bureaucracy; “first shredder” in the bureaucracy in the trade division
- Stakeholder relations about licenses and quota rents

India's disputes



Number of disputes in which India acted as a complainant, respondent or as a third party during 2000-2015

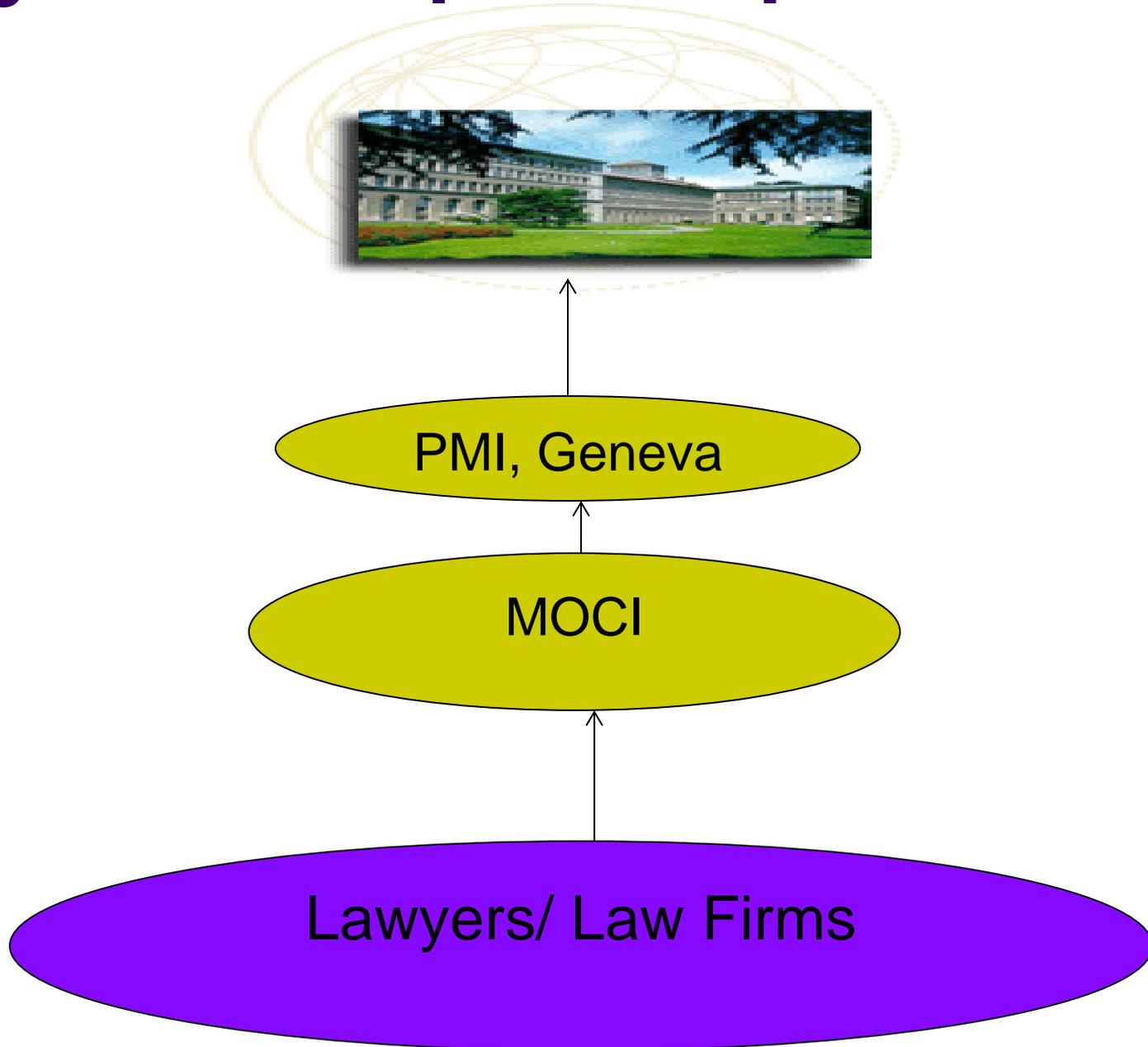
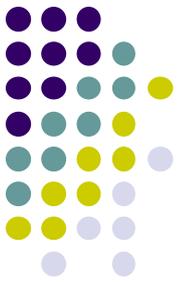


Impact of Early US Cases against India

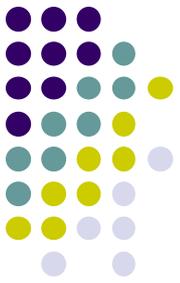


- Early days of the implementation of WTO obligations
- Outcome in India- Patents (“Mail Box case”)
- Impact of India- Quantitative Restrictions (“BoP case”)
- India- Auto
- India’s response to losing these disputes

Lawyers on Tap: WTO process



Increased Role of Law and Lawyers



- Legal professionalization of trade defenses (antidumping and safeguards) investigations after the elimination of QR regime
- Preparedness for WTO dispute settlement:
 - Trained lawyers substitute for diplomats
 - Initially relied on foreign lawyers and law firms
- Outsourcing to Indian firms; MoCI keen to develop pool of domestic lawyers

India's disputes & Impact on WTO legal order



- US- Shrimp/Turtle
- EC- Bed Linen (Zeroing practice)
- Turkey- Textiles (Key jurisprudence on RTAs and CUs)
- EC- GSP (jurisprudence on the Enabling Clause)

India and WTO legal order



- Government engaged with the private lawyers to examine trade policies
- Private lawyers given opportunities to attend Ministerial conferences and dispute settlement process
- Foreign expertise called in to supplement local expertise

Engagement with Educational Institutions



- Various law schools (national law schools and private law schools such as Jindal) have started trade law courses
- Various internship opportunities are available
- The internships reflect a radical shift in the previously closed Indian bureaucracy.
- Development of an epistemic community or network community

Institutionalization of WTO Impacts



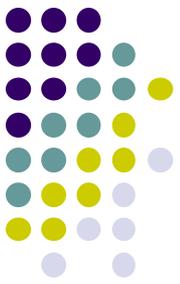
- Turn to law for defensive measures: India is by far the largest initiator of AD cases and a leading user of Safeguards.
- Increased government transparency on trade
- Trade law expertise increased: Local law firms, lawyers and think tanks affirm that capacity to address WTO matters significantly improved



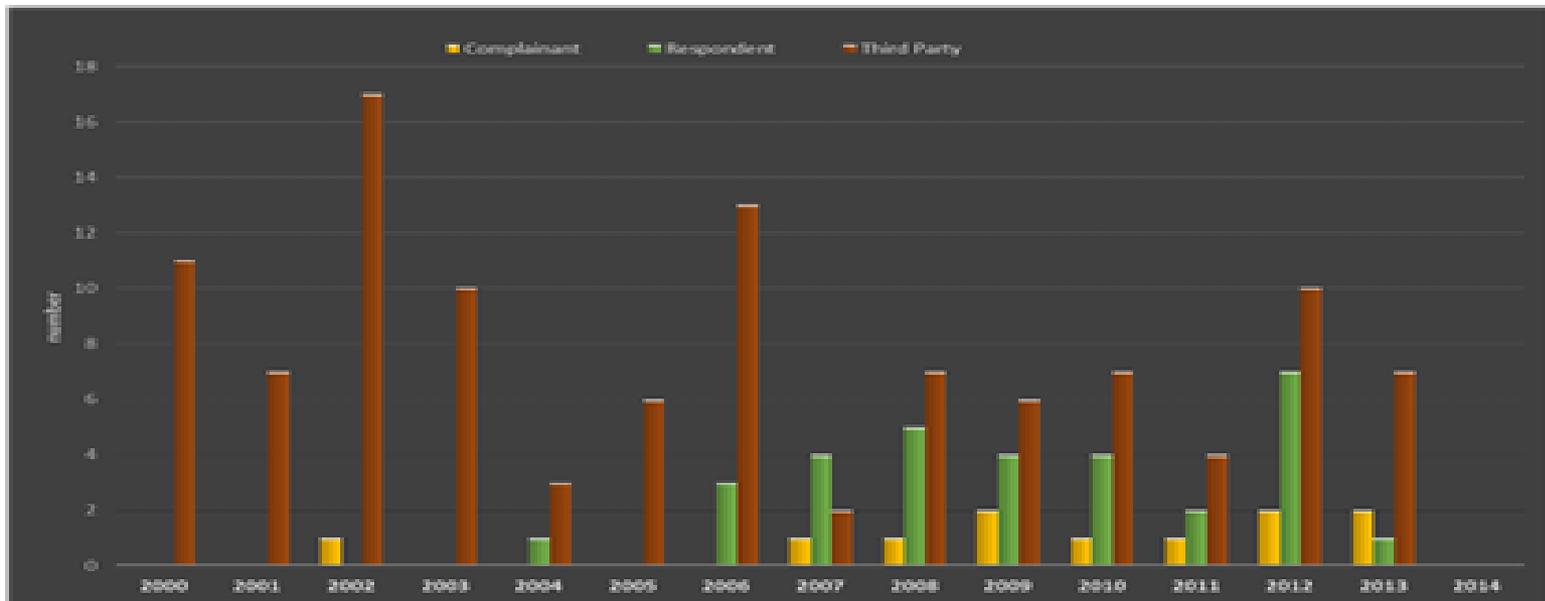
Ongoing Challenges

- Legal capacity within government is limited.
- Limited tenure of staff (Normally for 5 years). Lack of continuity a serious challenge
- Limits to Government-Private coordination in light of bureaucratic history

India and other Emerging countries



Disputes of China: As complainant, Respondent or Third party (2000 - 2014)



Defending Interests: India and China

India	China
Relied on Frieder Roessler	Domestic and Foreign
Foreign law firms in US- Shrimp (Lalive Partners), US- Steel (Squire Sanders); EC- Bed Linen (VVG)	(King and Wood worked with Hogan Lovells, China – Intellectual Property Rights); (assisted China in more than 10 cases)
ACWL	(Hylands Law Firm, Steptoe & Johnson, China- Auto dispute)
Domes Lawyers	(Winston and Strawn- US- Tyres)
Exclusive Domestic Lawyers	No dependence on ACWL (Not a Member)

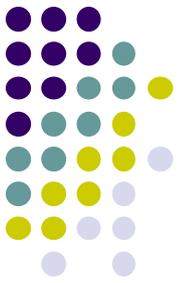
Defending Interests: India and China

India	China
Role of industry associations, FICCI, CII, TEXPROCIL, MPEDA, SEAI, Pharmexil, APEDA, etc	Govt agencies and SOEs
Govt officials moving to private sector (No two way movement)	Govt officials moving to private sector (No two way movement)
Academic institutions (Centre for WTO Studies)	Beijing WTO affairs Centre Shanghai WTO Affairs Centre Shenzhen WTO Affairs Centre (far greater role for academic professionals)

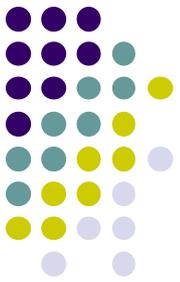
Defending Interests: India and Brazil

India	Brazil
Relied on Frieder Roessler	Domestic and Foreign Law Firms But arguing counsel mainly foreign
Foreign law firms in US- Shrimp (Lalive Partners), US- Steel (Squire Sanders); EC- Bed Linen (VVG)	Filed high profile cases (Brazil- Aircraft, US- Cotton) with U.S. law firms
ACWL	No reliance on ACWL
Domestic Lawyers	
Exclusive Domestic Lawyers	Not exclusively

Conclusions



- India sees its stature in the WTO as a reflection of its capacity to engage with dispute settlement and negotiations
- Shift in role of professional expertise. Shift to increased role of law and lawyers in light of demands of WTO regime.
- India is slowly and marginally moving toward a more pluralist model of interest group representation.
- Rather than the state weakening in light of market forces, the state has strengthened itself through diffusing expertise and working with private professionals and economic stakeholders
- In sum, in aiming to enhance its ability to participate in WTO, India also reciprocally changes, which is the two-sided aspect of transnational legal ordering



- Thank you!
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