

**LECTURES ON "IPR" FOR SCIENCE
STUDENTS**
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By

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Dr. B.B.Singh holds a Master's degree in Physics and is a recipient of the Gold Medal for being the best student of the year. He obtained his Ph. D. degree in Radiation Biology from the university of London and is an elected Fellow of the Indian Academy of Sciences and also of the National Academy of Sciences of India. He has been awarded the degree of Doctor of Sciences (h.c.) from the International Open University, Colombo, Sri Lanka. He had held several important positions in India at the Bhabha Atomic Research Centre Mumbai and at the United Nations' International Atomic Energy Agency in Vienna. He has served as an expert in various countries including at the Syrian Atomic Energy Commission, Damascus. He is a scientist of international repute specializing in the fields of free radical biology and combination therapy of cancer with radiation and hyperthermia. He is a widely traveled scientist and has participated in 44 international conferences in over 32 countries and has been a member of the Organizing Committee of numerous international conferences held in India and abroad. He has to his credit 2 books and 163 original scientific papers published in as reputed scientific journals as *Nature* (Lond.) and *Science* (Wash.). He has been the President of Indian Biophysical Society, Indian Society for Radiation Biology and Indian Association for Hyperthermic Oncology & Medicine and a Hon. Member of International Society for Clinical Hyperthermia. He retired in 1998 as the Head of the Biochemistry and Radiation Biology Divisions of Bhabha Atomic Research Centre, Mumbai, India. He has served on the Editorial Boards of several International Journals including Intl. J. Radiat. Biol. (UK); Intl. J. Hyperthermia (UK); Radiation Phys. & Chem. (UK).



Dr. Singh also holds LL.B. degree from the Mumbai University specializing in Environmental Law and Consumer Protection. His research work at the J.C. College of Law, Mumbai on "Laws Relating to IPR in Biomedical Technologies in India" has earned him the degree of LL.M. from the Mumbai University. He has been a Research Fellow at the Institute of Intellectual Properties, University of Tokyo, Japan and is currently a member of the Editorial Board of the Intl. Journal of Nuclear Law (Paris). He is presently practicing at the Bombay High Court on laws relating not only to IPR issues but also in other branches of law such as Constitutional remedies & Writs, Public Interest litigations, Consumer Protection, Recovery of debts, Company matters including mergers and winding-up, arbitrations and conciliations, transfer of properties and cases complicated by Indian personal laws for child adoption and matrimonial disputes.

He has extensively toured India for over 5 years delivering public lectures on fallacies of the Indian Patent Bill before it was passed into an Act by the Parliament. He is an active member of several NGOs and social welfare bodies including Rotary International, Masonic Fraternities and Swadeshi Jagran movement. He is a very popular public speaker and a teacher for students of academic pursuits and has guided several research scholars for their master and doctoral degrees in various Universities.

LECTURE - 1

GATT & WTO

HISTORY AND BASIC INFORMATION

After World War II, the United Kingdom and the United States submitted proposals to the Economic and Social Council (ECOSOC) of the United Nations regarding the establishment of an international trade body that was to be named the International Trade Organization (ITO). That is, perhaps, why the GATT is often referred to as a UN related body and its documents are sometimes mistakenly referred to as UN documents.

ECOSOC convened a conference, the United Nations Conference on Trade and Employment in 1946 to consider the UK and U.S. proposals. A Preparatory Committee drafted the ITO Charter and it was approved in 1948 at the conference in Havana, Cuba. The Charter is often referred to as the Havana Charter or the ITO Charter.

The first round of trade negotiations took place while the Preparatory Committee was still working on drafting the Charter because the participants were anxious to begin the process of trade liberalization as soon as possible. Their results were incorporated into the General Agreement, which was signed in 1947.

Since the original signatory nations expected the Agreement to become part of the more permanent ITO Charter, the text of the GATT contains very little "institutional" structure. This lack of detail within the agreement has created increasing difficulties as the GATT membership and roles governing trade between so many of the world's nations have grown. The GATT has functioned as an international organization for many years even though it has never been formalized as such.

ECOSOC established an Interim Commission for the ITO that is referred to as ICITO. Unfortunately, when it came time for the members to ratify the ITO Charter, the Congress of the United States refused and the ITO never became a reality. The GATT survived, but remained intact only due to the Protocol of Provisional Application of the General Agreement on Tariffs and Trade which was concluded in 1947 and which entered into force in 1948.

The GATT completed 8 rounds of multilateral trade negotiations (MTNs). The Uruguay Round (the 8th round) concluded with the signing of the Final Act on April 15, 1994, in Marrakesh, and produced the World Trade Agreement (WTO) and its annexes.

GATT ROUNDS

NAME	DATE	OBJECTIVE
Geneva	1947 (23)	Adoption of GATT
Annecey, France	1949 (13)	Tariff reduction
Torquay, England	1951 (38)	Tariff reduction; Concern for developing countries
Geneva	1956 (26)	Tariff reduction
Geneva, Dillon	1962 (26)	Tariff reduction
Geneva, Kennedy	1967 (62)	Tariff reduction, Anti-dumping Act rejected by US
Tokyo	1973-79 (102)	Overall reduction of tariff to an average level of 35% and 5-8% among developed countries
Uruguay	1986-94 (123)	Non tariff barrier codes, Government procurement, custom valuation, Subsidies & Countervailing measures, Antidumping, Environmental standards, Import licensing, Agriculture subsidies, service trade, intellectual properties, and establishment of WTO w.e.f 1st January 1995.
Singapore	1996	New issues like environment, investment, competition policy & labour
Geneva	1998	E-commerce. IT & trade facilitation
Seattle	1999	Agriculture & Biotechnology (aborted)
Doha	2001	Pharmaceuticals

(Figures in brackets denote number of countries as members)

BASIC PRINCIPLES OF WTO

1. **TRANSPARENCY:** A WTO member is required to publish promptly laws, regulations, judicial decisions and administrative rulings of general application pertaining to the classification or valuation of products for customs, rates of duty, taxes or other charges affecting sale, distribution, transportation, insurance, warehousing inspection with the object of enabling governments and traders to be come acquainted with them.
2. **NON-DISCRIMINATION BETWEEN COUNTRIES:** Trade should go without discrimination- a country should not discriminate between its trading partners- WTO members.
3. **NON-DISCRIMINATION WITHIN A COUNTRY:** Imported locally produced goods should be treated equally- at least after the foreign goods have entered the market.
4. **OPTIMAL UTILISATION OF WORLD RESOURCES:** Lowering trade barriers mainly customs duty (or tariffs) and other measures such as quantitative restrictions like import bans and quotas restricting quantities selectively.
5. **REMOVAL OF QRs, TARIFF BINDINGS, DISMANTLING TRADE BARRIERS:**
6. **CERTAINTY AND PREDICTABILITY IN RULE BASED TRADING SYSTEM:** Through its automatic and speedier dispute settlement mechanism, WTO adjudicates in disputes between Members and in case of non-compliance with DSB recommendations by the losing side, grants authorization for imposing sanctions.
7. **HELP FOR POOR COUNTRIES:** There are special and differential treatment provisions for developing and least developed countries run across the whole range of agreements which include trade concessions.
8. **RESTRICTING MONOPOLIES AND PROMOTING CONSUMER INTERESTS: THE COMPETITION PRINCIPLE:** WTO aims to promote consumer interests by promoting competition in the market and ensures that trade flows across the border are not restricted because of unnecessary trade regulations.
9. **IMPROVING QUALITY OF LIFE: ENVIRONMENTAL PROTECTION:**

THE MAIN DIFFERENCES BETWEEN GATT & WTO

1. GATT was ad hoc and provisional whereas WTO agreements are legal because these have been ratified by the Member States.
2. GATT had only contracting parties whereas WTO has Members.
3. GATT dealt with trade in goods whereas WTO covers services & Intellectual Properties as well.
4. GATT 1947 has been updated to GATT 1994 and it operates along with WTO.
5. WTO dispute settlement is faster and its rulings cannot be blocked by a majority unlike GATT.

The Dispute Settlement Understanding (DSU) is the legal text that spells out the rules and procedures for settling disputes among WTO Members. It contains 27 Articles and is the legally binding negotiated Agreement and it is the ultimate means of enforcing the WTO trade rules. All disputes are referred to the Dispute Settlement Body (DSB) that comprises of the WTO General Council and has powers to establish Panels, adopt panel and appellate body reports, surveillance of implementations of rulings and recommendations and authorize suspension of concessions and obligations.

Panels have 3/5 members and appeals against panel Reports are heard by 3 members from a 7 member Appellate Body. The Reports of the Panels and Appellate Body are confidential and are to be accepted by the parties unconditionally. Several NGOs have complained that the proceedings lack transparency.

The Dispute Settlement Panels have judicial powers to enforce law that makes WTO an international institution with legal powers to enforce its rules. The International Court of Justice also has similar powers but it comes into play only when both the parties approach.

STRUCTURE OF WTO

The Ministerial Conference: HIGHEST AUTHORITY

composed of representatives of all WTO members, which is required to meet at least every two years and which can take decisions on all matters under any of the multilateral trade agreements.

The General Council,

composed of all WTO members, which is required to report to the Ministerial Conference.

- (i) The Dispute Settlement Body,
to oversee the dispute settlement procedures
- (ii) The Trade Policy Review Body
to conduct regular reviews of the trade policies of individual WTO members.
- (iii) Council for Trade in Goods,
- (iv) Council for Trade in Services and
- (v) Council for Trade-Related Aspects of Intellectual Property.

Three other bodies are established:

- (i) The Committee on Trade and Development is concerned with issues relating to the developing countries and, especially, to the "least-developed" among them.
- (ii) The Committee on Balance of Payments is responsible for consultations between WTO members and countries that take trade-restrictive measures, in order to cope with balance-of-payments difficulties.
- (iii) The Committee on Budget relating to WTO's financing and budget.

Four additional management bodies are formed which are required to report to the General Council.

- (i) civil aircraft, (ii) government procurement, (iii) dairy products and (iv) bovine meat -

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