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Prof. K.V. Thomas,
Hon'ble Minister of State for Agriculture, Consumer Affairs,
Food & Public Distribution
Krishi Bhavan,
New Delhi

Dear Prof. Thomas,

Need for an Authority for Ensuring Single National Market

Greetings from CUTS!

I read in the newspapers that your Ministry is exploring the establishment of a two-tier panel to streamline internal trade to ensure benefit of FDI multi brand retail. Please see the enclosed newsclip from Business Standard of 28th November. This is a welcome move.

The need to streamline internal market is required not only for facilitating retail sector, but in several other areas of inter-state trade and commerce. Many studies have pointed out about the distortions which exist, which adversely affects the Indian economy. In fact, the draft National Competition Policy also calls for tearing down internal trade barriers. Among major policies, the Essential Commodities Act and the Agriculture Produce and Marketing Act too have to be dealt with, as both create huge economic distortions.

While India is entering into several Free Trade Agreements with foreign countries, we also need an "FTA with India". This was visualised by our founding fathers and has been captured in the Constitution of India. The Constitution of India under Article 307 desires the establishment of an Inter-State Trade and Commerce Commission, to deal with myriad inter-state trade barriers, which has not been done and deserves highest consideration.

The Justice Sarkaria Commission in 1988 had recommended setting up of a permanent authority under article 307 to bring out reports on inter-State and intra-State Trade and Commerce and recommend measures for their modification.

Following this the National Commission to Review the Working of Constitution in 2000 also recommended constitution of a statutory authority under article 307 for carrying out the objectives of articles 301-304 of the Constitution of India.

The above recommendations were endorsed by the Punchi Commission in 2010.

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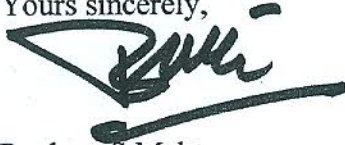
Enclosed, please find herewith a CUTS's Note on the subject with a request that the Ministry review these recommendations and take them forward for implementation.

May I also request you to raise this issue in the forthcoming meeting of the National Development Council on 27th December, as our States will need to be carried on board.

Looking forward to your valued response, I remain,

with kind regards

Yours sincerely,



Pradeep S Mehta

Copy to:

1. Shri Sharad Pawar, Union Minister for Agriculture
2. Shri P. Chidambaram, Union Minister for Finance
3. Shri Anand Sharma, Union Minister for Commerce & Industry
4. Shri Montek Singh Ahluwalia, Deputy Chairman, Planning Commission
5. Dr. C. Rangarajan, Chairman, Prime Minister's Economic Advisory Council
6. Shri Sachin Pilot, Union Minister of State (I/C) for Corporate Affairs

Centre to set up two-tier panel to smoothen retail FDI ride

SANJEEB MUKHERJEE
New Delhi, 28 November

The government is looking at setting up a two-tier panel to streamline internal trade to unleash benefits from foreign direct investment in multi-brand retail.

The first one will be inter-ministerial tier and headed by Consumer Affairs Minister K V Thomas. It would comprise Finance Minister P Chidambaram, Agriculture Minister Sharad Pawar, Commerce & Industry Minister Anand Sharma and Corporate Affairs Minister Sachin Pilot, among others.

Select ministers in-charge of consumer affairs from states and industry representatives will also form part of this group.

The second tier will be formed at the bureaucratic level, where secretaries of all department concerned will be members.

The committee will review

GROUNDWORK

- Two-tier committee to suggest reforms in internal trade structure
- The first tier to comprise union and state ministers, second of bureaucrats
- Change in Shops & Establishments Act, APMC Act, and tax burden are the broad areas of discussion
- Panel's analysis essential to unlock full economic benefits of FDI in multi-brand retail



Consumer Affairs Minister K V Thomas will head the inter-ministerial panel

tax spread between states, Shops and Establishments Acts and integrated logistics hubs for reforming the country's internal trade structure.

The development comes as the issue of foreign direct investment in multi-brand retail continued to divide political parties.

Officials said the committee would suggest measures to smoothen internal trade, which will enable full unlock-

ing of the economic benefits of FDI in multi-brand retail.

The Cabinet, while clearing a proposal to allow up to 51 per cent FDI in multi-brand retail in September 2012, had directed a high-level group under Thomas to examine internal trade-related issues and suggest remedial measures.

Last week, Thomas said that the inter-ministerial panel on internal trade reforms

would be set up soon. He also discussed the matter with Prime Minister Manmohan Singh.

According to officials, the Consumer Affairs Department, for the time being, has identified strengthening the Essential Commodities Act, a mechanism outside the municipal limits, to facilitate smooth flow of traffic, and reforms in Agriculture Produce Marketing Committee (APMC) Act, a mechanism to bring farmers, processors, retailers closer and link agriculture production to market and consuming centres.

Strengthening the spot exchanges and improving transparency in trading and storage of essential commodities are the some of the other broad issues, which the high-powered committee is expected to deliberate upon.

"The issues flagged on internal trade and composition of the panel to examine them has been floated for

comments by other ministries concerned with FDI in multi-brand retail, and once all the details are available, the agenda could be altered," said a senior government official. Reviewing of shops and establishments acts would also be part of the agenda, officials added.

Even if up to 51 per cent FDI in multi-brand retail is allowed by the Union Cabinet, the key to operationalising the decision rests with states. Through the Shops and Establishments Act, states can bar the entry of foreign retailers.

The government's decision to allow up to 51 per cent FDI in multi-brand retail in September has attracted a lot of criticism from rival political parties.

The United Progressive Alliance (UPA) ally, Trinamool Congress (TMC) moved out of the alliance, saying, FDI in multi-brand retail would hurt the interests of the common man.

CUTS's Note on Need of an Authority for Ensuring Single National Market

A single national integrated domestic market is necessary to make the Indian economy efficient and competitive. Free flow of trade and commerce within and across inter-State borders is an important pre-requisite for ensuring economic unity, stability and prosperity of a country. This note tries to put together the important recommendations by various commissions appointed by Government of India and the cases decided by the Supreme Court of India. The common thread which seems to emerge from this note is that single unified national market will benefit the trade and commerce and ultimately the governments of the States and the Centre.

Constitutional provisions

Article 301 mandates that trade, commerce and intercourse throughout the territory of India shall be free. However, no freedom can be absolute. Under Article 302, Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Article 304 confers power on the State Legislature to impose on goods imported from other States any tax to which similar goods manufactured in that State are subject provided there is no discrimination between goods so imported and goods so manufactured or produced within the State. This Article also empowers the Legislature of a State to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in public interest.

In *Atiabari Case* the Supreme Court brought out the main **objects and reasons which weighed with the Constitution-makers** in formulating the scheme and content of the Articles in Part XIII, as follows:

"In drafting 'the' relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity..... Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the country".

Section 8 of Article 1 of the U.S. Constitution contains what is called "Commerce Clause", which regulates trade and commerce. This is an authorisation in favour of the Congress to enact laws for the protection and encouragement of commerce among the States. By its own force, it creates an area of trade free from interference by the States. Section 92 of the Australian Constitution provides for freedom of trade and commerce. It does not seek to regulate as in case of commerce clause. However, it has been held in numerous decisions of the Privy Council and the Australian High Courts that section 92 leaves open the regulation of trade and commerce at all events until the regulation is enacted provided it does not impede the true freedom of inter-State commerce.

Article 301 is inspired by section 92 of the Australian Constitution when it refers to freedom of trade and commerce, however, Article 301 is subject to limitations and conditions in Articles 302, 303 and 304 which are borrowed from the commerce clause under Article 1 of the US Constitution. Therefore, Part-XIII is an amalgam of the United States and Australian Constitutions. The origin of idea contained in Art 307 can be traced to Ss. 101-104 of the Australian Constitution. Interstate Commission was established in Australia under the Interstate Commission Act, 1912.

Although Article 301 guarantees the freedom of trade and commerce throughout the country, Articles 302 and 303 read together empower the Parliament to impose restrictions on internal trade if it is required in 'public interest' and is non-discriminatory. 'Public interest' is an ambiguous concept which can be prone to subjective interpretation and misuse.

The major tax impediments to free trade across states include: (i) tax on inter-state trade of goods (CST); and (ii) Octroi/entry tax. In fact, the States have been empowered to levy inter-State sales tax on their exports to other States so long as there is a sales tax on the domestic consumption of the good and this has created serious impediments to internal trade besides creating iniquitous transfer of resources from poorer to richer regions. Similarly, under Entry 52 of the State List, urban local bodies can levy a tax on the entry of goods into a local area for consumption use or sale. The levy of Octroi or Entry Tax under this provision is in the nature of import duty levied by local areas. Besides obstructing free movement of goods, it creates severe distortions.

While inter-State sales tax is on the export of goods, Octroi is similar to import duty. Octroi has resulted in harassment to taxpayers (abolished in all States other than Maharashtra). On account of problems associated with it, States like Karnataka and Madhya Pradesh have replaced it with an Entry tax. The purview of entry tax has been widened in some states. Tamil Nadu has added 15 new items which would be subject to an entry tax. Maharashtra has also imposed entry tax on a number of commodities. The prevailing trend runs counter to removing trade barriers and reaping the advantages of common market. Thus despite the potential, the Indian market continues to remain divided and sub-divided into small economic units. This fragmentation has occurred over the years by multiple tax rates, restrictions on the movement of goods imposed by States and the local bodies.

Observations in Eleventh Plan

The **Eleventh Plan document** observed that regulations such as ECA and APMC Act and the control orders issued under these Acts have created restrictive and monopolistic marketing structures resulting in inefficient operation and high degree of marketing cost. The document further added that these restrictions have an adverse impact on agricultural production and system, efficient flow of commodities and fostering competition. **Such regional trade barriers may affect national interest and will be disadvantageous to the States in the long run.**

Commission on Centre- State Relations (Justice Sarkaria Commission, 1988)

The **Sarkaria Commission** recommended setting up of a permanent authority under Article 307 to bring out reports on inter-State and intra-State trade and commerce and recommend measures for their modification. The Commission stated that:

'Considering the intricate nature and the need for objective examination of the wide-ranging issues connected with the freedom of trade, commerce and intercourse, we recommend that an expert authority should be constituted under Article 307. Among other things, such an authority may be enabled to:

- a) survey and bring out **periodically a report** on the restrictions imposed on intra-State and inter-State trade and commerce by different governments and their agencies;*
- b) recommend **measures to rationalise or modify the restrictions** imposed to facilitate free trade and commerce;*
- c) examine complaints from the public and the trade in this regard; and*
- d) **suggest reforms** in the matter of imposition, levying and sharing of taxes for purposes of Part XIII of the Constitution.*

The ambit of Article 307 is wide enough to bring all matters relevant to freedom and regulation of trade, commerce and intercourse within the purview of such an authority 'for carrying out the purposes of Article 301, 302, 303 and 304'. It is entirely left to the judgement of Parliament to clothe the 'authority' under Article 307 with such powers and duties as may be considered necessary. Such an 'authority' may have both an advisory and executive role with decision-making powers.'

National Commission to Review the Working of Constitution, 2000

The **National Commission to Review the Working of Constitution**, (NCRWC), 2000 also recommended constitution of a statutory authority under Article 307 for carrying out the objectives of Articles 301, 302, 303 and 304. The relevant recommendations of the commission are:

'In order that the country's competitiveness in trade, commerce and industry is enabled to respond to the increasing pressures of globalisation, it is necessary that barriers to Interstate trade and commerce, particularly, the free movement of goods on the inter-state routes should be progressively reduced with a view to their final elimination. A statutory authority contemplated under article 307 of the Constitution requires to be set-up. As the effects of such an authority could as well go beyond the purposes of article-307, the legislation could be comprehensive drawing on Entry 42 of List -I and, if necessary, Entry 97 of List-I of the Seventh Schedule.'

Commission on Centre- State Relations (Justice Punchi Commission, 2010)

The commission on Centre State Relations (Punchi Commission, 2010) endorsed the recommendations of the NCRWC in this regard and noted:

*We are convinced of the need for such an authority and recommend the setting up of a Inter-State Trade and Commerce Commission under Article 307 read with Entry 42 of List-I. This Commission should be vested with both advisory and executive roles with decision making powers. As a Constitutional body, the decisions of the Commission should be final and binding on all States as well as the Union of India. Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.'*¹

As envisaged by the Joint Select Committee on Indian Constitutional reforms, some entries in the Concurrent List take into account the fact, that (in future), a need may arise to enact legislation providing for mischief's arising in the provincial sphere, which extend, (or are likely) to extend, beyond the boundaries of a single province.² Entry 21 titled '**Commercial and industrial monopolies, etc.**' of the concurrent list is one such example. This shows the foresightedness of the Joint Select Committee and thus it is high time to give effect to the recommendations which have been endorsed by various Commissions in India.

Case laws

Part XIII of the Constitution is replete with non-obstante clauses and the presence of exception upon exception in a series of articles has often presented complex questions of interpretation before the Court.

1. *Atiabari Tea Co. V. State Of Assam*

Facts: A tax levied by the State of Assam on the carriage of tea by road or inland waterways was held bad for "the transport or movement of goods is taxed solely on the basis that the goods are thus carried or transported, and thus "directly affects the freedom of trade as contemplated by Art. 301."

The Supreme Court took the view that the freedom guaranteed by Art. 301 would become illusory if the movement, transport, or the carrying of goods were allowed to be impeded, obstructed or hampered by the taxation without satisfying the requirements of Art. 302 to 304. Simply because the tax was levied on 'movement' of goods, from one place to another, it was held to offend Art. 301.

¹ Para 10.3.06 of Chapter 10 'UNIFIED AND INTEGRATED DOMESTIC MARKET' Centre-state financial relations and planning, Volume iii, **Commission on Centre-State Relations report**, March 2010, Available at <http://interstatecouncil.nic.in/volume3.pdf>

²P.M. Bakshi, A Background Paper on 'CONCURRENT POWERS OF LEGISLATION UNDER LIST III OF THE CONSTITUTION' prepared for the **National Commission to Review the Working of Constitution**, 2000 headed by former Supreme Court Chief Justice MN Venkatchalaiah. Available at http://lawmin.nic.in/ncrwc/finalreport/v2b3-3.htm#_ftnref5

2. The matter came to be re-considered by the Supreme Court in *Automobile Transport V. Rajasthan*

Facts: The State of Rajasthan had levied a tax on motor vehicles (Rs. 60 on a motor car and Rs. 2000 on a goods vehicle per year) used within the state in any public place or kept for use in the state. The validity of the tax was challenged. Taking the view that freedom of trade and commerce under Art. 301 should not unduly cripple state autonomy, and that it should be consistent with an orderly society, the Supreme Court ruled that regulatory measures and compensatory taxes for the use of trading facilities were not hit by Art. 301 as these did not hamper, but rather facilitated, trade, commerce and intercourse.

The concept of compensatory tax evolved in this case was something new as in *Atiabari*, the court had dismissed the argument that the money realized through the tax would be used to improve roads and waterways rather curtly by saying that there were other ways, apart from the tax in question, to realize the money, and that if the said object was intended to be achieved by levying a tax on the carriage of goods, the same could be done only by satisfying Art. 304(b).

Decision: The court ruled that Art.301 did not hit the tax, as it was a compensatory tax having been levied for use of the roads provided for and maintained by the state. Thus, to this extent, the majority view in *Atiabari* was now overruled by *Automobile*. Since then the concept of regulatory and compensatory taxes has become established in India with reference to entries 56 and 57, List II, and the concept has been applied in several cases, and progressively the courts have liberalized the concept so as to permit state taxation at a higher level.

3. Further in the case of *State Of Mysore V H. Sanjeevah*, section 39 of the Mysore forest Act was in question as violative of the freedom under Art. 301. It was held by the Court that the provision is invalid on the ground that it totally prohibits the movement of forest produce during the period between Sunset and Sunrise is prohibitory of right to transport Forest produce. The court held that the rule cannot be called valid because a rule regulating transport in its essence, certain to certain conditions devised to promote transport; such a rule aims at making the transport orderly, so that it does not harm other person carrying the same vocation, and enables transport to function for the public good.

4. *G.K. Krishnan V. State Of Tamil Nadu*

Facts: The State of Tamil Nadu increased the motor vehicles tax from Rs. 30 to 100 per seat per quarter and this was challenged as being violative of Art. 301. The issue involved in this case was whether a non-discriminatory tax levied by a state should be regarded as a restriction on trade and commerce because of the feeling that this would curtail state autonomy to levy taxes falling in the state legislative sphere?

But the Supreme Court upheld the tax. The court stated, "A compensatory tax is not a restriction upon the movement part of trade and commerce." The tax should not go beyond "a proper recompense to the State for the actual use made of the physical facilities provided in the shape of a road." The tax was thus held to be compensatory and hence valid.

5. *Bolani Iron Ores V. State Of Orissa*

A compensatory tax is levied to raise revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The Supreme Court held that taxation under entry 57, List II, couldn't exceed the compensatory nature, which must have some nexus with the vehicles using the roads. The regulatory and compensatory nature of the tax is that taxing power should be used to impose taxes on motor vehicles, which use the roads in the state or are kept for use thereon.

6. *International Tourist Corporation V. State Of Haryana*

Facts: The state of Haryana levied a tax on transporters plying motor vehicles between Delhi and Jammu & Kashmir. They use national highway, pass through Haryana without picking up or setting down any passenger in the state. The responsibility for constructing and maintaining of national highways rests on the Centre. It was therefore argued by the transporters that the tax could hardly be regarded as compensatory, but the court rejected the contention.

The Supreme Court said that what is necessary to uphold such a tax is the existence of a specific, **'identifiable' object behind the levy and a 'sufficient nexus' between the 'subject and the object of the levy.'** The court further said that a state incurs considerable expenditure for maintenance of roads and providing facilities for transport of goods and passengers. Even in connection with national highways, a state incurs considerable expenditure not directly by constructing or maintaining them but by facilitating the transport of goods and passengers along with them in various ways such as lighting, traffic control, amenities for passengers, halting places for buses and trucks. That part of a national highway which lies within municipal limits is to be developed and maintained by the state. There is thus sufficient nexus between the tax and the passengers and goods carried on the national highways to justify the imposition of the said tax. The tax was held to be valid.

7. *In Malwa Bus Service V. State Of Punjab*

Facts: In this case, in the year 1981, the State of Punjab substantially increased the rate of tax on every stage carriage plying for hire and transport of passengers. The rates adopted were Rs. 500 per seat per year subject to a maximum of Rs. 35,000 per bus irrespective of the distance over which it operated daily. According to the budget figures for 1981-82, the revenue receipts of the government from motor vehicles tax was Rs. 50 crores as against the expenditure of Rs. 34 crores. The tax was challenged on the ground that it was not compensatory as the government was using it for augmenting its general revenues, but the court upheld the tax as compensatory.

In the instant case, the budget expenditure on the roads and bridges did not include the expenditure incurred by the state on other heads connected with road transport, such as, the directorate of transport, transport authorities, provision for bus stands, lighting, traffic police, grants to local authorities. Taking all this expenditure into account, it became clear that a substantial part of the levy on motor vehicles was being spent annually on providing facilities to motor vehicles operators. The court also pointed out that in later years, the government expenditure on roads and bridges had substantially increased. It also said that the figures of income and expenditure for only one year might present a distorted picture. In this case,

cumulative figures of receipts and expenditure for nine years (1973-1982) presented a different picture. Describing the principle underlying such a tax, the court said: "what is essential is that the burden should not disproportionately exceed the cost of the facilities provided by the state."

Decision: Therefore the tax imposed by the state of Punjab was held to be valid.

8. *Jindal Stainless Ltd. & Anr vs State Of Haryana & Ors*

In a batch of appeals, the constitutional validity of the Haryana Local Area Development Tax Act, 2000 was challenged on two grounds: (1) that, the Act is violative of Article 301 and is not saved by Article 304; and (2) that, the Act in fact seeks to levy sales tax on inter-State sales, which is outside the competence of the State Legislature. The Court reiterated the doctrine of "direct and immediate effect" of the impugned law on trade and commerce under Article 301 as propounded in *Atiabari Tea Co. Ltd. v. State of Assam* and the working test enunciated in *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* for deciding whether a tax is compensatory or not. Hon'ble Supreme Court in a five member bench in this case laid down the following principles to verify whether a particular tax enactment is valid on the grounds of it being a compensatory tax :

- The concept of compensatory tax is not there in the constitution but is judicially evolved in *Automobile Transport* case as a part of regulatory charge.
- Compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the cost of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse.
- Whenever any law is impugned as violative of Article 301 of the Constitution, the courts have to verify whether the impugned enactment facially or patently indicates quantifiable data on which compensatory tax is sought to be levied. The Act must facially indicate quantifiable or measurable benefit.
- If the provisions are ambiguous/even if the Act does not indicate facially the quantifiable benefit, the burden will be on the State as a service/facility provider to show by placing the material before the Court, that the payment of compensatory tax is a reimbursement/recompense for the quantifiable/measurable benefit provided/to be provided to its payers.
- Once it is shown that the enactment invades freedom of trade, it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation satisfy the conditions laid down in Article 304(b):
 - Such restrictions shall be in public interest;
 - Such restrictions shall be reasonable and
 - Such enactment shall be subject to the procurement of prior sanction of the president.

Further the Hon'ble Supreme Court also decided that constitutional validity of various entry tax enactments, which are subject matter of pending appeals, SLP's and writ petitions will now be disposed of in light of the above principles. Hence Hon'ble Supreme Court in its abovementioned judgment upheld the doctrine of direct and immediate effect as propounded in the *Automobile Transport* case and gave a clear direction to verify all the entry tax enactments

by applying this doctrine. Based on the above principles, various appellate authorities and high courts have held respective State's Entry Tax Act's as unconstitutional:

- Haryana – Jindal Strips Limited and Another vs. State of Haryana and Others. [2008-(012)-VST -0149 -P&H]
- Rajasthan – Dinesh Pouches Ltd. vs. State of Rajasthan and Others. [2008-(016)-VST -0387 –RAJ].
- Jharkhand – Tata Steel Limited vs. State of Jharkhand and Others [2008-(017)-VST -0209 –JHA]
- Andhra Pradesh – Sree Rayalaseema Alkalies and Allied Chemicals Limited vs. State of Andhra Pradesh and others. [2008-(013)-VST -0015 –AP]
- Arunachal Pradesh – Jaiprakash Associates Limited (Cement Division) vs. State of Arunachal Pradesh and Others. [2009-(022)-VST -0310 –GAU]
- Assam – ITC Limited vs. State of Assam [2007-(009)- VST -250 (Gauhati)]
- West Bengal - National Hydroelectric Power Corporation Ltd. vs. ACCT Siliguri charge and others [2008-(015)-VST -0158 –WBTT]

9. In *Jaiprakash Associates Ltd. v. State of Madhya Pradesh* (2008 (16) SCALE 9) the Supreme Court has referred the questions to be considered by a constitutional bench. The decision of the Supreme Court is awaited and it has to be seen whether Entry Tax is held to be violative of the freedom guaranteed under Article 301 of the Constitution.

Conclusion

Thus from the above given case laws it is clear that the Supreme Court has evolved the concept of regulatory and compensatory tax to reconcile the freedom of trade and commerce and the power of taxation. This implies that Article 301 cannot stand in a way of a regulatory or compensatory tax. The concept of regulatory and compensatory tax has been applied by Indian Courts mainly to the State taxation under Entries 56 and 57 of List II. The need for imposing this type of a tax is to impose a levy on trade and commerce at least to the extent of making it pay for the facilities provided by the State, for example, a road network and other infrastructural facilities. The reason for this is that taxes of this nature facilitate rather than hamper, the flow of trade and commerce. With Globalisation, industries require larger markets and as a country we cannot develop, if we try and fragment every state and give liberty to them to levy entry taxes which amount to restrictions on trade. As rightly noted by Sarkaria Commission, limitations for the common good are inherent in such freedom, **lest it should degenerate into a self-defeating licence**. Thus these limitation which were incorporated for the purpose of regulating and facilitating free trade should not hamper the free trade and commerce in India. As noted, from time to time, by various Commissions discussed above, it is high time that a permanent authority should be set to achieve the objectives of economic unity and single national market in India.

Annexure: Relevant provisions of the Constitution of India

Article 301 Freedom of trade, commerce and intercourse:

Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Article 302 Power of Parliament to impose restrictions on trade, commerce and intercourse: Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Article 303 Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce:

(1) Notwithstanding anything in Article 302 neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Article 304 Restriction on trade, commerce and intercourse among States:

Notwithstanding anything in Article 301, the Legislature of a State may by law -

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

Article 305 Saving of existing laws and laws providing for State monopolies:

Nothing in Articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth

Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19.

Article 306 Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce:

Article 307 Appointment of authority for carrying out the purposes of articles 301 to 304: Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of Articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.