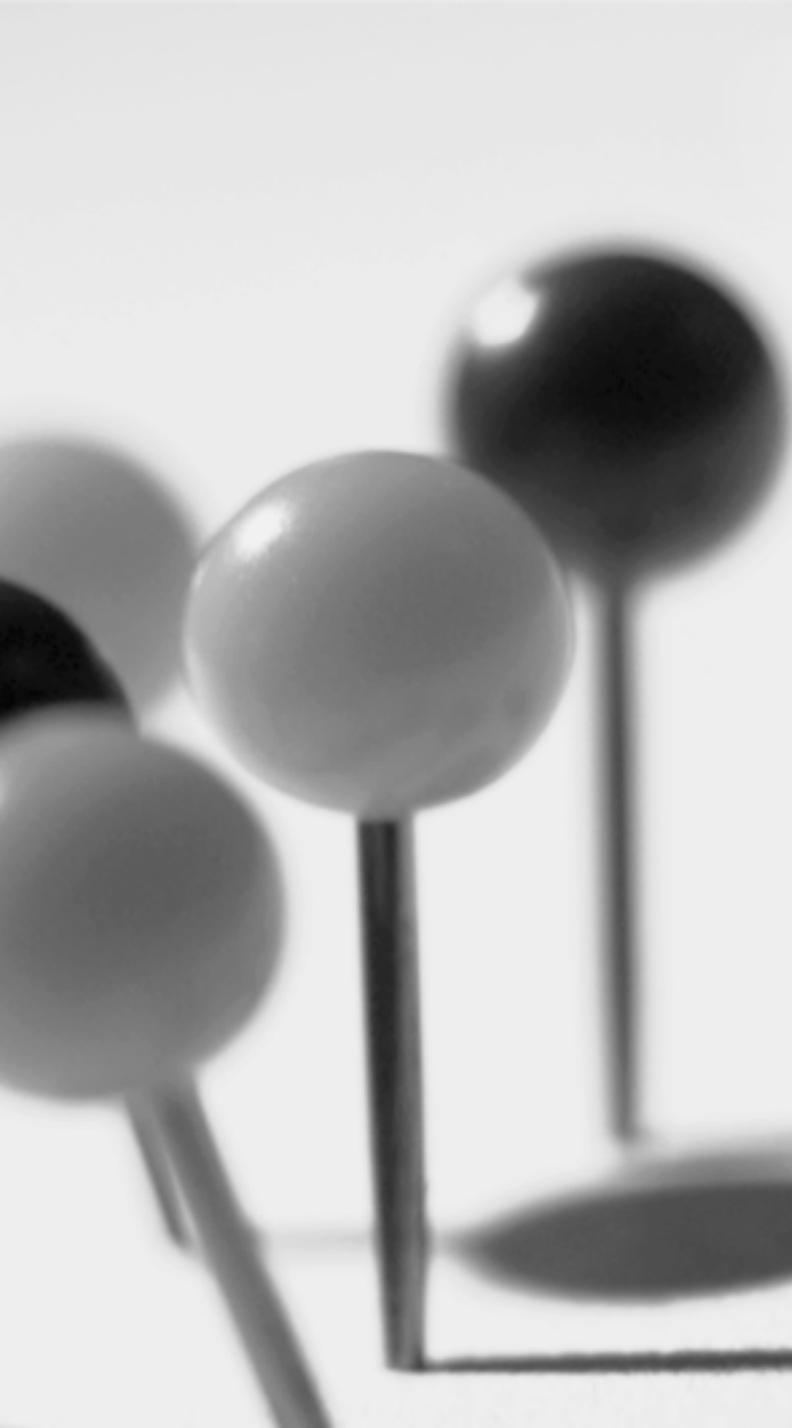


The background of the slide features a close-up, slightly blurred view of the United States flag on the left and the Indian national flag on the right. The American flag's stars and stripes are visible, while the Indian flag's saffron, white, and green horizontal stripes, along with the Ashoka Chakra, are partially shown. The text is centered over the white stripe of the Indian flag.

**Doing Business in  
India Simplified**



# **ASK Legal, Advocates**

Doing Business in India

Simplified

# Introduction

- Geopolitical changes in the last few years and gradual changes in India's economic policies have led to a transformation in the bilateral relationship between India and the US. This is best reflected in the vastly increased co-operation between the two countries in political, strategic and economic activities
- Co-operation in anti-terrorism measures is well established. So is India's commitment to promote globalization and democracy, alleviate poverty at home and abroad and to work closely with the US to promote global peace
- Strategic co-operation is at an all time high with the signing of the Indo-US nuclear deal

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- In the economic sphere, waves of economic reform that swept through the Indian economy from 1991 has brought a sea change in the economy as well as the global perception of it
  - India started being perceived as an attractive destination for investments with the SENSEX stock index recently touching 17000 points!
  - The India story comes for an interesting telling and at this point the world is witnessing a strong, fast-growing and vibrant Indian economy, which is rapidly integrating with the global economy

# India-an attractive investment destination

- World's largest democracy with a stable political environment
- English speaking, educated, skilled human resource base at far lesser rates than other developing or developed country
- World's leader in global outsourcing with excess of 80% market share
- Young population: 80% below 45 years of age
- Attractive fast growing consumer-class, markedly western in orientation
- Favorable foreign investment policies, tax incentives, strong economic fundamentals and attractive investor returns

# India's Industrial Policy

- Insignificant bureaucratic controls on industry (under liberalization policy) with licensing/restrictions limited to these sectors:
- Sectors reserved for public enterprise:
  - atomic energy
  - railways
- Industries with compulsory licensing:
  - distillation and brewing of alcoholic drinks
  - cigars and cigarettes of tobacco
  - electronic aerospace and defense equipment
  - industrial explosives
  - hazardous chemicals

- 
- Manufacture of items reserved for Small Scale Sector.
  - Proposals attracting location restrictions

GREAT OPPORTUNITIES FOR US FDI!

**Note:** Exemption from licensing applies also to substantial expansion of existing units

# Foreign Investment in India

## Foreign Direct Investment (“FDI”)

- FDI welcomed in almost all sectors
- Option to invest either directly or via joint venture
- Few investment caps (being progressively lifted)
- Opportunities in sectors as diverse as tourism and infrastructure, petrochemicals, mining technology and engineering, real estate, biotechnology, bio-informatics and nanotechnology
- Global destination for R&D, engineering design and prototype development and manufacturing hub for high technology products

# FDI Policy

Currently FDI is not permitted in these sectors:

- atomic energy
- lotteries, gambling and betting
- agriculture (other than floriculture, horticulture, seed development, animal husbandry, pisciculture and cultivation of vegetables, mushrooms, etc.)
- plantations (other than tea plantation)
- retail trading (other than single brand retail)

# FDI Policy contd....

Two FDI routes:

## Automatic Route

- FDI permitted under this route for all items/activities except ventures in which foreign investor has existing venture/tie-up in India in the same field. Certain exemptions to the restriction apply:
  - investment by a venture capital fund registered with securities regulator SEBI
  - existing joint venture with less than 3% investment by either party
  - existing joint venture is defunct or sick

## FDI Policy contd....

- Proposals falling outside notified sectoral policy/caps or sectors in which FDI is not permitted

### FIPB Route (Approval Route)

- Applies to all projects that do not qualify for automatic approval
- Prior FIPB approval is required
- FIPB decision is normally issued within 30 days
- Foreign investment is decided on a case-to-case basis on merit and based on the prescribed sectoral policy

# Acquisition of Shares

- Shares of private or public companies may be acquired
- Acquisition of shares of a public listed company is subject to the guidelines of the Securities Exchange Board of India (SEBI)
- Foreign investors may acquire equity in an existing Indian company through the automatic route

# Investment by Foreign Institutional Investors ("FII")

- The FII must be registered with SEBI and comply with certain investment limits. They may purchase shares and/or convertible debentures of an Indian company under the Portfolio Investment Scheme
- Shares/convertible debentures of an Indian company must be purchased through registered brokers on recognized stock exchanges in India
- FII's also permitted to purchase shares/convertible debentures of an Indian company through private placement/arrangement
- Foreign pension funds, mutual funds, investment trusts, asset management companies, nominee companies and incorporated/institutional portfolio managers or their power of attorney holders may invest In India as FIIs

# Foreign Technology Transfer

Foreign technology encouraged (both through FDI/foreign technology collaboration agreements)

No approvals required in respect of foreign technology agreements that involve:

- a lump sum payment of up to USD 2 million
- royalty payable up to 5% of net domestic sales and 8% of exports

Note: Indian Companies may issue equity shares toward lump sum fee and royalty

# Global Depository Receipts (GDRs)/ American Depository Receipts (ADRs)/ Foreign Currency Convertible Bonds (FCCBs)

- Indian companies listed on the stock exchange allowed to raise capital through GDRs/ADRs/FCCBs
- Foreign investment through GDRs/ADRs/FCCBs treated as FDI
- Issue of GDRs/ADRs does not require any prior approvals (except if FDI after such issue would exceed the sectoral caps requiring prior FIPB approval)
- Issue of FCCBs up to USD 500 million does not require any prior approvals

# Preference shares

- Foreign investment can be through subscription of preference shares for financing projects and industries
- Issue of preference shares permissible only as Rupee denominated instruments
- Preference shares to be redeemed out of accumulated profits/fresh capital within 20 years
- Preference shares carrying a conversion option must comply with sectoral caps on foreign equity

# Exchange Control Regulations of India

- Foreign exchange regulated under the Foreign Exchange Management Act, 1999 (“FEMA”)
- Foreign exchange transactions categorized current account and capital account transactions
- Indian Rupee is fully convertible on the current account (subject to a negative list of transactions that are prohibited/ require prior approval)
- Resident exchange control laws and regulations apply to foreign invested companies

# Repatriation of Capital

- If foreign capital is invested on a repatriable basis, investment and capital appreciation repatriable (after payment of taxes)

# Laws Governing Business in India

- The Companies Act, 1956
- Arbitration and Reconciliation Act, 1996
- The Competition Act, 2002
- The Foreign Exchange Management Act, 1999
- Income Tax Act, 1961
- Central Sales Tax, 1956
- Central Excise Act, 1944
- Information Technology Act, 2000
- Copyright Act, 1957
- Trademarks Act, 1999

## Laws Contd...

- Geographical Indications of Goods Act, 1999
- Indian Patents Act, 1970
- Designs Act, 2000
- Industrial Disputes Act, 1947
- Workmen Compensation Act, 1956
- Employees Provident Fund Miscellaneous Provisions Act, 1952
- Consumer Protection Act, 1956

# Important Regulatory Authorities for Foreign Investment

- Secretariat for Industrial Assistance (SIA)
- Foreign Investment Promotion Board (FIPB)
- The Foreign Investment Implementation Authority (FIIA)
- Reserve Bank of India (RBI)
- Registrar of Companies (RoC)
- Securities and Exchange Board of India (SEBI)
- Central Board of Excise and Customs (CBEC)
- Central Board of Direct Taxes (CBDT)
- Authority for Advance Rulings (AAR)
- Investment Commission (IC)

# Growth Sectors of economy for foreign investment– IT and ITES

- Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) schemes in operation
- Undertakings setup in EHTP/STP are eligible for 100% tax exemption of export profits till March 31, 2009
- 100% FDI permitted without prior approval

# Special Economic Zones (SEZ's)

- SEZ Act and its rules notified with effect from February 2006
- An export oriented duty free enclave deemed to be outside the customs territory of India
- 22 operational SEZ's with over 200 SEZ's in various stages of approval and development
- 100% tax deduction for 10 years
- Exemption from dividend distribution tax
- Sales tax exemption on purchases from domestic tariff area
- Service tax exemption

## SEZ Contd....

- No minimum export obligation
- 100% FDI permitted under the automatic route for SEZ development
- 15 year corporate tax exemption on export profits
- Branches of foreign companies in SEZ's eligible to undertake manufacturing

## Biotechnology and Bioinformatics

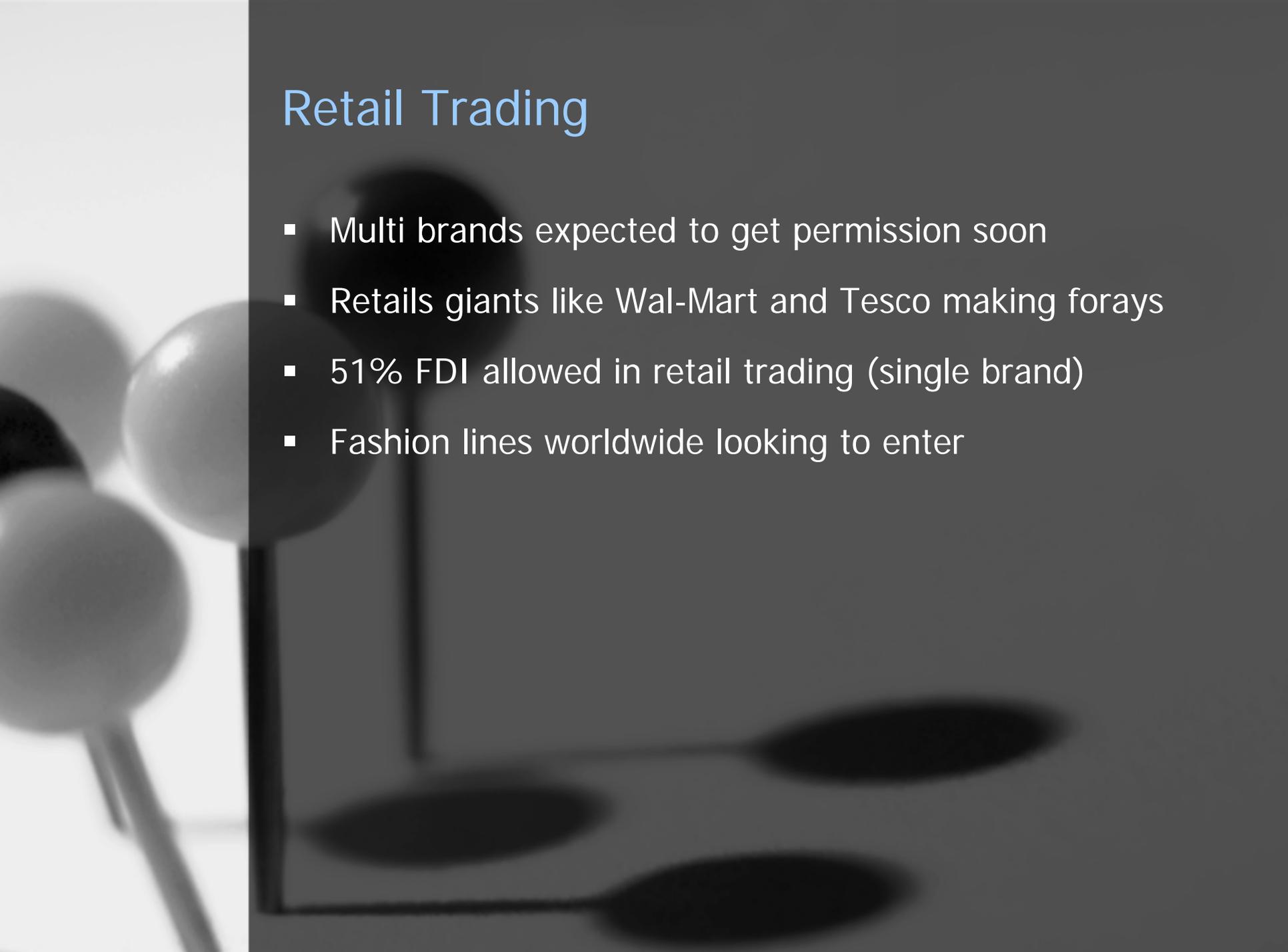
- 100% FDI permitted without prior approval
- 100% pass through tax incentive to VCFs and FVCIs
- One main reason for growth is implementation of product patent regime in India (TRIPS)

## Nanotechnology

- 100% FDI permitted without prior approval
- 100% pass through tax incentive to VCFs and FVCIs

# Manufacturing

- Expansion in core sectors in India like:
  - steel
  - chemicals and petrochemicals
  - consumer durables
  - IT hardware and telecom
  - transportation



## Retail Trading

- Multi brands expected to get permission soon
- Retails giants like Wal-Mart and Tesco making forays
- 51% FDI allowed in retail trading (single brand)
- Fashion lines worldwide looking to enter

# Tourism

- India fast emerging as one of the most enticing destinations for the global leisure traveler
- Tourism sector expected to grow at 8% a year in real terms between 2007 and 2016
- Hotels in the luxury and business traveler segment are recording nearly 100 per cent occupancy
- Spiraling tariffs and a strain on capacity and manpower offers tremendous opportunity for capacity expansion

## Tourism contd...

Major policy initiatives in tourism and travel include:

- Liberalization of the aviation sector
- Dynamic pricing policy for aviation turbine fuel that influences internal air fares
- Rationalization in tax rates in the hospitality sector
- Tourist friendly visa regime and immigration services
- Procedural changes in allocating land for hotels
- Permissions to set up guest houses

# Tourism Contd....

## Inbound

- 100% FDI allowed in tourism and hotels (includes beach resorts and other tourist complexes providing accommodation and/or catering and food facilities to tourists)
- Tourism related industries also include travel agencies, tour operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment amusement, sport and health units for tourists and convention/seminar units and organizations

# Tourism Contd....

## Outbound

- With the rise in living standards, India has become an impressive source for outbound tourist traffic
- Thomas Cook, Cox & Kings, Star Luxury Cruises, Queen Mary II Cruise Liners have launched full fledged operations
- Introduction of package tours to all five continents by various travel agencies/companies has become very popular over the past few years

## Other growth sectors

- Energy
- Infrastructure
- Non- banking financial services
- Banking
- Real Estate
- Media/broadcasting
- Telecommunication

# Forms of enterprises in India

## Joint Venture Company

Foreign Companies can set up operations through strategic alliances with Indian partners. A joint venture is preferred route for foreign investors intending to invest in any sector that does not permit 100% foreign direct investment

## Wholly Owned Subsidiary

Foreign companies can set up a wholly-owned subsidiary in the form of a private limited company in sectors where 100% foreign direct investment is permitted

# Forms of enterprises contd...

## Branch Office

A Branch Office is an extended arm of the foreign company. It can undertake:

- export/import, consultancy, research and development of software
- coordinate with local buyers and sellers or provide technical support for products sold in India and conduct operations related to airline/shipping business
- It is not allowed to undertake manufacturing activities (except research work in which the parent company is engaged)

Prior Reserve Bank of India approval necessary to set up

## Forms of enterprises contd...

### Liaison Office

Role limited to collecting market information. As name suggests not allowed to undertake business activity other than liaison activities. Cannot earn income in India

### Project Office

For overseas companies planning to execute specific projects in India. RBI conditions apply. Just a report to RBI on particulars of the project/contract is required

# Tax Regime of India

## Direct Tax

### Corporate Tax

Domestic Company: 33.66%

Foreign Company: 41.82%

### Dividend Tax

Company: 16.995%

Money Market Mutual Fund : 25%

- Minimum Alternate Tax
- Capital Gains
- Securities Transaction Tax

## Tax Contd...

- Royalties/technical fees to non-residents are taxed on net basis.
- Fringe Benefit Tax (FBT)
- ESOPs brought under FBT
- Banking Cash Transactions Tax: 0.1% to apply for withdrawals over INR 50,000
- Double Tax Avoidance Agreements (DTAAs)
- Other Direct Tax: Wealth Tax
- Important concept: Transfer pricing and determination of arms length price ("ALP")

# Indirect Tax

- Customs duty
- CENVAT (excise duty)
- Sales tax
- Value added tax
- Service tax
- Octroi duty/entry tax
- Stamp duty
- R&D cess
- Works contract tax

## Indirect Tax Contd...

- Turnover tax
- Purchase tax
- Secondary and higher education cess



**IMPORTING INTO INDIA**

# Import Policy

1. make necessary imported goods more easily available, including essential capital goods for modernizing and upgrading technology
2. simplify and streamline procedures for import licensing
3. promote efficient import substitution and self-reliance.
  - only 4 prohibited goods:
    - tallow fat
    - animal rennet
    - wild animals
    - unprocessed ivory

## Restricted List

- Exports and imports shall be free, except where regulated by FTP/other law
- Item wise export and import policy is specified in ITC (HS) notified by DGFT
- Based on grounds of:
  - security, health and environmental protection
  - goods reserved for production by small and tiny enterprises
  - goods made home-based or village-based that require low skills and employ a large number of people

# Tariff and Non-Tariff Barriers

- Policy to achieve average ASEAN region tariff levels
- Basic customs tariff rate ranges from 0% to 40% plus additional duty of 2% (average rate about 30%)
- Imports of 4200 items allowed free of duty for export production
- No quantitative restrictions on imports of capital goods/intermediates
- Import of second-hand capital goods (with minimum residual life of 5 years) permitted
- Export Promotion Capital Goods Scheme allows exporters and service industries import of capital goods at concessional or at nil customs duty

## Compliance with Laws

- Importers must comply with FT (D&R) Act, Rules and Orders and Authorization terms and conditions
- All imported goods are subject to domestic laws, rules, orders (PACO), regulations, technical specifications, environmental and safety norms applicable to domestically produced goods.

# Principles of Restriction

DGFT may, through a notification, adopt and enforce any measure necessary for:

- Protection of public morals; protection of human, animal or plant life or health; protection of patents, trademarks and copyrights and the prevention of deceptive practices; prevention of use of prison labor; protection of national treasures of artistic, historic or archaeological value; conservation of exhaustible natural resources; protection of trade of fissionable material or material from which they are derived and prevention of traffic in arms, ammunition and implements of war

# Terms and Conditions of a license/ Certificate/Permission/ Authorization

Every Authorization shall be valid for prescribed period of validity and shall contain terms and conditions like:

- (a) quantity, description and value of goods
- (b) actual User condition
- (c) export obligation
- (d) value addition to be achieved
- (e) minimum export/import price.

# Importer-Exporter Code (IEC) Number and Miscellaneous

- All importers need an IEC number
- Imported for export needs authorization on execution of LUT/BG with customs authorities
- Permission is not required for import of capital goods under lease financing
- Authorization to import and for any other benefit or concession under FTP needs a registration cum membership certificate
- Hotels of one-star and above/other registered service providers in tourism sector are entitled to duty credit scrip equivalent to 5%/10% of free foreign exchange earned during preceding financial year