
THE ENFORCEMENT GAP IN INTERNATIONAL TRADE LAW: IMPLICATIONS FOR INDIA'S DOMESTIC INTEGRATION

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ABSTRACT

India's domestic legal framework struggles to keep pace with its international trade obligations under the World Trade Organization (WTO). As a dualist system, treaties such as the General Agreement on Tariffs and Trade (GATT) or the Agreement on Subsidies and Countervailing Measures (SCM) require enabling legislation, producing an enforcement gap between global commitments and local enforcement. This becomes evident in disputes such as *India–Solar Cells*¹ and *India–Export Related Measures*², where WTO panels found Indian measures inconsistent due to weak alignment between domestic law and international obligations. Using doctrinal research based on treaties, case law, and scholarly literature, this chapter examines how institutional fragmentation, limited administrative resources, and poor coordination between ministries hinder compliance. It argues that without a centralized enforcement body to oversee treaty implementation, India risks reputational damage and weakened credibility and reduced credibility in global trade governance. Comparative lessons from countries like Brazil and South Africa suggest possible institutional reforms for stronger integration.

Keywords: Dualistic legal system, Enforcement gap, WTO compliance, Institutional coordination, Centralized enforcement

¹ India – Certain Measures Relating to Solar Cells and Solar Modules, WTO Doc. *WT/DS456/AB/R* (Sept. 16, 2016).

² India – Export Related Measures, Panel Report, *WT/DS541/R* (Oct. 31, 2019).

1. Introduction

Identifying and dealing with the gaps in enforcement of international trade law are paramount because they threaten the integrity of the global legal system by causing uncertainty, skewing competition, and impeding the achievement of stable, free trade, which is the aim of well-crafted multilateral accords. It is not easy to integrate international trade law with India's domestic legal systems because of its robust legal structures and socio-economic factors. The absence of a centralised enforcement mechanism in India is the critical research gap this chapter addresses which eventually leads to uncertainty, irregular application of standards, and fundamentally hampers the seamless domestic adoption of international trade commitments.² This chapter employs a qualitative, doctrinal legal research method to examine the difficulties that are likely to arise from India's lack of a centralized enforcement mechanism for international trade law which involves analyzing primary sources such as treaties, national laws, judicial decisions and secondary sources to assess enforcement gaps, judicial efficacy etc.

The main goal is to suggest some strategies which would help in better domestic integration, specifically advocating in particular for the creation of high-level nodal agency that would use relative views to standardized policy interpretation and expedite implementation across center and state government. India's multi-layered system, operating at both central and state levels, makes consistent application difficult, as the regular legal system may lack the necessary expertise. India is the largest developing country litigant at the WTO whose broad nature of international trade law, combined with the absence of a single enforcement body, leading to a patchwork approach to compliance and differing interpretations by various regulatory bodies and courts. This deficiency impedes the free flow of trade and necessitates an examination of the legislative and institutional barriers to effective enforcement.³

New developments like Regional Trade Agreements (RTAs) and the increased focus on sustainability contributes to complexity of international trade law as it is ever evolving in nature, the rise of RTAs since the mid-1980s, exemplified by the United States-Israel Free

² Shashank P. Kumar, Meghana Sharafudeen *et.al.*, *A Bittersweet Celebration*, 5(1) TRADE L. & DEV. 1 (2013) available at: <https://docs.manupatra.in/newslines/articles/Upload/4EA8070B-71C24454B1B71FFA977E3F7B.pdf> (last visited on Nov. 24, 2025).

³ *Ibid.*

Trade Agreement 1985³, adds complexity to international trade law. These preferential agreements introduce discriminatory elements, affecting non-participating countries. Understanding the legal, political, and economic ramifications of RTAs is crucial, as they reflect merging national agendas beyond commercial objectives and offer insights into multilateral collaboration and the balancing of diverse national interests.⁴

The effectiveness of international trade law heavily depends upon the domestic adoption and implementation of international standards because well-crafted accords are insufficient without strong compliance means. India's challenge, exacerbated by the absence of a central enforcing body, echoes the "Realist" argument regarding enforcement limitations in a decentralised system.⁵

It is crucial to discuss the growing interplay between trade liberalization and sustainability requirements, while the GATT and WTO historically focused on removing trade barriers, increased stress on environmental and social issues have created a new, complex, and potentially complementary paradigm. Sustainability is defined as achieving economic, social, and environmental prosperity for present and future generations.⁶

Though seemingly incompatible, trade liberalisation and sustainability are not mutually exclusive. Trade policies are increasingly impacted by sustainability concerns, with agreements now including clauses on fair labour standards and environmental protection. Arguments suggest trade agreements should be used as tools for environmental and climate defence, as commerce can facilitate climate change adaptation and cleaner technology distribution, though climate change itself threatens commerce. For India, including

³ Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, 1985, available at <https://ustr.gov/trade-agreements/free-trade-agreements/israelfta> (last visited Nov. 24, 2025).

⁴ Raj Bhala *et al.*, "Scrutinizing RTAs: A Comparative Review of David Gantz, *Regional Trade Agreements: Law, Policy and Practice* (Durham: Carolina Academic Press, 2009)," 1(2) Trade L. & Dev. 319 (2009).

⁵ Shinya Murase, *Trade and the Environment: With Particular Reference to Climate Change Issues*, 2 Manchester J. Int'l Econ. L. 18 (2005).

⁶ *Ibid.*

sustainability adds complexity to its decentralised enforcement system, requiring careful, integrated attention to upholding social and environmental protections alongside trade liberalisation.⁷

2. International Trade Law and Domestic Legal Systems

Founded on the principles of GATT and WTO, International Trade Law governs global commerce to promote liberalisation. Despite its economic focus, the field is evolving to integrate sustainability. A key challenge as highlighted in the research is the lack of a centralised enforcement mechanism, which complicates its domestic integration into systems like India's.⁸

The foundation of international trade law generally lies with the legally binding sources such as primarily treaties and international agreements like WTO, GATS, and TRIPS, while Customary international trade laws can't be fully ignored. The system is clarified by rulings of International Court of Justice (ICJ) but mainly through WTO Dispute Settlement Body (DSB), and its domestic enforcement crucially depends on the national law of member states.⁹ International trade law rests on core principles of Non-discrimination (MFN and National Treatment), Trade Liberalisation (reducing barriers), and Predictability and Transparency. It also incorporates rules for Fair Competition (anti-dumping) and a growing focus on Sustainable Development. Special and Differential Treatment is afforded to developing nations like India.¹⁰

India's legal framework for incorporating international trade law operates under a dualist system established by cases like *Ali Akbar v. United Arab Republic*¹¹, requiring Parliamentary

⁷ Kamo Sende, "International Trade Law and Sustainability: Balancing Trade Liberalisation and Environmental Protection" (Unpublished LL.M. Dissertation, 2023).

⁸ Kamo Sende, *Supra note 1*, at 9.

⁹ Représentation permanente de la France auprès des Organisations Internationales à Vienne, *What is International Trade Law?*, (Mar. 30, 2020), available at <https://onu-vienne.delegfrance.org/What-is-international-tradelawInternational>.

¹⁰ Kamo Sende, *Supra note 2*, at 9.

¹¹ SCR (1) 319

enactment Article 253¹² to domestically enforce treaties in this landmark judgement the Supreme Court dismissed the appeal and upheld that to sustain an action against a foreign state authorization is necessary here the plaintiff had sued the UAR for breach of contract without obtaining the necessary government approval. Key domestic legislation fulfilling these global commitments includes the Customs Act, 1962¹³, governing tariffs and border control the Foreign Trade (Development and Regulation) Act, 1992¹⁴, which frames the current Foreign Trade Policy 2023¹⁵ and the Foreign Exchange Management Act, 1999 (FEMA)¹⁶,

streamlining financial transactions. Additionally, the Arbitration and Conciliation Act, 1996¹⁷ facilitates international dispute resolution compliant with the New York Convention. While domestic law takes precedence over unincorporated treaties, the Indian judiciary usually employs harmonious construction to align laws with international commitments as established by the celebrated case of *Indian Council for Enviro-Legal Action v. Union of India*.¹⁸ However, the major challenge is the absence of a centralised enforcement mechanism as it leads to inconsistent application and coordination issues across multiple agencies (DGFT, Customs), and varying effectiveness across states and this decentralisation hampers India's capacity to seamlessly fulfil its international trade obligations.¹⁹

Integrating international trade law domestically in India is challenged by its dualist system as mentioned in *Ali Akbar v. United Arab Republic*²⁰, requiring time-consuming legislative changes, and its federal structure, causing inconsistent application across states.²¹ The most significant hurdle is the lack of a centralised enforcement mechanism as discussed that leads

¹² The Constitution of India, 1947, Art. 253

¹³ The Customs Act, 1962 (Act No. 52 of 1962)

¹⁴ The Foreign Trade (Development and Regulation) Act, 1992 (Act No. 22 of 1992).

¹⁵ Government of India, Ministry of Commerce and Industry, Department of Commerce, *Foreign Trade Policy-2023* (LexisNexis 2025).

¹⁶ The Foreign Exchange Management Act, 1999 (Act No. 42 of 1999).

¹⁷ The Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996).

¹⁸ AIR 1996 SC 1446 31, AIR 1996 SC 2715.

¹⁹ Bharat Sharma, Annual Report Analysis With Regards To IP Under Budget 2021-22, ZestIP (Apr. 1, 2021), available at <https://www.zestip.in/annual-report-analysis-with-regards-to-ip-under-budget-2021-22/>.

²⁰ *Supra note 1*, at 15.

²¹ Open Budgets India, *Federal Structure of India - Budget Basics*, available at <https://budgetbasics.openbudgetsindia.org/indian-federal-structure>.

to a fragmented system where numerous agencies (DGFT, Customs) enforce trade laws, causing bureaucratic delays and compliance uncertainties.^{22,23}

2.1 Case Studies of Enforcement Challenges:

Using the doctrinal research method, we shall further dwell deep into the case study of *India - Export Related Measures*, the United States initiated a WTO dispute against India on March 14, 2018, regarding alleged export subsidy measures under the Dispute Settlement Understanding (DSU) and Subsidies and Countervailing Measures (SCM) Agreement. Consultations failed, and a Panel was established on May 28, 2018. The Panel proceedings involved written submissions and a single substantive meeting, which India opposed, and also featured debate over a US request for a partially open meeting, which the Panel declined. India also sought preliminary rulings regarding the Panel's terms of reference. This case exemplifies the difficulty of dispersed domestic institutions to continuously adhere to WTO regulations by highlighting the discrepancy between India's local export promotion and subsidy programs and its international obligations under the SCM Agreement.²⁴

Whereas in the other dispute of *India-Solar Cells* The GATT/WTO system, established to liberalize international trade and provide stable rules, is now gravely threatened. The fragility stems primarily from internal WTO factors, including agreements and rules that are inconsistent with rising non-market objectives like industrial protection, and an overreach of its mandate. This "damage" is not irreparable, but objectives like environmental protection or labour rights should be handled by other bodies or through plurilateral arrangements among like-minded countries. This issue, which relates to local content criteria for solar energy projects, is a perfect example of the enforcement vacuum brought about by the absence of a central, coordinating agency. It shows how India's industrial protection and renewable energy policies conflict with WTO national treatment norms.²⁵

²² Privacy Shield, India - Trade Barriers, (U.S. Dep't of Commerce,

²³ 1), available at <https://www.privacyshield.gov/ps/article?id=India-Trade-Barriers>.

²⁴ India - Export Related Measures, Panel Report, *WT/DS541/R (WTO 2019)*, available at <https://idt.taxsutra.com/sites/idt.taxsutra.com/files/webform/541R.pdf> (last visited Nov. 24, 2025).

²⁵ H.K.S. Harisankar, *The Efficacy of India's Current IPR Regime in Promoting Innovation and Foreign*

India's export promotion and subsidy programs are regulated by many government agencies such as the Ministry of Finance and the Directorate General of Foreign Trade (DGFT), each of which applies regulations based on regional economic objectives rather than a single, topdown interpretation of India's obligations under the SCM Agreement. These policies continued since there is no centralized enforcement or coordinating agency, which exposed a serious mismatch between India's obligatory international obligations and its domestic economic goals. The execution of the legislation across several agencies without uniform central monitoring is the problem, not the statutes. As in the other relevant case while the Ministry of Commerce was in charge of overseeing WTO compliance, the Ministry of New and Renewable Energy (MNRE) created its policies with an emphasis on energy independence and national security. India's industrial protection and renewable energy programs were permitted to clash with WTO regulations in the absence of a single entity tasked with preventing or harmonizing policy between these conflicting governmental goals. The institutional check is required to smoothly collaborate the industrial and environmental aims with national trade requirements is not provided by the current decentralized system.

3. The Indian Legal and Institutional Framework for International Trade Law

India follows predominantly dualist structure²⁶ which requires Parliament to enforce international treaties. Despite this, the Constitution's Article 51 (DPSP) mandates upholding international law and treaty obligations. The judiciary facilitates integration through the rule of harmonious construction as in *Gramophone Company*²⁷ case which dealt with the interaction of law between the international law and domestic laws specially focusing on the meaning of 'import' under the act and ordered that while the goods even though through transit if enters the domestic boundary will be considered imported and customs authority will have the right to seize if found illegal.²⁸

Investment, 5 Trade & Env't L. Rev. 10 (2024), available at: https://www.sciencedirect.com/science/article/pii/S2667111524000021?ref=pdf_download&fr=RR2&rr=986d241f98a8a843 (last visited Nov. 24, 2025).

²⁶ H.O. Agarwal, *International Law and Relations* 10 (2018).

²⁷ AIR 1984 SC 667

²⁸ Priya Sepaha, Ministry of Commerce and Industry- An Overview, Law Colloquy (Dec. 27, 2024), available at:

India's institutional framework for trade is complex, center on the Ministry of Commerce and Industry. Its Department of Commerce handles foreign relations and policy, which the Directorate General of Foreign Trade (DGFT) enforces through regional offices, licensing importers and exporters. "Specialized agencies like the DGTR address unfair trade practices (dumping/subsidies), the CBIC administers customs and tariffs, and the RBI regulates foreign exchange under FEMA, collectively managing India's engagement with the global economic system."²⁹

3.1 The Role of State Governments in Trade-Related Matters

Despite the Central government's exclusive constitutional authority over foreign trade, State Governments are increasingly vital for trade facilitation. Their role is crucial in developing infrastructure (ports, highways), creating local industrial policies, and offering incentives to boost regional exports.³¹ Programs like "Districts as Export Hubs" underscore their growing importance in identifying export products and removing local barriers,²⁹ supporting the national goal by providing a necessary bottom-up, localized approach to trade competitiveness.³³

<https://lawcolloquy.com/publications/legal-news/ministry-of-commerce-and-industry-an-overview>.

²⁹ Sharmila Kantha, *States as Proactive Drivers of India's Export Mission*, NatStrat (Mar. 13, 2024), available at: <https://www.natstrat.org/articledetail/publications/states-as-proactive-drivers-of-india-s-exportmission124.html>.

³¹ *Ibid.*

4. Analysing the Enforcement of Key International Trade Agreements in India.

India faces difficulty in executing major international trade agreements due to a multi-stage process involving domestic laws.³⁰ Enforcement of international rules and ratified treaties relies on numerous central and state agencies like DGFT and CBIC to make them consistent with domestic legislature leading to inconsistencies and coordination challenges. Enforcing RTAs is also complex due to varying provisions and the difficulty in ensuring uniform application of rules across India's dispersed administration.³¹

4.1 Enforcement of WTO Agreements in India:

Enforcing WTO agreements in India is a complex and decentralized task.³² While Parliament has enacted legislation, such as amending IP laws to comply with TRIPS and establishing the DGTR for trade remedies,³³ legislative integration can be slow, causing implementation gaps.³⁴ Administrative implementation is scattered across the DGFT (trade policies), CBIC (customs),

²⁹ Government of India, *India's Advancing Role in Global Trade Competitiveness*, Press Information Bureau (Dec. 3, 2024), available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=2079986>.

³³ Sharmila Kantha, *Supra note 1*, at 30.

³⁰ Vivek Sehrawat, *Implementation of International Law in Indian Legal System*, 31 Fla. J. Int'l L. 4 (2019), available at: <https://scholarship.law.ufl.edu/fjil/vol31/iss1/4>.

³¹ India, *Renewable Energy*, Trade.gov (Jan. 12, 2024), available at: <https://www.trade.gov/countrycommercialguides/india-marketchallenges>.

³² *Ibid.*

³³ Government of India, DGTR (Directorate General of Trade Remedies) of the Department of Commerce issues 56 final findings since April, 2021 in in Anti-Dumping (AD)/Countervailing Duties (CVD)/Safeguard (SG) investigations., Press Information Bureau (Jan. 25, 2022), available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1792557>.

³⁴ *Supra note 1*, at 35.

and BIS (standards). This confusing and interdependent structure causes significant challenges, including a lack of interagency coordination and inconsistent regulation, increasing compliance costs and lack of autonomy.³⁰ Furthermore, specific WTO commitments like those on agricultural subsidies and the effective enforcement of IPR against piracy remain persistent problems.⁴⁰ The judiciary assists through the harmonious construction of domestic law, but its direct enforcement power over unincorporated WTO provisions is limited. Strengthening enforcement requires better coordination and capacity building.³¹

4.2 Enforcement of Bilateral and Regional Trade Agreements

Compared to multilateral agreements like those under the WTO, the implementation of bilateral and regional trade agreements (RTAs) entails a distinct set of problems and procedures. These agreements, which are often tailored to specific alliances, typically include special chapters for rules of origin, dispute resolution, customs cooperation, and safeguards to encourage adherence to the conditions set out.³² Within the framework of RTAs, joint working groups and committees are essential for overseeing implementation and settling likely conflicts through dialogue and consultation. Compared to multilateral agreements like those under the WTO, the implementation of bilateral and regional trade agreements (RTAs) entails a distinct set of problems and procedures.³³

³⁰ *Supra note 1*, at 37.

⁴⁰ *Supra note 2*, at 35.

³¹ CBIC notifies Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, Lexplosion (Aug. 2020).

³² Free Trade Agreements, Indian Trade Portal, available at: <https://www.indiantradeportal.in/vs.jsp?lang=0&id=0,55,288>

³³ Ministry of Commerce & Indus., India's Current Engagements in RTAs, available at: <https://www.commerce.gov.in/international-trade/trade-agreements/indiascurrent-engagements-in-rtas/>.

5. Towards a More Centralized and Effective Enforcement Mechanism in India

To effectively resolve the difficulties in India's domestic enforcement of international trade law, a move toward a more centralized and organized system is required. The proposed solution not only focuses on establishing a central nodal agency potentially, within the Ministry of Commerce as in Brazil to oversee the consistent execution and interpretation of all international trade agreements but also acting as a single point of contact across geographies and sectors which will make it more convenient for the international laws to be directly converted into domestic law more faster and hassle free, agency will also act as a point of contact for various nations to contact directly.³⁴

Complementing this, capacity building is crucial, demanding investment in training and specialized knowledge for enforcement authorities at all levels, alongside upgrading infrastructure and technology for efficient IPR and customs administration. To address inconsistencies arising from the federal structure, the text suggests promoting greater harmonisation by developing model state-level trade laws and setting up inter-state coordinating bodies to ensure uniform compliance.³⁵

Leveraging technology including electronic platforms and AI for data analysis can significantly enhance efficiency, transparency, and risk assessment in trade compliance. At the end compliance will be strengthened by improving the awareness and knowledge of international trade law among local stakeholders, such as businesses and legal professionals.³⁶ This multifaceted approach aims to optimize India's capacity to meet its global trade responsibilities.

5.1 Comparative Insights: South Africa and Brazil:

India may take influence of comparative lessons from other dualist, complex, and growing economies to support the argument for a centralized enforcement authority.

³⁴ G20, *Trade and Investment Ministers Chair's Statement and Outcome Document* (Apr. 20, 2023), available at: <https://g20.utoronto.ca/2023/230825-trade.html>.

³⁵ Chirag Bharadwaj, *AI in Risk Management: Key Use Cases*, Appinventiv (Nov. 9, 2023), available at: <https://appinventiv.com/blog/ai-in-risk-management/>.

³⁶ MDPI, *Modernizing Customs Procedures with Distributed Ledger Technology: Requirements for Issuing the Certificate of Origin*, available at: <https://www.mdpi.com/2504-3900/111/1/1>.

5.1.1 Brazil:

Centralized Coordination of Policy is the system in Brazil that places a strong emphasis on institutional cooperation. The design and execution of foreign trade strategy are centralized by the high-level, interministerial Chamber of Foreign Trade (CAMEX). Its function in coordinating talks, establishing trade policy, and guaranteeing coordination across ministries (avoiding the fragmented approach saw in India) provides a potent model for centralized political control, even if it is not a single enforcement body.³⁷ India must establish a distinguished coordinating body akin to CAMEX which would guarantee political alignment between center and state and policy harmonization which will be the role of the body to implement what India has signed and ratified in international sphere. This would lower the likelihood of compliance failures resulting from inter-ministerial disagreement as demonstrated in India–Solar Cells.

5.1.2 South Africa

Simplifying legislative reform may be learned from South Africa, which likewise has a dualist constitution. In order to approve the execution of complete international accords or groups of agreements, the government frequently employs larger enabling legislation, which greatly shortens the bureaucratic time gap between ratification and domestic impact. Additionally, trade remedies (anti-dumping, countervailing measures) are centralized into a single, dedicated regulatory body by specialized organizations like the International Trade Administration Commission (ITAC), which improves technical uniformity and compliance efficiency.³⁸ In order to reduce the implementation lag caused by Article 253's requirements, India can try and explore the use of wide enabling legislation which would speed up the domestic application of international trade agreements and imitate ITAC's centralization for technical standardization. Hence, India can reduce the fundamental enforcement gaps caused by its Quasi federal structure and dualist traditions by implementing aspects of central policy coordination (like CAMEX) and efficient legislative change (like South Africa's efficiency).

³⁷ L. Pereira & T. Moreira, *The Role of CAMEX in Brazilian Trade Policy: A Model for Inter-Ministerial Coordination*, 15 J. of Latin American Trade Law 21 (2024).

³⁸ J. Van Der Linde, *The Transformation of International Agreements in South Africa: Efficiency in a Dualist System*, 12 African J. of Legal Studies 345 (2023).

6. Conclusion

The existing literature provides a strong foundation for understanding India's international trade landscape, encompassing its dualist legal system and the institutional roles of government agencies and the judiciary in upholding WTO agreements and customs.

Despite this, a critical gap the literature has acknowledged is the difficulty in catering of domestic implementation of international trade norms the empirical analysis of how India's heavily decentralised enforcement structure impacts compliance with specific trade provisions, business operations, and the system's overall effectiveness.³⁹ Using the Export Related Measures and Solar Cells case debates, this chapter has tried to showcase that the institutional fragmentation which permits contradictory policies to emerge unchecked, is the fundamental failing rather than legislation. The increasing complexity of RTAs and sustainability requirements further highlights this issue as it demands uniform application of rules of origin and market access clauses, a difficult task without a centralised entity.⁴⁰

The conflicts between the WTO and GATT system and Multilateral Environmental Agreements (MEAs) particularly regarding regulatory tools and enforcement are intensified by India's lack of a unified national enforcement framework, risking inconsistent trade and environmental compliance at various governmental levels,⁴¹ to directly avert the policy central level interministerial agency must be made which will serve as the single point of policy interpretation and coordination and in order to lessen the time-consuming legislative barrier India can include comparable methods, such as South Africa's use of wide enabling legislation and Brazil's CAMEX model for political coordination. The decline of the WTO's enforcement

³⁹ Shashank P. Kumar, *Supra note 1*, at 3

⁴⁰ Raj Bhala, *Supra note 1*, at 4

⁴¹ Shinya Murase, *Supra note 1*, at 7

pillar underscores the necessity for India to fortify its domestic institutional and legal frameworks.⁴²

Conclusively, the study advocates for policy-oriented research that offers concrete, empirically backed models for a more centralised and effective enforcement system, thereby enhancing India's adherence to international obligations and ensuring sustained economic growth.⁴³

⁴² A. Kaushik, "Dispute Settlement and Efficacy of the Multilateral Trading System," 59 *Econ. & Pol. Wkly.* 46 (2024), available at: <https://www.epw.in/journal/2024/46/global-value-chains/dispute-settlement-andefficacymultilateral.html>.

⁴³ Kamo Sende, *Supra note 3*, at 9.

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