

India & The WTO

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INDIA INTRODUCES FULL PRODUCT PATENT REGIME

SALIENT FEATURES OF ORDINANCE ON PATENTS THIRD AMENDMENT



Mr. Kamal Nath, Minister for Commerce and Industry, holding a Press Conference in New Delhi on December 27, 2004, to announce the Ordinance on Patents Third Amendment

- ✓ Extension of product patent protection to all fields of technology (i.e., drugs, food and chemicals);
- ✓ Deletion of the provisions relating to Exclusive Marketing Rights (EMRs) (which would now become redundant), and introduction of a transitional provision for safeguarding EMRs already granted;
- ✓ Introduction of a provision for enabling grant of compulsory licence for export of medicines to countries which have insufficient or no manufacturing capacity, to meet emergent public health situations (in accordance with the Doha Declaration on TRIPS and Public Health);
- ✓ Modification in the provisions relating to opposition procedures with a view to streamlining the system by having both Pre-grant and Post-grant opposition in the Patent Office;
- ✓ Addition of a new proviso to circumscribe rights in respect of mailbox applications so that patent rights in respect of the mailbox shall be available only from the date of grant

“ The law effectively balances and calibrates intellectual property protection with public health concerns ” - Kamal Nath

of patent, and not retrospectively from the date of publication.

- ✓ Strengthening the provisions relating to national security to guard against patenting abroad of dual use technologies;
- ✓ Clarification of the provisions relating to patenting of software related inventions when they have technical application to industry or are in combination with hardware;
- ✓ Rationalisation of provisions relating to time-lines with a view to introducing flexibility and reducing the processing time for patent applications, and simplifying and rationalising procedures.

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KAMAL NATH'S STATEMENT ON THE ORDINANCE RELATING TO PATENTS (THIRD) AMENDMENT

The following is the text of the statement made by Mr. Kamal Nath, Union Minister of Commerce & Industry, Government of India, on the Ordinance relating to Patents (Third) Amendment dated 26th December, 2004 at a news conference in New Delhi on 27th December, 2004:

1. With the coming of the New Year, two significant developments in the world of commerce and industry open themselves to India. Both are connected with the world trading order, of which India is a part: one is the final phase-out of the Multi-Fibre Agreement, and the other is marked by India's conformity with the international Intellectual Property System in all respects, on terms that are practical and credible.
2. When India decided ten years ago to accept and adopt the world trading order, we committed ourselves to fulfilling certain obligations on the understanding that other countries of the world too would commit themselves to the same obligations. And out of these common commitments would arise opportunities – opportunities that would not have come our way had we stayed outside the system.
3. The WTO system provides an organized multilateral framework within which India can claim trade demands as a legitimate right; and in this we have succeeded. Ten years ago, our exports stood at less than 32 billion dollars. A decade later they had doubled to 64 billion dollars. Now we look to doubling our exports in five years. This year we are already set to cross 75 billion dollars. All this translates into more employment opportunities and greater economic activity, with its concurrent benefits.
4. It must be remembered that it is not only India that is conforming – for every commitment of ours, there is a parallel commitment of other member States. Because of our stand on special and differential treatment, our major trading partners have had to reduce their tariffs to a greater extent. Where dissatisfied we have recourse to the Dispute Settlement Mechanism of the WTO. Of the 22 cases involving India which have so far been decided, India has won 9, and 7 were amicably settled on terms favourable to us.
5. The pharma industry and the IT industry are the two sunrise sectors for India. The ordinance amending the Patent Act provides for an enabling environment for both of these. Among the sectors that have experienced the greatest transformation in India, the Pharmaceutical Industry is perhaps the most significant. India's WTO involvement during the last decade has encouraged our pharma companies to adopt a strategy of R & D based innovative growth. Thus, while Indian companies spent not even a fraction of a percent on R & D ten years ago, today the larger Indian companies are spending in the region of 6 to 8 percent of their turnover on R & D. (The norm for major MNCs is 12%). The transformed Indian pharma industry is itself looking for patent protection – particularly the bio-tech sector, in which India has aggressive prospects.
6. When we joined the WTO ten years ago Indian pharma exports were less than 4000 crore rupees. A decade later our pharma exports are 14,000 crore rupees, and account for more than a third of the industry's turnover. This is the result of the confidence built up in our industry due to our progressive adherence to our IP commitments. Now we are poised to achieve an annual compounded growth rate of 30% in order to double our pharma exports in three years. Some 60 billion dollars worth of drugs are going off patent in the next few years. Indian industry can grab a lion's share of this – provided we are a bona fide member of the international trading community, and are not in a questionable position, open to the possibility of retaliatory measures and sanctions, threatening not only our pharma exports, but other sectors as well – including our textiles sector.
7. Apart from manufacture of drugs, the pharma industry offers huge scope for outsourcing of clinical research. We have a vast pool of scientific and technical personnel, and recognized expertise in medical treatment and health care. India can take advantage of our strength in this provided we have the right legal framework in place, which provides IP protection to the results of that research.
8. In IT, the trend is to have software in combination with or embedded in hardware – such as in computers or cell phones or a variety of other gadgets. Software as such has no patent protection (the protection available is by way of copyright); but the changing

technological environment has made it necessary to provide for patents when software has technical applications in industry in combination with hardware. This has been a demand of NASSCOM.

9. This Third Amendment is only the culmination of a process begun ten years ago. The provisions of the Ordinance are to be seen in conjunction with, and in the context of the Act, as well as of the earlier two Amendments of 1999 and 2002. Our Patents Act always provided for process patents in all fields, and product patents in all fields except drugs, food and chemicals. The Act had to be amended in order to provide for product patents in these also with effect from 1st January 2005. A Bill had been introduced in Parliament a year ago by the previous government, but lapsed.
10. The new Government set up a Group of Ministers on the matter. It was our desire to bring the Bill to Parliament first. But it was also necessary to consult with all stakeholders and political parties. The last comments we received were on the 21st of December – and so it was not possible to bring the Bill to this session of Parliament. This has necessitated the Ordinance. The ordinance will be discussed in detail in Parliament in the Budget session. The ordinance is an interim measure to fulfill our legal obligations within the stipulated time.
11. The ordinance is the same as the Bill introduced last year with improvements in some significant respects. We have introduced a provision for patenting of software that is embedded in hardware. We have also provided for a definite pre-grant opposition procedure. The earlier bill had only a post-grant opposition, with a weak pre-grant representation. After extensive discussions we have decided to have both pre-grant as well as post-grant opposition. Of course, we have rationalized the timelines, so as not leave everything open-ended, but have a definite time-table within which each of the stages should take place. This reduces by half the maximum time it would take for the processing of an application, from more than nine years to about four. Another significant modification is the introduction of a provision to protect Indian industry from infringement proceedings with retrospective effect. We have specifically provided that patent rights for mail box applications will only be available prospectively. We have made these changes after wide consultation, and we feel that these considerably improve the proposals.
12. The fear that prices of medicines will spiral is unfounded. In the first place we must realize

the fact that 97% of all drugs manufactured in India are off-patent, and so will remain unaffected. These cover all the life-saving drugs, as well as medicines of daily use for common ailments. In the patented drugs also, in most cases there are always alternatives available. In fact a feature of patent protection is that it spurs research, so that constantly alternatives keep appearing in the market – and often the alternatives are better ones. Thus price control is inherently built in.

13. We have 13 Compulsory Licensing provisions under Chapter XVI in place. The Joint Parliamentary Committee discussed this issue threadbare three years ago. Their recommendations were the basis of the Second Amendment. The Act also has strong provisions under Chapter XVII for outright acquisition of the patent to meet national requirements. There is also the Drug Price Control Order administered by the National Pharmaceuticals Price Authority. With this framework in place it is clear that the concerns and fears expressed by various sections are wholly misplaced.
14. The Act ensures that the reasonable requirements of the public with respect to availability and affordability are taken care of. Public interest particularly public health and nutrition is protected. The law effectively balances and calibrates Intellectual Property protection with public health concerns and national security. By participating in the international system of intellectual property protection, India unlocks for herself vast opportunities in both exports as well as her potential to become a global hub in the area of R&D based clinical research outsourcing, particularly in the area of bio-technology.

U.S. BHATIA INDIA'S NEW AMBASSADOR TO THE WTO

Mr. U.S. Bhatia presented his credentials to the DG/WTO in Geneva on 10th November, 2004 as India's Ambassador to the WTO. He succeeds Mr. K.M. Chandrasekhar who has taken over as Secretary (Revenue) in the Ministry of Finance. DG/WTO welcomed Ambassador Bhatia and complimented India on the constructive role played by it in the finalisation of the July Framework. India had been active in coalition building and Minister Kamal Nath had personally visited Geneva twice.

IMPORTANT PUBLIC INTEREST PROVISIONS IN THE INDIAN PATENT LAW

The important public interest provisions in the Patent Law announced by Shri Kamal Nath, here today are:

- (a) **Conditional grant of patent [Section 47]:** This empowers the Government to import, make or use any patent for its own purpose. For drugs, it also empowers import for public health distribution.
- (b) **Revocation of patent in public interest [Section 66]:** This empowers the Government to revoke a patent where it is found to be mischievous to the State or prejudicial to the public.
- (c) **Grant of compulsory licence [Sections 82 to 94]: Chapter XVI** deals with the general principles and circumstances for grant of compulsory licences in order to protect **public interest** particularly **public health** and **nutrition**. These provisions check the abuse of patent rights. They can be invoked if the **reasonable requirements of the public** with respect to patented inventions have not been satisfied, and the patented invention is **not available** for public at a **reasonably affordable price**, and if the patented invention is not worked in the territory of India.

Note : [Section 92]: This provides for action in case of **national emergency, extreme urgency and public non-commercial use**, and **can be invoked without the grace period of 3 years from grant of patent**.
- (d) **Use of invention for the purpose of Government [Sections 100 & 101]:** This complements section 47.
- (e) **Acquisition of invention and patent for public purpose [Section 102]:** This empowers the Government to acquire a patent to meet national requirements.
- (f) **Bolar provision [Section 107 (A) (a)]:** This facilitates production and marketing of patented products immediately after expiry of term of patent protection by permitting preparatory action by non-patentees during life of patent.
- (h) **Parallel import [Section 107(A) (b)]:** This provides for import so that patented product can become available at the lowest international price.

TEXT

THE PATENTS (AMENDMENT) ORDINANCE, 2004

Ord.No 7 of 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Patents Act, 1970.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

Short title and commencement

1. (1) This Ordinance may be called the Patents (Amendment) Ordinance, 2004.
- (2) Sub-clause (ii) of clause (a), and clause (b), of section 37, sections 41, 42, 47, 58 to 62 (both inclusive) and 73 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and the remaining provisions shall come into force on the 1st day of January, 2005.

39 of 1970

Amendment of section 2

2. In section 2 of the Patents Act, 1970 (hereinafter referred to as the principal Act), in sub-section (1),-
 - (a) after clause (ab), the following clause shall be inserted, namely:-

'(aba) "Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;'
 - (b) in clause (d), for the words, brackets and figure "notified as such under sub-section (1) of section 133", the words and figures "referred to as a convention country in section 133" shall be substituted;
 - (c) clause (g) shall be omitted;
 - (d) in clause (h),-

1 of 1956.

(i) in sub-clause (iii), after the words and figures "the Companies Act, 1956", the word "; or" shall be inserted;

(ii) after sub-clause (iii), the following sub-clause shall be inserted, namely:-

"(iv) by an institution wholly or substantially financed by the Government;";

(iii) the words "and includes the Council of Scientific and Industrial Research and any other institution which is financed wholly or for the major part by the said Council;" shall be omitted;

(e) for clause (i), the following clause shall be substituted, namely:-

'(i) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;';

(f) for clauses (l) and (m), the following clauses shall be substituted, namely:-

'(l) "Opposition Board" means an Opposition Board constituted under sub-section (4) of section 25;

(m) "patent" means a patent for any invention granted under this Act;'

Amendment of section 3

3. In section 3 of the principal Act,-

(a) in clause (d), for the words "new use", the words "mere new use" shall be substituted;

(b) for clause (k), the following clauses shall be substituted, namely:-

"(k) a computer programme *per se* other than its technical application to industry or a combination with hardware;

(ka) a mathematical method or a business method or algorithms;".

Omission of section 5.

4. Section 5 of the principal Act shall be omitted.

Amendment of section 7

5. In section 7 of the principal Act,-

(a) after sub-section (1A), the following sub-section shall be inserted, namely:-

"(1B) The filing date of an application referred to in sub-section (1A) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty.";

(b) in sub-section (3), for the word "owner", the word "person" shall be substituted;

(c) for sub-section (4), the following sub-section shall be substituted, namely:-

"(4) Every such application (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification."

Amendment of section 8

6. In section 8 of the principal Act,-

(a) in sub-section (1),-

(i) for the words "within such period as the Controller may, for good and sufficient reasons, allow", the words "within the prescribed period as the Controller may allow" shall be substituted;

(ii) in clause (b), for the words "upto the date of the acceptance of his complete specification filed in India", the words "upto the date of grant of patent in India" shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish to the Controller information available to him within such period as may be prescribed."

Amendment of section 9

7. In section 9 of the principal Act,-

(a) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.";

(b) in sub-section (2), the following proviso shall be inserted at the end, namely:-

"Provided that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.";

(c) for sub-sections (3), the following sub-section shall be substituted, namely:-

"(3) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.";

(d) in sub-section (4), for the words "the acceptance of the complete specification", the words "grant of patent" shall be substituted.

Amendment of section 10

8. In section 10 of the principal Act,-

(a) in sub-section (3), for the words "before the acceptance of the application", the words "before the application is found in order for grant of a patent" shall be substituted;

(b) in sub-section (4), in the proviso,-

(i) in clause (ii), for the words "the material to an authorised depository institution as may be notified by the Central Government in the Official Gazette", the words "the material to an international depository authority under the Budapest Treaty" shall be substituted;

(ii) for sub-clause (A), the following sub-clause shall be substituted, namely:-

"(A) the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;"

(c) for sub-section (4A), the following sub-section shall be substituted, namely:-

"(4A) In case of an international application designating India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act."

Amendment of section 11

9. In section 11 of the principal Act,-

(a) after sub-section (3), the following sub-section shall be inserted, namely:-

"(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in

the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.”;

- (b) in sub-section (6), after the brackets and figure “(3),”, the brackets, figure and letter “(3A),” shall be inserted.

Amendment of section 11A

10.In section 11A of the principal Act,-

- (a) for sub-sections (1) to (3), the following sub-sections shall be substituted, namely:-

“(1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section

(3), the Controller shall publish such application as soon as possible.

(3) Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application-

(a) in which secrecy direction is imposed under section 35; or

(b) has been abandoned under sub-section (1) of section 9; or

(c) has been withdrawn three months prior to the period specified under sub-section (1).”;

- (b) in sub-section (4), for the words “of eighteen months”, the words, brackets and figure “prescribed under sub-section (1)” shall be substituted;

- (c) after sub-section (6), the following sub-section shall be inserted, namely:-

“(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted:

Provided further that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before

the 1st day of January, 2005 shall accrue from the date of grant of the patent.”.

Amendment of section 11B

11.In section 11B of the principal Act,-

- (a) for sub-section (1), the following sub-section shall be substituted, namely:-

“(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.”;

- (b) sub-section (2) shall be omitted;

- (c) for sub-section (3), the following sub-section shall be substituted, namely:-

“(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1st day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.”;

- (d) in sub-section (4),-

- (i) the words, brackets and figure “or sub-section (2)” shall be omitted;

- (ii) for the proviso, the following proviso shall be substituted, namely:-

“Provided that-

(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and

(ii) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.”;

Amendment of section 12

12.In section 12 of the principal Act,-

- (a) in sub-section (1), for the words, brackets, figures and letter “under subsection

(1) or sub-section (2) or sub-section (3) of section 11B, the application and specification and other documents shall be referred to by the Controller”, the words, brackets, figures and letter “under sub-section (1) or sub-section (3) of section 11B, the application and specification and other documents related thereto shall be referred to at the earliest by the Controller” shall be substituted;

- (b) in sub-section (2), for the words “a period of eighteen months from the date of such

reference", the words "such period as may be prescribed" shall be substituted.

Amendment of section 13

- 13.**In section 13 of the principal Act, in sub-section (3), for the words "it has been accepted", the words "the grant of a patent" shall be substituted.

Substitution of new sections for sections 14 and 15.

- 14.**For sections 14 and 15 of the principal Act, the following sections shall be substituted, namely:-

Consideration of the report of examiner by Controller.

"14. Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.

Power of Controller to refuse or require amended applications, etc., in certain cases.

- 15.**Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so."

Amendment of section 16

- 15.**In section 16 of the principal Act,-
- (a) in sub-section (1), for the words "before the acceptance of the complete specification", the words "before the grant of the patent" shall be substituted;
- (b) for the *Explanation*, the following *Explanation* shall be substituted, namely:-
- Explanation.-* For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the

request for examination is filed within the prescribed period."

Amendment of section 17

- 16.**In section 17 of the principal Act, in sub-section (1), for the words "before acceptance of the complete specification", the words "before the grant of the patent" shall be substituted.

Amendment of section 18

- 17.**In section 18 of the principal Act,-
- (a) in sub-section (1), for the words "to accept the complete specification", the words "the application" shall be substituted;
- (b) sub-section (4) shall be omitted.

Amendment of section 19

- 18.**In section 19 of the principal Act, in sub-section (1), the words and figures "by the foregoing provisions of this Act or of proceedings under section 25", the words "under this Act" shall be substituted.

Substitution of new section for section 21

- 19.**For section 21 of the principal Act, the following section shall be substituted, namely:-

Time for putting application in order for grant

"21. (1) An application for a patent shall be deemed to have been abandoned unless, within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.

*Explanation.-*Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed.

- (2) If at the expiration of the period as prescribed under sub-section (1),-
- (a) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or
- (b) in the case of an application for a patent

of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.

- (3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court."

Omission of sections 22 to 24

- 20.** Sections 22 to 24 of the principal Act shall be omitted.

Omission of Chapter IVA

- 21.** Chapter IVA of the principal Act shall be omitted.

Substitution of heading of Chapter V

- 22.** In Chapter V of the principal Act, for the Chapter heading "OPPOSITION TO GRANT OF PATENT", the Chapter heading "REPRESENTATION AND OPPOSITION PROCEEDINGS" shall be substituted.

Substitution of new sections for sections 25 and 26

- 23.** For sections 25 and 26 of the principal Act, the following sections shall be substituted, namely:-

Opposition to the patent

"25. (1) Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground of-

- (a) patentability including novelty, inventive step and industrial applicability, or
(b) non-disclosure or wrongful mentioning in complete specification, source and geographical origin of biological material used in the invention and anticipation of invention by the knowledge, oral or otherwise available within any local or indigenous community in India or elsewhere, and the Controller shall consider and dispose of such representation

in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the person making a representation referred to in that sub-section shall not become a party to any proceedings under this Act only for the reason that he has made such representation.

- (3) At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:-
- (a) that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
- (b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim-
- (i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or
- (ii) in India or elsewhere, in any other document: Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;
- (c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the claim of the patentee and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the claim of the patentee;
- (d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation.-For the purposes of this clause, an invention relating to a process for which a patent is granted shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has

been for the purpose of reasonable trial or experiment only;

- (e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step,

In cases of "obtaining" Controller may treat the patent as the patent of opponent.

26. (1) Where in any opposition proceeding under this Act the Controller finds that—

(a) the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of sub-section (3) of section 25 and revokes the patent on that ground, he may, on request by such opponent made in the prescribed manner, direct that the patent shall stand amended in the name of the opponent;

(b) a part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention.

(2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which included the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act."

Omission of section 27

24. Section 27 of the principal Act shall be omitted. Amendment of section 28.

25. In section 28 of the principal Act,—

(a) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) A request or claim under the foregoing provisions of this section shall be made before the grant of patent.";

(b) sub-section (5) shall be omitted;

(c) in sub-section (6), for the words, brackets and figure "Subject to the provisions of sub-section (5), where", the word "Where" shall be substituted.

Amendment of section 31

26. In section 31 of the principal Act, for the words "not later than six months", the words "not later than twelve months" shall be substituted.

Amendment of section 34

27. In section 34 of the principal Act, the words "to accept complete specification for a patent or " shall be omitted.

Amendment of section 35

28. In section 35 of the principal Act, in sub-section (3), for the words "acceptance of complete specification", the words "grant of patent" shall be substituted.

Amendment of section 36

29. In section 36 of the principal Act, in sub-section (1), for the words "twelve months", the words "six months" shall be substituted.

Amendment of section 37

30. In section 37 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a), for the words "to accept", the words "to grant" shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely:—

"Provided that the application may, subject to the directions, proceed up to the stage of grant of the patent, but the application and the specification found to be in order for grant of the patent shall not be published, and no patent shall be granted in pursuance of that application.";

(b) in sub-section (2), for the words "is accepted", the words "is found to be in order for grant of the patent" shall be substituted.

31. For section 39 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 39

Residents not to apply for patents outside India without prior permission.

"39. (1) No person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless—

- (a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and
- (b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.
- (2) The Controller shall dispose of every such application within such period as may be prescribed:
Provided that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government.
- (3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India."

Substitution of heading of Chapter VIII

- 32.** In Chapter VIII of the principal Act, for the Chapter heading "GRANT AND SEALING OF PATENTS AND RIGHTS CONFERRED THEREBY", the Chapter heading "GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY" shall be substituted.

Substitution of new section for section 43

- 33.** For section 43 of the principal Act, the following section shall be substituted, namely:-

Grant of patents

"43. (1) Where an application for a patent has been found to be in order for grant of the patent and either-

- (a) the application has not been refused by the Controller by virtue of any power vested in him by this Act; or
- (b) the application has not been found to be in contravention of any of the provisions of this Act, the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.
- (2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection."

Amendment of section 44

- 34.** In section 44 of the principal Act, for the word "sealed", at both the places where it

occurs, the word "granted" shall be substituted.

Amendment of section 45

- 35.** In section 45 of the principal Act, in sub-section (3), for the words "the date of advertisement of the acceptance of the complete specification", the words "the date of publication of the application" shall be substituted.

Amendment of section 48

- 36.** In section 48 of the principal Act, the proviso shall be omitted.

Amendment of section 52

- 37.** In section 52 of the principal Act,-

(a) in sub-section (1),-

(i) for the opening words "Where a patent has been revoked", the words and figures "Where the patent has been revoked under section 64" shall be substituted;

(ii) for the word, "court", wherever it occurs, the words "Appellate Board or court" shall be substituted;

(b) in sub-section (2), for the word "court", occurring at both the places, the words "Appellate Board or court" shall be substituted.

Amendment of section 53

- 38.** In section 53 of the principal Act,-

(a) after sub-section (1), the following *Explanation* shall be inserted, namely:-

"*Explanation.*-For the purposes of this sub-section, the term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.";

(b) in sub-section (2), for the words "or within that period as extended under this section", the words "or within such extended period as may be prescribed" shall be substituted;

(c) sub-section (3) shall be omitted.

Amendment of section 54

- 39.** In section 54 of the principal Act,-

(a) in sub-section (3), for the words "complete specification", occurring at both the places, the word "application" shall be substituted;

(b) for sub-section (4), the following sub-section shall be substituted, namely:-

"(4) A patent of addition shall not be granted before grant of the patent for the main invention."

Amendment of section 57

- 40.** In section 57 of the principal Act,-

(a) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the grant of patent and the nature of the proposed amendment may be published.";

(b) in sub-section (4),-

(i) for the word "advertised", the word "published" shall be substituted;

(ii) for the word "advertisement", the word "publication" shall be substituted;

(c) for sub-section (6), the following sub-section shall be substituted, namely:-

"(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification or any other document related thereto to comply with the directions of the Controller issued before the grant of a patent."

Substitution of new section for section 58

41. For section 58 of the principal Act, the following section shall be substituted, namely:-

Amendment of specification before Appellate Board or High Court

"58. (1) In any proceeding before the Appellate Board or the High Court for the revocation of a patent, the Appellate Board or the High Court, as the case may be, may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the Appellate Board or the High Court may think fit, and if, in any proceedings for revocation, the Appellate Board or the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to the Appellate Board or the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the Appellate Board or the High Court.

(3) Copies of all orders of the Appellate Board or the High Court allowing the patentee to amend the specification shall be transmitted by the Appellate Board or the High Court to the Controller who shall, on receipt thereof, cause an entry thereof and

reference thereto to be made in the register."

Amendment of section 59

42. In section 59 of the principal Act, for sub-section (2), the following subsection shall be substituted, namely:-

"(2) Where after the date of grant of patent any amendment of the specification or any other documents related thereto is allowed by the Controller or by the Appellate Board or the High Court, as the case may be,-

(a) the amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto;

(b) the fact that the specification or any other documents related thereto has been amended shall be published as expeditiously as possible; and

(c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud."

Amendment of section 60

43. In section 60 of the principal Act, in sub-section (1), for the words, brackets and figures "prescribed period or within that period as extended under sub-section (3) of section 53", the words, figures and brackets "period prescribed under section 53 or within such period as may be allowed under sub-section (4) of section 142" shall be substituted.

Amendment of section 61

44. In section 61 of the principal Act, in sub-section (1), for the words "advertise the application", the words "publish the application" shall be substituted.

Amendment of section 62

45. In section 62 of the principal Act,-

(a) in sub-section (1), for the word "advertisement", the word "publication" shall be substituted;

(b) in sub-section (2), for the words "date of the advertisement", the words "date of publication" shall be substituted.

Amendment of section 63

46. In section 63 of the principal Act,-

(a) in sub-section (2), for the word "advertise", the word "publish" shall be substituted;

(b) in sub-section (3), for the words "such advertisement", the words "such publication" shall be substituted.

Amendment of section 64

47. In section 64 of the principal Act, in sub-

section (1), for the words "on the petition of any person interested or of the Central Government or on a counterclaim in a suit for infringement of the patent, be revoked by the High Court", the words "be revoked on a petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court" shall be substituted.

Substitution of new section for section 65

48. For section 65 of the principal Act, the following section shall be substituted, namely:-

33 of 1962 ***Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy.***

"65. (1) Where at any time after grant of a patent, the Central Government is satisfied that a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962, it may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent.

(2) In any proceedings under sub-section (1), the Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent."

Substitution of new section for section 68

49. For section 68 of the principal Act, the following section shall be substituted, namely:-

Assignments, etc., not to be valid unless in writing and duly executed.

"68. An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed."

Amendment of section 74

50. In section 74 of the principal Act, for sub-section (2), the following subsection shall be substituted, namely:-

"(2) The Central Government may, by notification in the Official Gazette, specify the name of the Patent Office."

Amendment of section 78

51. In section 78 of the principal Act,-

- (a) in sub-section (4), for the word "advertised", the word "published" shall be substituted;
- (b) in sub-section (5), for the words "such advertisement", the words "such publication" shall be substituted.

Amendment of section 87

52. In section 87 of the principal Act, in sub-section (1), for the words "shall advertise the application in the Official Gazette", the words "shall publish the application in the official journal" shall be substituted.

Amendment of section 90

53. In section 90 of the principal Act, in sub-section (1), for clause (vii), the following shall be substituted, namely: -

"(vii) that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(viii) that the licence is granted with a predominant purpose of supplying in the Indian market:

Provided that the licensee may also export the patented product in accordance with section 92A:

Provided further that in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product."

Insertion of new section 92A

54. After section 92 of the principal Act, the following section shall be inserted, namely:-

Compulsory licence for export of patented pharmaceutical products in certain exceptional circumstances.

"92A. (1) Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country.

(2) The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms

and conditions as may be specified and published by him.

(3) The provisions of sub-sections (1) and (2) shall be without prejudice to the extent to which pharmaceutical products produced under a compulsory license can be exported under any other provision of this Act.

Explanation.—For the purposes of this section, ‘pharmaceutical products’ means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use.”.

Amendment of section 100

55. In section 100 of the principal Act, in sub-section (3), for the words “the acceptance of the complete specification in respect of the patent”, the words “grant of the patent” shall be substituted.

Amendment of section 105

56. In section 105 of the principal Act, in sub-section (4), for the words “after the date of advertisement of acceptance of the complete specification of a patent”, the words “after the publication of grant of a patent” shall be substituted.

Amendment of section 107A

57. In section 107A of the principal Act,—

(a) in clause (a),—

(i) for the words “using or selling”, the words “using, selling or importing” shall be substituted;

(ii) for the words “use or sale,” the words “use, sale or import” shall be substituted;

(b) in clause (b), for the words “who is duly authorised by the patentee to sell or distribute the product”, the words “who is duly authorised under the law to produce and sell or distribute the product” shall be substituted.

Amendment of section 113

58. In section 113 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If in any proceedings before the Appellate Board or a High Court for the revocation of a patent under section 64 and section 104, as the case may be, the validity of any claim of a specification is contested and that claim is found by the Appellate Board or the High Court to be

valid, the Appellate Board or the High Court may certify that the validity of that claim was contested in those proceedings and was upheld.”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Nothing contained in this section shall be construed as authorising the courts or the Appellate Board hearing appeals from decrees or orders in suits for infringement or petitions for revocation, as the case may be, to pass orders for costs on the scale referred to therein.”.

38 of 2002

Amendment of section 116

59. In section 116 of the principal Act [as substituted by section 47 of the Patents (Amendment) Act, 2002], in sub-section (2), clause (c) shall be omitted.

Amendment of section 117A

60. In section 117A of the principal Act [as inserted by section 47 of the Patents (Amendment) Act, 2002], in sub-section (2), for the words and figures

“section 20, section 25, section 27, section 28”, the words, figures and brackets

“section 20, sub-sections (5) of section 25, section 28” shall be substituted.

Amendment of section 117D

61. In section 117D of the principal Act [as inserted by section 47 of the Patents (Amendment) Act, 2002], in sub-section (1), for the words, “for rectification of the register”, the words and figures “for revocation of a patent before the Appellate Board under section 64 and an application for rectification of the register” shall be substituted.”.

38 of 2002

Substitution of new section for section 117G

62. For section 117G of the principal Act [as inserted by the Patents (Amendment) Act, 2002], the following section shall be substituted, namely:— 38 of 2002.

Transfer of pending proceedings to Appellate Board

“117G. All cases of appeals against any order or decision of the Controller and all cases pertaining to revocation of patent other than on a counter-claim in a suit for infringement and rectification of register pending before any High Court, shall be transferred to the Appellate Board from such date as may be notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.”.

Amendment of section 120

- 63.** In section 120 of the principal Act, for the words, "ten thousand rupees", the words "one lakh rupees" shall be substituted.

Amendment of section 122

- 64.** In section 122 of the principal Act, in sub-section (1), for the words, "twenty thousand rupees", the words "ten lakh rupees" shall be substituted.

Amendment of section 123

- 65.** In section 123 of the principal Act, for the words, "ten thousand rupees in the case of a first offence and forty thousand rupees", the words "one lakh rupees in the case of a first offence and five lakh rupees" shall be substituted.

Amendment of section 126

- 66.** In section 126 of the principal Act,-
(a) in sub-section (1), in clause (c), sub-clause (i) shall be omitted;

38 of 2002

- (b) in sub-section (2), for the words, brackets and figures "the Patents (Amendment) Act, 2002", the words, "the Patents (Amendment) Ordinance, 2004" shall be substituted.

*Substitution of new section for section 133
Convention countries*

- 67.** For section 133 of the principal Act, the following section shall be substituted, namely:-
"133. Any country, which is a signatory or party or a group of countries, union of countries or intergovernmental organizations which are signatories or parties to an international, regional or bi-lateral treaty, convention or arrangement to which India is also a signatory or party and which affords to the applicants for patents in India or to citizens of India similar privileges as are granted to their own citizens or citizens to their member countries in respect of the grant of patents and protection of patent rights shall be a convention country or convention countries for the purposes of this Act."

Amendment of section 135

- 68.** In section 135 of the principal Act, after sub-section (2), the following subsection shall be inserted, namely:-
"(3) In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application:

Provided that a request for examination under section 11B shall be made only for one of the applications filed in India."

Amendment of section 138

- 69.** In section 138 of the principal Act, for sub-section (1), the following subsection shall be substituted, namely:-

"(1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, when required by the Controller, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country as referred to in section 133 verified to the satisfaction of the Controller, within the prescribed period from the date of communication by the Controller."

Amendment of section 142

- 70.** In section 142 of the principal Act, in sub-section (4), for the words, "the complete specification", the words, "the application" shall be substituted.

Substitution of new section for section 143

- 71.** For section 143 of the principal Act, the following section shall substituted, namely:-

Restrictions upon publication of specification

"143. Subject to the provisions of Chapter VII, an application for a patent, and any specification filed in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller before the expiration of the period prescribed under sub-section (1) of section 11A or before the same is open to public inspection in pursuance of sub-section (3) of section 11A or section 43."

Substitution of new section for section 145

- 72.** For section 145 of the principal Act, the following section shall substituted, namely:-

Publication of official journal

"145. The Controller shall publish periodically an official journal which shall contain such information as may be required to be published by or under the provisions of this Act or any rule made thereunder."

Amendment of section 151

- 73.** In section 151 of the principal Act,-
(a) in sub-section (1), for the words, "the High Court", occurring at the places, the words "the High Court or the Appellate Board" shall be substituted;
(b) in sub-section (3), for the word "courts",

the words "Appellate Board or the courts, as the case may be," shall be substituted.

Omission of section 152

74. Section 152 of the principal Act shall be omitted.

Amendment of section 159

75. In section 159 of the principal Act,-

(i) in sub-section (2),-

(a) for clauses (ia) and (ib), the following clauses shall be substituted, namely:-

"(ia) the period which the Controller may allow for filing of statement and undertaking for in respect of applications under sub-section (1), the period within which the details relating to processing of applications may be filed before the Controller and the details to be furnished by the applicant to the Controller under sub-section (2) of section 8;

(ib) the period within which a reference to the deposit of materials shall be made in the specification under sub-clause (A) of clause (ii) of the proviso to sub-section (4) of section 10; (ic) the period for which application for patent shall not be open to the public under sub-section (1) and the manner in which the applicant may make a request to the Controller to publish his application under subsection

(2) of section 11A;

(id) the manner of making the request for examination for an application for patent and the period within which such examination shall be made under sub-sections (1) and (3) of section 11B; (ie) the manner in which an application for withdrawal of an application for grant of a patent shall be made and the period within which a request for examination from the date of revocation of secrecy directions shall be made under the proviso to sub-section (4) of section 11B.";

(b) in clause (ii), for the word "advertised", the words "published" shall be substituted;

(c) for clause (v), the following clauses shall be substituted, namely:-

"(v) the manner in which and the period within which the Controller shall consider and dispose off a representation under sub-section (1) of section 25; (va) the period within which the Controller is required to dispose off an application under section 39;"

(ii) in sub-section (3), the following proviso shall be added at the end, namely:-

"Provided that the Central Government may, if it is satisfied that circumstances exist which render it practically not possible to comply with such condition of previous publication, dispense with such compliance."

Omission of section 163

76. Section 163 of the principal Act shall be omitted. 20

Transitional provision

77. (1) Notwithstanding the omission of Chapter IVA of the principal Act by section 21 of this Ordinance, every application for the grant of exclusive marketing rights filed under that Chapter before the 1st day of January, 2005, in respect of a claim for a patent covered under sub-section (2) of section 5 of the principal Act, such application shall be deemed to be treated as a request for examination for grant of patent under sub-section (3) of section 11B the principal Act, as amended by this Ordinance.

(2) Every exclusive right to sell or distribute any article or substance in India granted before the 1st day of January, 2005 shall continue to be effective with the same terms and conditions on which it was granted.

(3) Without prejudice to any of the provisions of the principal Act, the applications in respect of which exclusive rights have been granted before the 1st day of January, 2005 shall be examined for the grant of patent immediately on the commencement of this Ordinance.

(4) All suits relating to infringement of the exclusive right granted before 1st day of January, 2005 shall be dealt with in the same manner as if they were suits concerning infringement of patents under Chapter XVIII of the principal Act.

(5) The examination and investigation required as carried out for the grant of exclusive right shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

A.P.J.ABDUL KALAM

President.

T.K.VISWANATHAN

Secy. to the Govt. of India.

Post MFA Scenario



PREPAREDNESS OF INDIAN TEXTILE INDUSTRY FOR THE POST-MFA REGIME

NEW INVESTMENT OF Rs.50,000 CRORE IN LAST FIVE YEARS – INCREASED ORDERS FOR INDUSTRY – CAPACITIES FULLY BOOKED UPTO APRIL 2005

The mood in the Indian textile industry in anticipation of the phase-out of the quota regime of the multi-fibre arrangement (MFA) is upbeat with **new investment flowing in and increased orders for the industry as a result of which capacities are fully booked up to April 2005.**

As a result of various initiatives taken by the government, there has been **new investment of Rs.50,000 crore in the textile industry in the last five years. Nine textile majors invested Rs.2,600 crore and plan to invest another Rs.6,400 crore. Further, India's cotton production increased by 57% over the last five years; and 3 million additional spindles and 30,000 shuttle-less looms were installed.** The industry expects investment of Rs.1,40,000 crore in this sector in the post-MFA phase. A Vision 2010 for textiles formulated by the government after intensive interaction with the industry and Export Promotion Councils to capitalise on the upbeat mood **aims to increase India's share in world's textile trade from the current 4% to 8% by 2010 and to achieve export value of US \$ 50 billion by 2010. This has been indicated in the presentation made to the Prime Minister on December 14 last evening, which was attended by Mr. Kamal Nath, Union Minister of Commerce & Industry and Mr. Shanker Sinh Vaghela, Union Minister of Textiles.**

Vision 2010 for textiles envisages growth in Indian textile economy from the current US \$ 37 billion to \$ 85 billion by 2010; creation of 12 million new jobs in the textile sector; and modernisation and consolidation for creating a globally competitive textile industry.

There will be **opportunities as well as challenges for the Indian textile industry in the post-MFA era.** But India has natural advantages which can be capitalised on viz., strong raw material base – cotton, man-made fibres, jute, silk; large production capacity (spinning – 21% of world capacity and weaving – 33% of world capacity but of low technology); vast pool of skilled manpower; entrepreneurship; flexibility in production process; and long experience with US/EU (European Union). At the same time, there are constraints relating to fragmented industry, constraints of processing, quality of cotton, concerns over power cost, labour reforms and other infrastructural constraints and bottlenecks. Several initiatives have already been taken by the government to overcome some of these concerns including rationalisation of fiscal duties; technology upgradation through the Technology Upgradation Fund Scheme (TUFS); setting up of Apparel Parks; and liberalisation of restrictive regulatory practices.

KAMAL NATH SAYS INDIA WILL RESIST NEW FORMS OF PROTECTIONISM IN POST-MFA ERA

INDIA ECONOMIC SUMMIT ON INTERNATIONAL TRADE

Mr. Kamal Nath, Union Minister of Commerce and Industry, has said that India will resist pressures for any new form of protectionism in the world textile trade following the phase-out of quotas under the multi-fibre arrangement (MFA) and the expiry of the Agreement on Textiles and Clothing three weeks from now, with effect from 1/1/2005. Addressing the India economic Summit Plenary Session on International Trade: A New Voice of Emerging Markets, organised by the CII and the World Economic Forum in New Delhi on December 6, 2004, **Mr. Kamal Nath sounded a note of caution on the post-MFA scenario, saying that "the expiry of Agreement on Textiles & Clothing three weeks from now does not ensure that protectionism will disappear from that date. While developing countries poise themselves to fully exploit the opportunities that will open up before them, there are forces at work to negate this of course, we shall not allow it. There is a need to consolidate gains achieved thus far and be vigilant on the emerging trade policy conditions to collectively resist pressure for any new form of protectionism in this sector".**

On foreign direct investment (FDI), Mr. Kamal Nath emphasised that India welcomed **FDI both as a source of capital as well as a vehicle for technology transfer.** "The scarcity of capital in developing countries is of course there – but what is an even more cogent reason for welcoming FDI, in my opinion, is the fact that FDI is a major source of skills upgradation and technology transfer. I am a firm believer that technology alone can enable developing countries to do the 'catching up' that could leapfrog them into the frontiers of progress", he said. Stating that India was both

demandeur of technology as well as a supplier of it, Mr. Kamal Nath announced that government was in the process of preparing a new Technology Transfer Policy, aimed at attracting the state-of-the-art technology.

Referring to issues that concern India in the WTO, Mr. Kamal Nath said these included the multilateralism vis-à-vis regionalism debate, the issue of distortions in international trade, especially agriculture, emergence of non-tariff barriers to occupy the space being vacated by tariff barriers on account of the implementation of Uruguay Round commitments by countries, issues relating to tariff peaks and tariff escalations and access restrictions on services export, among other things.

Underlining the India's comparative advantages in the Services sector, Mr. Kamal Nath said "there is **need to enable service providers to supply services in overseas markets either from remote locations (Mode 1) or through the temporary movement of service personnel (Mode 4). We shall be working towards this in the ongoing WTO negotiations**". The political backlash against outsourcing in developed countries was misplaced, he said, adding that "this signals an inclination to protectionism which is unfortunate".

"India attaches prime importance to the multilateral trading system... but we also see a role for regional FTAs.... We hope SAFTA (SAARC Free Trade Area) will come into existence from 1st January, 2006.... **The negotiations for a Preferential Trade Arrangement (PTA) with Mercosur countries of Latin America are complete..... We also hope to have something with SACU (Southern African Customs Union) of South Africa in the near future**", he said.

MFA PHASE-OUT FROM 1ST JANUARY 2005 – MAJOR TEXTILE EXPORTING DEVELOPING COUNTRIES TO GAIN : OECD REPORT

Developing countries with both textile and clothing capacity may be able to prosper in the new competitive environment when the textile quota regime of quantitative import restrictions under the multi-fibre arrangement (MFA) comes to an end two days from now – with effect from 1st January, 2005 under the World Trade Organisation (WTO) Agreement on Textiles and Clothing, putting an end to a complex trade regime built up over decades, according to an OECD (Organisation for Economic Cooperation and Development) policy paper titled "*A New World Map in Textiles and Clothing: Adjusting to Change*". **As a result, the textile industry in developed countries will face intensified competition in both their export and domestic markets.** The migration of textile capacity will nevertheless be influenced by objective competitive factors and will be hampered by the presence of distorting domestic measures and weak domestic infrastructure in several developing and least developed countries.

The elimination of quota restriction will open the way for the most competitive developing countries to develop stronger clusters of textile expertise, enabling them to handle all stages of the production chain from growing natural fibres to producing finished clothing, the paper says, adding that the recent surge in China's imports of up-to-date textile and clothing machinery bears witness to this trend and points to the future sources of textile and clothing production and exports.

Emphasising the **need for shifting industrial expertise in textile sector towards service related skills,** the OECD paper says that while low wages can still give developing countries a competitive edge in world markets, time factors now play a far more crucial role in determining international competitiveness. Developing countries that can offer low-wage workers for sewing

garments or seat covers together may have a comparative advantage over developed countries for that one stage of the assembly process, **but that does not necessarily translate into a comparative advantage in the management of the entire supply chain when no export restrictions apply.** **Countries that aspire to maintain an export-led strategy in textiles and clothing need to complement their cluster of expertise in manufacturing by developing their expertise in the higher value-added service segments of the supply chain such as design, sourcing or retail distribution.** **To pursue these avenues, national suppliers need to place greater emphasis on education and training of services-related skills and to encourage the establishment of joint structures where domestic suppliers can share market knowledge and offer more integrated solutions to prospective buyers.**

Further, the textile industry is undergoing a major reorientation towards non-clothing applications of textiles, known as technical textiles, which are growing roughly at twice rate of textiles for clothing applications and now account for more than half of total textile production. The processes involved in producing technical textiles require expensive equipments and skilled workers and are, for the moment, concentrated in developed countries. Technical textiles have many applications including bed sheets; filtration and abrasive materials; furniture and healthcare upholstery; thermal protection and blood-absorbing materials; seatbelts; adhesive tape, and multiple other specialized products and applications.

The textile and clothing industries provide employment for tens of million of people, primarily in developing countries, and accounted for US \$ 350 billion in merchandise exports in 2002, or 5.6% of the world total, the paper adds.

PARLIAMENT BRIEFS



✓ AMENDMENT IN PATENT BILL

Under the TRIPS agreement of WTO Agreement, India has an obligation to amend the Patents Act, 1970 to provide for product patent protection in all fields of technology with effect from January 01, 2005. In order to indentify the elements of the proposed amendments, Government undertook extensive and broadbased country-wide consultations involving different stakeholders, including all sections of the pharmaceutical industry. The Indian Pharmaceutical Alliance in its submission has suggested, inter alia, for retention of pre-grant opposition, no patents to polymorphs, hydrates, isomers, metabolites etc. All views and concerns will be taken into consideration suitably before finalising the said amendment.

✓ WTO AGREEMENT ON LIFE SAVING DRUGS

The Doha Declaration on the TRIPS Agreement and Public Health recognised that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. It reaffirmed the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement which provide flexibility for this purpose. The Declaration recognised that these facilities include the right of each Member to grant Compulsory license and the freedom to determine the grounds upon which such license is granted, the right to determine what constitutes a national emergency or other circumstances of extreme urgency and the freedom to establish its own regime for exhaustion of intellectual property rights. Paragraph 6 of the Doha Declaration recognized difficulties of WTO Members with insufficient or no manufacturing capacities in the Pharmaceutical sector in making effective use of compulsory licensing under the TRIPS Agreement and instructed the Council for TRIPS to find an expeditious solution to this problem. The General Council of the WTO took a Decision on 30 August 2003 for implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. The Decision allows manufacture and export of patented pharmaceutical products under a compulsory license to countries with limited or no manufacturing capacities in the pharmaceutical sector. This decision would enable countries with limited or no manufacturing capacities in the

pharmaceutical sector to import pharmaceutical products at affordable prices. Customs duty on 126 life saving drugs/medicines (as per List 4 of the Notification) is nil vide Government of India Notification number 21/2002-Customs dated 1.3.2002 (against S.No.83 of the Notification).

✓ TURMERIC PATENTS

Patents are sought and obtained by applicants/inventors, both Indian and foreign, in different countries to safeguard and promote their commercial and other interests. Such patents are granted under the sovereign prerogative of countries according of their respective patent laws and have territorial effect, that is they are effective only in the country of grant. In order to qualify for grant of patent in any country an invention, whether process or product, has to meet the criteria of patentability, namely, novelty inventiveness and industrial and industrial applicability. As patents are essentially private rights they are normally challenged, in accordance with the patent laws of the country concerned, by the person(s) whose interests are affected/jeopardized. As and when information is received about patents being obtained on certain items which are not considered patentable and which affect Indian interests, steps are taken to assess whether the grant of such patent can be challenged under the patent laws of the country concerned. Earlier a patent granted in the United States of America on the use of turmeric in wound healing was successfully challenged and was also cancelled by the Patent Office of the country concerned. Similarly, a patent on the fungicidal property of neem, granted in Europe, was successfully challenged. The claims of the patent on Basmati Ricelines and grains granted in the United States of America which had the potential of affecting India's commercial interest were also challenged. The said claims were subsequently cancelled by the United States Patent and Trademark Office and the title of the patent was also amended.

✓ DAIRY SECTOR SUGGESTS RE-NEGOTIATIONS WITH WTO

A number of measures for the dairy sector, including the renegotiation of the bound duty on imports of

butter oil from 40 percent to 75 percent, have been proposed in memoranda and representations received from time to time and considered by the Government. The bound duty on imports of whole milk powder (WMP) and skimmed milk powder (SMP) have been increased from zero percent to 60 percent with a tariff rate quota of 10,000 MT per annum and an in-quota duty of 15 percent applicable on the two tariff lines 0402.10 and 0402.21 taken together. Additionally, the applied rate of duty on imports of butter oil has been increased to 40 percent. The Livestock Importation Act has also been amended requiring a Sanitary Import Permit on imports of a number of livestock products, including dairy products.

✓ **WTO NEGOTIATIONS AT DOHA DECLARATION**

India has submitted requests in a number of services sectors such as Accounting and Book-keeping, Architecture, Health, Computer related services, Construction and Engineering, Financial, Audio-Visual, Tourism and Maritime Transport Services to a large number of member countries seeking more liberal commitments and also removing limitations in their existing schedule of commitments in these services sectors. Moreover, India has made requests to 62 member countries seeking horizontal as well as sectoral commitments for freer movement of its professionals under Mode 4. The requests are part of the request-offer process that is underway at the WTO. Negotiations of Emergency Safeguard Measure (ESM) have been further extended beyond March 2004 and the results of such negotiations shall enter into effect on a date not later than the date of entry into force of the results of the current round of services negotiations. The negotiations on services towards market access and national treatment commitments to be undertaken by the member countries are going on and as per the decision taken by the General Council of the WTO on 1st August, 2004, they should submit their 'Revised Offer' by May 2005.

✓ **GENERAL AGREEMENT ON TRADE IN SERVICES**

Since the conclusion of the Uruguay Round of Agreements on Services (General Agreement on Trade in Services), India's services trade has grown considerably. From US \$ 6.8 billion exports in 1995, India's service exports have increased to US \$24.9 billion in 2003. India's share in world trade in Services is higher than its share in world trade in goods. One of India's objectives in the present negotiations is to ensure that trade in services improves through movement of natural persons. We have submitted comprehensive negotiating proposals

in this regard. India's paper identifies key barriers to the movement of natural persons and suggests possible approaches members can adopt to achieve meaningful liberalization in this area. As per the Framework Agreement adopted by the General Council in July, 2004 all member countries are to submit revised offers on services by May, 2005. The objective is to have a balanced outcome as part of Single Undertaking.

✓ **NON-TARIFF BARRIERS ON AGRICULTURAL EXPORTS**

The Most Favored Nation (MFN) Treatment requirement of the World Trade Organisation (WTO) does not permit any discrimination or restriction specific to Indian goods by other WTO Members. Moreover, WTO rules allow restrictions on imports of goods based on tariffs as agreed upon and also through specific non-tariff measures, including those based on balance of payment grounds, sanitary and phytosanitary measures, conformity with agreed/international standards and contingent protection measures like anti-dumping, subsidy and safeguard actions. Nevertheless, non-tariff barriers, beyond agreed WTO rules, exist on import of goods from India in some WTO Member countries, including maintenance of sanitary and phyto-sanitary measures at levels which are not readily justifiable on the basis of scientific evidence. Procedural requirements could also act as barriers to trade. Problems arising due to non-tariff barriers are duly taken up by Government with the concerned authorities of the country concerned either bilaterally with a view to their early and mutually satisfactory resolution or presented for resolution by the WTO's Dispute Settlement Mechanism. In the on-going WTO negotiations, India has also co-sponsored proposals along with some other developing countries to disallow use of measures by developed countries that act as barriers to imports from developing countries.

✓ **VIEWS OF G-20 ON WTO AGREEMENT**

In the negotiations leading up to the Framework for Establishing Modalities in Agriculture, adopted by the General Council of the World Trade Organisation (WTO) on 1st August 2004, the G-20 alliance met regularly at Ministerial, Capital-based Officials, Ambassador and at technical levels, as necessary, in order to formulate their strategy and approach to achieve their objective of early elimination of export substantial improvements in market access for products of their export interest while safeguarding food security and livelihood concerns and rural development needs of developing countries. The G-20 alliance also made concerted

efforts with other WTO Members to ensure that the Framework Agreement, which is a negotiated document among all WTO Members, duly addresses the concerns and interests of the G-20. The G-20 is continuing to actively engage in the on-going negotiations towards establishing detailed modalities and the further commitments of WTO Members in agriculture. The negotiations have been extended up to the Sixth Ministerial Conference of the WTO in Hong Kong, China, in December 2005.

✓ **PLAN TO PROMOTE TEXTILE TRADE**

The global trading environment in the textiles and clothing sector is likely to become more competitive with the expiry of the Agreement on Textiles and Clothing from 1 January, 2005. Indian exporters in this sector have also been facing stiff competition from various low-cost supplying countries including Bangladesh, Nepal, Pakistan and Sri Lanka. The Government has been taking suitable steps, from time to time, which have enabled the Indian exporters in this sector to meet the emerging challenges of global trade. These include various initiatives aimed at facilitating the modernization of technology in this sector, manpower development and providing suitable infrastructure at important textile centers. Certain fiscal measures and incentive schemes have also been implemented for the benefit of the domestic textile and clothing industry.

✓ **FRAMEWORK AGREEMENT FOR FTA WITH THAILAND**

India and Thailand have signed only a Framework Agreement for establishing a Free Trade Area (FTA) on 9th October 2003 in Bangkok, Thailand. The key elements of the Framework Agreement cover FTA in Goods, Services and Investment, and Areas of Economic Cooperation. The Framework Agreement also provides for an Early Harvest Scheme (EHS) under which common items have been agreed for elimination of tariffs on a fast track basis. The list of items on which tariff concessions will be exchanged between India and Thailand under the Early Harvest Scheme has been finalized after consultations with the administrative Ministries / Departments and the domestic stakeholders. The tariff preferences on imports to India would be available only for those products which enjoy the 'originating status' in Thailand as prescribed under the Rules of Origin which are integral part of any Free Trade Agreement. Similarly, the products which enjoy the 'originating status' in India would only get tariff preferences for imports in Thailand. To protect the vulnerable sections of the domestic industry, the Framework Agreement provides for each country to maintain a negative / sensitive

list of items on which no tariff concessions shall be granted under the FTA. In addition, the Agreement provides for trade defence measures which an importing country can take recourse to. In case of a surge in imports and injury to the domestic industry, a country is allowed to take measures such as anti-dumping and safeguards. The Agreement also provides for cooperation among customs authorities for ensuring that the Rules are not violated.

✓ **MFN STATUS TO PAKISTAN**

Whereas India has conferred Most Favoured Nation (MFN) Status on Pakistan, that country has yet to confer the same status on India. Even though Pakistan's denial of this status is violative of WTO Agreement, India has, however, been availing every opportunity to impress upon Pakistan to confer MFN status to us. India and Pakistan have exchanged tariff concessions in four rounds of trade negotiations under the Agreement on SAARC Preferential Trading Arrangement (SAPTA). During the first three Rounds of these negotiations, India granted concessions on a total number of 477 tariff lines (6-Digit HS) to Pakistan with an average tariff concession of 20% whereas Pakistan granted concessions on 262 tariff lines to India. During the bilateral negotiations between India and Pakistan under the 4th Round concluded on 2nd - 3rd December, 2003 at SAARC Secretariat, Kathmandu, India agreed to grant concessions to Pakistan on a total number of 262 tariff lines ranging from 10-20% while Pakistan agreed to grant concessions on 223 tariff lines ranging from 10-20%. These concessions, in future, will be exchanged and negotiated keeping in mind the export interest of India and the principles of reciprocity.

✓ **AMENDING OF FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT**

Foreign Trade (Development & Regulation) Bill, 2001 was introduced in Rajya Sabha providing, inter-alia, a mechanism for safeguard measures enabling imposition of Quantitative Restrictions (QRs) where a surge in imports leads to, or threatens to seriously injure domestic industry. This Bill was referred to the Parliamentary Sub-Committee on Commerce and after incorporating their recommendations as well as provisions for certain other matters relating to foreign trade, Foreign Trade (Development & Regulation) Bill, 2005 (subsuming the Foreign Trade (Development & Regulation) Bill, 2001) is likely to be introduced in the Parliament after taking into account the views/comments of various trade bodies as well as the concerned Ministries/Departments.

(Source : Replies given in Parliament during December, 2004)

ANTI-DUMPING

WTO Secretariat reports significant decline in new final anti-dumping measures

The WTO Secretariat reported that in the period 1 January – 30 June 2004, 18 WTO Members imposed a total of 52 new final anti-dumping measures against exports from 24 countries or customs territories. This represents a significant decline from the 114 measures imposed during the corresponding period of 2003. Nineteen of the new measures were imposed by developed countries, up from the 7 measures imposed by developed countries in the first half of 2003.

The European Communities, India and the United States imposed the most new final measures, 6 each, during the first semester of 2004. For India, this is a significant decline from the 21 measures it imposed during the corresponding period of 2003, but it is an increase for the EC and US, from 1 and 3 measures respectively. Canada was a close second in the number of final measures imposed during the period, with 5, followed by China, Peru and Turkey with 4 each. Other Members imposed 3 or fewer measures each during this period.

Exports from China were once more the subject of the largest number of new final measures (16) during the first semester of 2004, down slightly from the 18 measures imposed against Chinese exports during the first semester of 2003. Korea, Malaysia, Russia and Thailand were distant seconds, with 3 measures each on their exports, while 19 other countries or customs territories were subject to fewer than three measures each on their exports.

The largest number of new final measures were imposed on products classified in the base metals sector of the Harmonized System of Tariff Classification, which includes iron, steel and aluminium products, with 19 new final measures imposed on products in that sector. The chemicals sector was second most affected, with 12 new measures imposed, and the minerals sector was third, with 5 measures. Of the new measures on products in the base metals sector, the largest number was imposed by the United States – 5 of its 6 new measures were on products in that sector. India imposed 5 of its 6 new measures on products in the chemical sector, while China imposed all 4 of its new measures on products in the minerals sector. The EC imposed 3 new measures on chemical products, 2 on products in the live animals/animal products sector, and one on a textile product.

Sixteen WTO Members initiated 101 anti-dumping investigations against exports from a total of 23 different countries or customs territories during the first half of 2004. This is only slightly more than the 98 investigations initiated in the first half of 2003, but a larger number of Members (22) initiated those 98 investigations. Forty of the 101

initiations during the first semester of 2004 were reported by developed countries.

The United States initiated the most investigations during the first semester of 2003 (21), up from the 16 investigations it had initiated during the first semester of 2003. The European Communities and Turkey had the second highest number of initiations during the first semester of 2004, with 13 each, significantly more than the 3 and 5 investigations initiated by those Members, respectively, during the first half of 2003. China reported 11 initiations in the first half of 2004, the same number as during the corresponding period of 2003, while other Members reported 7 or fewer initiations each.

China, with 23 investigations on its exports, up from 17 initiations in the first semester of 2003, remains at the top of the list of countries and customs territories subject to anti-dumping investigations. Chinese Taipei and Korea were next, with, respectively, 14 and 11 investigations initiated on their exports in the first semester of 2004. The United States had 8 investigations initiated on its exports, Russia had 6, and India and Thailand had 5 each. Sixteen other Members had 4 or fewer investigations initiated on their exports during the first semester of 2004.

The largest number (20) of investigations initiated during the first semester of 2004 involved products in the base metals sector. The second most affected sectors were chemicals and plastics (18 initiations each), followed by textiles (15 investigations). The United States initiated 7 of its 21 investigations on products in the live animals/animal products sector, 5 investigations in the base metals sector, and 4 in the plastics sector. The European Communities initiated 4 of its 13 investigations on textile products, and three each on products in the plastics and base metals sectors. Turkey initiated 5 of its 13 investigations on plastics, and 5 on textile products. China initiated 7 of its 11 investigations on products in the chemicals sector, and the remaining 4 on products in the wood pulp/paper sector.

The data are taken from the semi-annual reports of Members to the anti-dumping Committee. The statistics are based on information from Members having submitted semi-annual reports for the relevant periods, and are incomplete to the extent Members have not submitted reports or have submitted incomplete reports. For the purpose of these statistics, each investigation or measure reported covers one product imported from one country or customs territory.

The anti-dumping semi-annual reports by Members for the period 1 January – 30 June 2004 can be found under document series (G/ADP/N/119).

DOHA DEVELOPMENT AGENDA

WTO LAUNCHES NEGOTIATIONS ON TRADE FACILITATION

At the first meeting of the Negotiating Group on Trade Facilitation held on 15 November 2004, Members agreed on a Work Plan and a schedule of meetings

The Chairman, Ambassador Muhamad Noor Yacob of Malaysia, said that the Work Plan he submitted to the Negotiating Group was based on intensive consultations with delegations.

The Plan provides for work to proceed on the basis of Members' contributions and other input that the Negotiating Group may request.

The approved agenda of the Negotiating Group is as follows:

Clarification and improvement of relevant aspects of Articles V, VIII and X of the GATT 1994; enhancement of technical assistance and support for capacity building; effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues;

- Special and differential treatment for developing and least-developed countries;
- Least-developed country members;
- Identification of trade facilitation needs and priorities; concerns related to cost implications of proposed measures;
- Technical assistance and support for capacity building;
- Working with and work of relevant international organizations.

The Group agreed to hold its next meeting on 22-23 November 2004, and to invite the IMF, OECD, UNCTAD, World Customs Organization and the World Bank to attend on an ad hoc basis.

At the meeting, many delegations underlined the importance of the agenda items related to the needs of developing countries and LDCs. Landlocked countries expressed the hope that negotiations would be of practical benefit to them, pointing out that they faced higher transport costs compared to other Members.

On another matter, smaller delegations urged that their resource constraints be considered in the scheduling of future meetings.

The 1996 Singapore Ministerial Conference launched the study of trade facilitation in the WTO. From 1997 to 2003, this work has been carried out in the Council for Trade in Goods.

The General Council, on 1 August 2004, decided by explicit consensus to commence negotiations on trade facilitation on the basis of the modalities set out in the July Package.

Annex D states in part that: "Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues."

The Trade Negotiations Committee, on 12 October 2004, established the Negotiating Group on Trade Facilitation and appointed Ambassador Noor as its Chairperson.

TEXT

CHINA AND THE WTO: CHALLENGES AND OPPORTUNITIES FOR THE FUTURE

I am delighted to join you today for a discussion on the WTO and the Doha Development Agenda. The pace of China's economic development has been electrifying and perhaps, no other Chinese city reflects this speed of progress better than Shanghai. It is indeed fitting that Shanghai should be the venue for this discussion.

Let me start by saying a few words about the current round of negotiations.

As you know, the Doha negotiations have entered a new phase after the adoption of the July Decision. I do not wish to spend too much time on the current state of play as I would like to devote most of my time on China and the WTO. Let me just say that after a period of some uncertainty, in particular following the setback at our Ministerial Conference in Cancún, the negotiations are back on track and moving forwards. In July this year, we succeeded in making significant progress in some of the areas that had been most divisive among Members in the past, most notably agriculture.

We are now focussing primarily on the technical work which needs to be done in each area to prepare the ground for the next major steps in the negotiations. This work may be technical, but it is very important and it must be done properly.

The challenge ahead of us is to negotiate greater levels of specificity. Hard political decisions will need to be taken in capitals, particularly as we gear up for our next Ministerial Conference scheduled for December 2005 in Hong Kong. This will require full engagement at the highest political levels. I have heard a good deal of support for the idea of a stocktaking in March/April of 2005, to evaluate progress in all areas as we begin our preparations for the Hong Kong Ministerial Conference.

I remain firmly convinced that if we can maintain the momentum of July and continue to build on the spirit of compromise, we have a unique opportunity to re-energize the Doha round in a lasting way and establish the conditions for its successful conclusion.

I would like to turn now to look more closely at China's impressive integration into the multilateral trading system. China joined the WTO with extensive and ambitious commitments. China is overtaking Japan as the world's third largest merchandise trader in 2004. The Chinese economy of 2004 is not only bigger and stronger but it is also more integrated with the rest of the world. China is not only a major exporter but also a major importer. China is now the world's third biggest importer, behind the US and Germany but ahead of Japan. Chinese imports have also become geographically more diverse. For the past five years Chinese imports have generally grown faster than its exports, with import growth outpacing export by about an average of 5 percentage points a year. This is not surprising since China's economic expansion requires billions of dollars worth of equipment, technology and raw materials. China's strong import growth has provided an important stimulus for export-led growth in the world during the past few years. China's economic boom is potentially an economic boom for the world.

In the next few years, I believe we will start to see a new phase in China's integration into the multilateral trading system. Let me explain why I say this. Three years ago when China joined the WTO, it gave an important signal of its commitment and willingness to bring its economy into harmony with the rules of the WTO. To China's credit it did not waver in its resolve. The task was not always easy but throughout this period we have seen China, in implementing the terms of its accession to the WTO, progressively lower its tariffs, phase-out non-tariff measures and reduce restrictions on trade in services. In trade in goods, China's simple average tariff rate dropped from 42.9 per cent in 1992 to 10.4 percent at the beginning of 2004. Overall, China's performance has been very good.

That being said, it would be fair to say that China has not settled all the issues and concerns of other WTO Members relating to bringing its trade regime into strict conformity with its terms of accession. For instance, I have been informed that

the level of counterfeiting and piracy remains of concern to many WTO Members. Also in specific industrial and service sectors, there are still various obstacles confronting foreign companies. Retail businesses, scheduled to be further opened to foreign competition by the end of this year, are one such example. I understand new regulations have left investors concerned over vague expressions and definitions. China will have to strengthen its efforts in terms of transparency and information on relevant laws and procedures. This will help to alleviate any misconceptions about China's commitment to its reform agenda. Some sensitive service industries will have to further open up by 1 January 2005 – thus becoming more exposed to competition. A number of restrictions will be lifted in the areas of foreign equity participation, business scope and geographical presence.

With more open markets Chinese businesses will certainly face more competition but this is not necessarily a negative consequence. As the last decade of reforms has shown, a more open economy is the best way to boost competitiveness. With more open markets Chinese businesses will continue to improve their overall ability to respond.

Let me take the example of agriculture, an area that is much debated in the Doha Development Agenda. When China joined the WTO, many were concerned that China's farmers would be hardest hit by the country's new openness to trade. However, the results have not gone quite that way. Due to greater openness China's agriculture sector is going through a period of change. Admittedly this is difficult for some – but it is by no means entirely negative. In fact, China's agriculture is rapidly moving in the direction of national comparative advantage.

With more than 20 per cent of the world's population and only 7 per cent of its arable land, China is rightly shifting towards labour intensive, high value added production, and away from land intensive grain production. As a result, China's agricultural sector is more competitive and exports have improved. Agriculture productivity is increasing because of greater openness. Opening up new market access opportunities around the world can have potentially big gains for China. It should be

in China's interest to ensure that its trading partners also undertake reforms in agriculture. After all, as a result of accession, China's agriculture market is already relatively open and subsidies are used in only a very limited way. If this is true for agriculture, it is even more so for manufactured goods and services.

China has so far devoted much attention to implementing its accession commitments. This year, the amended Foreign Trade Law which took effect on July 1, changed the foreign trade rights approval system which had been in effect for 50 years into a registration system. This means that China has met its commitment of opening up foreign trade rights 6 months ahead of schedule. This is highly commendable. China is also an active player in the Doha Round. However, I believe that as China's membership of the WTO matures we will need to see it participating even more actively in the current round of negotiations. Being able to participate in trade negotiations was one of China's key objectives for joining the WTO. Many developing countries look up to China for leadership. They also see in China's experience concrete evidence that the path to economic openness and integration is also the path to growth and modernization.

Let me be frank, the Doha negotiations have been put back on track but much work remains to be done to finish the Round. Whether we can successfully negotiate the challenges over the next period depends very much on the commitment of all Members to build on the July Decision. Few countries have a greater interest than China in progressive trade liberalization and the strengthening of the rules-based multilateral trading system. China also holds the unique position of being both a developing country and a trading superpower. With this status, of course, comes responsibility. In its own interests and in the global interest, China must do even more to help bring the Doha Round to a timely, successful conclusion.

Given the limited time that I have left, let me refer to a couple of current trade issues that are of particular significance to China.

First, the end of 2004 will herald the historic expiry of the Agreement on Textiles and Clothing (ATC). This puts an end to more than 40 years of discriminatory quota restrictions and will bring

considerable welfare and efficiency gains for the global economy. There is also potential for more South-South trade as this sector liberalizes. We should also not forget that the abolition of quotas in this sector was a very important objective for developing countries in the Uruguay Round.

I am therefore pleased to confirm that expiry of the Agreement on Textiles and Clothing is on track. Restraining countries have notified the Textiles Monitoring Body that they will eliminate all remaining quota restrictions on 1 January 2005. I welcome the role that China together with other WTO Members have played.

It would be remiss of me if I did not also mention that there is anxiety on the part of some countries about the short-term, but considerable, adjustment costs that may result from quota abolition. The issue has been raised in Geneva in the Council for Trade in Goods and China's initial reaction has been constructive and helpful. Adjustment challenges are complex. The starting point is domestic reform. There is a role for International Financial Institutions in facilitating a coordinated response in support of domestic reform efforts. In WTO discussions, China has also usefully suggested that it and other countries could play a positive role through South-South cooperation. All these contributions will count, but there will be no simple solutions.

That being said, it is important to stress that adjustment and domestic industry restructuring is a necessary part of the process of reform and liberalization. China has had to undergo adjustment in several areas. No country in today's global economy can afford not to undertake domestic policy reforms. I should also highlight that there is support for adjustment such as through the IMF's Trade Integration Mechanism, the World Bank's Country Assistance Strategies and the World Bank and IMF's Poverty Reduction Strategies. We need to work together in the most appropriate forums to find solutions.

My second point relates to the strengthening of existing WTO rules. In the current round of negotiations, we are looking at how to strengthen WTO disciplines on anti-dumping. It is important that we have strong disciplines to prevent unfair

trading practices, but at the same time these should not be used to undermine trade liberalization. As the negotiations progress, the rules negotiations will take on even more significance. It is important to ensure that the rules negotiations continue to progress in parallel with other areas under the Doha work programme.

Sixteen WTO Members initiated 101 anti-dumping investigations against exports from a total of 23 different countries or customs territories during the first half of 2004. This is slightly more than the 98 investigations initiated in the first half of 2003. While it is important that we protect Members' rights to act against trading practices which the GATT condemns, we must also ensure that anti-dumping measures are not used as a pretext for protectionism. For systemic reasons, I believe it is vital that we use the opportunity of the current round to clarify and improve WTO disciplines in this area.

As you know, a few major users of anti-dumping duties continue to treat China as a "non-market economy". I know that this is a vexed issue and it would not be for me, nor for the WTO, to comment on it. This is an issue between China and its trading partners. But I do think that the best answer that China can give is to stay firmly on its impressive road of reform. Membership of the WTO and participation in the current round of negotiations has proven China's firm commitment to the market economy. By powering ahead with its programme of broad and continuing reforms, China will make it clear to all its trading partners that the process is irreversible.

Let me conclude by reminding us all that we all share a joint responsibility to strengthen the multilateral trading system and to keep international trade policies liberal. I look forward that as a major trading nation China will do its utmost to maintain a strong commitment to the DDA and together with all the WTO Members ensure further progressive momentum of the negotiations in 2005 that will pave the way for the final success of the Round in the near future.

(Text of WTO/DG, Dr. Supachai Panitchpakdi's speech in Shanghai on December 2, 2004)

SCHEDULE OF MEETINGS AT THE WTO/GENEVA*

DECEMBER - 2004

1	Trade Policy Review Body - Brazil
3	Council for Trade in Services - Special Session
6-8	Textiles Monitoring Body
6	Negotiating Group on Market Access
6	Working Party on the Accession of Bosnia and Herzegovina
7	Committee on Trade and Development - Special Session
8	Working Party on the Accession of the Republic of Cape Verde
8	Negotiating Group on Market Access
9	Textiles Monitoring Body
9	Trade Negotiations Committee
10	Working Group on Trade, Debt and Finance
13-14	Dispute Settlement Body
13-14	General Council
13	Negotiating Group on Rules - Regional Trade Agreements
15	Trade Policy Review Body - Switzerland/Liechtenstein
15	Working Party on the Accession of Viet Nam
16	Committee on Government Procurement
16	Negotiating Group on Rules
16	General Council
17	Trade Policy Review Body - Switzerland/Liechtenstein
17	Committee on Agriculture - Special Session
17	Dispute Settlement Body
24	Year-End Closure
25	Christmas day

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14	Dispute Settlement Body
17	Trade Policy Review Body - Jamaica
18-19	Dispute Settlement Body - Special Session
19	Trade Policy Review Body - Jamaica
19	Sub-Committee on Least-Developed Countries
24	Negotiating Group on Rules - Regional Trade Agreements
24	Report by DG's Consultative Board
25	Trade Policy Review Body - Japan
25	Dispute Settlement Body
26	General Council (Director-General Selection Process)
27	Trade Policy Review Body - Japan
31	Negotiating Group on Market Access

(Source : WTO/Geneva as on November - December 2004)

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We welcome your comments and suggestions at :

Telefax : 2301 4622

E-mail : sbiswas@ub.nic.in

Website : <http://commerce.nic.in>