

# PATENT LAWS

## Developing Countries Suffer The Most

By DIPAK BASU

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The TRIPS (Trade Related Intellectual Property) agreement requires that by 1 January, 2005, developing countries like India must become compliant — particularly by allowing product patents rather than just process patents under the current regime. Fears have also been expressed on the impact the amendments will have on the India's booming software and bio-technology industry that has traditionally been protected under copyright laws, because fair use provisions in the copyright law that permits reverse engineering is not permitted under the patent law. The worse affected would be the patients in India and in all poor countries which depend on the cheap generic drugs manufactured in countries like India, Brazil, and South Africa.

### Flexibilities

The India government is going far beyond what is required under WTO rules. The patent amendment Bill proposes to extend patent protection to new uses of known drugs — a level of protection not required by the TRIPS agreement, and one that could allow foreign pharmaceutical companies to maintain monopoly control over a drug long after their original patent expires. In addition, the new legislation proposed by the Indian government and some of its elements as "TRIPS-plan clauses" do not fully take advantage of flexibilities available under TRIPS in order to safeguard accessibility and availability of drugs and medicines.

Most notably, the Bill does not fully incorporate the 30 August, 2004 decision of the TRIPS Council on aiding countries without manufacturing capacity to access medicines, since it makes the granting of compulsory licences for export purposes contingent upon the existence of a compulsory licence for importation in the purchasing country. This could make it impossible for the less developed countries (LDC) to import drugs from India. Since LDCs do not have to provide patents on pharmaceutical products until 2016, many of them do not have patent law institutions capable of issuing compulsory licences. The process India is going through is likely to be replicated in a number of developing countries that have to bring their patent legislation into compliance with the WTO TRIPS agreement.

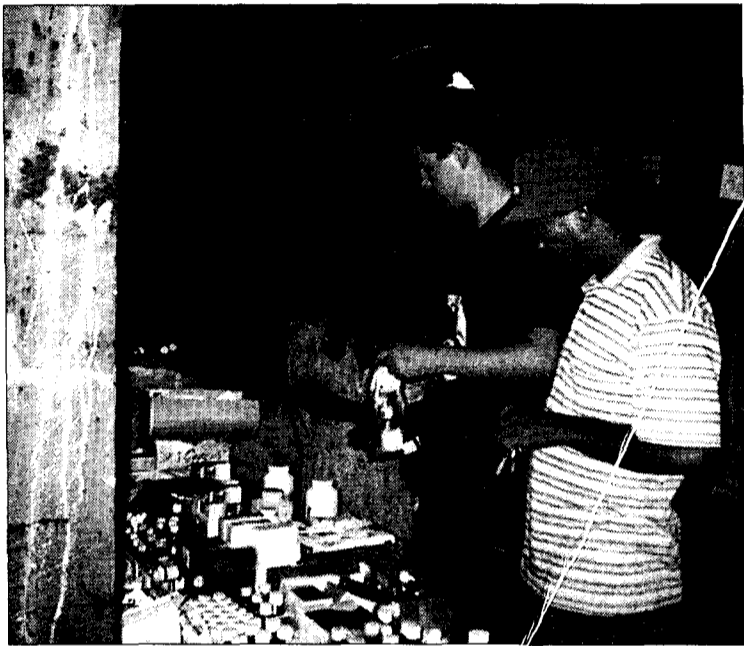
Patent law in India is regulated by the Patents Act, 1970 (39 of 1970) and the Patents Rules, 1972. The Indian Parliament has ratified drastic changes to the Patents Act, 1970. These changes have become effective from 1 January 1995. The changes are in line with the commitments made by India before WTO. India is committed to harmonise its intellectual pro-

erty laws with the members of WTO. The WTO agreement enables a signatory to avail of a transition period of ten years to implement its commitments. India has availed off the full transition period of ten years up to 2005 for formulating and amending its Patent Laws.

The 1994 WTO agreement on TRIPS established patent protection for a minimum of 20 years in all fields of technology, including medicine. Developing countries were given until 2000, and LDCs till 2006 to bring their national legislation into line with WTO rules. All countries have

export copies of patented drugs".

It is important to examine the adverse health impact laws are having on developing countries. In the drive to maintain and increase their profits, Western drug companies are putting vital medicines beyond the reach of a growing and vast proportion of the world's population. It is possible to refute the argument used by defenders of the WTO agreement that the impact will be minimal in the Third World since most diseases there are long-standing and can be treated using un-patented drugs. Firstly,



to offer protection on drugs for which patents were filed after 1995.

WTO rules are complex and appear to permit some exceptions, with countries able to "adopt measures necessary to protect public health and nutrition". This is supposed to allow the granting of "compulsory licences" for the production of vital drugs. It is also supposed to allow "parallel importing" of patented drugs, i.e. their purchase from whoever sells them the cheapest.

The difficulty is being able to utilise the rules permitting capable of producing on a scale to bring down drug prices. They are only allowed to import cheap "generic" drug (copies of expensive drugs patented by Western companies), usually produced in countries such as India, Brazil, and Thailand, if a compulsory license has been issued in the exporting country. Even in this case, the TRIPS agreement specifies that a compulsory license can only be issued for "predominantly" domestic needs.

### Unaffordable

What is more, compulsory licensing can only be obtained after efforts have been made to obtain a regular license from the patent holder on commercial terms, and if the patent holder is compensated. The result of the WTO rules effectively means, "governments will no longer be permitted to allow local companies to produce, market, and

there are millions of AIDS sufferers in Africa and the developing countries, with no possibility of affording the triple combination AIDS drugs that are covered by patents. Secondly, there is a vast increase of new strains of diseases, including malaria and tuberculosis, which can only be treated by recently developed patented drugs. A World Health Organisation study has shown that in the case of pneumonia, which kills 3.5 million people annually, medications that were formerly effective now fail in 70 per cent of cases because of drug resistance. A new range of antibiotics is being patented that will be unaffordable in developing countries.

To make sure that the poorer countries do not find ways of using compulsory licensing or parallel importing to avoid WTO rules, the major pharmaceutical companies are using "armies of lawyers" to press their case. The US government is acting as the main defender of the pharmaceutical companies, with representatives of the industry playing a major role in the committees that develop its trade policy. Recently, the US government made a formal complaint to the WTO concerning Brazil's new patent legislation, alleging that it did not comply with TRIPS rules.

Introduced in 1988, the "Special 301" provision of the US government is used to impose trade sanctions on countries to enforce compliance with WTO rules. India, the Dominican

Republic, Argentina, Vietnam and Thailand all face Special 301 sanctions by the USA over patenting rules for medicines.

Another argument used by defenders of the drug companies is that the cost of medicines is only one aspect of health care, and that the provision of drugs such as antiretroviral used to treat AIDS would be of no use without an advanced health infrastructure to back them up. However, a much higher proportion of the small amount governments spend on health care goes to pay for pharmaceutical drugs: over one-fifth of public health spending in Mali, Tanzania, Vietnam and Colombia, for example. Therefore, the high cost of drugs is at least in part responsible for limiting the provision of public healthcare.

### Insurance

In the advanced capitalist countries, most health cares are provided from public funds or by insurance schemes. For example, in Britain, annual spending on health per person is \$1,193 per annum, of which only three per cent is paid personally. In contrast, spending per person in India is \$23 per annum, with 84 per cent being paid by private households, of which the cost of drugs is the highest item. Thus the increase in drug prices being pushed through under TRIPS will intensify the division between rich and poor in relation to health provisions on a world scale. Already some two billion people of the world lack access to basic health care and 11 million die each year from preventable diseases.

The attempt to restrict the range of diseases that developing countries can claim are part of a public health problem was introduced into the WTO negotiations by the USA, supported by Japan. Amazingly, it is argued that diseases such as cancer, heart complaints, or asthma are not a public health problem in third world countries.

Aside from drugs for AIDS, tuberculosis and malaria, the USA only agreed to consider cheap drugs for tropical diseases that affect the poorest countries. They also demanded that medicines only were considered so that vaccines, diagnostic tests, and monitoring tests could not be provided cheaply under WTO rules. Clearly, however, the companies producing generic drugs could not survive if their profits were to be made only on drugs for diseases mainly affecting the poorest countries.

It is unfortunate that both the BJP and the Congress looks at the interests of multinational companies and their Indian collaborators and ignore the vital interests of the people. The WTO negotiations have demonstrated that India will protest first, then implement everything even going beyond what is demanded by the developed countries. Since 1995, we have seen this process of surrender and lack of care and concern for the people.

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# Patent ordinance dilutes objection procedure

## Decree promulgated on December 26 does not allow any objector to be heard before the grant of patent

MANOJ MITTA

NEW DELHI, DECEMBER 29

**A**s the New Year dawns, a serious but somewhat misleading exercise will get underway.

First, the government will open a "mail box" that was set up 10 years ago in anticipation of a law extending "product patent" protection to the critical sectors of drugs, food and chemicals. More than 12,000 patent applications (many of them by MNCs) have been dropped in the mail box in the intervening period and the anticipated law came last

Sunday in the form of an ordinance.

After the mail box is opened, the government will, as required by the Patents Act 1970, publish the applications that are being considered. On the face of it, this is to inform all those who are likely to be affected by the grant of product patents.

But if there is anything objectionable in any of the patent claims, there is little anybody can do about it, thanks to an amendment made by the new ordinance.

Under the 1970 Act, anybody could within four months of the publication of the application "give notice to the Controller of opposition to the

grant of the patent" on any of the specified grounds. And the Controller was then required to give the challenger "an opportunity to be heard before deciding the case."

But the ordinance promulgated on December 26 does not allow any objector to be heard before the grant of patent. It stipulates that the objector "shall not become a party to any proceedings..." All that is permissible under the ordinance is that he "may, in writing, represent by way of opposition to the Controller against the grant of patent" on the specified grounds.

The ordinance has, in effect, re-

duced the provision for pre-grant opposition in the 1970 Act to the "pre-grant representation" envisaged by the now lapsed 2003 Bill of the NDA Government on the same subject.

Commerce and Industries Minister Kamal Nath has, however, claimed that the ordinance has "improved" on the NDA Bill by providing "a definite pre-grant opposition procedure."

Kamal Nath was trying to signal to the Left parties that one of their most important concerns had been accommodated.

Unwilling to pass on too much power too easily to potential monop-

olists, the Left parties wanted pre-grant opposition to be retained. The irony is that even the NDA, which had initially felt that such challenges might slow down the process of granting process patents, had come around to the same view.

This happened after a controversy earlier this year over an exorbitant price quoted by a pharma MNC, Novartis, for a life-saving anti-cancer drug after it had been granted exclusive marketing rights in India.

That experience may have sobered the NDA, but the new government is clearly plumbing for speed in the grant of patents.

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30 DEC 2004

INDIAN EXPRESS

## Patent sense & nonsense

Si & mp? Terrible politics, good law

Literally, India's most important change of policy was introduced on the sly on a cold, dark winter evening; when oceans left tens of thousands dead throughout Asia. The cabinet didn't choose last Sunday to clear the patents ordinance, but the fact that all other news was washed away by the tsunami could not have distressed ministers too much. However, the tragedy ensured evasions, silences and misleading information preceding the issue of patents ordinance got little or no media space. That suited the government fine since it had bypassed Parliament and scrutiny was avoided. Government taking the ordinance route suggests that the Left didn't want amendments to the Patents Act and the BJP, in Opposition, changed tack. But surely these are common hazards of parliamentary politics? If every controversial legislation has to be dealt with by ordinance, what message do you send about government? It should be noted that there was no attempt to introduce the patents amendment bill in Parliament this session or in the earlier one. The previous NDA government had a draft Bill readied. The UPA could have easily tabled its own version almost as soon as it came to power because this is where political differences do not matter. That government waited till the second last week to issue an ordinance — the WTO deadline is 1 January 2005 — shows it did not intend to have a proper discussion. This is disrespect shown to democratic institutions. Political convenience doesn't even begin to mitigate the offence.

Thankfully, the amended patent law is well-drafted. India now enters the world of product patents, where everything from medicines does not come "free". It is priced with computers to protect inventors. Left and other social activists may indeed hold this to be terrible. They do not answer the question why an inventor should not be rewarded. Or whether if this is not done, there'll be fewer inventors. It is no coincidence that India, which hasn't had product patents for six decades, also ranks poorly in industrial and scientific patents. Of course, for public health, non-commercial issues are in play. But the amended patent law takes care of life saving drugs being exempted. Government has the power of compulsory licensing, overturning a patent and ordering generic production of a medicine needed in a health emergency. The new law applies prospectively, therefore generic drugs sold cheaply now will not be priced upwards. There are also safeguards in terms of challenging patents and preventing them on existing products that have been tweaked into something "new". Industry needs patents. The government has the choice of intervening. If the UPA were to explain these, maybe it could have done without an ordinance.

30 DEC 2004

THE STATESMAN

30 DEC 2004

J. Mohan  
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# Patenting a law

The amendment to the patents act needs to be supported when it comes up in Parliament

THE Patent (Third) Amendment ordinance clears the air on one of the most contentious issues in recent years: the changeover in our patent regime. The amendment (the most significant to date) heralds the transition from a process to a product patent regime for pharmaceuticals, chemicals and food by January 1, 2005. This is in line with our obligations under the WTO's Trade-Related aspects of Intellectual Property Rights (TRIPS). The government had little choice but to adopt the ordinance route to ensure compliance with international obligations once the winter session of Parliament ended without the amendment bill being passed. The ordinance, therefore, was not wholly unexpected. To be sure this is not the best and most democratic way to effect such a far-reaching change in our statute books. But given the Left's strident political opposition to changes in the existing law, the government had little choice in the matter.

Indeed, the ordinance tries to address many of the concerns voiced by the Left and domestic industry, which had a stake in the earlier regime. For instance, it fixes a time-bound (90 day) period for all pre-grant opposition. Such opposition, moreover, will only be allowed on grounds of 'patentability'. Post-grant, a patent can be opposed before the patents controller as well as in a court of law. The rights of mailbox applicants (those who had submitted their patent applications un-

der the Mailbox Facility established after the 1999 amendment) will be operational only from the date of the granting of the patent and not retrospectively. This takes care of a major concern of generic producers in the country who feared that they would be hauled to court for patent violations in case the benefit is extended retrospectively.

Contrary to widespread anxieties, the new regime is unlikely to see drug prices shoot through the roof, since an estimated 97 per cent of all drugs sold over the counter are off-patent. The other safeguards include retention of 13 compulsory licensing provisions, including one for enabling grant of compulsory licensing for export of medicines to countries which have no manufacturing capacity. Additionally, a compulsory licence — a facility to sidestep patents under specified circumstances — can now be issued within the grace period of three years from the grant of patent. The transitional arrangement of EMRs has been dropped. Embedded software can now be patented. This should come as a major source of relief to the Indian software industry at a juncture when it is slowly moving up the value chain and developing potentially patentable software. The ordinance also gives the government much needed breathing space. It can only be hoped that the Left will see reason on the issue and stop tilting at windmills. The bill — whenever it comes up in Parliament — needs to be supported.

29 DEC 2004 INDIAN EXPRESS

## WTO beneficial, says Kamal Nath

By Our Special Correspondent

NEW DELHI, DEC. 27. The Government defended the promulgation of an ordinance on Sunday for giving effect to the third amendment of the Indian Patents Act on the grounds that the world trading order under the World Trade Organisation (WTO) had been beneficial for India and that it had to fulfil certain obligations on the understanding that other countries too would commit themselves to the same.

Defending the promulgation of the ordinance, the Commerce and Industry Minister, Kamal Nath, told the media here today that when India decided to accept and adopt the world trading order, its exports stood at less than \$32 billion.

A decade later, they had doubled to \$64 billion and now the country was looking towards doubling exports in five years.

"This year we are already set

to cross \$75 billion. All this translates into more employment opportunities and greater economic activity, with its concurrent benefits," he said.

The third amendment was only the culmination of a process that had begun 10 years ago and its provisions had to be seen in conjunction with, and in the context of the Act, as well as of the two earlier amendments of 1999 and 2000.

"Our Patents Act always provided for process patent in all fields, and product patent 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 January 1, 2005. A Bill had been introduced in Parliament a year ago by the previous Government, but it lapsed," he said.

Responding to criticism that the Government had rushed through an important legislation in the form of an ordi-

nance, Mr. Nath explained that a Group of Ministers had been set up to go through the lapsed legislation. It was also necessary to consult political parties and trade and industry organisations.

"The last comments we received were on December 21 and so it was not possible to bring the Bill in this session of Parliament. But the ordinance will be discussed in detail in Parliament during the budget session, which is just a few weeks away."

On the charge that prices of medicines would spiral as a result of the ordinance, the Minister said the apprehension was unfounded.

In the first place, 97 per cent of the drugs manufactured in India were off patent and would remain unaffected. These covered all the life saving drugs as well as medicines for common ailments.

28 DEC 2004

25 DEC 2004

THE HINDU

# No decision yet on patents ordinance

By Our Special Correspondent

**NEW DELHI, DEC. 24.** With the January 1, 2005 deadline approaching for amending the Patents Act, 1970, the Union Cabinet today failed to arrive at a decision on promulgating an ordinance for the same. With Parliament having adjourned *sine die*, the only option before the Government is to issue an ordinance, provided it decides to adhere to the commitment given to the World Trade Organisation (WTO) that a product patent regime would be in place by the end of the year.

Coming out of the Cabinet meeting, the Commerce and Industry Minister, Kamal Nath, told the media that the "Cabinet discussed the Patent Amendment Bill. Various options have been discussed to meet our obligations under the Trade-Related Intellectual Property rights (TRIPs) agreement but no decision was taken. We will now finalise the route and what should be done

to meet our obligations."

## "All options considered"

Asked if the Government would take the ordinance route, Mr. Kamal Nath said, "Parliament has been adjourned *sine die*. A decision will be taken in due course and shortly." Asked about the discussions, he said, "We considered all options, including meeting the commitment, not meeting the commitment and also how to meet the commitment."

There have been objections from many quarters against the draft legislation for amending the Act, including from the Left parties, trade unions and non-governmental organisations. More important, the proposed ordinance route has been criticised on the ground that such complex legislation of far-reaching importance should be subjected to a thorough public examination. There has been a demand that in the very least, the legislation should be referred to an appropriate com-

mittee of Parliament for a proper review and recommendations for the changes to be brought into the Act.

## "Law can be delayed"

A Joint Action Committee against the amendment of the Patents Act, in a statement today, countered the official argument that under the TRIPs agreement, a product patent regime has to be in place by January 1, 2005 as it was linked to the end to the textile quota re-

gime as envisaged in the WTO Agreement on Textiles and Clothing. According to the committee, the legislation could be delayed pending a thorough review, and legal provisions could be introduced to give retrospective effect to certain amendments, as [was] done in the recent past when "exclusive marketing rights" were introduced in the Act.

The committee also drew attention to the changing world opinion on issues pertaining to Intellectual Property Rights,

particularly where the TRIPs regime threatens to adversely affect human rights in the context of healthcare. It suggested that the "need of the hour is to follow a more creative and independent approach while still remaining within the broad contours of TRIPs."

## Suggestions

With this end in view, it said a number of suggestions had been submitted to the Government, and the modifications or amendments proposed related to vital matters such as the definition and scope of patentability; eschewing retrospective protection to product patent rights not visualised in TRIPs; ensuring the continued availability, at affordable prices, of medicines brought into the market with due approval of the Government during the transitional period 1995-2005; the need to fully exploit the flexibility provided in TRIPs on compulsory licensing; and also the possibility of exports.

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# Govt terms to US & EU for patents law

HT Correspondent  
New Delhi, December 24

THE CENTRE is likely to issue an Ordinance providing for product patents to fulfil its WTO obligations from January 1, 2005. But the Ordinance will be promulgated only if the European Union and the US keep their commitment to removing quota curbs on textiles without non-tariff barriers. This was decided at a Cabinet meeting today. A final decision will be taken at the next meeting of the Cabinet on December 29.

At today's meeting, a strategy was worked out to link the issue of product patents with the lifting of textile quota by Brussels and Washington. "Let the EU and US discharge their commitment on textiles without imposing non-tariff barriers like environment and labour standards. If the Big Two don't keep their word, why should we hurry to keep ours?" a senior minister said.

Sources said the Centre would make all efforts to accommodate the concerns of the Left parties, which are worried about the impact of the proposed law on the prices of life-saving drugs. Though the Left parties continue to oppose the proposed Ordinance, government insiders insist that an "agreement has been reached" with them.

CPI secretary D. Raja said the Left parties have forwarded their suggestions to the government on the subject. "We are apprehensive about the proposed amendments," he said.

Already 4,000 applications are pending before the government for grant of patents. While the domestic generic industry is not very keen on introduction of product patents, the multinational drug companies, holding patents on a number of drugs, would benefit from the new dispensation.

If New Delhi fails to meet the WTO deadline, the US and the European Union can drag it to the Dispute Settlement Panel. The entire process of initial consultations, followed by the formation of a panel, the proceedings and finally, a decision by the panel, is expected to take at least three years, during which India can still bring about a political consensus on the subject.

## Impact

- Patented medicines, software may be expensive
- More MNCs may set up R&D base in India
- More Indian companies will set up R&D cells for invention of drugs
- Domestic pharma companies producing patented drugs may have to pay royalty

# Amending the Patents Act

By R. Gopalakrishnan

THE LATEST amendments to the Patents Act, 1970, expected to be introduced in Parliament shortly to comply with India's commitments under the TRIPS (Trade-Related Intellectual Property Rights) Agreement of the World Trade Organisation (WTO), have invoked almost unanimous criticism. This centres especially on the re-introduction of product patents for foods, drugs and chemicals.

A substantial part of the criticism is based on misconceptions. This is particularly true of claims that the Indian drug industry has been able to "bring down the price of medicines" as a result of the Act, which deleted the provision for grant of product patent in the case of foods, drugs and chemicals alone. How was such a capability achieved and is it a sustainable strategy for a crucial sector such as health?

No doubt the 1970 Act, granting only process patent for drugs, enabled even small and medium Indian companies to produce indigenous versions of drugs developed abroad, especially in the United States and Europe, and even export them.

The low price of Indian drugs was because the material cost of the final product was very low, compared to the costs involved in the development of drugs. Development costs include not just the wages of medical and scientific manpower involved in research, but also the infrastructure required for experimentation on ani-

mals and humans over a long period before a new drug is ready. This is followed by a lengthy and rigorous process of approval by the regulatory authorities.

It is in the nature of chemical products that their composition can be easily known and they can then be made through alternative processes. Any company that makes a drug developed and patented by

ents, instead of making it dependent on the development of drugs abroad for producing copies. The latter option, encouraged by the 1970 Act, is economic tailism, which a nation can embrace only at the risk of undermining its own technological potential.

Among the objections to the restoration of product patents for drugs are allegations that drug multina-

ferent from but also in a sense a counterweight to the power of big firms, especially in a developing country. Also, if, as alleged, the cost of research and development is exaggerated as a ground for product patents, there is no reason for drug companies to rely on copying drugs developed by others. They can as well develop new drugs at non-exaggerated costs and capture markets. However, one valid objection to the reform of the Indian patent law, already effected, is the introduction of exclusive marketing rights (EMRs) in the period of transition (10 years from 1995) to the product patent regime in tune with the TRIPS agreement.

The EMR ran counter to the very objective of the transition period. What is more, it linked the grant of EMRs by a member-country of the WTO to grant of a patent to the applicant in any other member-country, undermining the philosophy of national sovereignty that to this day covers decisions on the grant of patents.

The task now before the nation is to debate openly how to deal with a possible rise in the prices of newly patented drugs. It would be unwise either to skirt parliamentary approval for reintroduction of product patents for drugs by issuing an ordinance or to adopt a delaying tactic by not honouring the country's obligation and leaving the consequences to the WTO dispute settlement mechanism.

## *For India, the task now is to debate openly how to deal with a possible rise in the prices of newly patented drugs.*

tionals indulge in monopoly practices and that they exaggerate the cost of product development. In this argument, there is a tendency to confuse the monopoly of big companies that inevitably emerge in the course of development of capitalism and the limited monopoly granted by a patent.

The power of monopolistic companies is controlled by governments through anti-trust legislation, price regulation, etc. The limited monopoly that a patent entails is a grant from the state to any innovator — individual or business or institution. The patentee is entitled to compensation from anyone, including a big company or multinational that puts his or her innovation to commercial use. Thus the patent monopoly granted by the intellectual property rights (IPRs) system is not only dif-

somebody else but uses another process avoids the bulk of the development costs and is thus able to produce and sell it at a low cost.

The 1970 Patents Act reflected the experience of the colonial era. The British rulers had used the Indian Patents and Designs Act, 1911, to force products (including drugs) on this country — encouraging import from Britain and discouraging manufacture in India.

To persist with the rationale behind that law now is anomalous. At present, there is enormous scope for investment of capital, both indigenous and foreign, for manufacturing within India. What is more, India's vast scientific manpower can be harnessed to make the industry an innovator of new drugs at low cost. This will help the Indian drug industry take advantage of product pat-

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# The patent controversy

By Rajeev Dhavan

**P**ATENTS AND medicine are inextricably inter-linked. Patents are a monopoly. Drug companies possess separate monopolies over many life-saving and other drugs, including those that treat HIV-AIDS. As monopolists, these companies have no compunctions about fixing high prices for essential drugs. High prices create a clear divide between the rich who can afford the medicine and the poor who cannot.

India's thriving pharmaceutical industry has shown that the price fixed by the monopolists has nothing to do with the cost of production. Yusuf Hamied of CIPLA has declared that he can supply medicine for HIV to Sub-Saharan Africa, India and the rest of world at affordable prices. The monopolists argue that they need to recoup their research and development (R&D) costs, for which they have already received tax benefits, and foundation funds. Until these supposed costs are recouped, the poor and the ill must literally hold their breath. Medicine will be available, but not for the poor.

On May 6, 1981, Indira Gandhi declared India's policy when she said her "idea of a better world is one in which medical discoveries would be free from patent and there will be no profiteering from life and death." What happened to this policy? How did India — a champion of the world's poor and a major supplier of cheap medicine — miss the wood for the trees? Contrary to its own policy and interests, the capitulation took place between 1987 and 1994 when the World Trade Organisation (WTO) treaty was negotiated. Records in Parliament will show that time and again, this issue was bypassed. In December 1993, a Rajya Sabha Committee headed by I.K. Gujral viewed with concern the "grave impact of the proposed patent ... on the drug prices in the country" and warned that the "primacy of public interests for the right of patent holders should be ensured." Public discussion was thwarted. The confidential report of the Arjun Singh Committee in the early 1990s remained confidential. As members of the National Working Group on Patent Laws, we continually exposed the impending consequences.

When the WTO came into effect, India did not seriously contest America's threats. From 1995 to 2004, a large number of foreign companies filed anticipatory claims under the 'mail box' procedure, which will flow into full-fledged patents on Janu-

***By rushing through the Third Patents Amendment without proper parliamentary scrutiny, India is short changing its post-Doha obligations to both its own and the world's poor.***

ary 1, 2005. After the Left and the BJP thwarted earlier attempts to do so, the First Patents Amendment Act was passed in 1999, followed by the Second Amendment Act in 2002. A political promise was made that further amendments on social concerns would be incorporated in future. None of the ameliorative amendments was included in the Third Amendment Bill of 2003, which is now being rushed through without change or discussion. The WTO and the U.S. want the law passed before January 1, 2005 under the implicit threat of WTO retaliation for non-compliance.

It is obvious that monopolies — patent or otherwise — have no place in a free trade treaty. But the U.S. is keen on defending the market of its drug companies in ways India was not willing to defend its poor. Economists such as Jagdish Bhagwati, Dani Rodrick and Michael Finger who support the WTO are coming round to question whether the TRIPS (Trade Related Intellectual Property Rights) treaty should be in the WTO. By rushing to comply with the TRIPS deadline, India is turning its own international law upside down.

India follows the incorporation theory. A treaty does not become law until enacted by Parliament. By giving greater credence to WTO deadlines than democracy, India is prepared to jeopardise its sovereignty. The WTO is not the only treaty that India has to comply with. It is also a signatory to the Universal Declaration of Human Rights (1948), the Civil and Political and Economic and Social Rights Covenants (1966) and a host of others. The Supreme Court decisions culminating in and following Vishaka's case (1997) have directly imported many human rights into the life and liberty provisions of Article 21, including the right to health. The WTO cannot override these obligations.

The proposed Third Patents amendment should not be rushed through Parliament without making a serious effort to deal with issues of health, food and technology thoroughly. The Doha Declaration in 2001 specifically indicated that the WTO and TRIPS agreement "can and

should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicine for all ... and enable access to existing medicines and research and development into new medicines." The HIV-AIDS phenomenon illustrates the problem which is not limited to it. AIDS has spread to 40 million victims throughout the world. Africa has been hit the hardest. It has spread to all the 31 provinces of China and all over India. It is not just a truckers' disease but has spread to homes. Countries such as Costa Rica and Venezuela have made it the Government's duty to supply medicine for AIDS. In my view, such a duty exists in India too.

The proposals that contend for inclusion in the Third Patents Amendment have been lucidly stated in the Fourth Peoples' Commission Report of October 2004. The Commission was headed by Mr. Gujral, of which I was also privileged to be a member. The broad argument rests on the fact that India's Patents Act, 1970 was a model legislation which segregated health, food and agriculture for special treatment by granting a restrictive process patent for such patents. Even if a product patent is now granted for such items, the public interest should not be defeated. So far, no amendment has undermined the principles in Section 83 of the Patents Act 1970 which secure the public interest and abjure purely commercial uses of patents. The rest of the Act must not subvert these purposes — especially after Doha. Articles 7 and 8 of TRIPS enlarge the possibilities for the public interest, health and the transfer of technology.

The Third Patents Amendment is being rushed as an unnecessary *fait accompli*. Certain minimal proposals need discussion and incorporation. Firstly, India needs to follow China's example whereby if a patent monopolist does not respond to production on reasonable commercial terms within a stipulated period, a compulsory licence to manufacture will be granted in India. Secondly, following the lead of other countries, the royalty should not be more than four per cent. It cannot be overlooked that

such a royalty would inure to the monopolist patent holder without investing a rupee.

Thirdly, although a manufacturing licence will be 'predominantly' for India's domestic market, it is necessary to permit exports to other markets of those least developed and developing nations with insufficient or no capacity to manufacture drugs. The Government's proposal necessitating a compulsory licence for export to such nations plays back into the hands of the patent holders. Helping other nations in this way has to be in addition to any provisions for parallel imports into a country with the permission of the patent holder or authorised licensee. Third world countries can only access cheap medicine from countries such as India — short of paying exorbitant monopoly prices.

Fourthly, there is a tendency to downplay the importance of inventiveness so that all kinds of medical formulations are given patents. Without an equal emphasis on novelty, inventive step and industrial application, too many spurious patented drug monopolies will be created.

Fifthly, the mail box that has been opened since 1995, and recognised in 1999 in our legislation, should not be an invitation to indiscriminate recognition. India must permit pre-grant opposition so that spurious applications with doubtful antecedents can be rigorously scrutinised.

Sixthly, where an Indian has commenced substantial production on a mail box patent, he cannot be asked to arbitrarily stop production on January 1, 2005 but must be permitted to continue — even if subject to limited conditions. Seventhly, the entire debate on patentable subject matter should not be pre-empted since TRIPS discussions concerning micro-organisms are still incomplete. No less, combination drugs and compounds are neither inventive nor worthy of protection; and are a fraud on the concept of patentability.

By rushing through the Third Patents Amendment without proper parliamentary scrutiny, India is short changing its post-Doha obligations to both its own and the world's poor. It is also putting its sovereignty, status, prestige and obligations at risk. Parliament should not rush through the Third Patents Amendment Bill, but deliberate on it through the full committee process — not an ordinance. Medicine without social justice is unacceptable. Patents are not a gift for drug companies to exercise power without responsibility.

## LAW AND SOCIETY

10 DEC 2004

THE HINDU

Judith - 9 39

# Protest against new Patents Bill

By Our Staff Reporter

NEW DELHI, DEC. 7. A people's meeting and protest march were held here today against the Patent Amendment Bill, expected to be tabled in Parliament by the Government during the ongoing winter session. The meeting was organised jointly by the Affordable Medicines and Treatment Campaign, the National Working Group on Patent Laws and the Research Foundation for Science, Technology and Ecology.

According to experts, the Patents Bill in its present form seriously compromises on the "accessibility and availability of medicines," the two important components of the right to health.

Public interest groups working on health issues claimed that they were concerned that India, through the Third Patent Amendment Bill, would trade away its rights to protect the public health of people who need access to low-cost and quality-generic medicines. They added that the introduction of a product patent regime would

reduce accessibility to new drugs.

Till now India provided for only process patents in the case of medicines. In the case of a process patent, protection is only for the process and method of manufacture and not for the product. Therefore a process patent does not prevent third parties from manufacturing the product through another process. But in the case of product patents, only the patent owner or the agent authorised by him through a licence can produce the patented medicine.

### Extended scope

"The Bill proposes to extend the scope of patentability to new use of known medicines and to do away with pre-grant opposition procedure. What we are demanding is that the product patent should be given only to new chemical entities and not to new use and dosage forms. This will limit the number of patent-protected drugs. Also, pre-grant opposition is absolutely essential for blocking trivial patents as it gives an opportunity to interested parties,

including civil society, to be heard before granting a monopoly," claimed Anand Grover of the Affordable Medicine and Treatment Campaign.

Protesters also state that the Bill has not properly incorporated the August 30 decision of the TRIPS General Council which permits the grant of compulsory licences for export purpose to countries with no or insufficient manufacturing capacity in the pharmaceutical sector.

More importantly, protesters claim, the people at large, as an affected party, have a right to be consulted and heard. Unfortunately, the Government views patents as a trade issue between Indian and foreign drug companies and not as a health issue concerning the public. "Since the product patent regime will have serious and adverse ramifications for the public interest and security of the country, the Government should consult public interest groups and individuals on the ways and means to ensure accessibility and availability of medicines," claimed a protester.

08 DEC 2004

THE HINDU

# India-bashing on outsourcing unjustified: IMF

Press Trust of India

WASHINGTON, Dec. 3. — India-bashing on outsourcing of jobs from America is totally unjustified, in fact the USA and Britain have the largest net surpluses in business services and hence would suffer the most in terms of the foregone dollar value of such trade if other countries cut service outsourcing, an IMF study has said.

Ms Mary Amiti, an economist, and Mr Shang-Jin Wei, head of the Trade Unit in the IMF's Research Department, in an article in Finance & Development, an IMF publication, said that between January and May

2004, there were 2,634 reports in the US media on service outsourcing, mostly focusing on the fear of job losses. Call centres and computing services in India were the most frequently reported examples.

"Firms based in industrial countries that outsource services have been accused of exporting jobs to developing countries.

"But in reality, the growing outsourcing of services in industrial sources is simply a reflection of the benefits from the greater division of labour and trade that have been described for manufactured goods since the time of Adam Smith and David Ricardo," they said after doing research on

the issue of India-bashing and others on the outsourcing.

Furthermore, there has been a push in some industrial countries, for example in the United States and Australia, to introduce legislation that would limit the outsourcing activities of firms with government contracts.

Analysing the pros and cons, the authors say: "On the whole, welfare should improve as a result of outsourcing but in the process some groups or individuals could be made worse off.

But in the aggregate, outsourcing does not appear to be leading to net job losses. Jobs lost in one industry often are offset by jobs created in other

growing industries." US business service imports as a share of GDP have almost doubled in each of



the past several decades, from 0.1 per cent in 1983 to 0.2 per cent in 1993 and 0.4 per cent in 2003. India, reported to be the re-

recipient of major outsourcing, itself outsources a large amount of services. Its business services grew from 0.5 per cent of GDP in 1983 to 2.5 per cent of GDP in 2003.

Like trade in goods, trade in services is a two-way street. In addition to being a large importer of services, the USA is also a large exporter of services and it has a net surplus in all services, in contrast to its goods trade, in which it has a net deficit. Hence it would suffer the most in terms of the foregone dollar value of such trade if other countries cut service outsourcing.

In the final analysis, outsourcing does not lead to net job losses. "Rather, our results indicate that,

when looking at finely disaggregated sectors, you find that only a small number of jobs are lost as a result of service outsourcing.

Aggregated data would indicate that there are no net job losses when there is sufficient job creation in another sector, which indeed seems to be the case. "Our results from the USA and the UK studies suggest that service outsourcing not only would not induce a fall in aggregate employment but also has the potential to make firms and sectors sufficiently more efficient, leading to enough job creation in the same broadly defined sectors to offset the lost jobs due to outsourcing," they said.

# Caution on the Patent Act

By Suman Sahai

THE INDIAN Patent Act, 1970, was considered an empowering Act that enabled domestic interests to flourish. Product patents could not be granted in the food and drug sector and agriculture was protected from monopolies during a critical phase of growth. After the concessions India granted in the Uruguay Round and the emergence of the World Trade Organisation, Intellectual Property Rights legislation in the country had to be changed. The Patent Act of 1970 had to be amended and product patents introduced.

The Patent Act has been amended twice already. The pending third amendment is slated to introduce a product patent regime for all inventions in the fields of food, chemicals and pharmaceuticals. There is trepidation about what else the third amendment could bring. A recent USAID-DBT collaboration touched upon the existing patent law. There is talk that genes could be brought under the patent law; a controversial and disputed clause called 'data exclusivity' is suddenly being discussed in every meeting. And the agreement that only 'inventions' would be patentable is being threatened by making discoveries also patentable. All these are undesirable developments.

Let us consider the discussion on 'data exclusivity.' This has sneaked into the debate recently, after the product patent regime became imminent. Data exclusivity refers to steps taken by some governments, chiefly the United States (through bi-

lateral and regional agreements) to block competition from generic drug producers.

The term refers to test data that a pharmaceutical company submits to the country's regulatory authority to get market approval. The practice in almost all the countries has been for authorities to use this data when judging later applications by generic producers. This saves costs and allows generic drugs to be priced low.

protection to invented products. It is not obliged to secure the investments made by pharma companies. Most importantly, data exclusivity is not a TRIPS obligation. That is why the U.S. is pushing it through bilateral and regional agreements. WTO members do not have to grant data exclusivity under Article 39.3, the only article touching upon test data. TRIPS refers to a need for data protection but does not suggest any way

ing products in new garb. Micro-organisms have direct economic value in key sectors such as agriculture (biofertilisers, biopesticides) and pharmaceuticals. We should proceed with caution, honouring our international commitments but not succumbing to either pressure or blandishments.

The suggestions to include cells and plasmids, genes and DNA as patentable subject matter in the new law should be put down decisively. Because of the stake in biotechnology and genetic engineering there is great pressure from the multinationals backed by the U.S. Government agencies in this regard.

The third patent amendment should not permit the broad coverage of patents with a very wide coverage, as corporations try to claim. Where patents are granted, they should be restricted to the specific function that constitutes the particular invention, so that the micro-organism patented for one particular product remains free for research and for others to produce other inventions.

In keeping with our efforts in the TRIPS Council, to link WTO with the Convention on Biological Diversity (CBD) at least with respect to patents on bioresources, the Indian law must insist that patent applications must follow the protocol of the CBD. This involves executing prior informed consent and material transfer agreements, as well as sharing the profits made on commercialisation of Indian micro-organisms.

## *The Indian law must insist that patent applications follow the protocol of the Convention on Biological Diversity.*

Asking for data exclusivity is anti-competitive since it impacts on the producers of generic medicines and it will affect drug price and access to medicines.

The U.S. and big pharma want data exclusivity clauses to deny this data to generic drug producers so that they cannot compete. The sufferers in countries such as India will be poor consumers who will find it even more difficult to access expensive drugs controlled by pharma multinationals. In India, the big pharmaceutical and the agrochemical firms are pushing the Government to include data exclusivity whereas most Indian drug companies are opposing it.

Data exclusivity protects investment, not innovation, which the product patent does fully. The Government of India is obliged to grant

of protecting it. It certainly does not suggest any 'exclusive rights'. The Government has no reason to enter into TRIPS-plus commitments.

With respect to micro-organisms, the other major area of contention, Indian policy so far has been that no patents would be granted on micro-organisms found in nature, only on genetically engineered ones. Apparently there is talk of reversing this and making natural micro-organisms (bacteria, virus, etc.) patentable. This would be not just against our interests but also in violation of the very essence of patent law, which is to reward inventions not discoveries. If all discoveries could be monopolised by patents, the public would be cheated of beneficial inventions and patent holders could make a lot of money recycling exist-

# Pawar point: We sold out at WTO

9/25/99

11/2/98

HT Political Bureau  
New Delhi, August 22



**THEY make gains**

US gets to export its agri-products to India. But isn't deadline-bound to cut subsidies that keep its farm prices artificially low

**WE get concessions**

We've agreed to cut import tariffs without a floor level. Our export subsidies can continue, but where are the exports?

**HT EXCLUSIVE**

date", which was not defined. The agriculture ministry's contention is that in the absence of any "finality", the developed countries' commitments are meaningless.

Developed countries give subsidies of billions of dollars every year to their farmers, resulting in artificially low prices for their agricultural exports. The "flexibility" given to India to continue with its export subsidies for a longer period is of no use because Indian exports and export subsidies are negligible.

While there is no firm commitment from developed countries on cutting export subsidies, India has agreed to cut its import tariffs. The commerce

ministry is happy that India is safe, since Indian tariffs are quite high. But the agriculture ministry's worry is that without spelling out the "minimum" cuts, the agreement can be used to make India yield more. India has, thus, agreed to open up to US agricultural products, while the US has not said when its export subsidies will be taken out.

Instead of bargaining for concrete concessions, India has even agreed to US demands to shift some of its trade-distorting subsidies to the Blue Box route. The Blue Box subsidies give US farmers incentives to keep their production within limits. While closing subsidies through one route, the US has got approval to continue them through another route. India gets nothing in the deal.

# 'Major aims achieved at WTO meet'

By Our Special Correspondent

NEW DELHI, AUG. 16. India has achieved all its major objectives in the recently-concluded Framework Agreement at the World Trade Organisation in Geneva, which lays down the guidelines for further negotiations in the current Doha round of trade talks. This was stated by the Commerce Minister, Kamal Nath, today while stressing that the country's approach to the negotiations would be dictated by its national interests.

The Framework Agreement is the first step forward in the Doha round after the failure of the Cancun ministerial conference. The round will conclude with the Doha Work programme. The next step is finalising the modalities, including formulae, to reduce tariffs and domestic support, set the actual date for eliminating export subsidies on agriculture and give shape and meaning to special provisions that India has managed to incorporate in the agreement.

Making a statement in both Houses of Parliament, Mr. Kamal Nath said: "We are determined to ensure that as negotiations proceed based on the framework that has been recently agreed

upon, our core concerns continue to be adequately addressed."

## Major demand

On agriculture, he said, the framework agreement provided for the elimination of all forms of export subsidies by an end date. This was a major demand of India since the developed countries were giving hundreds of billions of dollars every year to their farmers, resulting in low prices for their agri-exports.

Besides, the flexibility available to the developing countries such as India to provide certain subsidies for the export of agricultural products would continue to be available for an even longer period, beyond the elimination of export subsidies by developed countries. On trade distorting domestic support in agriculture, he said the developing countries had extracted an immediate commitment in the form of 20 per cent reduction in such subsidies in the very first year itself. Besides the permissible *de minimis* [minimal] support for the developed countries would be reduced from the present level of five per cent while the developing countries such as India would not have any obligation to reduce their existing level

of *de minimis* support of ten per cent.

## Blue Box

As for the Blue Box which covers trade distorting domestic support by developed countries, he said that it would now be capped at five per cent from the first year of the implementation period itself. The blue box till now did not have any ceiling. In addition, a modified Blue Box could be created only after agreement among members or the criteria, which would be subject to negotiations.

## Greater flexibility

Besides, the Framework Agreement adopted the principle of less than reciprocity which meant the developing countries would have to make lower rate of reduction compared to the developed countries. It provided greater flexibility to India and other developing countries to a number of sensitive products and their treatment. The agreement provided for the use of a Special Safeguard Mechanism triggered by prices or quantity against surge in imports which would safeguard the domestic producers in the developing countries.

ভর্তুকি প্রশ্নে  
ডব্লিউ টি ও-র  
ভারত সফল,  
মানল বিজেপি

স্টাফ রিপোর্টার, নয়াদিল্লি, ৬  
অগস্ট: জেনিভায় বিশ্ব বাণিজ্য সংগঠন  
বা ডব্লিউ টি ও-র বৈঠকে ভারত-সহ  
উন্নয়নশীল দুনিয়া একটাই সাফল্য  
পেয়েছে বলে বিজেপি-ও মনে করে।  
সেই সাফল্য হল, কৃষিতে উন্নত  
দেশগুলির ভর্তুকি ধীরে ধীরে বন্ধ  
হওয়ার প্রতিশ্রুতি।

তবে এই কৃতিত্ব বর্তমান  
বাণিজ্যমন্ত্রী কমল নাথকে দিতে  
নারাজ অটলবিহারী বাজপেয়ীর দল।  
বরং কানকুন বৈঠকে যিনি ভারতের  
হয়ে লড়াই চালিয়েছিলেন, সেই  
প্রাক্তন বাণিজ্যমন্ত্রী অরুণ জেটলির  
বক্তব্য, দোহার বৈঠকেও এই একই  
সিদ্ধান্ত হয়েছিল। জেনিভার  
কাঠামোগত চুক্তিতে সেটাই আবার  
বলা হয়েছে। তাই এই কৃতিত্বটা কমল  
নাথ নয়, মুরাসোলি মারানকেই দিতে  
চায় বিজেপি। বিজেপি মনে করে বিশ্ব  
বাণিজ্য সংগঠনে মনমোহন সরকার  
ভুল কৌশল নিয়ে চলেছে। কমল  
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জেনিভাতে এই প্রথম মেনে নেওয়া  
হয়েছে যে, উন্নয়নশীল দেশগুলি যে  
ন্যূনতম ভর্তুকি দেয়, তাও কমানো  
হবে। ফলে কৃষকদের জরুরি ভর্তুকিও  
দেওয়া যাবে না।

# Nice and farm

Be careful about West's trade promises

Revival of trade talks which collapsed in Cancun, needs admission by rich countries that their farm subsidies must be addressed. Geneva round of pre-talks talks succeeded in getting that admission and its not a small achievement for middle income countries, of which India is a principal interlocutor. First, the US and EU have agreed to review farm subsidies not only because of pressure from key developing countries but because they see big compensatory prizes opening up service sectors. When the real talks start, every dollar or euro of farm subsidy sacrificed will be weighed against the extra rupee or yuan worth of business Western service sector gets in countries like India and China. China may have the advantage of not having to refer to society while making decisions on degrees of trade openness but India's government faces harrowing debates at each step. Remember the brouhaha created by accountants when it was proposed to allow firms overseas to do business in India. Note the strong opposition Indian lawyers have to foreign legal firms. If professionals oppose elements of service liberalisation, communists will oppose it and everything else also. Kamal Nath was understandably happy at Geneva but if he is wise he must face up to consider how to sell a WTO deal to Sitaram Yechuris and Prakash Karats.

Indeed, the commerce minister must consider the fact that rich countries should ideally reduce farm subsidies without a question of reciprocity. That's not realistic but remember it helps understand the magnitude of Western hypocrisy on farm subsidies. Rich countries pay their farmers to grow food that they don't need and don't eat but which, thanks to subsidies, price out exports from very poor countries, which need the money desperately. This, simply put, is the problem and the West has consistently refused to see it as a great contribution to combating global poverty. Western ministers talk about protecting their farmers way of life. If that is a valid argument so is every other argument against trade. After all, free trade in services will change the way of life of, say, Indian accountants and lawyers, and they are not even subsidised by governments. But trade talks are about power. Useful fact in context: India's share of world trade is not even one per cent.

THE STATESMAN

6 AUG 2004



# BJP, Left disagree with govt on WTO pact

Our Political Bureau  
NEW DELHI 3 AUGUST

**T**HE Left, the ruling regime's chief prop, as well as the BJP on Tuesday differed with the government's interpretation of the WTO's Geneva meeting outcome when they said the commitment to reduce tariff will go against India's interests.

Both parties said since the new accord calls for the biggest tariffs to be cut the most, it will go against developing nations. The two parties also pointed to US trade representative Robert Zoellick's assertion that "it was a top priority for the US as it significantly

cantly benefits the country" to drive home the point that commerce minister Kamal Nath did not stick to his mandate.

BJP leader and former minister Arun Jaitley, who headed the negotiating team at Cancun, said the Framework WTO Agreement was "disturbing" as it had left very little bargaining options in tariff negotiations for developing countries like India. "My first reading of the draft has disturbed me, both on content as also on India's negotiating strategy," Mr Jaitley said.

"Conceding to the strengthening of the blue box, no discipline on the green box and agreeing to

Singapore issues leaves India with little bargaining options when tariffs are negotiated," he said. Green box pertains to subsidies, which are permissible and are not targeted at products and include direct income support for farmers that is not related to production levels or prices. Blue box includes those subsidies given to farmers to limit production.

"We have agreed to a principle, a formula for agriculture tariff reduction according to which those countries with higher tariff will have to make maximum reductions. This obviously means that India which has high farm tariffs will have to reduce more than

the developed nations," he said. He also attacked the UPA government for making a firm commitment about strengthening of blue box in agriculture and on negotiations on one of the four Singapore issues.

Advocating a wait-and-watch attitude rather than making euphoric statements of Indian victory, the CPI leader and president of the All India Kisan Sabha, Atul Kumar Anjan said the WTO agreement "will have to be watched very carefully" even though the European Union and the USA has "in principle agreed to address some of the concerns raised by the G-20".



**TRADE WINDS:** Commerce and industry minister Kamal Nath at a press meet in New Delhi on Tuesday. — PTI

# 'India's future at WTO protected'

Statesman News Service

NEW DELHI, Aug. 3. — India has protected its future position in negotiations at the World Trade Organisation (WTO) by ensuring that its concerns over food security, livelihood security and rural development were enshrined in the revised Framework Agreement, commerce and industry minister, Mr Kamal Nath, today said.

"We succeeded in bringing in these concepts in the agreement," the minister said, adding, "the question was how to create a defence mechanism



Mr Kamal Nath

within the framework to protect the Indian farmer. This we have done now."

Tough negotiations on the part of the developing countries, led mainly by India, ensured that developed countries agreed to eliminating all export subsidies which distorted prices globally, the minister said, recounting the process that led to the revised framework for negotiations that was adopted by the WTO General Council in Geneva on 31 July.

Refuting criticism that the agreement left several loose ends, Mr Kamal Nath said the

principles of criteria for the framework had been set in place. "Flowing from these principles we will begin negotiations."

The Framework Agreement has also recognised the principle of less-than-full reciprocity which was very important in the agriculture sector. Under this, developing countries would have to reduce their tariffs at a level less than that of the developed countries. Another major gain for developing countries was the acceptance by developed nations of a tiered reduction of trade distorting domestic support. It will go down by 20 per cent in the first year, Mr Kamal Nath said.

The stalling of a move to reduce the de minimis, which would have adversely affected subsistence and resource poor farmers in developing countries was another major gain, achieved after much wrangling, the minister said.

He said the Framework Agreement has not one but three windows of protection for farmers — under sensitive products, special products and special and differential products. Moreover, the developing countries will now have the freedom to select the sensitive products for seeking protection for the farmers.

On the modalities for the non-agricultural market access (NAMA), the framework seeks to reduce or eliminate tariffs, including tariff peaks and tariff escalations as well as non-tariff barriers, particularly on products of export interest to developing countries.

The negotiations will also address the issue of flexibility for developing countries on the present unbound tariffs and the sectoral issues.

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# East meets West, WTO deal struck

GENEVA, Aug. 1. — World Trade Organisation members early today approved a plan to end export subsidies on farm products and cut import duties across the world, a key step toward a comprehensive global accord under discussion since 2001, trade officials said.

The deal approved by a consensus of the 147-nation body shortly after midnight opened the way for full negotiations to start in September.

“Developed countries have recognised that agricultural trade with a heavy subsidy component is not free trade,” said commerce minister Mr Kamal Nath. “We expect that the revised framework text will give impetus to the overall elimination of farm subsidies and trade distorting domestic support by developed countries,” Mr Nath told journalists. He said that the United States, European Union and other developed countries will also benefit by removing heavy agricultural subsidies from their budgets.

In Beijing, China cautiously welcomed the framework agreement reached by the 147 members of the WTO to revive the deadlocked Doha Round of global trade describing it as “not bad”. “Generally speaking, the framework (agreement) is not bad, though the developing countries are not fully satisfied,” the Chinese ambassador to the WTO, Mr Sun Zhenyu, said.

From the developed world the reaction was more positive. “It is



Mr Kamal Nath at the WTO meet. — AFP

incredibly important for Canada and for the world,” the Canadian trade minister, Mr Jim Peterson, said. “We have a historic opportunity to get rid of agricultural subsidies and open up the world, particularly the developing world.” “It is a good deal for everybody,” said the Brazilian foreign minister, Mr Celso Amorim. “It’s a good deal for trade liberalisation. It is also a good deal for social justice ... with the elimination of subsidies.”

The approval followed a breakthrough earlier yesterday when some 20 key countries approved a document setting out the framework for a legally binding treaty, the WTO spokesman, Mr Keith Rockwell, said. The document commits nations to lowering import duties and reducing government support in the three major areas of international trade — industrial goods, agriculture and service industries such as telecommunications and banking. — AP

Photograph on page 11

# India's wish list accepted at WTO

By Our Special Correspondent

NEW DELHI, AUG. 1. India today said that most of its concerns had been addressed in the revised framework for further discussions adopted at the World Trade Organisation (WTO) meeting that ended in Geneva on Saturday. "India has secured significant gains and succeeding in fully protecting her interests in agriculture and other key areas in the revised framework for negotiations," said an official news release here today.

The revised framework was the subject of intense negotiations in Geneva, with developing countries holding out till issues crucial to them, such as the livelihood of farmers with marginal land holdings, were addressed through deferential treatment and a real cut in subsidies to farmers in developed countries. Sensing that the developing countries' concerns might be addressed in the revised framework, the Prime Minister, Manmohan Singh, had directed the Commerce Minister, Kamal Nath, to rush back to Geneva as soon as he had arrived in Bangkok.

## Singapore issues dropped

India worked closely with developing country groupings,

such as the G-20, in adopting a framework that met its key demands aimed at preserving the country's domestic policy space. These include assurances to discuss special and differential treatment, such as giving developing countries the flexibility to adopt a special safeguard mechanism (SSM) and designate several farm produce as special products (SP). The framework also drops the three Singapore issues relating to investment, competition and Government procurements from the Doha agenda, whose deadline has been pushed to December 2005 from January 2005.

## Concerns met

The developing countries also resisted a move to reduce the "de minimis," which would have affected subsistence and poor farmers, by reducing the minimal level of domestic support. The issue has been excluded from the agenda for further talks. "The Minister repeatedly warned during the talks that apart from being a highly iniquitous move, this was also an emotional issue for developing countries like India and could completely derail the talks for a framework," the press release said.

According to New Delhi, its

concerns had been met with the revised framework stating that "developing countries will have the flexibility to designate an appropriate number of products as SPs and an SSM will be established for use by developing country members." SPs are products of special sensitivity that would be exempt from tariff reduction commitments while the SSM would enable countries to take steps against surges in agricultural imports.

## Another gain

Acceptance of the concept of proportionality is another major gain. The new approach ("banded" or "tiered") takes into account the fact that sensitivities of developing countries on tariff structure in agriculture are different from their developed counterparts. The framework also incorporates the point made by India and other developing countries that their farmers could not compete with the heavily-subsidised farm sector of developed countries by agreeing on the need for deeper cuts in domestic support. The American bid to transfer some of the domestic support to another category was stalled with the revised draft stating that additional criteria would have to be negotiated before being made operational.

In the area of services, where India is doing well, the framework said that special attention would be given to sectors and modes of supply of export interest to developing countries. On non-agricultural market access, the framework accepted the importance of special and differential treatment and stated that talks would aim at reducing tariff barriers on products of export interest to developing countries. Talks would also address issues of flexibility for developing countries with regard to treatment of presently unbound tariffs and sectoral issues.

Mr. Kamal Nath had articulated India's position when he had called on the WTO Director-General, Supachai Panitchpakdi, and told him that developing countries would not allow uninhibited farm imports till the problem of heavy subsidy being given to farmers in developed countries was addressed. The developing countries were willing to accept trade in farm products provided developing countries were given special and discriminatory treatment and developed countries cut their subsidies instead of shifting them from one category to another. According to the press release, India's wish list had been accommodated for now.

# France threatens to wreck WTO deal

By Nick Mathiason

LONDON, JULY 24. France is threatening to wreck a World Trade Organisation (WTO) plan to revive talks on a global trade pact.

The European Trade Ministers fly to Brussels on Monday knowing that world trade talks could implode if the 25-member European Union fails to agree its own negotiating position.

France has lost faith in the E.U. Trade Commissioner Pascal Lamy's negotiations and

wants to force a vote in order to frame a new mandate for him. This could split Europe and also delay any progress on a wider international agreement for nine months.

## Last chance

WTO talks beginning in Geneva on Tuesday will be the last chance to make meaningful progress on a global deal until after the U.S. elections.

France is furious that under the current draft framework published 10 days ago, it would

be forced to open up its beef, dairy and cereals markets to imports.

British Trade Minister, Mike O'Brien, is set to fly to Brussels on Monday and is expected to put pressure on France to accept the deal as it stands.

A British source said: 'France is causing flutters.'

They are focusing on the legality of the commission's position. Everyone's rushing to their lawyers. This could be France's "Iraq" moment when it just says: "Non! We have had enough".

France, the main beneficiary of the E.U.'s euros 40 billion farm budget, and others such as Ireland are most worried about an E.U. offer to scrap agricultural export subsidies and open its domestic farm markets to imports.

Developing countries, however, are frustrated that any concessions they receive are ambiguous and could be further watered down.

But French demands are a 'set' causing worries among other member states. — ©Guardian Newspapers Limited 2004

# India finds WTO draft framework disappointing

Our Delhi Bureau

19 JULY

INDIA on Monday termed as "disappointing" the draft framework for negotiations circulated by the World Trade Organization (WTO) on July 16, as the draft failed to provide the required balance, fairness and equity between the "provisions" of the developing and the developed countries, especially in agriculture. The draft does not adequately appreciate the developing countries' sensitivities in agriculture, considering that the rural populations of these countries depend on agriculture for their food and livelihood security.

It is skewed in allowing a "greater level of specificity on matters of interest to the developed countries and a greater level of generality in respect of the special and differential treatment components of the developing countries", India observed.

"We believe that much work will have to be done in making the draft text acceptable," the ministry of commerce and industry said in a statement. India expects that there would be intense negotiations during the next two weeks before firming up an agriculture framework acceptable to

all 148 members of the world body. New Delhi will be working with the G-20 on agriculture and jointly put forward our concerns in the discussions at Geneva, the statement said. The draft framework is the first text and underlines the explicit recognition that this would be only a basis for further negotiations in view of the fact that serious divergence in



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positions of the WTO member countries have emerged, as reflected in the current status of the negotiations. The draft is being negotiated in Geneva, starting from July 19, 2004, and an amended version of the draft, which will be produced after incorporating the responses of WTO members, will be considered by the general council of the WTO next week.

India felt that the dialogue after the stalled Cancun meeting, thus far, has been constructive, but the shape of the agreed package is not visible as yet.

# India calls for more G-20 and G-90 cooperation

Statesman News Service

NEW DELHI, July 12.— India today called for greater cooperation between the G-90 and G-20 groupings of developing nations for a consolidated voice at the WTO negotiations on global trade.

This was vital in order to achieve a new global trading order, supportive of the aspirations of the developing countries, the commerce and industry minister, Mr Kamal Nath, said in his address to a ministerial meeting of the G-90 at Port Louis in Mauritius, an official communique said.

Conceived at the Cancun WTO meet, G-90 comprises the least developing countries (LDCs), African Union and the Africa, Caribbean and Pacific (ACP) countries.

“The bonds of solidarity between India, the G-20 as a whole and the G-90,” Mr Kamal Nath said. The minister also said India and the G-20 would work closely with cotton producers in the G-90 to remove any distortions and win a fair deal for the industrious and cost-efficient African farmers.

Stating that India stands for fair competition which accepts the widely differing levels of development globally, Mr Nath said there was a travesty of comparative advantage and the distortions in international trade in agriculture were only the most obvious instance of this.

“The lavish support and subsidies available to farmers in developed countries depress prices internally and handicap the competitive ability of our agriculturists”.

## Indian agriculture's 'sensitivities' have to be considered: WTO chief

By Sushma Ramachandran

NEW DELHI, JUNE 25. The visiting Director General of the World Trade Organisation (WTO), Supachai Panitchpakdi, today declared that any deal to break the deadlock in the agriculture negotiations would have to take into account the "sensitivities" of Indian agriculture.

Speaking shortly after meeting the Union Commerce and Industry Minister, Kamal Nath, he said the Ministers of member-countries were aware that any deal to move forward on these talks would have to take into account these sensitivities. He was referring to the Indian stance that it will not make any compromises on protecting the livelihood and food security concerns of its 650 million farmers while negotiating an agreement on agriculture under the Doha round of talks.

Mr. Panitchpakdi, who also met Prime Minister Manmohan Singh and Finance Minister P. Chidambaram during his one-day visit, said the signs from various countries were that they were continuing to negotiate and offering different options, even though they could not agree on a common position. He was hopeful of the outcome since members were continuing to have flexibility in their positions.

Regarding the view of the Group of 20 developing countries on movement on all three pillars of agriculture negotiations simultaneously, he said this principle was accepted by all participating members, including the United States and the European Union. He pointed out that not only balance between the three pillars, but also specificity needed to be spelt. This had not just been accepted but was being worked on during the talks at Geneva, he said. The G-20, which recently submitted a paper on agriculture after the Unctad conference in Sao Paolo, has been described by India as the starting point for moving forward in the agriculture negotiations.

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# India unlikely to attend WTO meet

PRESS TRUST OF INDIA

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NEW DELHI, April 17. — India is unlikely to attend a ministerial meeting convened by US Trade Representative, Mr Robert Zoellick to break the deadlock to restart the stalled WTO negotiations.

India's commerce minister, Mr Arun Jaitley who received an invitation from Mr Zoellick for the meeting in London this month-end, has expressed his difficulties in attending the meeting in view of the Lok Sabha Elections, official sources said.

However, he may consider whistle-stop tour on 30 April to participate in the meeting if there was some forward movement in the agriculture negotiations at Geneva early next week.

The USA is keen to break the impasse in WTO talks and Mr Zoellick has already visited several countries, including India, in the last couple of months to narrow the differences among the key players particularly on contentious agriculture issues.

The USA, in consultation with the European Union and Brazil, India, South Africa is trying to build a

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broad agreement or a framework encompassing all contentious issues including agriculture, non-agriculture market access, services and some of the new issues.

So far there has been no forward movement on agriculture with developing countries insisting on firm commitment on subsidies and domestic support besides adequate safeguards to protect their livelihood concerns of poor farmers.

Among the new issues known as Singapore issues, the EU and the USA have indicated that they were not averse to dropping investment and competition, two of the four Singapore issues after the collapse of the Cancun ministerial meet. Now there appears to be a broad consensus among members to bring into the WTO work programme, trade facilitation, on the two remaining Singapore issues.

Apart from the EU, India, Brazil and Mexico, Mr Zoellick has extended the invitation for the informal Ministerial to Kenya, South Africa, Egypt and Japan.

The two-day meeting in London would precede another gathering of WTO members on the sidelines of OECD conference in Paris on 14 May.

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