

**Centre for
WTO Studies
gets a new Head**



The Centre for WTO Studies welcomes Mr. Abhijit Das as the Professor and Head of the Centre. Prof Das joined the Centre on 11th January 2011. Before joining the Centre headed the UNCTAD-India Programme for 5 years which was a joint initiative of the Department of Commerce (Government of India), UNCTAD and DFID. Prof Das was also a Director at the Trade Policy Division in the Commerce Ministry, in which capacity he was a key negotiator for India at the WTO and other fora.

Editor's Note

The New Year began on a none-too-optimistic note regarding the progress in the multilateral trade negotiations. However, much promise developed during the year with the release of the new documents at the WTO. Analysts and commentators have expressed an entire range of views ranging from cautious optimism of an 'early harvest' to downright dismissive pessimism about the success of the proposed Ministerial Conference at the end of the year.

The Centre has been busy with a large number of studies and programmes over the period including those on scenario building.

The WTO Secretariat along with regional institutions of higher learning conducts regional trade policy courses (RTPC) to assist in giving exposure to developing country officials to the way the WTO works as well as in developing practical negotiating skills and an opportunity to develop extensive network of contacts within the Member States. Government officials from each region participate in the training during which they examine the regional concerns in the context of multilateral trade environment. The courses are administered by officials from the WTO Secretariat as well as trade policy experts from the Region.

This year the WTO Secretariat would be conducting the RTPC for the Asia Pacific Region in collaboration with the Centre for WTO Studies at IIFT. The duration of the course is 3 months and is scheduled to begin in September 2011.

The Centre takes pride in its candidature being accepted over that of institutions from Malaysia, Macau-China and the Philippines.

Lead Article

**Seizures of drugs in EU:
An examination of the issues
Introduction**

A patentee is granted the exclusive monopoly over his patented product or process for a period of time. This monopoly pertains to exclusive manufacturing and marketing rights. A very highly debated issue today, is whether the patent holder has the right over distribution and in particular the right to prohibit transit.

The position in different countries differs in this regard and if this right, gains a legal sanction it can cause serious impediments to the international generic trade.

Since 2008, there have been a number of cases wherein generic drugs from India in transit through Europe to various destinations in Africa and Latin America have been seized by European authorities on account of

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(Contd on page from 1) them being either counterfeit or infringing the rights of patent holder in Europe. Some of the seizures can be noted as follows:

In October 2008, the Dutch authorities seized a shipment of a generic blood-thinning drug, clopidogrel, in transit to Colombia at the Amsterdam airport. The generic drug was produced by the Indian firm Ind-Swift, and the seizure was made on behalf of the European company Sanofi.¹

In November 2008, two shipments en route to Peru from Indian company Cipla were seized by the Dutch customs. One of the seizure was on behalf of Novartis Company for

generic medicine of the Alzheimer's disease medicine rivastigmine and the other on behalf of Lilly.²

In December 2008, the Dutch authorities seized a consignment of 500 kgs of a generic version of the arterial hypertension drug, losartan, which directed through Netherlands to Brazil. The generic drug was manufactured by Dr. Reddy's Laboratories, India. Losartan is the generic name for the drug Cozaar developed jointly by Merck & Co and Dupont Co. and are patent holders of the same within Netherlands. However the drug does not enjoy patent rights in India and Brazil.³

15 Years of the TRIPS Agreement: Rethinking Intellectual Property and Development



(Prof. Abhijit Das welcoming the participants to the Seminar: Sitting L-R: Prof. Madhukar Sinha, Shri K.T. Chatcko, Shri Rajeev Kher, Mr. Martin Khor)

Definition of Counterfeit Goods

Black's Law Dictionary

The term "counterfeit drug" may be used to describe a drug made by someone other than the genuine manufacturer, by copying or imitating an original product without authority or right, with a view to deceive or defraud, and then marketing the copied or forged drug as the original.

World Health Organization

Because there exists no universal definition for counterfeit drugs/medicines and different countries define it differently, the WHO developed upon the following definition:

"A counterfeit medicine is one which is deliberately and fraudulently mislabeled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging."

The main issue with this definition of counterfeit drugs and medicines is that it does not distinguish between patent dispute or infringement and counterfeit drugs and medicines; as to establish a patent infringement a more technical, in-depth analysis and lab-testing is required and not just a first sight analysis. Second issue

¹<http://www.livemint.com/2008/12/12000018/Shipments-seizure-India8217.html>

²<http://www.twinside.org.sg/title2/gtrends/gtrends262.htm>

³<http://www.business-standard.com/india/news/latha-jishnu-choking-indias-generics-exports/01/41/347369/>

with this definition is that it does not clearly establish that while counterfeiting is an IP issue, it is not necessary that it be a health and public safety issue as well.

While it is nobody's case that counterfeits should be tolerated, it can be stated that the intensity of opposition to counterfeits, in case they are perceived to a threat to public safety, would be much more than if they were just in violation of private IP rights. It needs to be iterated here that it is more likely that spurious, substandard, fake, and falsified drugs would also be counterfeits. In such cases the cause of action against such products lies on both grounds, viz. of threat to public health and safety as well as of violation of trademarks. Thus, it would be incorrect to use the word 'counterfeit' only as a chapeau to classify such products and invoke public health concerns. In fact, this leads to a piquant situation that while counterfeits violate private rights it is public rights which are seen to be violated due to this usage. Further, in case of any dispute regarding violation of trademarks, once public safety concerns have been raised, the entire dispute loses the private rights perspective.

TRIPS

The basic objectives and principles of TRIPS is enforcement of IP in a manner which is conducive to social and economic welfare. Also 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 medicines for all.⁴ The mandatory obligations with respect to border measures in case of intellectual property rights as put down under Article 51-60 is only pertaining to trademarks and copyrights.

Article 51 of the TRIPS agreement reads as follows:

"Members shall, in conformity with the provisions set out below, adopt procedures^(*)13) to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods^(*)14) may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined

for exportation from their territories.

^(*)13) It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

^(*)14) For the purposes of this Agreement:

- (a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
- (b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

EC Regulation 1383/2003


The regulation provides for detaining goods at the border which have not been cleared by customs. The detention enables the right-holders to initiate a proceeding in-order to assess whether their rights have actually been infringed or not.

Article 1 of the Regulation reads as follows:

"This Regulation sets out the conditions for action by the customs authorities when goods are suspected of infringing a intellectual property right in the following situations:

- (a) when they are entered for release for free circulation. export or re-export in accordance with Article 61 of Council Regulation (EC) No 2913/92 of 12 October 1992 establishing the Community Customs Code;
- (b); when they are found during checks on goods entering or leaving the Community customs territory in accordance with Articles 37 and 183 of Regulation (EEC) No 2913/92, placed under a suspensive procedure within the meaning of Article 84(1)(a) of that Regulation, in the process of being re-exported subject to notification under Article 182(2) of that Regulation or placed in a free zone or free warehouse within the meaning of

⁴Para 4 of the Doha Declaration.



Article 166 of that Regulation.”

The regulations permit customs to hold these goods for ten working days (or a further period provided for in the regulations) and inform the patent holder of the seizure. The patent holder then has to apply to a civil court, request a civil seizure and initiate legal proceedings in order to prove that infringement has taken place.

Difference between Seizure and Detention

The use of “suspension of release” and “detention” of goods at the border, which is used throughout the EC Regulation, indicates temporary actions to check whether the goods infringe any IP right. However this term is often interchangeably used with seizure which is a stronger term which indicates a “forcible possession” or “confiscation” or “possession by warrant or legal right”

No seizure taken place and only detention which was in due course of procedure, aimed to ensure no IP right violation has taken place nor has any counterfeit/fake drug been introduced into the market.

However, the EC Regulation No 1383/2003 goes beyond the obligations required under the TRIPS Agreement, in which footnote 13 Article 51⁵ clearly states that goods in transit can be kept outside the purview of application of the general customs procedures.

Also the EC regulation No. 1383/2003 extends the customs authority to detain goods meant for import, export or re-export, infringing intellectual property rights other than the copyright and trademarks, even when the right holder has not lodged an application to do so, or on the mere suspicion that an IP Right has been infringed. The EC Regulation includes patents, geographical indications and plant varieties within its scope of application.⁶

An issue which has caused a great deal of confusion is that the EC includes patent infringement within the scope of counterfeit and pirated products. This can be seen from the European Union Report on Community Customs Activities on Counterfeit and Piracy.⁷

The Indian Position

The Indian Customs Act and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007,

deal with patents, designs and geographical indications over and above the mandatory obligations under the TRIPS which mandates inclusion of border measures for infringement of copyright and trademarks, by the member countries.

Gramophone Company of India Pvt. Ltd. V. Birendera Bahadur Pandey and Others⁸

In the above case the appellants, an Indian based Company, had alleged that the cassettes being imported into Nepal via India from Singapore were violative of their copyright as they were pirated works. The Supreme Court in this case had interpreted “import” under the Indian Copyright Act to mean any inflow into India, whether or not it was meant for the Indian market and ruled in favour of the Appellants.

The above case, however, cannot be considered relevant and applicable to the seizures of generic medicines in transit through Europe by European authorities due to the following reasons:

The Gramophone decision itself states in para 27 that “import” can mean different things in different places and takes color from the context where it occurs and that the sense of the statute is important.

The Supreme Court expressly relied upon international opinion that protects copyright (para 29) as established by both international copyright and transit trade conventions. The Court ruled that

“If this much is borne in mind, it becomes clear that the word “import” ... cannot bear the narrow interpretation sought to be placed upon it to limit it to import for commerce. It must be interpreted in a sense which will fit the Copyright Act into the setting of the international conventions.”

The Supreme Court interpreted import and delivered the judgment in terms of the Copyright Act and Copyright violation and the present case deals with generic medicines infringing patents.

Secondly, the Gramophone decision was delivered in the pre-TRIPS era and the position would be interpreted very differently today by striking a balance between IP violation and protection of public health.

EU Cases Laws

The European Federation of Pharmaceutical Industries

⁵ “It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.”

⁶ Article 2 of the Regulation 1383/2008.

⁷ For the year 2006 and 2007 the European Commission Taxation and Customs Union issued a “Report on Community Customs Activities on Counterfeit and Piracy”

⁸ (1984) 2 SCC 534

and Associations (EFPIA) stated that “it is neither the policy nor practice of our members to encourage Member States to use the powers of detention available to them to prevent the flow of legitimate generic products from manufacturer to customer”.⁹

According to the standing case law of the ECJ, the national courts have to interpret their national law according to the limits of the Community law insofar as such conform interpretation is appropriate to reach the targets prescribed by the Community norm: To guarantee to the rights holders protection of their intellectual property against interferences prohibited, according to Art. 2 of the European Regulation 3295/94, by applying civil law sanctions on counterfeit goods that are in transit through the territory of the respective country, i.e. civil law sanctions which are provided by national law for other prohibited acts, according to Art. 2 of the Regulation, insofar as they are effective, appropriate and have a deterring effect.¹⁰

Although there is no specific jurisprudence on disputes pertaining to goods detained on the suspicion of patent infringement as such, the position with regard to trademarks could be reviewed to see whether IP rights as a whole extend to goods in “mere” transit.

Montex Holdings Ltd. v. Diesel SpA. (C-281/05)¹¹

In the present case the Court held that “transit, which consists in transporting goods lawfully manufactured in a Member State to a non-member country by passing through one or more Member States, does not involve any marketing of the goods in question and is therefore not liable to infringe the specific subject-matter of the trade mark”.

In light of the above statement, the argument put forward by Diesel that the mere risk that the goods could fail to reach their destination, Ireland in this case, a Member State in which the mark is not protected, and that they could theoretically be marketed fraudulently in Germany is sufficient to allow the conclusion that the transit infringes the essential functions of the trade mark in Germany cannot be accepted.

Therefore, the courts concluded by saying that “the trademark proprietor can prohibit the transit only if those goods are subject to the act of a third party while they are placed under the external transit procedure which necessarily entails their being put on the market in that Member State of transit.

Administration des douanes et droits indirects v. Rioglass SA & Transremar SL (C-115-02)¹²

In the present case, the French customs authorities had detained the goods manufactured by Rioglass and Transremar, a Spanish based company on the ground of suspected infringement of trademark. The goods detained were due to be exported to Poland and carried a community transit seal since 1997.

In this decision, the ECJ has explained that the connection between transit and the specific content of trademark law exists in the aim to safeguard the right of the trademark owner to use the trademark by way of first distribution of a product and to therefore protect him from competitors who under abuse of the status and the reputation of the trademark are selling goods illegally labeled with this trademark.

The Court held that

Mere transit does not constitute an act of use reserved to the holder of a protective right; and transit, which consists in transporting goods lawfully manufactured in a Member State to a non-member country by passing through one or more Member States, does not involve any marketing of the goods in question and is therefore not liable to infringe the specific subject-matter of the trade mark.

The implementation of such protection is therefore linked first to the marketing of the goods and transit does not involve any marketing of the goods in question and is therefore not liable to infringe the specific subject-matter of the trade mark.

The final destination (another Member State or a non-member country) is immaterial to the fact that, by its very definition, transit does not constitute placing on the market and does not therefore affect the specific subject-matter of the right of the holder of the trade mark.

Therefore, from the foregoing considerations the impediment to the free movement of goods caused by the detention under customs control of products lawfully manufactured in another Member State in order to prevent their transit is not justified on grounds of the protection of industrial and commercial property.


Courts in different EU member states appear to have pronounced different views on the legality of these provisions, when the goods are not intended for an EU

⁹ www.efpia.eu/content/default.asp?PageID=559&DocID=6574

¹⁰ Polo/Lauren Case C-383/98

¹¹ <http://curia.europa.eu>

¹² <http://curia.europa.eu>



member country and the law is not completely settled in this regard.

Nokia Corporation v. Her Majesty's Commissioners of Revenue & Customs¹³

In the present case the Customs stopped and inspected a consignment of mobile phones bearing the trade mark of NOKIA, being transshipped from Hong Kong to Columbia. The issue before the Courts was to determine whether the 1383 Regulation encompasses goods in transit. The Court reached upon the following conclusions:

Infringement of registered trade mark requires goods to be placed on the market and that goods in transit and subject to suspensive customs procedures do not, without more, satisfy this requirement.

A mere risk that the goods may be diverted is not sufficient to justify a conclusion that the goods have been or will be put on the market.

The stand taken by the Court was “that in order for products bearing trade marks to be counterfeit goods within the meaning of the Counterfeit Goods Regulation they must in fact infringe someone's trade marks in the territory in question.”

Conflicting position in Germany

When assessing IPR infringement in this context, the Federal Supreme Court has always differentiated the so-called “uninterrupted transit” which lacks the business criteria of turnover and sales defining “distribution”¹⁴ (BGH decisions “Taeschner/Pertussin” and “Zeiss” of 1957).

However the Hamburg District Court in April 2, 2004 held “mere” transit as an act of use reserved to the patent holder regards it as a sub-category of “distributing”, not least in order to prevent cases of misuse when goods declared for transit ultimately end up in Germany.

EC regulation: Whether TRIPS compliant?

The TRIPS Agreement requires prima facie evidence of infringement. However, such challenges have had limited, if any, success, and rights holders have attempted to meet this potential objection by including infringement evidence with detention applications. The EC regulation 1383/2003 does not

explicitly require infringement evidence.¹⁵ Also the degree of customs examination of infringement differs in various EC countries.

Seizure/detention of goods in transit on grounds that it may be infringe the intellectual property rights of the country in transit is in itself in violation of the Article V of the GATT, which sets out the principles of freedom of transit.

Argument used by Brazil: Territoriality principle: Article 28 of the TRIPS (rights conferred). The protection of patents depends upon the national regulations/laws of the country it exists in, making it territorial in nature. Therefore its validity and enforcement pertains only to its issuing state. Article 28 of the TRIPS confers exclusive rights of making, using, selling and importing¹⁶ the product to the owner of the patent and transit does not fall in any of the mentioned rights conferred. The generic medicines do not enjoy patent rights in the country of import as well as export, nor were they intended to enter the European market.

The Doha Declaration on TRIPS and Public Health

The basic underlying theme of the Doha Declaration on TRIPS and Public Health is that the TRIPS Agreement should not prevent members from taking measures to protect public health and the Agreement should be interpreted in a manner supportive of WTO member's right to protect public health and in particular to promote access to medicines for all¹⁷

Other issues involved

A general prohibition of transit in one or more EC-countries would force the owner/shipper to choose another route which from case to case could be equated with a prohibition of distribution and would thus discriminate against the foreign offerer vis-à-vis offerers domiciled in the inland.¹⁸

To establish patent infringement one has to go into the detailed testing of the product without which an infringement cannot be established. Therefore the customs authorities who allege infringement on the first appraisal of the goods are not competent enough to deal with such cases. This way the customs would

¹³ [2009] EWHC (ch)

¹⁴ BGH decisions “Taeschner/Pertussin” and “Zeiss” of 1957, although subject matter was trademark infringement can be used for interpretation of patent law.

¹⁵ Article 5 of the EC Regulation 1383/2003 which doesn't not require the application to contain the infringement evidence.

¹⁶ Importing means transporting to a country where the patent exists.

¹⁷ Declaration of the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/2, 20 November 2001, WTO Ministerial Conference, Fourth Session, Doha, 9-14 November 2001.

¹⁸ Intellectual Property Quarterly Update, First Quarter 2008.

just be assuming infringement, and then giving the patent holders a chance to put up an application for suspension of release on ground of infringement.

The only criteria provided in the regulation to detect and establish infringement to detain them is that the customs should be “satisfied” that the goods can be “suspected” of an infringement.

The representations made by the EC have used “counterfeit goods” as a common and general term for all intellectual property right infringements, and this has led to a lot of confusion between counterfeit drugs and quality generic medicines. Counterfeit drugs or copies would pertain more to infringement of trademark law.

In its representations the EC put forward that through its border checks and detention of goods on suspicion of infringement of IP right; it helped in checking the safety and effectiveness of the drugs released in the world market.¹⁹ Quality and standard of medicines

should not be an issue which should be addressed to under the TRIPS agreement; it requires sound regulatory mechanisms at national levels.

Conclusion

Therefore, the deciding factor remains whether the goods are on “mere” transit or declared as in-transit but ultimately routed into the transiting country. Mere transit would mean uninterrupted transit which lacks the commercial intent of revenue generation in the country of transit.

What is really required is a WTO panel verdict on whether the rights conferred to an IP Right holder would also include his right to prohibit goods in transit, on grounds that they infringed his intellectual property rights.

Events

Seminar on Doha Development Agenda for Developed Nations: Carve Outs in Recent Agricultural Negotiations



Releasing the Study on Doha Development Agenda for Developed Nations: Carve Outs in Recent Agriculture Negotiations. L-R: Ms. Anu Mathai, Dr. Sachin Sharma, Prof. Abhijit Das, Shri Rajeev Kher, Shri D. K. Mittal, Prof. Rajan S. Ratna, Mr. Manab Majumdar.

¹⁹ Response of the European Commission on Questions relating to the seizure of drugs in Netherlands.

The Centre for WTO Studies in cooperation with FICCI organized a Seminar on WTO Agreements and Doha Negotiations: Towards Capacity Building of Stakeholders on the 31 January at FICCI, New Delhi.

Mr. Manab Majumdar welcomed the audience followed by the welcome note given by Prof. Abhijit Das, Head, Centre for WTO Studies. Professor Das mentioned about the centre and its thrust areas of research and also introduced the topic of the seminar. Then Professor R.S Ratna discussed briefly whether the agricultural modalities are in favour of the developing countries. He also emphasized on the fact that the discussion paper that was to be released on that day was an academic paper and its purpose was to give information to the negotiating parties in the ongoing round. Then after a short speech by D.K.Mittal on the fundamental principles of the Doha round, India's position with respect to cotton and a brief note on SPS, Green Box subsidies etc. Mr. Mittal and Mr. Kher released the discussion paper entitled "Doha Development Agenda for Developed Nations: Carve Outs in Recent Agricultural Negotiations". The paper was prepared by Professor R.S. Ratna, centre for WTO Studies, Professor Abhijit Das, Head, Centre for WTO Studies and Dr. Sachin Kumar Sharma, Centre for WTO Studies.

The technical session included two presentations. The first session on the newly-released discussion paper was addressed by Prof. Ratna and Dr. Sharma. They presented the paper in order to examine and quantify the carve outs for the developed nations in the recent ongoing negotiations on agriculture. In the revised draft on agricultural modalities circulated on 6th December, 2008, several carve-outs were proposed for developed nations. In different sections of the presentations, they discussed the cases of USA, EU, Canada, Switzerland, Norway and Japan. Their study showed the attempts of the developed nations to protect their agricultural sectors and to delay opening

of their markets to the developing nations through these carve outs. Again, these carve outs will also enable them to control the price of agricultural goods. In conclusion they held that, "It is evident from this study that the Doha development agenda is for developed nations, not for the developing nations." The next session was on another discussion paper from the Centre of WTO Studies titled "Cotton production, Exports and Price: A comparative Analysis of India and USA" prepared and presented by Prof. Ratna. He explained the background of the study and some facts about the export of cotton. His study seeks the answers to certain questions such as the production of cotton in the two above mentioned countries, the farm gate prices of cotton in USA and India, their share in the world cotton export, the export price of cotton in the two countries and obviously, the amount of subsidy given by USA to the cotton producers and its possible trade distorting effects.

Both of the discussions were followed by interactive and interesting question-answer sessions. Various questions regarding the chances of developing nations to gain from the ongoing negotiations were posed to the panelists in the first session. In the second session also panelists responded to different questions regarding positions of Pakistan and Sudan in case of cotton production, productivity of cotton in India etc. The event was concluded by vote of thanks from Prof Ratna, Prof Das and Mr. Manab Majumdar.



Audience at the Seminar.

Seminar on Doha Development Agenda for Developed Nations: Carve Outs in Recent Agricultural Negotiations

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Mr. Manab Majumdar of FICCI welcomed the participants, followed by the welcome note by Prof.

Abhijit Das, Head, Centre for WTO Studies. Professor Das mentioned about the Centre and its thrust areas of research and also introduced the topic of the Seminar. Thereafter, Prof. R.S Ratna discussed briefly whether the agricultural modalities were in favour of the developing countries. He also emphasized that the discussion paper that was to be released on that day was an academic paper and its purpose was to give

information to the negotiating parties in the ongoing round. Mr. D.K. Mittal, Additional Secretary, Ministry of Commerce and Industry, gave a short speech on the fundamental principles of the Doha Round, India's position with respect to cotton and on sanitary and phyto-sanitary (SPS) measures, Green Box subsidies etc., after which Mr. Mittal and Mr. Kher released the discussion paper entitled "Doha Development Agenda for Developed Nations: Carve Outs in Recent Agricultural Negotiations". The paper was prepared jointly by Prof. Abhijit Das; Prof. R.S. Ratna, and Dr. Sachin Kumar Sharma of the Centre for WTO Studies.

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these carve outs will also enable them to control the price of agricultural goods. In conclusion, they stated that: "It is evident from this study that the Doha development agenda is for developed nations, not for the developing nations." The next session was on another discussion paper from the Centre of WTO Studies titled "Cotton production, Exports and Price: A comparative Analysis of India and USA" prepared and presented by Prof. Ratna. He explained the background of the study and some facts about the export of cotton. His study seeks the answers to certain questions such as production of cotton in the two above-mentioned countries; the farm gate prices of cotton in USA and India; their share in the world cotton export; the export price of cotton in the two countries; and finally, the amount of subsidy given by USA to the cotton producers and its possible trade distorting effects.

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Summary Report on Training Programme on WTO Accession

The Centre for WTO Studies conducted a Training Programme on WTO Accession from 28 February 4 March 2011 at the Indian Institute of Foreign Trade, New Delhi. The training programme was organised in collaboration with the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and the Department of Commerce, Government of India, and with the support of the Permanent Mission of India (PMI) in Geneva. The programme was jointly funded by the Centre for WTO Studies and the Ministry of External Affairs, and the application process facilitated by PMI-Geneva.

The training was intended for officials from countries in the process of accession to the WTO. Thirteen countries had been identified at the time of conceptualisation of the process, in consultation with PMI-Geneva, from which participation was sought. These countries were: Afghanistan, Azerbaijan, Bhutan, Ethiopia, Iraq, Lao People's Democratic Republic, Lebanese Republic, Seychelles, Sudan, Syria, Tajikistan, Uzbekistan and Yemen. However the final

programme was attended by twenty-participants representing eleven countries (there was no participation from Iraq and Yemen).



Mr. Rajeev Kher, Additional Secretary, DOC delivering keynote address. L-R Sitting: Panelists: Prof. Shashank Priya, Mr. K.T. Chacko, Prof. Abhijit Das.

Participants were welcomed at the Inaugural Session by Prof. Abhijit Das, Head of the Centre for WTO Studies, with opening remarks by Mr. K. T. Chacko, Director, Indian Institute of Foreign Trade. Mr. Rajeev

Kher, Additional Secretary, Department of Commerce, delivered the Keynote Address and Prof. Shashank Priya of the Centre for WTO Studies gave the vote of thanks. The Inaugural Session was followed by an introduction to the course and its objectives.

The five-day training comprised classroom sessions focussed on accessions-related issues, with a strong emphasis on experience sharing. The issues covered included an overview of the WTO agreements and their scope, the benefits of WTO accession and membership, the evolving rules governing accession and special provisions, the accession process and technical assistance for acceding countries, suggestions for developing countries in the process of accession, negotiations in the WTO, the experiences of recently acceded members and WTO related case studies on issues of interest to developing countries.

In addition to the faculty of the Centre for WTO Studies and the Indian Institute of Foreign Trade, international and national experts in the area of multilateral trade and accession were especially invited as resource persons for the training, namely Mr. Sajal Mathur, Counsellor, Accessions Division, World Trade Organisation; Dr. Xiangchen Zhang, Deputy Permanent Representative, Permanent Mission of the People's Republic of China to the WTO and also the Chairman of the Working Party on Accession of Lao PDR to the WTO;

Mr. Jib Raj Koirala, Under Secretary, Ministry of Commerce and Supplies, Government of Nepal; Ms. Tran Thi Thu Hang, Deputy Permanent Representative of Vietnam to the United Nations and the WTO; Mr. U. S. Bhatia, former Ambassador of India to the WTO; Mr. J. S. Mukul, Joint Secretary, Ministry of External Affairs, Government of India; and Mr. Amar Sinha, Joint Secretary, Department of Commerce, Government of India.

Participants were extremely interactive and took the initiative to raise questions and concerns of relevance to the accession process of their individual countries. They availed the opportunity to interact with resource persons and draw lessons for taking forward their process of acceding to the WTO. A special session for eliciting and sharing of individual country experiences with reference to the accession process was also built into the structure of the training programme.



Capacity Building Programme in RCVPN Academy of Administration, Bhopal

In order to improve knowledge on WTO issues and on issues under negotiation in the Doha Round, the Centre for WTO Studies in collaboration with RCVPN Academy of Administration, Bhopal organized a two day Seminar in Bhopal on WTO issues on 7-8 March, 2011. The Seminar was attended by Government Officials as well as the participants from the private sector.

The programme covered discussions on negotiation in Agriculture, Industrial Goods, Intellectual Property Rights, Antidumping & Countervailing Measures and Services. In addition, there were also deliberation regarding how partnership between the Centre for

WTO Studies and RCVPN Academy of Administration, Bhopal, could be strengthened. In this regard, it was considered appropriate that the Centre could support some basic research by RCVPN Academy of Administration in areas like creation of a database for production, employment, productivity of various categories of industrial and agricultural goods in the State of Madhya Pradesh, cataloguing opportunities to improve export of identified products of Madhya Pradesh and study of traditional handicrafts with the aim of identifying appropriate support measures like registering them as Geographical Indications (GIs).

Workshop on the “State of Play in the Doha Negotiations with the focus on Agriculture

The Centre for WTO Studies along with the South-Centre, Geneva organized a Workshop on the “State of Play in the Doha Negotiations with the focus on Agriculture” on the 12-13th April 2011 in Geneva, Switzerland. The Workshop was attended by delegates/Ambassadors from 40 countries world over. Centre for WTO Studies was represented by Professor Abhijit Das and Dr. Sachin Kumar Sharma who spoke about the Evolution of Agriculture Modalities with respect to the interests of developing and developed countries; Special Safeguard Mechanisms and their impact on certain conditionalities and on Carve-outs for developed nations in Agriculture Negotiations.



International Seminar on Anti-Counterfeiting Trade Agreement: Implications for Developing Countries



Participants and Resource Persons at the International Seminar on ACTA: Implications for Developing Countries
Inset : Shri Rajeev Kher addressing the participants at the Seminar. L-R Sitting: Prof Madhukar Sinha, Shri. K.T. Chacko, Prof. Abhijit Das.

In the wake of coming into existence of the plurilateral Anti-Counterfeiting Trade Agreement (ACTA), which aims to establish an additional framework which provides minimum standards to ensure better enforcement of IPR internationally, the Centre for WTO Studies, Indian Institute of Foreign Trade (IIFT), organized an international seminar on “The Anti-Counterfeiting Trade Agreement: Implications for Developing Countries” at the IIFT on 25-26 April 2011.

The Seminar was attended by senior officials from 24²⁰ developing countries from the world over and India. Prof. Abhijit Das, Head of the Centre for WTO Studies (CWS), welcomed the participants while the inaugural address was given by Mr. KT. Chacko, Director, IIFT. Shri Rajeev Kher Additional Secretary, Department of Commerce, Government of India, gave the presidential


address. Prof. Madhukar Sinha proposed the vote of thanks for the Session.

It was an opportunity for the participants to exchange of views on national, regional and multilateral intellectual property right initiatives. The ongoing debate on the issue was recounted in great detail as were the concerns of the developing countries.

The technical Sessions of the Seminar covered a wide range of issues from basic general topics such as introduction of IPRs with respect to the TRIPS agreement, an introduction to the ACTA to the more specific and deliberative ones such as implications of ACTA for developing countries, IP and development issues with reference to ACTA in particular.

An attempt was also made to explore the extent of TRIPS plus commitments being asked for by developed

²⁰ The participating countries were Azerbaijan, Bangladesh, Belarus, Brazil, Egypt, Ghana, Indonesia, Iran, Kazakhstan, Kenya, Kyrgyzstan, Namibia,, Nigeria, Oman, Peru, South Africa, Tajikistan, Tanzania, Thailand, Togo, Uzbekistan, Vietnam, Zambia, Zimbabwe.



countries in their Bilateral Trade Agreements with developing countries and the possible role that ACTA might play in enhancing the scope and depth of these commitments.

The resource persons for the Seminar included Prof. Frederick Abbott, Dr. Biswajit Dhar, Director General, Research and Information System for Developing Countries, Shri Yogesh Pai, Assistant Professor, National Law University, Jodhpur.

15 Years of the TRIPS Agreement: Rethinking Intellectual Property and Development

The Centre for WTO Studies in partnership with the South Centre, Geneva, organised a two-day international conference on “15 Years of the TRIPS Agreement: Rethinking Intellectual Property and Development” at the Indian Institute of Foreign Trade (IITF), New Delhi, 28-29 April 2011. Representatives of academic community, government, civil society and media discussed and debated the 15 years of the TRIPS Agreement and the development issues that confront the developing countries.

Prof. Abhijit Das, Head, Centre for WTO Studies (CWS), welcomed the participants to the Conference which was inaugurated by Mr. KT. Chacko Director, Indian Institute of Foreign Trade and Shri Rajeev Kher, Additional Secretary, Department of Commerce, Government of India. Mr. Martin Khor, Executive Director, South Centre, Geneva, delivered a special address and spoke primarily about the interface between public health and TRIPS and the need for South-South Cooperation in building a flexible IP regime. The vote of thanks was given by Prof. Madhukar Sinha of CWS.

The seven technical sessions that spanned over two days reviewed the negotiations of the TRIPS Agreement and examined whether the promises held for developing countries have been realised 15 years after the Agreement. Panelists discussed what has been learned on the relationship between intellectual property (IP) and development. The current state of negotiations on IP issues in different international forums such as the WIPO, WTO and WHO, and the trends of promoting TRIPS plus standards of IP protection and enforcement in various forums including the bilateral Free Trade Agreements (FTAs) and their detrimental effects on development were discussed. The technical sessions on the impact of TRIPS on specific sectors discussed the challenges and constraints for developing countries in implementing TRIPS and TRIPS flexibilities, and implications of TRIPS plus trends. They covered industrial development and innovation, public health and access to medicines, access to knowledge, education and learning, agriculture and biodiversity. The panelists shared

various experiences in making use of TRIPS flexibilities. The deliberations provided policy recommendations from a developing country perspective.

Ms. Viviana Munoz Tellez, Mr. Carlos Correa, Mr. German Velasquez from the South Centre, Geneva, Sanya Reid Smith from TWN, Shri S. Narayanan, Former Indian Ambassador to the WTO, Dr. Biswajit Dhar, DG of RIS, Prof. Frederick Abbott were some of the eminent resource persons at the Conference. Representations from the MSF, TWN also participated in the Conference.

The first Session began with tracing the negotiations at the WTO on TRIPS and how with the coming of GATT and subsequently the TRIPS other international organizations such as the WIPO were sidelined. The shortcomings of the negotiations were highlighted such as the lack of health ministry representatives in the negotiating process etc. The second session looked into the newer trends which emerged in the negotiating process such as innovation and access to knowledge, addressing developmental and health dimensions and transfer of technology and how all these factors collectively have formed the basis of negotiations today.

The third session tackled the developmental and innovation dimensions of intellectual property and how since the TRIPS Agreement flexibilities are known for not allowing alternate solutions, which in turn effects development. Prof Abbott stressed on the need for emerging market economies to create innovative paradigms for IP policy, consistent with the TRIPS Agreement. The fourth session focused on Public Health and Access to medicines wherein Ms. Leena Menghaney, MSF Delhi, spoke about the primacy of the generic drugs in terms of access to medicines and how a TRIPS plus regime would negatively impact the access to affordable healthcare.

The fifth Session covered the Access to Knowledge, Education and Learning aspects of IP and how to manage knowledge creation has become a pivotal issue as it has become imperative today to provide a sort of a incentive system for the production of Knowledge. The Sixth Session was on agriculture and

Biodiversity and recognized the fact that the space which is available for sui generis legislation is getting squeezed whereby there is a need for National Biodiversity Register.

The conference concluded with a discussion on the national and international strategies in response to TRIPS and the ways to develop an appropriate development-oriented national IP strategy, and how developing countries should coordinate among themselves on the issues that confront them in various international forums. The Concluding Session was



Participants at the International Seminar on TRIPS.

Three Day Training Programme on International Trade for FTD Officers (18-20 April 2011)

A three-day Training Programme for Foreign Trade Development Officers was organised by the Centre for WTO Studies from 18-20 April 2011 at the Indian Institute of Foreign Trade, New Delhi. The objective of the training was to build capacity of the Foreign Trade Development (FTD) Officers of DGFT in the area of WTO disciplines relevant to their work and India's various Export Promotion Schemes. The resource persons for the programme were drawn from the faculty members of the Centre for WTO Studies and serving officers of DGFT.

The Programme began with a welcome address by Prof. Abhijit Das, Head, Centre for WTO Studies, who introduced the participants to the Capacity Building Programme. Mr. Amitabh Jain, ADGFT, observed that the training on international trade and WTO was important as there was a constant interface between domestic trade policy and WTO disciplines. Prof. R. S. Ratna thanked all the participants for attending the training programme and said that the training was designed to equip the participants with basic understanding of WTO agreements and India's Foreign Trade Policy.

The training covered a number of subjects related to WTO and Foreign Trade Policy. Topics related to WTO

included Introduction and Overview of WTO Agreements, Subsidies & Countervailing Measures; Case studies on Countervailing Action against Indian Exports under ASCM; Selected Disputes in WTO on ASCM (US-Brazil Cotton Dispute and US-EU Aircraft Dispute); WTO Agreement on Import Licensing Procedure; and Select Cases relating to Import Licensing Procedures (EC- Poultry case, Korea- Beef case and EC- Banana). The topics relating to Foreign Trade Policy covered during the training included: Trade Theory and Import Export Policy & procedures; FTP: Promotional Measures: Reward scheme, Towns of Export Excellence (TEE) schemes, Status Holder incentive schemes; Duty Exemptions/Remission Schemes; Advance Authorisation scheme; DEPB and Drawback; Gems and Jewellery scheme; Export Promotion Capital Goods Scheme; Role and importance of Electronic Data Interchange (EDI) in DGFT; Global Trade Regime and India's FTP. One of the highlights of the programme was the session taken by Dr. A. K. Pujari, DGFT, who gave a very illuminating lecture on Global Trade Regime and India's FTP. In the valedictory session, Mr. Chacko, Director, IIFT and Dr. Pujari distributed the certificates of participation.



*Prof. Abhijit Das addressing the FTD Officers at the Training Program.
L-R Sitting: Prof. Shashank Priya, Dr. A. K. Pujari, DGFT, Shri. K.T. Chacko.*



FTD Officers and Resource persons at the Training Programme.

Faculty Participation in Outreach Programmes (January-April 2011)

Sr.	Event name	Event type and date	Topic	Type of Participation
I. Prof. Abhijit Das				
1	One day Seminar organized by CWS and FICCI	Seminar on 31 st January, 2011 at FICCI, New Delhi	Doha development agenda for developed nations: Carve outs in recent agriculture negotiations.	Speaker
2	"Post GI of World Famous Lucknow Chikankari"	Workshop, On 25 th February, 2011 in Lucknow	Post GI Initiatives	Panel Speaker
3	International Conference on Changing Structure of International Trade and Investment: Implications for Growth and Development	Conference on 2-3 rd March, 2011 in Jamia Milia Islamia, New Delhi	Changing Structure of Trade and Investment: Losers and Gainers	Speaker
4	"Understanding WTO & related issues pertaining to state Government".	Workshop on 7 th 8 th March, 2011; Bhopal	(i) Introduction: WTO Agreement (ii) WTO Overview of Agreement on Agriculture (iii) Evolving Mechanism for Institutional Arrangement for effective WTO regulation in states (iv) Recommendations & Summing-up	Speaker
5	AALCO Training Workshop on the World Trade Organization	Workshop on 28 th March, 2011; New Delhi	Inaugural Lecture	Speaker
6	Training Programme for IEG Officers	Workshop on 7 th April, 2011; New Delhi	Anti Dumping Agreement Implications and Issues for IEG	Speaker
7	State of play in the Doha Negotiations, with focus on agriculture	Workshop with South Centre, Geneva on 12 th April, Geneva	Evolution of Agriculture Modalities: What has happened over time to the interests of developed and developing countries?	Session Speaker with Dr. Sachin Kumar Sharma
8	State of play in the Doha Negotiations, with focus on agriculture	Workshop with South Centre, Geneva on 13 th April, 2011; Geneva	SSM: Simulating impact of some conditionalities	Speaker
II. Prof. Shashank Priya				
1	Training at the National Academy of Customs, Excise and Narcotics	Training on 10 th February 2011 in Faridabad	<ul style="list-style-type: none"> Negotiations on Trade Facilitation Trade Defence Measures 	Speaker
2	Training at the National Academy of Customs, Excise and Narcotics	Training 12 th February 2011 in Faridabad	<ul style="list-style-type: none"> Foreign Trade of India: Balance of Payments, foreign Trade Policy Foreign Investments in India: FDI, FII, Liberalization, Privatization and Globalization and Impact on Indian Economy 	Speaker
3	Training at the National Academy of Customs, Excise and Narcotics	Training on 25 th February 2011; Faridabad	<ul style="list-style-type: none"> Negotiations on Trade Facilitation Trade Defence Measures 	Speaker
4	International Training Programme for Acceding Countries to the WTO	Training on 28 th February 2011 at IIFT Delhi	Overview of WTO Agreements	Speaker

Sr.	Event name	Event type and date	Topic	Type of Participation
5	International Conference on Changing Structure of International Trade and Investment : Implications for Growth and Investment	Conference on 2-3 rd March, 2011; at Jamia Millia Islamia, New Delhi	Trade and Policy Reforms	Chairperson
6	Workshop on Understanding WTO and related issues pertaining to State Government	Outreach on 7-8 th March, 2011; Bhopal	(i) WTO GATS (ii) WTO TRIPS (iii) Evolving Mechanism for Institutional Arrangement for Effective WTO Regulation in State.	Speaker
7	Training on Customs Issues for IRS Probationers and Russian Trainees at NACEN,	Training on 9-10 th March, 2011, Faridabad.	(i) Customs Valuation Rules in WTO, GATT Article VII and Brussels Definition of Value (ii) Trade Defence Measures	Speaker
8	Seminar for Customs Officials and other Stake Holders at Chennai Custom House	Seminar on 5-6 th April, 2011.	Trade Facilitation Reforms and World Trade Organisation	Speaker
III. Prof. Madhukar Sinha				
1	Meeting on FDI in Retail Sector	Meeting organized by CII at Mumbai on 12 January 2011	FDI in Retail Sector	Main Speaker
2	Agriculture Negotiations	Seminar organized by FICCI, NEW Delhi on 31 st January 2011	Doha Development Agenda for developed Nations	Participant
3	Advance Course on WTO & related matters for IAS officers	Workshop organized by IIFT from 7-11 February 2011	IPRs and International Trade	Resource Person
4	WTO Issues	Meeting organized by State Academy of Administration & Local Industry Association at Patna from 9- 10 February 2011	Program on WTO Issues	Moderator
5	Invitation by Rajasthan University	Seminar organized in Jaipur on 12 th February 2011	Retail Sector in India FDI and other issues	Keynote address
6	IPR Programme	Seminar organized by Ministry of MSME in association with Government of Bihar and Bihar Industrial Association from 28 February- 1 March 2011	Intellectual Property Awareness	Speaker
7	Intellectual Property Awareness Programme	Outreach Programme 01 March 2011 conducted by Bihar Government.	IPRs	Speaker
8	Programme on Government Procurement Agreement	Seminars on Government Procurement Agreement at Mumbai, Bangalore, Hyderabad, Chennai and Delhi 15- 22 March 2011	Government Procurement Agreement	Moderator
9	Talk to Purchase Officers on IPR in Procurement	Outreach Programme conducted by Railway Staff College Vadodra 07 April 2011	IPR in Procurement	Speaker
10	Anti Counterfeiting Trade Agreement	Seminar on Anti Counterfeiting Trade Agreement (ACTA) at IIFT, New Delhi 25- 26 April 2011	ACTA	Moderator
11	Trips & Doha Development Round	Seminar on TRIPS & Doha Development Round 28-29 April 2011	TRIPS & Doha Development Round.	Moderator

Sr.	Event name	Event type and date	Topic	Type of Participation
IV. Dr. Murali Kallummal				
1	Advance Course on WTO and Related Matters: For the officers of Indian Administrative Services	Training Programme from 7-11 th February, 2011 at IIFT, New Delhi.	Sanitary and Phytosanitary Measures and Technical Barriers to Trade: How they Impact the overall Negotiations.	Speaker
2	Training Programme on WTO Accession for Officials from Countries in the Process of Accession to the WTO	Training from 28 February- 4 th March, 2011, New Delhi.	Introducing the SPS and TBT Portal Developed by CWS	Speaker
V. Mr. Bipin Kumar				
1	MDP on Risk Management in International Trade for MMTC officers	Workshop 9 th Feb, 2011; New Delhi	Negotiating Contracts for International Trade: Strategies for Risk Management.	Session Speaker
2	3 rd Edition GIMC International Moot Court on International Trade and WTO organized by GNLU and WTI, Berne	International Moot Court, 12 th Feb 2011; Ahmedabad.		Judge, Quarter Final Round.
3	8 day Trade Training on International Trade for Indian Revenue Services Probationers, NACEN	Training from 7-17 th Feb 2011, Faridabad.	1. Intellectual Property related Issues. 2. TRIPS: Super 301. 3. Introduction to Non-Tariff Measures. 4. SPS and TBT	Speaker
4	Training Programme on International Trade for Trade Revenue Service Probationers	Training Programme	Introduction to Non-tariff Barriers	Speaker
5	NACEN, Mumbai	Training Programme	Sanitary and Phyto Sanitary Measures (SPS) & Technical Barriers to Trade (TBT)	Speaker
6	NACEN, Mumbai	Training Programme	Intellectual Property and Related Issues	Speaker
7	NACEN, Mumbai	Training Programme	TRIPS and the Super 301	Speaker
8	3 day training on International Trade for FTD officers, IIFT, New Delhi.	Training on 20 th April, 2011; New Delhi	Discussion on select disputes in WTO on Agreement on Subsidies and Countervailing Measures	Speaker
9	Lecture at Indian Society of International Law	Lecture on 25 th April, 2011; New Delhi	International Commercial Arbitration	Speaker
VI. Dr. Sachin K. Sharma				
1	One Day Seminar Organized by CWS and FICCI	Seminar on 31 st February, 2011; New Delhi	Doha Development agenda for Developed Nations: Carve Outs in Recent Agriculture Negotiations.	Session Speaker
2	State of play in the Doha Negotiations, with focus on agriculture	Workshop with South Center, 12 th April, 2011; Geneva.	Carve-out for Developed nations in Agriculture negotiations	Session Speaker with Prof Abhijit Das
3	International Trade for Indian Revenue Service Probationers, NACEN	Lecture/Training 10 th February, 2011; Faridabad	Negotiations on Agriculture	Session Speaker



➤ **Members ready to move forward in environment negotiations**

On 10-14 January 2011, WTO members reviewed the various proposals on the table covering the Doha mandate related to environment. The discussions indicated that members were ready to move forward in revisiting various proposals and working on new ones. The discussions focused on national coordination, technical assistance, capacity building, special trade obligations (STOs) set out in multilateral environment agreements (MEAs) and principles. Discussions also revealed discrepancies between members as to the definition of an environment good. Members highlighted the importance of special and differential treatment, technical assistance, capacity building and transfer of technology. Regarding S & D treatment, members examined various options such as implementation delays for developing countries, difference in treatment and in coverage between developed and developing countries.

➤ **Geographical indications talks produce first single draft**

For the first time in over 13 years of talks, WTO intellectual property negotiators have started work on producing a single draft text for setting up a multilateral geographical indications register for wines and spirits. A draft notification the first of six broad topics of the system to be discussed was circulated by chairperson Mwape at an informal meeting of the full membership on 13 January 2011.

➤ **Chair sees a “change of spirit” in the industrial goods negotiations**

After four days of intensive negotiations, the

chairman of the industrial goods negotiations, Ambassador Luzius Wasescha on 20 January 2011 talked about a “change of spirit” in the talks and saw “the beginning of what might evolve into the final face of the negotiations”. He encouraged members to continue work among themselves for a revised text on the parameters of the final agreement.

➤ **WTO shows strong support for Afghanistan's membership**


On 31 January 2011, at the first Working Party meeting on Afghanistan's accession, WTO members carried out a first review of Afghanistan's trade regime. Members supported Afghanistan's integration in the multilateral trading system. They recognized Afghanistan's least-developed country (LDC) status and said that this would be factored into the accession negotiations.

➤ **Lamy outlines what is needed to conclude the round this year**

Director-General Pascal Lamy, as chairperson of the Trade Negotiations Committee (TNC) told WTO ambassadors at an informal meeting of the TNC ON 2 February 2011 that bilateral and small group discussions on resolving key differences need to catch up with the work among full membership on refining the texts. Noting that the mood has improved for producing revised drafts by Easter (late April), Lamy told ministers that while negotiations have to be “multilateral” (among full membership), possible breakthroughs have to be tested in a second leg, “plurilateral” or bilateral discussions among small groups or pairs of members.

➤ **World trade statisticians set up plans to improve trade figures**

About 200 statisticians from developed and developing countries participated in the Global Forum on Trade Statistics 2011. All participants agreed that trade figures should be improved to better reflect the direct relation between global value chains, trade in goods and services, employment and the growing interdependence of economies. For this purpose, all countries are encouraged to develop a national register to identify enterprises active in international trade. Trade data should be linked to these enterprise statistics with sufficient product detail for goods and services. Statisticians also recommended



enhancing coordination between national stakeholders such as national statistical offices, central banks, customs authorities and ministries.

➤ **General Council: Lamy calls for major acceleration of negotiations**

Director-General Pascal Lamy reported to the General Council on 22 February that he was encouraged by recent discussions among senior officers but warned that a “major acceleration at all levels multilaterally, plurilaterally and bilaterally is needed”. He added that “the window of opportunity is still there, but it is narrowing every day”.

➤ **Geographical indications draft completed swiftly but with 208 differences**

In less than two months, a drafting group of negotiators has produced a complete text on the proposed multilateral register for geographical indications for wines and spirits. But because all the present divergent positions are included, the 9-page document presented to a formal negotiation meeting on 3 March 2011 contains around 208 pieces of rival text, marked by square brackets.

➤ **Members seek stronger push for new negotiations text by Easter**

WTO ambassadors told an informal meeting of the Trade Negotiations Committee (TNC) on 8 March 2011 that they share Director-General Pascal Lamy's concern that recent progress on substance in the Doha Round is not fast enough to meet late April targets. Several also reiterated their particular concerns in a range of topics being negotiated in the Doha Round. A few remained worried that deals struck in smaller groups might be imposed on them and upset the balance of what has been achieved so far, or give a low priority to issues that concern them particularly. Lamy chairs the TNC which oversees the detailed talks in many subjects. The negotiations currently aim to produce new or revised draft texts in a range of subjects by Easter, to agree on these and some other legal drafts by June or July and to conclude the round by the end of the year. Lamy urged the ambassadors not to fool themselves. Some give-and-take is happening but it is too timid and too slow to meet the target of new or revised texts by Easter, he said. Lamy called for more substantive inputs from the negotiators.

➤ **Data published showing basis of**

members' farm trade commitments

The original information used to calculate WTO members' present agricultural subsidy commitments the agricultural Supporting Tables (AGST) has been published on the WTO website, making it available electronically for the first time. Most of these tables date back to the 1986-94 Uruguay Round negotiations. They provide background information on the data and methods that countries used to derive their commitments on domestic support and export subsidies. They include detailed information on the provision of domestic support and export subsidies during the agreed years (ie, the base period). For example, details can be found in these tables on : 1) domestic support exempt from reduction commitments (e.g. Green Box). 2) trade-distorting domestic support known as “aggregate measure of support” (AMS, sometimes called the Amber Box) overall and for specific products, including the data on AMS support that did not exceed the prescribed minimum threshold in terms of value of production (ie, the de minimis). And 3) export subsidies subject to reduction commitments.

➤ **Lamy cautions against weakening the WTO**

Director-General Pascal Lamy, in a speech to the Annual Session of the Parliamentary Conference on the WTO at the WTO headquarters on 22 March 2011 said : “ In the current turbulent times, the WTO must act as a catalyst of trust and global unity through the conclusion of the Doha Round. It must make a contribution to a more stable world. Let us not weaken one of the best examples of functioning international cooperation”. He further said: “ The “rules-based component” of the Doha Round is just as valuable as its “market access” elements; and should not be discounted, even if it grabs less media headlines. It is the rules of the Multilateral Trading System the law of the jungle from prevailing in international trade relations. If you look at the disputes that are brought to the WTO for settlement, you will find that many, if not most, have to do with the “rules” of trade, and not with tariff or subsidy commitments that are being violated. I say this so you are able to appreciate the full value of the Doha Round.

➤ **Members take first steps on private standards in food safety, animal plant health**

Five “actions” in a report on how WTO members te

might deal with private sector standards for food safety and animal and plant health were adopted by the Sanitary and Phytosanitary (SPS) Measures Committee in its 30-31 March meeting. Members continued to comment on each other's measures, part of the committee's core function of monitoring how the SPS Agreement is being implemented, with the recurring themes of whether certain measures are based on science, or international standards, and whether they are targeted more broadly than at the regions that are the source of genuine risks.

➤ **Documents from the negotiating chairs, 21 April 2011**

On 21 April 2011 the negotiating chairs circulated documents representing the product of the work in their negotiating groups. Director-General Pascal Lamy, in his cover note to the documents, said that for the first time since the Round was launched in 2001 “Members will have the opportunity to consider the entire Doha package”. He says the picture is “impressive” in the significant progress achieved so far, but also “realistic” on what it shows on the remaining divides. He asked Members to think hard about “the consequences of ten years of solid multilateral work” and called on members to “use the upcoming weeks to talk to each other and build bridges”.

➤ **Members confront Doha Round deadlock with pledge to seek meaningful way out**

WTO ambassadors endorsed on 29 April 2011 Director-General Pascal Lamy's plan to consult delegations in Geneva and ministers around the world in the search for a different way of achieving a breakthrough in the Doha Development Agenda negotiations. They were clear about what they do not want and said they are open to ideas. Lamy told an informal meeting of the Trade Negotiations Committee that he will report back to the membership at the next meeting on 31 May. Several speakers agreed with him that three options will not work: “business as usual” (continuing as before); “stopping and starting from scratch”, which some speakers called “rebooting” “since the issues blocking progress today will be the same ones on the agenda tomorrow”; and Lamy said - “'Drifting away' by wishing the issue would simply disappear”. The challenge is therefore to find a viable alternative to these three options, including the possibility of continuing to aim for all subjects to be agreed together or for some to be concluded faster than others, he said.


Who said what

Bi-monthly Round-up of News and Views on WTO and Related Issues

I. January-February, 2011

1. **China's patents surge** -- As a national strategy, China is trying to build an economy that relies on innovation rather than imitation. Clearly, its leaders recognize that being the world's low-cost workshop for assembling the breakthrough products designed elsewhere has its limits. The document, published in November by the State Intellectual Property Office of China, is called the “National Patent Development Strategy (2011-2020).” It discusses broad economic objectives as well as specific targets to be attained by 2015. In a recent interview, David J. Kappos, director of the United States Patent and Trademark Office, pointed to the Chinese targets for 2015 and called them “mind-blowing numbers.” China's goal for annual patent filings by 2015 is two

million. That number includes “utility-model patents,” which typically cover items like engineering features in a product and are less ambitious than “invention patents.” In the American system, there are no utility patents. China also wants to double the number of patents that its residents and companies file in other countries. Recent Chinese filings in the United States, Mr. Kappos says, are mainly in fields that China has declared priorities for industrial strategy, including solar and wind energy, information technology and telecommunications, and battery and manufacturing technologies for automobiles. To lift its patent count, China has introduced an array of incentives. They include cash bonuses, better housing for individual filers and tax breaks for companies that are prolific patent producers. “The leadership in China knows that innovation is its future, the key to higher living standards and long-term growth,” Mr. Kappos says. “They are doing everything they can to



drive innovation, and China's patent strategy is part of that broader plan." China's strategy is guided and sponsored by the state. (*New York Times News Service in Hindu Business Line dated 4/1/2011*).

2. Abbott patent application for HIV drug spurned -- The Mumbai patent office has rejected American drug maker Abbott Laboratories' patent application for an HIV combination drug, allowing low-cost local drug makers to make and sell their generic versions in India and other countries where the medicine is not patented. The decision to reject the patent application for Lopinavir & Ritonavir is a major victory for millions of HIV patients globally, who have failed to stay healthy with the first round of medicines, said Medicines, Access & Knowledge (I-MAK), the not-for-profit organisation which is behind the legal action. The Mumbai patent office refused to grant the patent to Abbott Laboratories because the drug was 'not an invention,' a key requisite to get a patent in the country. A patent holder gains a 20-year exclusive marketing right for the drug in India. (*Economic Times dated 4/1/2011*).

3. CSIR patent filings in US take a U-turn in four years -- The Council of Scientific and Industrial Research, (CSIR) one of the top global patent-seekers in recent years in the league of Samsung, LG and Huawei, has seen a dramatic decline in performance since 2006. The US Patent and Trademark Office which granted the council as many as 133 patents out of a total of 342 granted to Indian applicants as a whole in 2003, received just 53 patents in 2009, while the total number for the country shot up to 679. While CSIR attributes the decline to more selective patent filing i.e., the policy of seeking only those patents which would really have a commercial value or preemptive nature data show the number of its patent filings has not actually dwindled. In fact, the number of CSIR's patent filings abroad. has fluctuated in the range of 420 to 728 between 2000-01 to 2006-07, with no consistent trend of increase or decrease, thus raising questions on the quality of patent applications as well. (*Financial Express dated 7/1/2011*).

4. Move can potentially overturn India's Patent Act -- Hard lobbying by the European Union (EU), home to many of the world's largest pharmaceutical firms like Novartis, Sanofi-Aventis and Roche, has struck a chord with the

Prime Minister's Office (PMO), which is now 'putting pressure' on a reluctant commerce and industry ministry to include a contentious IPR chapter in the proposed India-EU trade and investment pact. The EU wants India to liberalise its patenting standards exclusively for the applicants from the union's 27 countries. It also clamours for a string of associated rewards like a defined period of 'data exclusivity' and Supplementary Protection Certificates (SPCs). These additional rights would enable the patent-holders to fully exploit the economic value of their inventions (including incremental ones) by enjoying the exclusive rights for longer periods. Agreeing to the EU demands could, however, potentially overturn India's Patent Act --which was last amended in 2005 and arguably strikes a balance between patent rights and the access to medicines--, and hit the country's generic drug industry hard. Official sources on the condition of anonymity told FE that the PMO has sought to know from the department of industrial policy and promotion (DIPP) as to what it thinks of the EU demands. This is despite the fact that the DIPP has been unflinchingly dismissive of these demands citing them as 'TRIPS-plus' and made its position amply clear to all concerned. (*Financial Express dated 12/1/2011*).

5. Doha talks : India refuses to back US on re-manufactured goods -- India has refused to play ball with the US and other developed countries on a controversial proposal for opening up developing markets to remanufactured goods under the Doha trade talks, apprehending this will lead to dumping of sub-standard goods. In a proposal issued to World Trade Organisation members India maintained that it is "gravely concerned on various aspects of the revised text." (*Hindu Business Line dated 13/1/2011*).

6. India not yet ready to take US to WTO : Sharma -- Commerce and Industry Minister Anand Sharma has said India will not "rush to" the WTO over the "regressive" steps taken by the US recently, which include an increase in the visa fee and a special levy on foreign manufacturers. (*Business Standard dated 17/1/2011*).

7. Trademark, patent seekers get access to database: Move to eliminate need for search report from Registrar -- Patent and trademark seekers will no longer have to wait for weeks to get the go-ahead for their applications from the


government's patent registrar. The commerce and industry ministry has thrown open the entire trademark and patent database for free online searches. Till now, prospective applicants for patents and trademarks were required to get an official search report from the patents office, which certified that no similar patent has been granted, before submitting an application. While free search facility would help patent seekers cut costs and time involved prior to filing an application, this will also put India on par with the developed countries that have well-equipped online trademark search systems. This would also enable foreign investors to check Indian databases before working out an entry strategy for India. (*Economic Times dated 18/1/2011*).

8. PMO okay with DIPP view on patent law -- The Prime Minister's Office has endorsed the commerce and industry ministry's view that no change in India's patent regime is necessary, even in the form of a special treatment to patent seekers from the European Union under the proposed trade and investment pact, an official source from PMO told FE. The EU for long has pitched for a liberal patenting regime in India and wants an IPR chapter in the pact, which is expected to be finalised in March, during the Prime Minister's visit to Brussels. The PMO had earlier written to the Department of Industrial Promotion and Policy (DIPP) in the ministry asking what it thought of the EU demand. The department has been taking a consistent stand since 2005 when the Patent Act was last amended that the country's patenting standards need to remain high. An official source, however, said the DIPP is yet to receive any communication from the PMO, endorsing the department's view. (*Financial Express dated 21/1/2011*).

9. India-EU FTA to deal with illegal immigration issue The much awaited European Union (EU) free trade agreement (FTA) would deal with the issue of illegal immigration and also have provisions concerning temporary mobility of professionals, Daniel Smajda, head of EU delegation to India said. She added the FTA would seek to deal with two main issues concerning movement of skilled labourers from India to EU and vice versa. In the FTA, we will discuss both Mode I and Mode IV whether under the Schengen visa system or the Blue Cards system, she said. (*Business Standard dated 22/1/2011*).

10. FTA with EU only by year-end -- Although negotiations on the much-awaited India-European Union (EU) Free Trade Agreement (FTA) are likely to be concluded by summer this year, the formal signing will only happen by the end of this year at the India-EU summit. (*Hindu dated 22/1/2011*).

11. EU push for liberal patents is detrimental for us -- According to a recent news report in FE, 'EU push for liberal patents finds favour with PMO', the India-EU Free Trade Agreement negotiations are in a crucial stage. While an FTA would open the European market for Indian exports and vice versa, there are some issues which are extremely worrisome. The most important point of concern relates to the EU demand of inclusion of Intellectual Property Rights (IPRs) and Data Protection in the FTA. In spite of an assurance from the Department of Industrial Policy and Promotion (DIPP) that they will not accept the EU Draft on IPRs to be included in the FTA, the fact is that there is great pressure on our government, especially the PMO, from the EU to accept their hidden agenda; and one cannot rule out a possibility of our government buckling down under EU and the MNC pressure. The demand that Data Exclusivity (euphemistically called 'Data Protection') be accepted by India as a part of the Free Trade Agreement is a matter of great concern to us because it will adversely affect our people by raising the prices of less expensive generic drugs to the level of monopoly prices which are generally very high. While TRIPS does not require data exclusivity, the EU has insisted in the FTA negotiations that India provide at least several years of data exclusivity and Supplementary Protection Certificates (SPCs). The European demand is that when any clinical data is submitted by any company to the drug regulator (in our case drugs controller general), that the company should get monopoly status or exclusivity on that product and that no other company should be allowed to work that product for a certain duration (generally 5 years). If this is accepted then generic competitors must repeat costly trials for marketing approval, which deters generic production. This may also raise ethical questions, as generic manufacturers would be forced to repeat human subject trials on medicines already known to be safe and effective. The EU is basing its demand on Article 39(3) of TRIPS. However, the truth is that



TRIPS Article 39 requires only 'Data Protection' which means it (1) does not debar other companies to manufacture that product, and (2) allows Member Countries to make their own rules in this regard. TRIPS does not support the EU demand. We feel that the demand is TRIPS-PLUS. (Article by Daara Patel, Secretary General, Indian Drug Manufacturers' Association (IDMA) in Financial Express dated 22/1/2011)

12. WTO chief : Alternatives to food export curbs needed -- World Trade Organization Director-General Pascal Lamy has said that export restrictions are a prime cause of recent surges in global food prices, and countries should find other ways to secure domestic supplies. (*Business Standard* dated 23/1/2011).

13. Growth marathon set to take off as India enters \$1000 per capita club India's per capita income has either just about or will soon cross \$1,000 mark. In rupee terms, this translates into an average annual income of roughly 45,000 for every Indian. \$1,000 income is the start of the take-off of a nation, says Janmejaya Sinha ,Chairman (Asia-Pacific) of consulting firm BCG .It is around this number that a nation gets out of subsistence spending and moves more and more into higher quality branded products, adds Chetan Ahya, Managing Director (Research),Morgan Stanley. China reached this threshold in 2003,and has since unleashed a consumption boom that the world is in awe of. Today its per capita income is at \$3,400. (*Economic Times* dated 26/1/2011).

14. Data exclusivity still key hurdle to India-EU FTA -- Despite all official assurances, the path towards a free trade agreement (FTA) between India and the European Union (EU) this year remains ambiguous, as both sides are unwilling to relax their stand on the biggest stumbling block the issue of "data exclusivity". (*Business Standard* dated 27/1/2011)

15. India for a realistic view on Doha talks -- India is positively and proactively engaged in the ongoing global trade talks, according to Union Commerce and Industry Minister Anand Sharma. "And, the way forward is the informal ministerial meeting on the margins of the World Economic Forum in Davos," said Mr. Sharma in a recent conversation with The Hindu in Singapore. The ministerial meeting will take place in Davos on January 29. The preparatory official-level meetings concluded

in Geneva on January 25. (*Hindu* dated 26/1/2011).

16. Rich nations not reciprocating on opening up, says Sharma -- A day before the informal meeting at Davos of the WTO, India, China and South Africa said the developing countries are being asked to further open their markets without any reciprocity from the rich nations, as per the draft proposals for a multilateral agreement. India's Commerce and Industry Minister Anand Sharma said that he and his counterparts from China and South Africa noted that under the draft proposals, the developing nations would be required to offer unprecedented level of contributions. "Such contributions are not being reciprocated by developed countries, some of whom still seek further exceptions and flexibilities to continue with their existing trade barriers and trade distorting policies, adversely affecting the developing countries' interests," said a communiqué issued after meeting. They said any effort to finalise the Doha Round cannot ignore the past trade-offs, nor require new disproportionate and unilateral concession from the developing countries. (*Hindu Business Line* dated 29/1/2011).

17. WTO members for concluding Doha Round within 2011 -- Trade ministers from key World Trade Organization (WTO) member countries, including India, in Davos agreed that efforts needed to be stepped up to conclude a multilateral trade deal this year under the Doha Round. "In the meeting lasting three hours, there is optimism that a window of opportunity (for concluding the deal) in 2011 can be accessed," India's Commerce and Industry Minister Anand Sharma told reporters. Besides India, about two dozen ministers from the U.S., the European Union, Brazil, China, South Africa, Australia and Japan were present at the informal meeting of WTO members hosted by Swiss Federal Councillor of Economic Affairs Johann N Schneider-Ammann. (*Hindu Business Line* dated 30/1/2011).

18. Sharma seeks early resumption of WTO talks -- Arguing that the stalled WTO negotiations should resume and conclude early, India on 31/1 said that the developed nations should amend the current text of the talks and pave way for resumption of text-based negotiations, which should be also fair and equitable. Returning from the just concluded World Economic Forum at Davos, Sharma said in

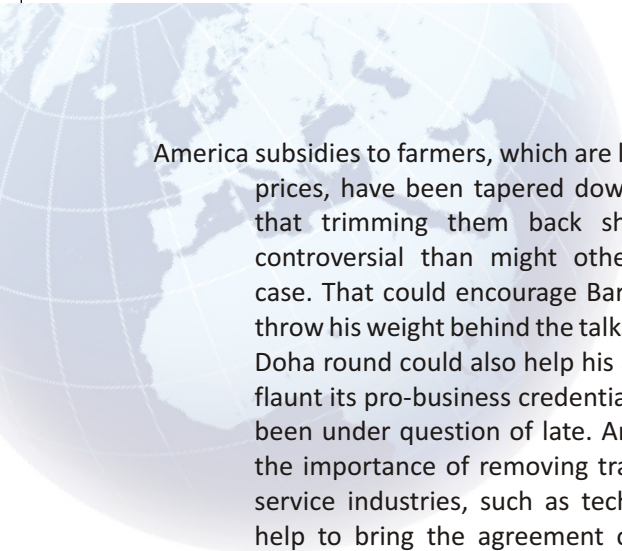
Rome that India along with other nations have re-energised the stalled talks and are taking it forward while hoping that the outcome would be fair and equitable. (*Indian Express* dated 1/2/2011).

19. India's red flag to re-manufacturing on green concerns -- Environmental concerns and protection of its domestic manufacturing units are two of the many reasons India has cited in a detailed note recently submitted to the WTO on the issue of opening up developing markets for remanufactured goods under the Doha trade talks. The proposal was mooted by developed countries, including the US. India has submitted an elaborate document, a work programme on the issue, putting forward its strong reservations under five categories or themes environmental, regulatory, industry, developmental and institutional. Under the work programme, India has pointed out that decision regarding remanufactured goods cannot be taken unless environment impact assessment of remanufactured goods is done and environment impact assessment of remanufactured current technology is done. While calling for a special definition for sectors where remanufacturing could have different connotations, India has said issues like effect on domestic manufacturing units, who will bear cost of disposal of remanufactured goods and prevention of dumping of such goods must be thought over by the developed world that is pushing for the proposal. While at the same time, the document says, the special and differential treatment for developing countries and the employment potential of such goods along with consumer safety and welfare are other important areas of concerns for India. Under the industry theme, India said that one has to consider the difference between remanufactured goods and related terms like recycled goods, reused goods, repaired goods, second hand goods, refurbished goods, renovated goods or any other such term while bearing in mind the cost of disposal of remanufactured items. (*Indian Express* dated 2/2/2011).

20. Indian cos eye \$ 4 bn generic opportunity : Blockbuster drugs will lost patent protection in US in 2011-12 -- Domestic generic companies have more reasons to smile this year. Around \$3-4 billion worth opportunity will be up for grabs in the wake of blockbuster drugs going off patent (losing patent protection

) in the US in 2011-2012 . Around \$30-40 billion worth of drugs, including topselling drugs like Lipitor (Pfizer), Nexium (Astra Zeneca) and Plavix (Bristol Myers Squibb), are facing patent expirations , starting this year. Once a patent of the original developer/ innovator expires, it allows a generic version to be sold in the US market. This will be a huge opportunity for domestic generic companies, including Dr Reddy's, Ranbaxy, Cipla, Glenmark and Lupin over the next few years. In fact, Ranbaxy is expected to launch generic Lipitor, the largest-selling drug in the world, in November under the settlement with Pfizer. Industry experts feel that after allowing 90% price erosion once generic drug versions appear in the market, and due to intense competition, the actual pie will be around \$3-4 billion. (*Times of India* dated 4/2/2011).

21. A deadline for Doha: The agonies of trying to revive free trade talks -- Last November marked the start of the tenth year since the epic, stamina-sapping Doha round of trade talks began. It was also when the German chancellor, Angela Merkel, and Britain's prime minister, David Cameron, joined by the heads of government of Turkey and Indonesia, asked a group of experts to work out how on earth to get a Doha deal done. Led by Peter Sutherland, a combative former director-general of the World Trade Organisation and its predecessor body, GATT, and by a trade economist at Columbia University, Jagdish Bhagwati, the experts were due to issue a report on 28 January. That will be in the midst of the annual jamboree at Davos in Switzerland, where global bigwigs gather to chew over world affairs. The report could cause a few attendees to choke on their Glühwein. It urges its sponsors, along with the rest of the leaders of the world's big economies, formally to commit to finishing the round by the end of the year. Mr. Sutherland argues that his experience during the Uruguay round of trade talks taught him that having a firm timetable is the best way to knock heads together. Those talks took a mere seven years, ending in 1994, and if it is any consolation to today's negotiators, even the WTO's official history admits that at times they "seemed doomed to fail". That is a fate that must not befall Doha, the experts insist. They reckon that only a few more steps are needed for an agreement. One reason is that agricultural commodity prices are high, so in



America subsidies to farmers, which are linked to world prices, have been tapered down. This means that trimming them back should be less controversial than might otherwise be the case. That could encourage Barack Obama to throw his weight behind the talks. Finishing the Doha round could also help his administration flaunt its pro-business credentials, which have been under question of late. An emphasis on the importance of removing trade barriers in service industries, such as technology, could help to bring the agreement of big service-sector exporters, notably India. That country's reluctance to make concessions on agriculture was blamed by many for the collapse of the last serious attempt to finish the Doha round in July 2008. And the big emerging economies, the authors argue, need to remember that an umbrella trade agreement that covers almost all countries is far preferable to the idea of trying to strike scores of bilateral deals. (*The Economist* dated February 2011).

22. Ayurvedic medicines face EU ban from May 1 -

- Practitioners of Ayurvedic and other traditional medicines in Europe are bracing themselves for a tough licensing system similar to that for Western medicines. The EU's Traditional Herbal Medical Products Directive is set to come into effect on May 1, and requires any herbal medicine sold over the counter to have either a Traditional Herbal Registration or a marketing authorisation. The legislation is tantamount to a ban, as just 70-80 herbal products in the UK (none of which is Ayurvedic) have so far got the licence. (*Hindu Business Line* dated 4/2/2011).

23. Move faster on trade barriers, US Commerce Secy to tell New Delhi --

As he prepares to lead a trade mission to India from February 6 to 11, US Commerce Secretary (meaning, minister) Gary Locke wants the Indian government to take more steps to open its economy, particularly in dealing with trade barriers. He was speaking from Washington to a select group of journalists on the visit. Locke said the US had brought up the issue of tariff and non-tariff barriers, including restrictions on Foreign Direct Investment and concerns about Intellectual Property Rights during President Barack Obama's visit to India last November, and will raise these again. (*Business Standard* dated 5/2/2011).

24. India set to move WTO against 9/11 health Act

-- India is contemplating to move the World

Trade Organisation (WTO) against a US health and compensation Act, which levies a two per cent tax on all goods and services procured by the US from countries not party to an international procurement agreement with it. The James Zadroga 9/11 Health and Compensation Act of 2010, signed by US president Barack Obama on January 2, 2011, is seen to violate the very premise of the WTO which calls for Most Favoured Nation (MFN) and national treatment obligation to countries which are a part of the world trade body. "The 2 per cent levy on goods and services is going to hurt India because we are a marginal player in the US procurement. Hardly one per cent of India's total export (as per the latest figures available) forms part of the US procurement and the new levy will lead to loss of opportunities for India vis-à-vis countries which are in the WTO government procurement agreement (GPA) with the US," the sources said. (*Indian Express* dated 7/2/2011).

25. India not to rush to WTO on US visa fee hike issue --

The Commerce and Industry Minister, Mr. Anand Sharma, said that he took up with the US Commerce Secretary, Mr. Gary Locke, on 7/2 the issue of the visa fee hike by America hurting India's information technology sector. Mr. Sharma said he was assured by Mr. Locke that Washington was conscious of Indian sensitivities on the matter. Meanwhile, India has decided against rushing to the World Trade Organisation (WTO) to settle the issue as it wants to try and solve it bilaterally. (*Hindu Business Line* dated 8/2/2011).

26. No changes in Indian patent law, for now --

The prime minister's office (PMO) does not plan to seek any changes in two out of four key controversial provisions of the Indian patent law, which can compromise local drugmakers' ability to sell low cost medicines. The PMO will not ask for any modifications in section 3(d) of the Indian Patents Act that rejects grant of patent to foreign drug makers for incremental innovations, unless it provides significant therapeutic advantages to existing drugs. It has also decided not to push for patent term extension that would have allowed global pharma companies to increase existing patent period of 20 years for the time taken for examination and grant of a patent. But the PMO is yet to clarify its stand on global drug makers' request to provide data exclusivity and

link marketing approval with patent status, Indian Pharmaceutical Alliance secretary general D G Shah said. (*Economic Times dated 9/2/2011*).

27. Pharma data protection won't harm Indian interests -- Research and development-based pharmaceuticals accounts for 17 per cent of total business R&D investments in the European Union. Traditionally, Europe has had a massive lead over the rest of the world in the industry. However, competition in the field is heating up. European pharma has been investing in India, which it views as an important market and manufacturing base. But the India-EU Free Trade Agreement, now in the final stages of talks, is seen as crucial to really get pharma synergies going. **Brian Ager**, the Director-General of Efpia, the main pharma industry body, spoke to *Pallavi Aiyar* in Brussels about the hopes and concerns of European pharma on the FTA. Edited excerpts: The India Patent Act of 2005 was a very encouraging development, signalling that India was getting into the incentivisation of research and development, rather than merely focusing on generics. But we believe enforcement continues to be patchy. More, it's very difficult to get patents. Andrew Witty the CEO of GlaxoSmithKline and President of Efpia, recently pointed out how despite having been in India for some 100 years, GSK has only been granted one patent for the whole of its business. Another issue has been deficiencies in the IP infrastructure and a lack of appropriate experience. The patent office is faced with a backlog of patent applications 12,000 were filed in one month alone. On the FTA, we would like to see something on regulatory data protection. This is an essential legal mechanism to protect, for a limited period (in Europe, it's 10 years), the huge investments in data necessary to bring a medicine to market. We do not believe data protection will harm Indian interests. Remember that contrary to the concerns at the time, the 2005 Patent Act has not had a negative impact on India's pharma industry. To give you examples from other BRIC countries, both Russia and China already apply six years of regulatory data protection. (*Business Standard dated 16/2/2011*).


28. EU arm being summoned on India FTA talks As the free trade negotiations between India and the EU enter the final stages, a googly has just been bowled by Corporate Europe Observatory (CEOb) a lobby watchdog. The Brussels based

organisation announced that it was suing the EC on charges of privileging corporate lobby groups in the India-EU FTA talks and violating the EU's transparency rules. According to a statement it issued, the case concerns 17 documents, including meeting reports, emails and a letter, which the commission sent to industry lobby groups including Business Europe, the EU's main industry lobby and the CII. Despite having repeatedly been approached, the EC has allegedly refused to release the documents in question fully to CEOb. (*Business Standard dated 16/2/2011*).

29. India-EU Free Trade Pact gives auto sector the jitters There is a sense of paranoia in the auto industry about the country's proposed FTA with the EU. The biggest fear is that the import duty on completely built units, now at 60% will end up being at par with the 10% peak import duty on auto components, sources said. If this does happen, it will be music to the ears of luxury carmakers such as Daimler, BMW, and Audi which can, overnight, build a larger customer base in India. At least Rs.10 lakh will be shaved off on the price sticker of a car which would otherwise cost Rs.30 lakh. In India, the overall levy on imported cars works out a little over 100% because of additional taxation beyond the 60% import duty. (*Hindu Business Line dated 17/2/2011*).

30. Govt to move WTO if visa talks with US fail next month -- With the recent visit of US commerce secretary Gary Locke failing to address India's concern on professional visa fee increase and imposition of additional duties on government imports, the country will try for one last time to settle the issue bilaterally next month. Commerce secretary Rahul Khullar will meet US undersecretary of commerce Francisco Sanchez in March to settle the issue, failing which India would approach the WTO, a senior official said. (*Economic Times dated 19/2/2011*).

31. 'Consensus on import duty key to Doha round success' --Zeroing in on an agreeable rate of exchange on import duties among member nations was key to concluding the talks on a global free trade agreement or the Doha round at the WTO. However, after the Davos summit, the sluggish pace of negotiations had finally started moving at a pace not seen in almost past three years, said Keith Rockwell, official spokesperson of WTO at a press meet. Last



month, at the World Economic Forum (WEF) at Davos, leading trading nations agreed to conclude Doha round of talks by July this year. Differences in opinion among WTO member nations on farm subsidies and sectorals, have been the main stumbling blocks in the Doha round, launched in 2001. Under sectorals, negotiating countries have to agree to cut import duties in some sectors at a faster pace than other sectors. (*Business Standard dated 19/2/2011*).

32. Trade pact makes palm oil imports from Malaysia duty-free -- India and Malaysia signed a 'comprehensive economic co-operation agreement' on 18/2 paving the way for a phased elimination of tariffs on a range of commodities, bringing to fruition efforts that began in 2004. However, the CECA goes beyond elimination of tariffs it contains provisions that facilitate investments and even movement of natural persons. Essentially, as a result of the agreement, imports from Malaysia of products such as palm oil, fruits and synthetic textiles will be (eventually) duty-free, and therefore cheaper. India will be able to export products such as mangoes, basmati rice, cotton, trucks and motorcycles, duty-free. (*Hindu Business Line dated 19/2/2011*).

33. US readies patent office for the future -- President Obama, who emphasises American innovation, says modernising the federal patent and trademark office is crucial to "winning the future". So, at a time when a quarter of patent applications come from California, and many of those from Silicon Valley, the patent office is opening its first satellite office in Detroit. (*Financial Express dated 22/2/2011*).

34. India-EU FTA : tough negotiations over healthcare norms -- India may have to abide by a series of international standards and regulatory practices in the healthcare sector, if it agrees to some proposals that are part of the ongoing IndiaEU Free Trade Agreement (FTA) negotiations. For instance, EU negotiators have sought India's commitment to adopting Global Harmonization Task Force (GHTF) norms for medical devices. The move comes at a time when India and other Asian countries are trying to formulate their own harmonised regulatory guidelines for medical devices due to divergent views on some of the GHTF standard. So, too, with International Conference on Harmonization (ICH) guidelines for drug

regulators, as India is trying to align its rules with most of the ICH standards, though not favouring a mere adoption. "In-principle, India is working towards harmonising its standards with that of GHTF. But blind adoption of standards will only benefit global multinational medical device makers, not us," said Rajiv Nath, co-ordinator of the Association of Indian Medical Devices Industry. (*Business Standard dated 21/2/2011*).

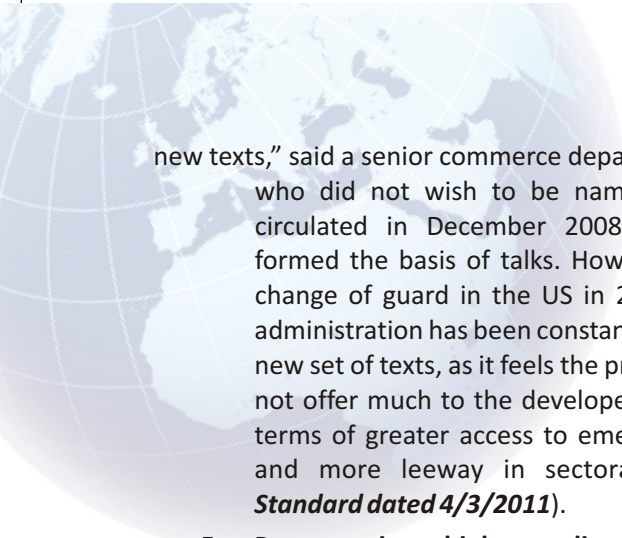
35. Mushrooming of free trade pacts can be detrimental -- The Economic Survey 2010-11 has pointed out that some of India's Free Trade Agreements (FTA) could result in "much more" benefits to the partner countries, while the net gains to India would be "small or negative." The Survey also highlighted that the "policy challenge related to FTAs / CECAs (Comprehensive Economic Cooperation Agreements) should take note of specific concerns of the domestic sector and ensure FTAs do not mushroom." "Instead they (FTAs/CECAs) should lead to higher trade, particularly higher net exports from India," the Survey stressed. (*Hindu Business Line dated 26/2/2011*).

36. Auto industry fears tariff cut on FTA talks -- The auto industry is leaving no stone unturned to express its disdain over the proposed tariff reduction under the India-European Union (EU) free trade agreement (FTA). However, the Ministry of Commerce and Industry is in no mood to relent as it believes that the industry should be ready for reduction in tariffs. The ministry believes it is time the auto industry geared itself for tariff reduction in order to make India a truly international hub for manufacturing. "I have always maintained that an industry cannot become internationally competitive if it forever sits inside a tariff wall of 60-100 per cent, which is the case with the auto industry. Industrial tariffs in India have come down significantly from a level of 100-200 per cent in the 1990s. India can never be an industry leader in auto engineering. This is in the country's best interest or we will miss the boat. And this is irrespective of any trade negotiation with any country," Commerce Secretary Rahul Khullar told Business Standard. Khullar, however, refused to divulge details on the state of negotiations currently underway with EU and the tariff lines offered by India. The Society of Indian Automobile Manufacturers (SIAM) has raised serious concerns with the th

commerce and industry ministry over India's offer to reduce the tariffs on automotive products in its negotiations with EU, complaining it would have an adverse impact on the Indian auto manufacturing sector. "So far, in all other FTAs with Korea, Japan and Asean, there has been some reduction in tariffs on components and not on CBUs (completely built units). We want the status quo to be maintained in the FTA with EU too. We do not want this to be favourable only for the European countries and not the Japanese or the Koreans," said SIAM Director General Vishnu Mathur. (*Business Standard* dated 27/2/2011)

II. March-April, 2011

1. **'India-EU FTA may restrict access to cheap drugs'** Civil society groups on 2/3/11 asked Indian negotiators working on the India-EU FTA to reject EU proposals that may result in restrictive access to affordable medicines. Hundreds of activists and patients groups, who organised a protest rally, alleged the EU pushing for intellectual property provisions in the FTA that exceed what international trade rules require. The most damaging measure to access to affordable medicines is so-called data exclusivity, which would act as a patent and block generic versions from the market, even for drugs that are already off-patent or do not merit a patent to begin with under India's strict patent law. The EU continues to claim falsely that these provisions will not harm access to medicines, the activists stated. Data exclusivity has proved damaging to public health in free trade agreements in other countries, said UN Special Rapporteur on the Right to health, Anand Grover. (*Business Standard* dated 3/3/2011).
2. **Comprehensive economic pact with Asean by year-end** -- India and the bloc of 10 South East Asian countries Asean are close to signing a Comprehensive Economic Partnership Agreement (CEPA), the Commerce and Industry Minister, Mr Anand Sharma, said. The CEPA will expand the ambit of the existing free trade agreement in goods to include services and investments, the key area of interest for India. "We are in an advanced stage of concluding negotiations (for free trade agreement) in services and investments," Mr Sharma told reporters in New Delhi in the presence of trade ministers of Asean. He added that the signing of the agreement is expected by end-2011. Trade Ministers of Asean are in the country to attend the India-Asean Business Fair and Conclave. FICCI is the lead co-ordinator of the event.
3. **India, EU kick off fresh talks on free trade agreement** -- India and the European Union moved closer to sealing an ambitious free trade agreement, with talks between the chief negotiators of the accord kicking off in Brussels, headquarters of the European Union. Sources say after years of discussion (the negotiations were launched in 2007), the broad parameters are finally in sight. John Clancy, spokesperson for the European Commission's trade directorate, told Business Standard this week's talks would focus on "tariffs and services". India and the EU have already agreed to eliminate tariffs on 90 per cent of all tradable goods and the current talks involve a proposal to raise this figure. India has asked the EU to abolish tariffs on 95 per cent of its goods, while the EU wants New Delhi to slash tariffs on 98 per cent of its goods. The auto industry will be in the spotlight this week, since a reduction of tariffs on European cars (which currently face import duties of 110 per cent) is a key demand of the EU. Indian auto makers are opposing the move, claiming it would hurt the domestic industry. However, Clancy made it clear Brussels was going to stand firm on the matter. The EU is also pushing for India to slash tariffs on wine and spirits and dairy products. (*Business Standard* dated 2/3/2011).
4. **Multilateral trade deal may elude WTO, again: Gaps are already visible in the decision to introduce yet another round of negotiating texts for all sectors** -- All the 153 member countries of the World Trade Organization (WTO) have vowed to intensify the talks to achieve a multilateral trade deal by 2011. But, wide gaps are already visible in the decision to introduce yet another round of negotiating texts for all sectors. Even as developing countries have not objected to the idea, they have warned against any shift from the development agenda. The revised drafts are expected to be introduced by the end of April. After that, there could be a full-fledged ministerial round for all members by July, officials involved in the negotiations in the commerce and industry ministry told Business Standard. "As long as the new texts do not open any drift from the developing agenda, India has no objections to the issuance of the



new texts,” said a senior commerce department official who did not wish to be named. The texts circulated in December 2008 have so far formed the basis of talks. However, with the change of guard in the US in 2009, the new administration has been constantly pushing for new set of texts, as it feels the present texts do not offer much to the developed countries in terms of greater access to emerging markets and more leeway in sectorals. (*Business Standard* dated 4/3/2011).

5. Patent expiry to hit bottom lines of drug firms

-- At the end of November, Pfizer stands to lose a \$10-billion-a-year revenue stream when the patent on its blockbuster cholesterol drug Lipitor expires and cheaper generics begin to cut into the company's huge sales. The loss poses a daunting challenge for Pfizer, one shared by nearly every major pharmaceutical company. This year alone, because of patent expirations, the drug industry will lose control over more than 10 mega medicines whose combined annual sales have neared \$50 billion. This is a sobering reversal for an industry that just a few years ago was the world's most profitable business sector, but is now under pressure to reinvent itself and shed its dependence on blockbuster drugs. And it casts a spotlight on the systemic problems drug

companies now face: a drought of big drug breakthroughs and research discoveries; pressure from insurers and the government to hold down prices; regulatory vigilance and government investigations; and thousands of layoffs in research and development. (*NYT News Service in Economic Times* dated 8/3/2011).

6. FTA with ASEAN will not harm agri sector: Sharma

-- Allaying fears in some quarters that the India-ASEAN Free Trade Agreement (FTA) will harm domestic agriculture, Commerce and Industry Minister informed the Rajya Sabha that majority of agriculture items had been protected by placing them in exclusion of the negative list where no tariff concession were available to ASEAN countries. Replying to questions during Question Hour in the Upper House, Mr. Sharma said items on the negative list included vegetables, fruits/nuts, spices, cereals/grains, oilseeds/oil, natural rubber and tobacco. “The agreement also provides for a safeguard mechanism to address sudden surge in imports on account of tariff concessions. When such a surge is likely to hurt the domestic market, safeguard measures including imposition

Forthcoming Events

S.No.	Topic	Venue	Date
1	Stakeholder Consultations on Sectoral Negotiations	Pune	20 May 2011
2	Stakeholder Consultations on Sectoral Negotiations	Mumbai	27 May 2011
3	Stakeholder Consultations on Sectoral Negotiations	Ahmedabad	28 May 2011
4	Training programme on International Trade for Foreign Trade Development Officers	IIFT	23 May - 25
5	Training programme on International Trade for Foreign Trade Development Officers	IIFT	6-8 June
6	Seminar on Prospects of Indian Agricultural Exports in 2025: Opportunities, Challenges and Roadmap	IIFT	29 June -01 July

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