

PARLIAMENT OF INDIA
RAJYA SABHA

92

**DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON COMMERCE**

NINETY SECOND REPORT

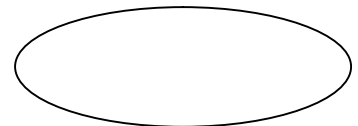
ON

**FOREIGN TRADE (DEVELOPMENT &
REGULATION) AMENDMENT BILL, 2009**

(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON THE 26TH MARCH, 2010)
(FORWARDED TO HON'BLE SPEAKER, LOK SABHA ON THE 26TH MARCH, 2010)

**RAJYA SABHA SECRETARIAT
NEW DELHI**

MARCH, 2010/ CHAITRA, 1931 (SAKA)



PARLIAMENT OF INDIA

RAJYA SABHA

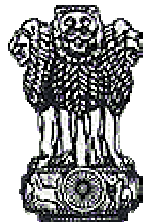
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DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON
COMMERCE

(Constituted on the 31st August, 2009)

1. Shri Shanta Kumar — *Chairman*

RAJYA SABHA

2. Shri V. Hanumantha Rao
3. Dr. K. Keshava Rao
4. Shri Arun Jaitley
5. *Shri A. Vijayaraghavan
6. Shri Jai Prakash
7. #Shri Prem Chand Gupta
8. Shri Rahul Bajaj
9. @Shri Mohammed Adeb
10. **Prof. P. J. Kurien

LOK SABHA

11. Shri G. S. Basavaraj
12. Shri K. P. Dhanapalan
13. Shri Shivarama Gouda
14. Shri Dilip Singh Judev
15. Shri Nalin Kumar Kateel
16. ***Sk. Saidul Haque
17. Shri O. S. Manian
18. Shri Somen Mitra
19. Shri Deoraj Singh Patel
20. Shri Sanjay Dina Patil
21. Shri Jagdish Singh Rana
22. Shri G. Sukender Reddy
23. Shri M. Venugopala Reddy
24. Shri Vishnu Deo Sai
25. Shri M. I. Shanavas
26. Shri Balkrishna K. Shukla
27. Shri Kalikesh Narayan Singh Deo
28. Shri Rajaiah Siricilla
29. Shri K. Sudhakaran
30. Shri Thirumaavalavan Thol
31. \$Shri Yashvir Singh

***Nominated w.e.f 12th January, 2010 vice Shri Shakti Mohan Malik nominated to Committee on Urban Development

*Nominated w.e.f 23rd December, 2009 vice Shri Mohammed Amin nominated to Committee on Coal and Steel.

Nominated w.e.f 17th September, 2009

@ Nominated w.e.f. 17th September, 2009

** Nominated w.e.f 31st December, 2009

\$ Nominated w.e.f 14th October, 2009

Secretariat

Shri P. Gopalakrishnan, AS & FA

Shri Surinder Kumar Watts, Joint Secretary

Smt. Subhashree Panigrahi, Joint Director

Smt. Indira Chaturvedi Vaidya, Assistant Director

REPORT

1. I, the Chairman of the Department Related Parliamentary Standing Committee on Commerce, having been authorised by the Committee to present the Report on its behalf, do hereby present this Ninety Second Report of the Committee on the Foreign Trade (Development and Regulation) Amendment Bill, 2009 (Appendix-I).
2. In pursuance of the rules relating to Department Related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Foreign Trade (Development and Regulation) Amendment Bill, 2009**, as introduced in the Rajya Sabha, on the 25th November, 2009, and pending in that House, to the Committee for examination and report within three months, i.e. by 1st March, 2010. However, an extension of time for a further period of one month, i.e. upto 31st March, 2010, was granted by Hon^{ble} Chairman, Rajya Sabha, for presentation of the aforesaid report by the Committee.
3. The Committee, at its sitting held on the 12th January, 2010 decided that a Press Release, inviting views/suggestions from various individuals, organisations, etc., interested in or having knowledge of the subject matter of the Bill, may be issued. Accordingly, a Press Release was issued on the 12th January, 2010 (Appendix-II).
4. Nineteen memoranda, containing the views, comments and suggestions on various provisions of the Bill, were received by the Committee from different individuals, organisations and associations (Appendix II).
5. The Committee, at its sitting held on the 12th January 2010, considered the information on the subject received from the Department of Commerce and also heard a presentation by the Secretary and other officials of that Department.

* Rajya Sabha Parliamentary Bulletin Part-II 44503 dated the 1st December, 2009

** Published in the Gazette of India Extraordinary Part-II dated the 25th November, 2009.

6. At its sittings held on 12th and 27th January and 8th, 9th, 16th and 23rd February, 2010, the Committee heard the views of the representatives of certain individuals / organisations / associations like the Confederation of Indian Industry (CII); the Institute of International Trade and Security; the PHD Chamber of Commerce and Industry (PHDCCI); the Federation of Indian Micro & Small & Medium Enterprises (FISME); the Federation of Indian Exports Organisation (FIEO); the PRS Legislative Research; the Federation of Indian Chambers of Commerce and Industry (FICCI); the National Association of Software and Services Companies (NASSCOM); and the Students of Jawaharlal Nehru University (JNU) and Delhi School of Economics (DSE), on various provisions of the Bill. The Committee also heard the views of the Secretary, Department of Revenue, Ministry of Finance, and the Secretary, Department of Information Technology, Ministry of Communications and Information Technology.

7. The Committee, at its sittings held on the 8th March, 2010, took up clause-by-clause consideration of the Bill.

8. The Committee considered the draft Report at its sitting held on 16th March, 2010 and adopted the same, with some changes.

9. The main changes suggested by the Committee in the Bill are set out in the succeeding paragraphs:

Clause 2

Sub Clause (b) of Clause 2 seeks to insert in Section 2 (g) of the Act, the words ~~certificate, scrip or any other instrument bestowing financial or fiscal benefits~~, after the word ~~permission~~.

Section 2 (g) of the FT (D&R) Act 1992, which is presently in force, reads as under:

~~licence~~ means a licence to import or export and includes a customs clearance permit and any other permission issued or granted under this Act.

The Committee was informed that the need to include ~~certificate, scrip or any other instrument bestowing financial or fiscal benefits~~ in the above definition is primarily to enable the DGFT to take penal action under section 9 of the Foreign Trade (Development & Regulation)

Act, in case of violation of provisions of the Act, if any, by the beneficiaries of the certificate/scrip/any other instrument, bestowing financial or fiscal benefits. In case the definition is separate, the words certificate, scrips or any other instrument bestowing financial or fiscal benefits would have to be added in all the sections, wherever the word licence appears, thereby leading to amendments in other sections of the Act as well. The Committee was of the view that licence and permission are in the nature of restrictions and it will not be correct to club financial and fiscal benefits with licence just for the sake of avoiding a few minor amendments.

The Committee recommends that it is better to have the various fiscal benefits / instruments like DEPB / FMS / FPS scrips, etc. separately defined in the Act itself.

Clause 2 (l) of the Bill, defines the words "specified goods or services or technology" as under: -

"specified goods or services or technology" means the goods or services or technology, the export, import, transfer, re-transfer, transit and trans-shipment of which is prohibited or restricted or in respect of which conditions have been imposed on grounds of their being pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, or to the furtherance of its foreign policy or its international obligations under any bilateral, multilateral or international treaty, covenant, convention or arrangement relating to weapons of mass destruction or their means of delivery to which India is a party or its agreement with a foreign country under the foreign trade policy formulated and notified under Section 5 of the Act;+

In order to make the definition of "specified goods or services or technology" clear and unambiguous, the Committee recommends that **in place of the words "or in respect of which conditions have been" be replaced with the words "because of imposition of conditions on the grounds."**

Clause 3

As per the present Foreign Trade (Development & Regulation) Act, 1992 "import" and "export" mean respectively, bringing into, or taking out of, India "**any goods**" by land, sea or air. However "services" are now proposed to be included for grant of benefits under the Foreign

Trade Policy. Sub Clause (a) of Clause 2 seeks to include %services+ and %technology+ in Section 2 (e) of the Act.

The Committee was informed that the share of service exports in India's total exports is increasing consistently. For instance, the IT sector accounts for nearly six per cent of the GDP of the country and the current year's export is expected to be just below 50 billion dollars. It gives direct employment to 2.2 million and indirect employment to 8 million people. Exports by the industry included a complete range of IT services, from absolutely low end to extremely high end Research & Development, system integration, etc. The proposed amendments should be viewed in this perspective and the Government should not do anything which will create an impediment to the growth of this sector.

The Committee noted that while it understood the intent of bringing "Services" and "Technology" within the ambit of the Act, the Government should take adequate precautions to ensure that the interpretation of various provisions of the Bill do not adversely affect the growth of various service sectors, particularly the IT Sector, in view of its importance in the national economy. Keeping this in view, the Committee recommends that after Sub Section (2) of Section 3 of the Principal Act, the following proviso be inserted:-

"Provided that Sub Section (2) of Section 3 of this Act shall be applicable, in case of import or export of services or technology, only when the service or technology provider (importer / exporter) is taking benefits under the Foreign Trade Policy or is dealing with specified services or specified technologies".

Clause 3 (b) seeks to insert the following Sub Section after Sub Section 3 of the Act, %Notwithstanding anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods or provision for services or technology, nor any goods or provision for services or technology shall be prohibited for import or export except, as may be required under this Act or rules or orders made thereunder: -

Provided that the Central Government may, having regard to the foreign trade policy, by order, exempt any service or class of services from the purview of this sub-section.+

The Committee recommends that the above sub section proposed to be inserted vide sub clause (b) of clause (3), be renumbered as “sub section (4) of the Act”.

The Committee was informed that this amendment has been proposed only to ensure that all the restrictions on imports and exports of goods, services and technology, notified by various Ministries and Departments are available at one place, to reduce transaction costs and avoid delay in clearance of consignments, keeping in view India's commitments to WTO, and will not amount to any waiver of any statutory requirement under any other law, as applicable. This has been made further explicit by insertion of a new Section 18A, which states that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

The Committee noted that there is an apparent contradiction between the Sub Section proposed to be inserted after Sub Section (3) and the proposed Section 18A. **To avoid this contradiction, the Committee recommends that the words “Notwithstanding anything contained in any other law” in clause 3 (b) be substituted by the words “Without prejudice to any other law”.**

The Committee also noted that there are already various laws and regulatory agencies under these laws, to regulate the services sector. Further, trade in services is entirely different from trade in goods. It is not possible to exactly classify ~~services~~ unlike ~~goods~~ which are classified up to the 8 digit level under ITC (HS) code. **The Committee, therefore, recommends that the words “or provision for services or technology” occurring twice in clause 3 (b) and the proviso thereto be deleted.**

Since the present Bill intends to include ~~Services and Technology~~ in the ambit of Sub Section (2) of Section (3), subject to the proviso mentioned above, **the Committee felt that the Department of Commerce should examine whether it is necessary to include the words “Services and Technology” in sub section (3) of the Act also, as the powers in respect of sub section (3) flow from sub section (2) of the said section.**

Clause 4

This Clause of the Bill seeks to substitute the words ~~“export and import policy”~~ by the words ~~“foreign trade policy”~~ in Section 5 of the Act.

The Committee recommends that the words “Export and import policy” in the marginal heading of Section 5 may also be modified as “Foreign Trade Policy”.

Clause 6

This Clause seeks to insert the following proviso in Section 7 of the Act: -

~~“Provided that in case of import and export of services, the Importer-exporter Code Number shall be necessary only when the service provider is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies.”~~

The Committee noted that that the proposed proviso to Section 7 does not cover the import of technology, which may create hurdles in technology upgradation/import, especially in the service sector. **The Committee recommends that technology be also included in this proviso.** The revised proviso to Section 7 would read as follows:

~~“Provided that in case of import or export of services~~ **or technology**, the Importer-exporter Code Number shall be necessary only when the service **or technology** provider (importer / exporter) is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies~~.”~~

Clause 7

The Committee recommends that in the proposed sub-section 1(a) of Section 8 of the Principal Act, after the words ‘foreign trade policy’”, the words ‘any other law’ be inserted.

Sub Clause (1) (b) of Clause 7 remove proposes to the word ~~“gravely”~~ from Section 8 of the Principal Act, which governs the action against unfair trade practices. Some of the industry associations, which deposed before the Committee, had expressed apprehension against the deletion of the word ~~“gravely”~~

The Committee was informed that adjectives like ~~grave~~ are to be avoided in legislative drafting and it would be better to have drafting without adjectives, because the adjectives give wide latitude of discretion, sometimes going on the verge of arbitrariness. If there is something which is prejudicial to the trade relations, that must be taken cognizance of and stopped. The representatives of the Department of Commerce assured the Committee that since decisions on such matters are taken at the highest level in the DGFT, there is no scope for any fear of misuse of these provisions. **The Committee hopes that the Department would ensure transparent and objective examination in such cases.**

Clause 9

Clause 9 seeks to insert a new Chapter IIIA, with heading ~~Quantitative Restrictions~~, after Section 9 of the Act, pertaining to Power of the Central Government to impose Quantitative Restrictions.

The Committee was informed that the proposed amendment seeks to make a clear provision in the Foreign Trade (Development and Regulation) Act for allowing Quantitative Restrictions (QRs) to be imposed to protect domestic industry from serious injury in case of a surge in imports. While such measures are available for all the WTO member countries, yet safeguard measures in the form of Quantitative Restrictions are not provided for under any Indian law. This is in accordance with the provision to incorporate safeguard measures in the form of Quantitative Restrictions, as provided in Article XIX of GATT and the WTO Agreement on Safeguards.

The Committee noted that the proposed new Clause relating to Quantitative Restrictions are to be made applicable only in respect of ~~goods~~. **To make this amply clear in the Bill, the Committee recommends that the words “article/articles”, wherever appearing in this Clause, be substituted by the word “goods”.**

The Committee also feels that an effective mechanism should be put in place for consultation with affected or likely to be affected parties, before imposing the Quantitative Restrictions. The Committee further recommends that it should be ensured

that the Rules framed under this Section be displayed on the website of the Department and be given wide publicity amongst general public / stake holders.

The Committee noted that safeguard duties come under the purview of the Department of Revenue, while the Quantitative Restrictions will be imposed by the Department of Commerce. Some of the industry associations had expressed apprehensions that Quantitative Restrictions imposed could sometimes be detrimental to the interests of small players in the industry, as well as the small scale industries. The Committee had also noted during the course of oral evidence that the Department of Commerce had not properly consulted the other affected Departments, like the Department of Information Technology; Department of Telecommunications; Ministry of Micro, Small and Medium Enterprises, etc., while finalising the Bill. **In order to ensure that there is proper coordination between various Departments of the Government and to protect the interests of small scale and micro industries, the Committee recommends that a High Powered Committee, headed by the Secretary or the Additional Secretary in the Department of Commerce be constituted, with very senior representatives from the Department of Revenue, Ministry of Micro, Small and Medium Enterprises, Department of Industrial Policy & Promotion, and other Ministries dealing with the major items of import, to periodically review the imposition of Quantitative Restrictions. Appropriate provision for the same may be made in the Rules.**

The Committee noted that in the proposed Section 9A, the definition of ~~serious injury~~ relates to the domestic industry only. **The Committee recommends that the Department of Commerce should ensure that there are appropriate legal safeguards for imposing Quantitative Restrictions in respect of agricultural goods also. The Department should also examine the feasibility of imposing restrictive mechanisms like Quantitative Restrictions, to restrict the import of goods which are hazardous to human health and environment.**

Clause 10

This Clause, *inter-alia*, seeks to extend the power of seizure to technology and services, which are being brought under the Foreign Trade (Development & Regulation) Act.

During the course of oral evidence, some members of industry associations had expressed the apprehensions that amendment to Section 10 could become an instrument of regulatory harassment, especially for the IT industry, as it provides a broad definition of what can be seized. The Committee is of the view that the power of seizure should be applicable only when a service or technology provider is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies.

For this purpose, the Committee recommends that a proviso may be added as follows:

“Provided that sub section (1) (b) of Section 10 shall be applicable, in case of import or export of services or technology, only when the service or technology provider (importer / exporter) is taking benefits under the Foreign Trade Policy, or is dealing with specified services or specified technologies.”

The Committee further recommends that the search and seizure should be permitted only with the approval of a very senior officer of the Directorate General of Foreign Trade and suitable provision to ensure this be incorporated in the Rules.

Clause 11

The Committee notes that by Clause 11 (a), the words ~~“export and import policy”~~ in Sub Section (1) of Section 11, are proposed to be substituted by the words ~~“Foreign Trade Policy”~~. However, the same words have been left out in the Heading of Section 11 and in Sub Section (5) of Section 11, which needs to be corrected.

The Committee recommends that in the Heading of Section 11 and also in sub section 5 of Section 11 of the Principal Act, the words “export and import policy” be substituted by the words “Foreign Trade Policy”.

Clause 20

This clause intends to bring amendments in Sub Clauses (c), (f), (h) and (i) of Sub Section 2 of Section 19 of the Act, to include ~~%services+~~ and ~~%technology+~~, alongwith ~~%goods+~~, while in clause 20 (b), the Bill proposes to insert a new clause (ea) in sub section 2 of Section 19 of the Act.

The Committee, in view of its recommendation made in the context of Quantitative Restrictions (Clause 9), recommends that in sub clause (b) of Clause 20, the word “articles” appearing twice in the proposed sub clause (ea) be substituted by the word “goods”.

Clause 1, Enacting Formula and Title

The Committee recommends that in Clause 1, Enacting Formula and the Title of the Bill, changes which were of consequential or drafting nature should be made, namely, ‘2009’ and ‘sixtieth’ be substituted by ‘2010’ and ‘sixty-first’, respectively. These amendments were necessitated due to passage of time.

10. GENERAL RECOMMENDATIONS

Heading of Chapter II of the Act presently reads, ~~%Power of the Central Government to make Order and announce Export and Import Policy+~~. Since amendments have already been introduced *vide* Clauses 5 and 6 of the Bill to substitute ~~%export and import+~~ by the words ~~%foreign trade policy+~~, **the Committee recommends that for having uniformity in the text, the heading of Chapter II should also be changed, which shall read as “Power of the Central Government to make Order and announce Foreign Trade Policy.”**

11. The Committee recommends that the Bill, as reported by it, be passed.

NEW DELHI
MARCH 16, 2010

SHANTA KUMAR
Chairman
*Department Related Parliamentary Standing
Committee on Commerce*

Bill No. XLVII of 2009

**THE FOREIGN TRADE (DEVELOPMENT & REGULATION)
AMENDMENT BILL, 2009**

A

BILL

Further to amend the Foreign Trade (Development and Regulation) Act, 1992.

Be it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:-

1. (1) This Act may be called the Foreign Trade (Development and Regulation) Amendment Act, 2009. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of Section 2 2. In section 2 of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as the principal Act), - 22 of 1992.

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

`(e) "import" and "export" means,-

(I) in relation to goods, bringing into, or taking out of, India any goods by land, sea or air;

(II) in relation to services or technology,-

(i) supplying, services or technology-

(A) from the territory of another country into the territory of India;

(B) in the territory of another country to an Indian service consumer;

(C) by a service supplier of another country, through commercial presence in India;

(D) by a service supplier of another country, through presence of their natural persons in India;

(ii) supplying, services or technology-

(A) from India into the territory of any other country;

(B) in India to the service consumer of any other country;

(C) by a service supplier of India, through commercial presence in the territory of any other country;

(D) by a service supplier of India, through presence of Indian natural persons in the territory of any other country;

Provided that "import" and "export" in relation to the goods, services and technology regarding Special Economic Zone or between two Special Economic Zones shall be governed in accordance with the provisions contained in the Special Economic Zones Act, 2005';

28 of 2005.

(b) in clause (g), after the word "permission", the words "certificate, scrip or any other instrument bestowing financial or fiscal benefits" shall be inserted;

(c) after clause (i), the following clauses shall be inserted, namely:-

(j) "services" means service of any description which is made available to potential users and includes all the tradable services specified under the General Agreement on Trade in Services entered into amongst India and other countries who are party to the said Agreement:

Provided that, this definition shall not apply to the domain of taxation;

(k) "service supplier" means any person who supplies a service and who intends to take benefit under the foreign trade policy;

(l) "specified goods or services or technology" means the goods or services or technology, the export, import, transfer, re-transfer, transit and trans-shipment of which is prohibited or restricted or in respect of which conditions have been imposed on grounds of their being pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, or to the furtherance of its foreign policy or its international obligations under any bilateral, multilateral or international treaty, covenant, convention or arrangement relating to weapons of mass destruction or their means of delivery to which India is a party or its agreement with a foreign country under the foreign trade policy formulated and notified under section 5 of the Act;

(m) "technology" means any information (including information embodied in software), other than information in the public domain, that is capable of being used in-

(i) the development, production or use of any goods or software;

(ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of service of any kind.

Explanation- For the purpose of this clause-

(a) when technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used in the development, production or use of such technology or goods;

21 of 2005

(b) "public domain" shall have the same meaning as assigned to it in clause (i) of section 4 of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.'

3. In section 3 of the principal Act,-

Amendment of section 3.

(a) in sub-section (2), for the words "import or export of goods", the words "import or export of goods or services or technology" shall be substituted;

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

"Notwithstanding anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods or provision for services or technology, nor any goods or provision for services or technology shall be prohibited for import or export except, as may be required under this Act or rules or orders made thereunder:

Provided that the Central Government may, having regard to the foreign trade policy by order, exempt any service or class of services from the purview of this sub-section."

4. In section 5 of the principal Act-

Amendment of section 5.

(a) for the words "export and import policy", the words "foreign trade policy" shall be substituted.

(b) The following proviso shall be inserted, namely:-

"Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adoptions as may be specified by it by notification in the Official Gazette."

5. In section 6 of the principal Act, in sub-section (2), for the words "export and import policy", the words "foreign trade policy" shall be substituted.

Amendment of section 6.

6. In section 7 of the principal Act, the following proviso shall be inserted, namely:-

Amendment of section 7.

"Provided that in case of import and export of services, the Importer-exporter Code Number shall be necessary only when the service provider is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies."

Amendment of section 8.

7. In section 8 of the principal Act,-

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

"(1) Where-

(a) any person has contravened any of the provisions of this Act or any rules or orders made thereunder or the foreign trade policy relating to Central excise or customs or foreign exchange or has committed any other economic offence under any other law for the time being in force as may be specified by the Central Government by notification in the Official Gazette; or

(b) the Director General or any other officer authorized by him has reason to believe that any person has made an export or import in a manner prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of, or services or technology provided from, the country; or

(c) any person who imports or exports specified goods or services or technology, in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy.

The Director General or any other officer authorized by him may call for the record or any other information from that person and may, after giving to that person a notice in writing informing him of the grounds on which it is proposed to suspend or cancel the Importer-exporter Code Number and after giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires, of being heard, suspend for a period, as may be specified in the other, or cancel the Importer-exporter Code Number granted to that person";

(B) in sub-section (2), for the words "import or export of any goods", the words "import or export of any goods or services or technology" shall be substituted.

Amendment of section 9

8. In section 9 of the principal Act, in sub-section (2), for the words "class or classes of goods", the words "class or classes of goods or services or technology" shall be substituted.

Insertion of

9. After section 9 of the principal Act, the following shall be inserted,

new section namely:-
9A

CHAPTER IIIA
Quantitative Restrictions

Power of Central Government to impose quantitative restrictions. 9A.(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, impose such quantitative restrictions on the import of such articles as it may deem fit:

Provided that no such quantitative restrictions shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent or where that article originates from more than one developing countries, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine per cent of the total imports of that article into India.

(2) The quantitative restrictions imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the quantitative restrictions should continue to be imposed to prevent such injury or threat and to facilitate the adjustments, it may extend the said period beyond four years:

Provided further that in no case the quantitative restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.

(3) The Central Government may, by rules provide for the manner in which articles, the import of which shall be subject to quantitative restrictions under this section, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined.

(4) For the purposes of this section-

(a) "developing country" means a country notified by the Central Government in the Official Gazette, in this regard;

(b) "domestic industry" means the producers-

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like articles or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury;'

10. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:-

Amendment of section 10.

"(1) The Central Government may, by notification in the Official Gazette, authorize any person for the purposes of exercising such powers with respect to,-

(a) entering such premises where the goods are kept, stored or processed, manufactured, traded or supplied or received for the purposes of import or export and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of goods;

(b) entering such premises from which the services or technology are being provided, supplied, received, consumed or utilized and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of services and technology,

Subject to such requirements and conditions, as may be prescribed.”

11. In section 11 of the principal Act, -

Amendment of section 11.

(a) in sub-section (1), for the words “export and import policy”, the words “foreign trade policy” shall be substituted;

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

“(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more.

(2A) Where any person signs or uses, or causes to be made, signed or used, any declaration, statement or document submitted to the Director General or any officer authorized by him under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tampered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or not more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.”;

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

“(4) A penalty imposed under this Act may, if it is not paid by any person, be recovered by any one or more of the following modes, namely:-

(a) the Director General may deduct or require any officer subordinate to him to deduct the amount payable under this Act from any money owing to such person which may be under the control of such officer; or

(b) the Director General may require any officer of customs to deduct the amount payable under this Act from any money owing to such person which may be under the control of such officer of customs, as if the said amount is payable under the Customs Act, 1962; or

(c) the Director General may require the Assistant Commissioner of Customs or Deputy Commissioner of Customs or any other officer of Customs to recover the amount so payable by detaining or selling any goods (including the goods connected with services or technology) belonging to such person which are under the control of the Assistant Commissioner of Customs or Deputy Commissioner of Customs or any other officer of Customs, as if the said amount is payable under the Customs Act, 1962; or

(d) If the amount cannot be recovered from such person in the manner provided in clauses (a), (b) and (c)-

(i) the Director General or any officer authorized by him may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue; or

(ii) the Director General or any officer authorized by him (including an officer of Customs who shall then exercise his powers under the Customs Act, 1962) and in accordance with the rules made in this behalf, detain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid, as if the said amount is payable under the Customs Act, 1962; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and costs including cost of sale remaining unpaid and shall render the surplus, if any to such person.

(4A) Where the terms of any bond or other instrument executed under this Act or any rules made thereunder provide that any amount due under

such instrument may be recovered in the manner laid down in sub-section (4), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(4B) Without prejudice to the provisions contained in this section, the Importer-exporter Code Number of any person who fails to pay any penalty imposed under this Act, may be suspended by the Adjudicating Authority till the penalty is paid or recovered, as the case may be."

(d) in sub-section (5), for the words "the goods", the words and brackets "the goods (including the goods connected with services or technology)" shall be substituted;

(e) in sub-section (6), for the words "the goods", the words and brackets "the goods (including the goods connected with services or technology)" shall be substituted.

12. After section 11 of the principal Act, the following sections shall be inserted namely:-

Insertion of new sections 11A and 11B.

"11A. All sums realized by way of penalties under this Act shall be credited to the Consolidated Fund of India

Crediting sums realized by way of penalties in Consolidated Fund of India.

1 of 1944.

11B Settlement of customs duty and interest thereon as ordered by the Settlement Commission as constituted under section 32 of the Central Excise Act, 1944, shall be deemed to be a settlement under this Act."

Empowering Settlement Commission for regularization of E.O. default

13. In section 14 of the principal Act, for the words "goods" at both the places where it occurs, the words and brackets "the goods (including the goods connected with services or technology)" shall be substituted.

Amendment of section 14.

14. After Chapter IV, following Chapter shall be inserted, namely:-

Insertion of a new Chapter IVA.

CHAPTER IVA

Controls on Export of Specified Goods, Services and Technology

21 of 2005

14A. (1) In regard to controls on export of specified goods, services and technology referred to in this Chapter, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 shall apply to exports, transfers, re-transfers, brought in transit, trans-shipment of, and brokering in specified goods, technology or services.

Controls on export of specified goods, services and technology.

21 of 2005.

(2) All terms, expressions or provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 shall apply to the specified goods, services or technology with such exceptions, modifications and adaptations as may be specified by the Central Government by notification in the Official Gazette.

(3) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Chapter-

(a) shall not apply to any goods, services or technologies, or

(b) shall apply to any goods, services or technologies with such exceptions, modifications and adaptations as may be specified in the notification.

Transfer controls.

14B. (1) The Central Government may, by notification in the Official Gazette, make rules in conformity with the provisions of the Weapons of Mass Destruction and their Delivery System (Prohibition of Unlawful Activities) Act, 2005 for, or, in connection with, the imposition of controls in relation to transfer of specified goods, services or technology.

21 of 2005.

(2) No goods, services or technology notified under this Chapter shall be exported, transferred, re-transferred, brought in transit or transshipped except in accordance with the provisions of this Act, the Weapons of Mass

21 of 2005.

	Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 or any other relevant Act.	
Catch-all controls	14C No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.	
Suspension of cancellation of a licence.	14D. The Director General or an officer authorized by him may, by order, suspend or cancel a licence to import or export or specified goods or services or technology without giving the holder of the licence a reasonable opportunity of being heard but such person shall be given a reasonable opportunity of being heard within six months of such order and thereupon the Director General or the officer so authorized may, if necessary, by order in writing, confirm, modify or revoke such order.	
Offences and penalties.	14E. (1) In case of a contravention relating to specified goods, services or technologies, the penalty shall be in accordance with the provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.	21 of 2005.
	(2) Where any person contravenes or attempts to contravene or abets, any of the provision(s) of this Chapter in relation to import or export of any specified goods or services or technology, he shall, without prejudice to any penalty which may be imposed on him, be punishable with imprisonment for a term stipulated in the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.	21 of 2005.
	(3) No court shall take cognizance of any offence punishable under this Chapter without the previous sanction of the Central Government or any officer authorized in this behalf by the Central Government by general or special order."	
Amendment of section 15.	15. In the principal Act, in the title of CHAPTER V, for the words "REVISION", the word "REVIEW" shall be substituted.	
Amendment of title of Chapter V	16. In section 15 of the principal Act, in sub-section (2) in the proviso, for the words "goods", the words and brackets "the goods (including the goods connected with services or technology)" shall be substituted.	
Substitution of new section for section 16.	17. For section 16 of the principal Act, the following shall be substituted, namely:-	
Review.	16. "The Central Government, in the case of any decision or order made by the Director General, or the Director General in the case of any decision or order made by any officer subordinate to him, may on its or his own motion or otherwise, call for and examine the records of any proceeding, for the purpose of satisfying itself or himself, as the case may be, as to the correctness, legality or propriety of such decision or order and make such orders thereon as may be deemed fit: Provided that no decision or order shall be varied under this section so as to prejudicially affect any person unless such person- (a) has, within a period of two years from the date of such decision or order, received a notice to show cause why such decision or order shall not be varied; and (b) has been given a reasonable opportunity of making representation and, if he so desires, of being heard in his defence."	
	18. In section 17 of the principal Act, for the word "Revision" wherever it occurs, the word "Review" shall be substituted.	Amendment of section 17.
	19. After section 18 of the principal Act, the following shall be inserted, namely:-	Insertion of new section 18A.
	"18A. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."	Application of other laws not barred.
	20. In section 19 of the principal Act, in sub-section (2),-	Amendment of

(a) in clauses (c), (f), (h) and (i), for the words "goods" wherever it occurs, the words and brackets "the goods (including the goods connected with services or technology)" shall respectively be substituted;

(b) after clause (e), the following clause shall be inserted, namely:-

"(ea) the manner in which articles, the import of which shall be subject to quantitative restriction, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined under sub-section (3) of section 9A;"

STATEMENT OF OBJECTS AND REASONS

The Foreign Trade (Development and Regulation) Act, 1992 was enacted to provide for the development and regulation of foreign trade by facilitating imports into and augmenting exports from India and for matters connected therewith or incidental thereto.

2. Since the enactment of the Foreign Trade (Development and Regulation) Act, 1992, certain requirements have arisen necessitating amendments to the said Act. These include providing a statutory provision for safeguard measures enabling imposition of Quantitative Restrictions (QRs); bringing in tighter export or trade control in the case of dual-use goods and related technologies and providing enabling provisions for establishing controls as in the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005; bringing ~~%~~technology+and %~~services~~+, including financial services, within the ambit of the Act for the purpose of administering incentive schemes and other provisions of the Foreign Trade Policy; dispensing with the requirement of obtaining any licence or permit for import or export except as may be provided under the Act; enabling swift and exemplary action in trade dispute matters; further rationalization as well as improvement of the system of levying and realizing fiscal penalties; empowering Customs and Central Excise Settlement Commission for settlement of customs and excise duty and interest dues; broadening the scope of word ~~%~~licence+ defined in the Act, providing a provision for review of all decisions of subordinate officers by Director General of Foreign Trade.

3. The proposed amendments would enable the Government to impose quantitative restrictions as a safeguard measure to provide the domestic industry a level playing field, in case a surge in imports leads to, or threatens to seriously injure domestic industry; rationalize the system of penalty leviable under the Act making it more equitable; enable stricter regulation of export in technology, especially relating to dual-use items, which is necessary to instill a sense of confidence among the technology providers and to ensure that trade in sensitive technologies including dual-use technologies is appropriately regulated; ensure conformity with

the provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. The provision of notifying all restrictions on imports and exports through the Foreign Trade Policy would ensure that all such information is available at one place therefore ensuring conformity with India's commitments to WTO. The power of review would ensure transparency and public accountability in the system. The amendments would also ensure that trade in sensitive technologies is regulated, additional modes for recovery of penalty are available and India's growing trade in service is facilitated.

4. The Bill seeks to achieve these objectives.

ANAND SHARMA

New Delhi
The 5th September, 2009

FINANCIAL MEMORANDUM

The proposed amendments to the Foreign Trade (Development and Regulation) Act, 1992 are regulatory in nature and do not have any financial implications. The additional work relating to imposition of quantitative restrictions as a safeguard measure will be managed by the Directorate General of Foreign Trade within its existing strength and regular budget.

2. The provisions of the Bill do not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill seeks to insert a new Chapter IIIA relating to imposition of quantitative restrictions to the Foreign Trade (Development and Regulation) Act, 1992. The new section 9A empowers the Central Government to impose quantitative restrictions on the import of increase quantities of articles into India. The said section also empowers the Central Government by rules to provide the manner in which articles, the import of which shall be subject to quantitative restrictions.

2. Clause 10 of the Bill seeks to amend sub-section (1) of section 10 to empower the Central Government, by notification in the Official Gazette, authorize any person for the purpose of exercising such powers with respect to-

- a) entering such premises where the goods are kept, stored or processed, manufactured, traded or supplied or received for the purposes of import or export and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of goods;
- b) entering such premises from which the services or technology are being provided, supplied, received, consumed or utilized and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of services and technology; subject to such requirements and conditions, as may be prescribed.

3. Clause 14 of the Bill seeks to insert a new Chapter IVA relating to application of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. The new section 14A empowers the Central Government to specify by notification the application of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 to the specified goods, services or technology with such exceptions, modifications and adaptations. The new section 14B empowers the Central Government to make rules in conformity with the Weapons of Mass Destruction and their Delivery Systems (Prohibition or Unlawful Activities) Act, 2005 for, or, in connection with, the imposition of controls in relation to transfer of specified goods, services or technology.

4. The matters in respect of which notifications may be issued or rules may be made are essentially matters of administrative detail and procedure and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

APPENDICES

PRESS COMMUNIQUE

**THE STANDING COMMITTEE ON COMMERCE INVITES SUGGESTIONS
ON
FOREIGN TRADE (DEVELOPMENT AND REGULATION) AMENDMENT BILL, 2009**

The Foreign Trade (Development and Regulation) Amendment Bill, 2009, introduced in the Rajya Sabha on the 25th November, 2009, has been referred to the Department Related Parliamentary Standing Committee on Commerce, with Shri Shanta Kumar, Member, Rajya Sabha, as its Chairman, for examination and report.

2. The Bill seeks to amend the Foreign Trade (Development and Regulation) Act, 1992 with a view, *interalia*, to:-

- i) Provide a statutory provision for safeguard measures enabling imposition of Quantitative Restrictions (QRs);
- ii) Bring in tighter export or trade control in the case of dual-use goods and related technologies and to provide enabling provisions for establishing controls as in the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005;
- iii) Bring ~~%echnology+~~and ~~%e services+~~, including financial services, within the ambit of the Act for the purpose of administering incentive schemes and other provision of the Foreign Trade Policy;
- iv) Dispense with the requirement of obtaining any licence or permit for import or export except as may be provided under the Act;
- v) Enable swift and exemplary action in trade dispute matters;
- vi) Further rationalise as well as improve the system of levying and realising fiscal penalties;
- vii) Empower Customs and Central Excise Settlement Commission for settlement of customs and excise duty and interest dues;
- viii) Broaden the scope of word ~~%icence+~~defined in the Act;
- ix) Provide a provision for review of all decisions of subordinate officers by Director General of Foreign Trade.

3. The Committee has decided to invite memoranda, containing views of the individuals/organizations, etc., interested in the subject-matter of the Bill, and also to hear oral evidence on the subject.

4. Those desirous of submitting memoranda to the Committee may send two copies (either in English or Hindi) thereof to **Shri Surinder Kumar Watts, Joint Secretary, Rajya Sabha Secretariat, Room No. 240, Second Floor, Parliament House Annexe, New Delhi (Tel: 23034240, E-mail: watts@sansad.nic.in)** within fifteen days of publication of this advertisement, indicating whether they would also be interested in giving oral evidence before the Committee.

5. The memoranda submitted to the Committee would form part of the records of the Committee and will be treated as confidential. These are not to be disclosed to anyone, till the report of the Committee is presented to Parliament, violation of which would constitute a breach of privilege of the Committee.

6. The Bill was published in the Gazette in India, Extraordinary, Part II, section 2, dated the 25th November, 2009. Its copies can be had on written request to the above-mentioned Officer or can be downloaded from the official web-site of the Rajya Sabha (<http://rajyasabha.nic.in>), under the caption %Bills with the Committees+.

**LIST OF ASSOCIATIONS/ORGANISATIONS/INDIVIDUALS
WHO TENDERED ORAL EVIDENCE**

Sl. No.	Name of witnesses	Date of hearing
1.	Shri P.C. Tripathi, Executive Director	27 th January, 2010
2.	Shri Pritam Banerjee, Head Trade and International Policy	27 th January, 2010
3.	Ms. Shabnam Pareek, Secretary, International Affairs	27 th January, 2010
4.	Mr. Anil Bharadwaj, Secretary General	27 th January, 2010
5.	Shri M. R. Madhavan, Head of Research	8 th February, 2010
6.	Shri Ajay Sahai, Director General	8 th February, 2010
7.	Dr. Amit Mitra	9 th February, 2010
8.	Shri R. Bhatnagar, Vice President	16 th February, 2010
9.	Ms. Stuti Ghildiyal, Shri Anuj Jain, Shri Parshant Atkaan	16 th February, 2010

**LIST OF INDIVIDUALS/ORGANISATIONS ETC., FROM WHOM
MEMORANDA WERE RECEIVED BY THE COMMITTEE**

Sl. No.	Name of the individual/organization	Address
1.	Shri P.C. Tripathi, Executive Director	Trade and Security. Office: C-32, Kanchanchanga, 90 I.P. Ext. Madhu Vihar, Delhi-110092
2.	Shri Pritam Banerjee, Head Trade and International Policy	Confederation of Indian Industry (CII) Mantosh Sondhi Centre, 23 Institutional Area, Lodhi Road, New Delhi-110003
3.	Ms. Shabnam Pareek, Secretary, International Affairs,	PHD Chamber of Commerce & Industry (PHDCCI), 4/2, Siri Institutional Area, New Delhi . 110016
4.	Mr. Anil Bharadwaj, Secretary General	Federation of Indian Micro and Small & Medium Enterprises, B-4/161, Safdurjang Enclave, New Delhi-110029
5.	Shri S. Balaraman	No. 7, Mallikeswarar Koil, North Street, Chennai-600001
6.	Ms. Rupa Naik, Executive Director	All India Association of Industries (AIAI), New Excelsior Building, 6 th Floor, A.K. Nayak Marg, Fort, Mumbai . 400001
7.	Shri C.S. Bist	C-160, South Moti Bagh, New Delhi-110021
8.	Shri M.K. Harikumar	A-602, Safal Park, Sector-25, Nerul (E) Navi Mumbai-400706
9.	Shri M. R. Madhavan, Head of Research	PRS Legislative Research, Centre for Policy Research, Dharma Marg, Chanakyapuri, New Delhi-110021
10.	Shri M. Chandrasekaran, Jt General Manager (Materials)	Larsen & Toubro Limited, Mount Poonamallee Road, Manapakkam, P.B.No. 979, Chennai-600089
11.	Shri V.K. Ladia, President	Indian Spinners Association Dhuru Building, 4 th Floor, Opp. Firoze Classes, Near Portugese Church, Gokhale Road (North), Dadar (West), Mumbai-400028
12.	Shri Alok Kumar	RSI Limited, 138, B.R.B.B. Road, Kolkata-700001

13. Shri Ajay Sahai, Director General Federation of Indian Exports Organisation (FIEO), Niryat Bhawan, Rao Tula Ram Marg, Opp. Army Hospital Research & Referral, New Delhi-110057
 14. Dr. Amit Mitra Federation of Indian Chambers of Commerce & Industry (FICCI), New Delhi.
 15. Shri R. Bhatnagar, Vice President The National Association of Software and Services Company (NASSCOM) International Youth Centre Teen Murti Marg Chanakyapuri New Delhi 110 021
 16. Ms. Stuti Ghildiyal, Shri Anuj Jain, Shri Parshant Atkaan Jawaharlal Nehru University (JNU) and Delhi School of Economics (DSE)
 17. Shri D. Narasimha Reddy 201, Aarthi Residency, Laxminagar Colony, Saidabad, Hyderabad -500659 (AP), India
 18. Raghuvendra Singh Dundlod, Secretary General Indigenous Horse Society of India
 19. Shri Sukumar Das Trisulapatti (Kumar Pukar East), P.O. Bolpur, Dist-Birbhun, Pin No-731204, West Bengal
 20. Shri M. K. Sarma Lal Niwas, 40158, Rajat Path Mansarovar, Jaipur-302020
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MINUTES

***VIII**
EIGHTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.30 A.M. on Tuesday, the 12th January, 2010, in Committee Room 4q Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Dr. K. Keshava Rao
3. Shri A. Vijayaraghavan
4. Shri Prem Chand Gupta

LOK SABHA

5. Shri G. S. Basavaraj
6. Shri K. P. Dhanapalan
7. Shri Shivarama Gouda
8. Shri Sakti Mohan Malik
9. Shri Somen Mitra
10. Shri Deoraj Singh Patel
11. Shri G. Sukender Reddy
12. Shri Rajaiah Siricilla
13. Shri K. Sudhakaran
14. Shri Yashvir Singh

REPRESENTATIVES OF DEPARTMENT OF COMMERCE, MINISTRY OF COMMERCE & INDUSTRY

Shri Rahul Khullar, Secretary
Shri R. S. Gujral, DGFT
Shri Amitabh Jain, Addl. DGFT
Shri Akash Taneja, Joint DGFT
Ms. Vibha Bhalla, Joint DGFT
Shri Tapan Mazumdar, Joint DGFT
Shri Sandeep Arya, Director, MEA

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA
Shri Surinder Kumar Watts, Joint Secretary
Shri T. N. Pandey, Joint Director
Smt. Indira C. Vaidya, Assistant Director

* Minutes of 1st to 7th meetings of the Committee pertains to other matters

2. The Chairman informed Members that Hon^{ble} Chairman, Rajya Sabha had referred, on 30th November, 2009, the Foreign Trade (Development and Regulations) Amendment Bill, 2009, as introduced and pending in the Rajya Sabha, to the Department Related Parliamentary Standing Committee on Commerce, for examination and report thereon within three months. He requested the members for their valuable suggestions in the matter and to suggest names of eminent persons / organisations, institutions, etc., who could be requested to furnish their memoranda on the Bill and also be invited before the Committee to give their views.

3. The Committee decided to issue a Press Communiqué inviting memoranda on the Bill from various organisations, institutions and individuals interested in the subject matter of the Bill. It also decided that in the meanwhile some industry associations may be invited to present their views on the Bill in the next meeting of the Committee.

4. The Chairman then informed Members that he had invited the representatives of Department of Commerce, Ministry of Commerce and Industry and Directorate General of Foreign Trade (DGFT) to present their views on the subject, in the meeting.

5. Following this, a Power Point presentation was made by the representatives of the DGFT that, *inter alia*, highlighted the sequence of events that necessitated the introduction of the revised Foreign Trade (Development and Regulation) Amendment Bill, 2009, and withdrawal of the previous Bill, introduced in the year 2001.

6. Secretary, Department of Commerce gave a brief account of the newly introduced Bill and also clarified some specific points relating to the Bill.

7. Members raised queries that related mainly to the inordinate delay in introduction of the revised Bill; protection for the agricultural community; environmental impact of the imports of various types of hazardous waste materials; screening of imported junk for radio active materials; introduction of a mechanism to review exim policy; and impact of the Foreign Trade Policy on the SEZs, etc, which were replied to by the witnesses. The Chairman directed the witnesses to send their written replies in response to the queries, for which information was not readily available.

8. The Committee decided to hold its next meeting on 27th January, 2010 to hear the views of some witnesses on the Bill.

A verbatim record of the proceedings was kept.

9. The Committee adjourned at 12.50 p.m.

IX NINTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.30 A.M. on Wednesday, the 27th January, 2010, in Room No. 53q First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Shri V. Hanumantha Rao
3. Dr. K. Keshava Rao
4. Shri A. Vijayaraghavan
5. Shri Jai Prakash
6. Shri Prem Chand Gupta

LOK SABHA

7. Shri G. S. Basavaraj
8. Shri Shivarama Gouda
9. Prof. Sk. Saidul Haque
10. Shri Sanjay Dina Patil
11. Shri Jagdish Singh Rana
12. Shri G. Sukender Reddy
13. Shri Yashvir Singh

CONFEDERATION OF INDIAN INDUSTRY (CII)

Shri Pritam Banerjee, Head, Trade & International Policy

INSTITUTE OF INTERNATIONAL TRADE AND SECURITY

Shri P.C. Tripathi, Executive Director

PHD CHAMBER OF COMMERCE & INDUSTRY (PHDCCI)

Mr. Anil Rajput, Member, Managing Committee

Ms. Shabnam Pareek, Secretary (International Affairs)

FEDERATION OF INDIAN MICRO, SMALL & MEDIUM ENTERPRISES (FISME)

Shri Anil Bhardwaj, Secretary General

REPRESENTATIVES OF MINISTRY OF COMMERCE & INDUSTRY, DEPARTMENT OF COMMERCE

Shri R.S. Gujral, DGFT & Special Secretary

Shri Amitabh Jain, Addl. DGFT

Ms. Vibha Bhalla, Joint DGFT

Shri Akash Taneja, Joint DGFT

Shri Tapan Majumdar, Joint DGFT

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE, LEGISLATIVE DEPARTMENT

Shri P. B. Singh, Joint Secretary & Legislative Counsel
Shri K. V. Kumar, Deputy Legislative Counsel

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA
Shri Surinder Kumar Watts, Joint Secretary
Smt Subhashree Panigrahi, Joint Director
Smt. Indira C. Vaidya, Assistant Director

2. The Chairman welcomed the new member Prof. SK Saidul Haque to the meeting of the Committee.
3. The Chairman and Members considered the memorandum regarding shifting of the Department of Industrial Policy & Promotion (DIPP) from the purview of the Department Related Parliamentary Standing Committee on Commerce to Committee on Industry, proposed by Dr. Akhilesh Das Gupta, Chairman, Standing Committee on Industry.
4. The members were of firm opinion that the functions of DIPP and Department of Commerce (DoC) are inter-related and are vital towards augmentation of trade and exports of the country, which are integral part of the Ministry of Commerce being overseen by the Standing Committee on Commerce. After liberalisation of the economy and delicensing system, the DIPP is left with matters like FDI, WTO, International bilateral and multilateral cooperations, Patents, Trade Marks Systems, Designs, etc. mostly related to Trade and Commerce, thereby supporting its relation with the Ministry of Commerce and Industry. Further, the shifting of the Department of Industrial Policy and Promotion from the Committee on Commerce to Committee on Industry, without effecting such a change in the Government of India, (Allocation of business) Rules, 1961 by the Prime Minister, would create a peculiar situation where in the two Departments of one Ministry i.e. Commerce and Industry, would be subjected to scrutiny by two Committees. The Committee unanimously decided that the Department of IPP may be kept under the purview of the Committee on Commerce and may not be shifted to Committee on Industry.
5. The Chairman then informed Members that the representatives of the Confederation of Indian Industry (CII); Institute of International Trade and Security; PHD Chamber of Commerce and Industry (PHDCCI) and Federation of Indian Micro and Small & Medium Enterprises (FISME) had been invited to present their views on the Foreign Trade (Development and Regulation) Amendment Bill, 2009 in the meeting.
6. The Committee heard the views of the CII on the Bill. The representative of the CII expressed a general agreement with the proposed amendments in various Sections of the Bill. He suggested integration of the importer exporter code with documents used by Reserve Bank

of India for recording transactions in foreign currency. He also suggested that a special section on dispute resolution and grievance redress may be included in the Bill, with a provision for an annual review on the quality of implementation of foreign trade policy.

7. The Committee re-assembled at 4.00 P.M. to hear the views of the remaining witnesses. The representative of the Institute of International Trade & Securities presented their views and suggestions on various aspects of the Bill viz., Imposition of Quantitative Restrictions to safeguard domestic industries; dispensing with requirement of license or permit to import and export; enabling swift and exemplary action in trade dispute matters; rationalization and improvement of system of levying and realizing fiscal penalties; authorizing Settlement Commission under the Customs act 1962 to settle interest dues under the Act; bringing of Technology and Services under the ambit of the Act; and establishment of tighter export controls by incorporating the provisions of Weapons of Mass Destruction Act, 2005, in the Foreign Trade (Development & Regulation) Act, 1992.

8. The representatives of the PHD Chamber of Commerce and Industry while welcoming the initiative to put in place a regulatory frame work on export of dual use goods and technologies, suggested that there should be an efficient and transparent system for giving clearances and for dispute resolution. They suggested that the rules to be framed under Act should be put on website inviting suggestions form the stake holders before they are finalized. They suggested that in the chapter on Quantitative Restrictions, there should be a provision for automatic periodic (6 months or 1 year) review. They also suggested some minor amendments to Section 3, definition of the word article etc.

9. The representative of the Federation of Indian Micro and Small and Medium Enterprises generally welcomed the provisions of the Bill and suggested that an effective mechanism should be put in place for mandatory consultation with affected or likely to be affected parties before imposing quantitative restrictions. He also suggested that the representatives of the Ministry of Small and Medium Enterprises should be associated with the meetings of DG Safeguards/Standing Board. On the development aspects, he suggested due weightage to MSMEs and more democratic functioning of Export Promotion Councils.

10. The members raised some queries which were replied to by the witnesses. The Chairman directed the witnesses to send their written replies in response to the queries, for which information was not readily available.

11. The DGFT clarified some specific points relating to the Bill as well as queries raised by members of the Committee. He also gave clarifications with regard to some specific points raised by the witnesses in the meeting.

12. The Committee decided to hold its next meetings on 8th and 9th February, 2010 to hear further oral evidence on the Bill.
13. A verbatim record of the proceedings was kept.
14. The Committee adjourned at 5.10 p.m.

X
TENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.30 A.M. on Monday, the 8th February, 2010, in Room No. 74q Ground Floor, Parliament Library Building, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Shri V. Hanumantha Rao
3. Shri A. Vijayaraghavan
4. Shri Prem Chand Gupta
5. Shri Mohammed Adeb

LOK SABHA

6. Shri K. P. Dhanapalan
7. Prof. Sk. Saidul Haque
8. Shri Somen Mitra
9. Shri Deoraj Singh Patel
10. Shri G. Sukender Reddy
11. Shri M. Venugopala Reddy
12. Shri M. I. Shanavas
13. Shri Kalikesh Narayan Singh Deo
14. Shri Rajaiah Siricilla
15. Shri Yashvir Singh

WITNESSES

FEDERATION OF INDIAN EXPORTS ORGANISATION (FIEO)

Shri Ajai Sahai, Director General, FIEO
Shri Ajit Manchanda
Ms. Achla Kumar
Shri R. K. Gupta
Shri H. C. Pant

PRS LEGISLATIVE RESEARCH

Shri MR Madhavan, Head of Research
Shri Avinash Celestine

REPRESENTATIVES OF MINISTRY OF COMMERCE & INDUSTRY, DEPARTMENT OF COMMERCE

Shri R.S. Gujral, DGFT & Special Secretary
Shri Amitabh Jain, Addl. DGFT
Shri V.K. Shrivastava, Addl. DGFT
Ms. Vibha Bhalla, Joint DGFT

Shri Akash Taneja, Joint DGFT
Shri Tapan Majumdar, Joint DGFT

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE, LEGISLATIVE DEPARTMENT

Shri P. B. Singh, Joint Secretary & Legislative Counsel
Shri K. V. Kumar, Deputy Legislative Counsel

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA
Shri Surinder Kumar Watts, Joint Secretary
Smt Subhashree Panigrahi, Joint Director
Smt. Indira C. Vaidya, Assistant Director

2. The Chairman welcomed the Members and informed them that the representatives of Federation of Indian Exports Organisation (FIEO) and PRS Legislative Research had been invited to present their views on the subject of Foreign Trade (Development and Regulation) Amendment Bill, 2009.
3. The representatives of the Federation of Indian Exports Organisation (FIEO) broadly expressed their satisfaction with regard to various amendments proposed in the Foreign Trade (Development and Regulation) Amendment Bill, 2009. They welcomed the various clauses of Bill, particularly pertaining to ~~%Technology+~~ and ~~%Services+~~ under Section 2 of the Act; provision of a single nodal agency to notify restrictions on imports or exports under Section 3, Section 7, Section 9A, Section 16, etc., of the Act. They requested for a re-look in Section 8 of the Act whereby the DGFT proposed to remove the word ~~%Gravely+~~ which governs the action against unfair trade practices.
4. The representatives of the PRS Legislative Research were also in broad agreement with various amendments proposed in the Act. They pointed out that it was unclear whether the proposed amendments mean that the service providers will no longer require to be licensed, at least for foreign trade in services, by the regulators in those sectors. They also suggested that a time limit should be fixed for DGFT to issue a final order in cases of suspension of cancellation made under Section 14D.
5. The members raised some queries which were replied to by the witnesses. The Chairman directed the witnesses to send their written replies in response to the queries, for which information was not readily available.
6. The DGFT clarified some specific points relating to the Bill, the queries raised by the members of the Committee as well as some specific points raised by the witnesses.
7. A verbatim record of the proceedings was kept.

8. The Committee adjourned at 12.25 p.m.

XI
ELEVENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 11.30 A.M. on Tuesday, the 9th February, 2010, in Room No. 74q Ground Floor, Parliament Library Building, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Shri Jai Prakash
3. Shri Mohammed Adeb

LOK SABHA

4. Shri G. S. Basavaraj
5. Shri K. P. Dhanapalan
6. Shri Somen Mitra
7. Shri Deoraj Singh Patel
8. Shri Sanjay Dina Patil
9. Shri G. Sukender Reddy
10. Shri M. Venugopala Reddy
11. Shri Kalikesh Narayan Singh Deo
12. Shri Rajaiah Siricilla
13. Shri K. Sudhakaran

WITNESSES

REPRESENTATIVES OF MINISTRY OF FINANCE, DEPARTMENT OF REVENUE

Shri Sunil Mitra, Revenue Secretary
Shri V. Sridhar, Chairman (CBEC)
Shri S. K. Goel, Member (Customs)
Ms. Kameshwari Subramanian, Joint Secretary (Customs)
Shri Najib Shah, Joint Secretary (Drawback)
Shri Ranjit Kumar, Addl. Comm., Directorate General of Safeguards

REPRESENTATIVE OF FEDERATION OF INDIAN CHAMBERS OF COMMERCE & INDUSTRY (FICCI)

Mr. Manab Majumdar, Assistant Secretary General, FICCI

REPRESENTATIVES OF THE MINISTRY OF COMMERCE & INDUSTRY, DEPARTMENT OF COMMERCE

Shri R.S. Gujral, DGFT & Special Secretary
Shri Amitabh Jain, Addl. DGFT
Shri V.K. Shrivastava, Addl. DGFT
Ms. Vibha Bhalla, Joint DGFT
Shri Akash Taneja, Joint DGFT

Shri Tapan Majumdar, Joint DGFT

REPRESENTATIVES OF THE MINISTRY OF LAW & JUSTICE, LEGISLATIVE DEPARTMENT

Shri P. B. Singh, Joint Secretary & Legislative Counsel
Shri K. V. Kumar, Deputy Legislative Counsel

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA
Shri Surinder Kumar Watts, Joint Secretary
Smt Subhashree Panigrahi, Joint Director
Smt. Indira C. Vaidya, Assistant Director

2. The Chairman informed the Members that the representatives of Department of Revenue, Ministry of Finance and Federation of Indian Chambers of Commerce & Industry (FICCI) had been invited to present their views on the subject of Foreign Trade (Development and Regulation) Amendment Bill, 2009.

3. The Chairman raised two specific issues viz, provision for levy of penalty and recovery of penalties as proposed in the Bill and empowering the Settlement Commission for regularization of all customs duty and interests, to be clarified by Secretary, Department of Revenue. The representatives of the Department broadly expressed their satisfaction with regard to various amendments proposed in Foreign Trade (Development & Regulation) Amendment Bill, 2009. They, however, maintained that the imposition of Quantitative Restrictions would not only be time-taking but would also impinge upon the purpose of imposing safeguard duties. Besides, the safeguard duties come under the purview of Department of Revenue while Quantitative Restrictions would be imposed by the Department of Commerce. Both the Departments assured that this issue would be resolved through mutual consent in the near future.

4. The representative of Federation of Indian Chamber of Commerce and Industry (FICCI) was also in favour of various amendments proposed in the Bill viz inclusion of ~~services~~ and ~~technology~~ within the purview of this Bill and setting up of a single nodal agency in respect of restrictions on imports/exports and imposition of quantitative restrictions as safeguard measures. He expressed reservations on the deletion of the word ~~gravely~~ in clause 8, sub-clause (b) of the Act. He pointed out that while FICCI appreciates the objectives of ensuring swift and exemplary action in trade dispute matters, the proposed amendment is open to misuse and corruption. FICCI also questioned the rationale behind the broadening of the term licence by including fiscal benefits.

5. The members raised some queries regarding imposition of restrictive measures on import of goods that cause health and environmental hazards, which were replied to by the

witnesses. The Chairman directed the witnesses to send their written replies in response to the queries, for which information was not readily available.

6. The DGFT clarified some of the points relating to the Bill, the queries raised by the Members of the Committee, as well as some specific points raised by the witnesses.

7. One member expressed grave concern about the import of arecanut meant for Nepal and its diversion for local consumption in India. The Department of Commerce assured that the matter will be looked into.

8. The Chairman informed Members that the Foreign Trade (Development & Regulation) Amendment Bill, 2009 was referred to the Committee on 1st December, 2009 by Hon^{ble} Chairman, Rajya Sabha, for examination and report, within three months. The Committee had so far heard the views of some individuals/organizations/associations, etc. The exercise was likely to take another one month, whereafter the report would be presented/laid in both the Houses. The Committee, therefore, decided to seek further extension of one month, for presentation of the Report to Parliament on the above Bill.

9. The Committee decided to hold its next meeting on 16th February, 2010 to further consider the Bill.

10. A verbatim record of the proceedings was kept.

11. The Committee adjourned at 12.30 p.m.

**XII
TWELFTH MEETING**

The Department Related Parliamentary Standing Committee on Commerce met at 11.30 A.M. on Tuesday, the 16th February, 2010, in Committee Room Aq Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Dr. K. Keshava Rao
3. Shri Arun Jaitley
4. Shri Prem Chand Gupta
5. Shri Mohammed Adeb

LOK SABHA

6. Shri G. S. Basavaraj
7. Shri K. P. Dhanapalan
8. Sk. Saidul Haque
9. Shri O. S. Manian
10. Shri Somen Mitra
11. Shri Deoraj Singh Patel
12. Shri Sanjay Dina Patil
13. Shri G. Sukender Reddy
14. Shri Kalikesh Narayan Singh Deo
15. Shri Rajaiah Siricilla
16. Shri Yashvir Singh

WITNESSES

REPRESENTATIVE OF THE NATIONAL ASSOCIATION OF SOFTWARE AND SERVICES COMPANIES (NASSCOM)

Shri Som Mittal, President
Shri R. Bhatnagar, Vice President
Shri Ameet Nivsarkar, Vice President

REPRESENTATIVE OF JAWAHARLAL NEHRU UNIVERSITY (JNU) AND DELHI SCHOOL OF ECONOMICS (DSE)

Ms. Stuti Ghildiyal
Shri Anuj Jain
Shri Parshant Atkaan

DEPARTMENT OF COMMERCE, MINISTRY OF COMMERCE & INDUSTRY

Shri R. S. Gujral, DGFT
Shri Amitabh Jain, Additional DGFT
Shri V. K. Srivastava, Additional DGFT
Ms. Vibha Bhalla, Joint DGFT

Shri Akash Taneja, Joint DGFT
Shri Tapan Majumdar, Joint DGFT

LEGISLATIVE DEPARTMENT, MINISTRY OF LAW AND JUSTICE

Shri P. B. Singh, Joint Secretary & Legislative Counsel
Smt. Akali V. Konghay, Assistant Legislative Counsel

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA
Shri Surinder Kumar Watts, Joint Secretary
Smt Subhashree Panigrahi, Joint Director

2. The Chairman informed Members that the representatives of National Association of Software and Services Companies (NASSCOM) and Students from Jawaharlal Nehru University (JNU) and Delhi School of Economics had been invited to present their views on the Foreign Trade (Development and Regulation) Amendment Bill, 2009.
3. The representatives of NASSCOM threw light on the role played by the Association in the development of trade, research, education, training and policy advocacy in the IT Sector in India. They informed that Indian IT-BPO industry had been making remarkable progress in terms of employment generation, spread of education, diversity, global exposure and growth of exports. But, protectionism of the developed nations, emulation by China, Philippines, etc., and wage inflation, lack of infrastructure in domestic market were posing a serious threat to the Industry. They supported the inclusion of %Services+and %Technology+in the Bill. But, stated that definition of services needed to be more comprehensive, as services were evolving day by day. Further, imposition of Quantitative Restrictions for services and technology, considered as indirect protectionism, should be discouraged. They pointed out that unintended consequences in the interpretation of the Bill could put the service sector of the national economy into a disadvantageous position. They therefore suggested that the intent of the various provisions of the Bill should be made more self explanatory.
4. DGFT informed the Committee that the definition of %services%conforms to the one given in GATT and WTO. On protectionism, it was informed that no such provision, as to encourage protectionism, was incorporated in the Bill. He also clarified that currently there is no intention to put quantitative restriction on import of services.
5. Thereafter, students of JNU/DSE presented their views and suggestions on the Bill. They opined that the labour intensive sectors of the Indian industry needed to be safeguarded. Negative Trade Balance with China should be taken seriously and some Transitional Safeguard Mechanism should be made active in this regard. They were of the view that implementation of Quantitative Restrictions should be on continual basis, as adopted by the U.S. A. vis-à-vis

China, as continuous implementation may be detrimental for Indian economy itself. They were also in favour of classification of intensity of technology for the purpose of providing incentive under Foreign Trade Policy. It was suggested that the business houses like CII, FICCI, ASSOCHAM, etc., should be made responsible for dissemination of knowledge among Indian manufacturers about foreign technologies and products. Swift and effective action in Trade Dispute matters should also be ensured.

6. Secretary, DGFT, agreed with the suggestion that safeguards for labour intensive sectors is called for. The need for incentives depended upon various factors such as type of the item, international demand, etc. As regards Trade deficit with China, it was informed that the Ministry of Commerce was seized of the matter.

7. The members raised some queries, which were replied to by the witnesses. The Chairman directed the witnesses to send their written replies in response to the queries, for which information was not readily available.

8. The Committee decided to hold its next meeting on 23rd February, 2010 to further consider the Bill.

9. A verbatim record of the proceedings of the meeting was kept.

10. The Committee adjourned at 12.40 p.m.

XIII
THIRTEENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 3.00 P.M. on Tuesday, the 23rd February, 2010, in Committee Room Aq Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Dr. K. Keshava Rao
3. Shri Rahul Bajaj
4. Shri Mohammed Adeb

LOK SABHA

5. Shri G. S. Basavaraj
6. Shri K. P. Dhanapalan
7. Sk. Saidul Haque
8. Shri Deoraj Singh Patel
9. Shri Sanjay Dina Patil
10. Shri M. Venugopala Reddy
11. Shri M.I. Shanavas
12. Shri Balakrishna K. Shukla
13. Shri Kalikesh Narayan Singh Deo
14. Shri Rajaiah Siricilla

WITNESSES

**REPRESENTATIVES OF THE DEPARTMENT OF INFORMATION TECHNOLOGY,
MINISTRY OF COMMUNICATION & INFORMATION TECHNOLOGY**

Shri R. Chandrashekhar, Secretary
Dr. Gulshan Rai, DG (CERT-In)
Shri Rakesh Singh, Additional Secretary
Shri P.S. Narotra

REPRESENTATIVES OF MINISTRIES

I. MINISTRY OF COMMERCE & INDUSTRY (DEPARTMENT OF COMMERCE)

Shri R. S. Gujral, DGFT
Shri Amitabh Jain, Additional DGFT
Shri V. K. Srivastava, Additional DGFT
Ms. Vibha Bhalla, Joint DGFT
Shri Akash Taneja, Joint DGFT
Shri Tapan Majumdar, Joint DGFT

II. MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)

Shri P. B. Singh, Joint Secretary & Legislative Counsel

Smt. Akali V. Konghay, Assistant Legislative Counsel

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA

Shri Surinder Kumar Watts, Joint Secretary

Smt Subhashree Panigrahi, Joint Director

2. The Chairman informed Members that the representatives of the Department of Information Technology had been invited to present their views on the Bill and thereafter welcomed the Secretary and other Officials to make the presentation.

3. Secretary, Information Technology, gave a brief overview of the Indian IT Industry. He informed that this sector accounts for nearly six percent of the GDP of the country and the current year's export is expected to be just below 50 billion dollars. It gives direct employment to 2.2 million and indirect employment to 8 million. Exports by the Industry included a complete range of IT services, from absolutely low end to extremely high end Research & Development, system integration, IT outsourcing, B.P.O. services, etc. The proposed amendments should be viewed in this perspective and we should not do anything which will create an impediment to the growth of this sector. He stated that the terms 'Information' and 'Technology', used in Section 2 of the Act had different connotations in different contexts. It needs to be brought in conformity with the definitions in the Information and Technology Act. He deposed that in the context of IT it was difficult to pinpoint where the services come from or to trace their origin. So, it was necessary to take precaution in defining the terms 'export', 'import', 'provision', etc., while dealing with IT Services. He also observed that different Regulatory Authorities existed in India, to regulate different services like Telecom Regulatory Authority of India for telecommunication services, Reserve Bank of India for banking services, etc.,. In such a scenario, the service providers and the concerned ministries should be consulted. Since there is a necessity to harmonise the provisions of this Bill with those other sovereign Acts which deal with the services like IT, Telegraph etc. Imposition of Quantitative Restrictions in the software services was not practicable. He questioned the inclusion of the word 'article' in chapter III(A), Clause 9(A), and recommended that it should be replaced by 'goods'. He also endorsed the suggestions given by NASSCOM during the previous meetings of the Committee.

4. DGFT clarified the issues raised by the witnesses one by one. He informed that the definition of 'technology' was taken from the Weapons of Mass Destruction Act and had international currency. As for the word 'provision' he said its meaning is quite clear; the word 'article' means goods in plain English and does not include services.

5. Members raised queries regarding Regulatory Authority for IT Sector, India's stance on strict visa rules in developed world, financial benefits for Indian IT Industry, etc., which were answered by the Secretary, DGFT. He agreed to go through Section 16 once again. Regarding Quantitative Restrictions, DGFT confirmed that there is no intention to cover services and technology and will make it abundantly clear in relevant clause.
6. Secretary, Information Technology requested the Chairman to give them some more time to send a few more detailed submissions on the Bill.
7. The Committee decided to close the evidence and to hold its next meeting on 4th March, 2010, to take up clause-by-clause consideration of the Bill.
8. A verbatim record of the proceedings was kept.
9. The meeting of the Committee adjourned at 4.20 p.m.

**XIV
FOURTEENTH MEETING**

The Department Related Parliamentary Standing Committee on Commerce met at 5.00 P.M. on Monday, the 8th March, 2010, in Committee Room 4q Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Dr. K. Keshava Rao
3. Shri Rahul Bajaj
4. Shri Mohammed Adeb

LOK SABHA

5. Shri K. P. Dhanapalan
6. Shri Shivarama Gouda
7. Sk. Saidul Haque
8. Shri Sanjay Dina Patil
9. Shri Balakrishna K. Shukla
10. Shri Kalikesh Narayan Singh Deo
11. Shri K. Sudhakaran

REPRESENTATIVES OF MINISTRIES

I. MINISTRY OF COMMERCE & INDUSTRY (DEPARTMENT OF COMMERCE)

Shri R. S. Gujral, DGFT
Shri Amitabh Jain, Additional DGFT
Shri V. K. Srivastava, Additional DGFT
Ms. Vibha Bhalla, Joint DGFT
Shri Akash Taneja, Joint DGFT
Shri Tapan Majumdar, Joint DGFT

II. MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)

Shri P. B. Singh, Joint Secretary & Legislative Counsel
Shri K.V. Kumar, Deputy Legislative Counsel

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA
Shri Surinder Kumar Watts, Joint Secretary
Smt Subhashree Panigrahi, Joint Director
Smt. Indira Chaturvedi Vaidya, Assistant Director

2. The Committee took up clause-by-clause consideration of the Foreign Trade (Development and Regulation) Amendment Bill, 2009 and decided as follows:-

Clause 2

- i) In order to make the definition of ~~%~~specified goods or services or technology+ clear and unambiguous, in Clause 2 (l), the words ~~%~~or in respect of which conditions have+ be substituted by the words ~~%~~because of conditions having been.+
- ii) Instead of inserting the words ~~%~~certificate, scrip, or any other instrument bestowing financial or fiscal benefits+in the definition of ~~%~~licence+in Clause 2 (g), it would be better to define various fiscal benefits / instruments like DEPB / FMS / FPS scrips, etc. separately in the Act itself.

Subject to above changes, the Clause was adopted.

Introduction of a New Provision in the Bill regarding change of the title of

Chapter II

The heading of Chapter II should be changed, which shall read as ~~%~~Power of Central Government to Make Order and Announce Foreign Trade Policy.+

Clause 3

The Committee felt that while it understood the intent of bringing ~~%~~Services+ and ~~%~~Technology+ within the ambit of the Act, the Government should take adequate precautions to ensure that the interpretation of the various provisions of the Bill, do not adversely affect the growth of the various service sectors, particularly the IT Sector, in view of its importance in the national economy. Keeping this in view, the Committee decided that:

- i) After Sub Section (2) of Section 3 of the principal Act, the following proviso be inserted:-
~~%~~Provided that Sub Section (2) of Section 3 of this Act shall be applicable in case of import or export of services or technology only when the service or technology provider is taking benefit under the Foreign Trade Policy or is dealing with specified services or specified technologies+.
- ii) The new sub section to be inserted vide sub clause (b) of clause (3) be renumbered as ~~%~~sub section (4) of the Act+.
- iii) The Committee noted that there is an apparent contradiction between the proposed Sub Section to be inserted after Sub Section (3) and the proposed Section 18A. To avoid this contradiction the words ~~%~~Notwithstanding anything contained in any other law+in clause 3 (b) be substituted by the words ~~%~~Without prejudice to any other law+.
- iv) The Committee noted that there are already various laws and regulatory agencies under these laws to regulate the service sector. Further, trade in services is entirely different from trade in goods. It is not possible to exactly classify ~~%~~services+unlike ~~%~~goods+which are classified upto the 8 digit level under ITC (HS) code. Hence the words ~~%~~or provision for services or technology+occurring twice in clause 3 (b) and the Proviso thereto be deleted.

v) Since the present Bill intends to include ~~§~~Services and Technology+ in the ambit of sub section (2) of Section (3), subject to the proviso mentioned above, the Committee felt that the Department of Commerce should examine whether it is necessary to include the words ~~§~~Services and Technology+ in sub section (3) of the Act also, as the powers in respect of sub section (3) flow from sub section (2) of the said section.

Subject to above changes, the Clause was adopted.

Clause 4

The Heading of Section 5 also be modified as ~~Foreign Trade Policy~~; since this is a consequential change.

Subject to the above change, the Clause was adopted.

Clause 5

The clause was adopted without any change.

Clause 6

The Committee noted that the proposed proviso to Section 7 does not cover the import of technology, which may create hurdles in technology upgradation / import, especially in the service sector. The Committee was of the view that technology should also be included in this proviso. The revised proviso to Section 7 would read as follows:

~~Provided~~ that in case of import or export of services or technology, the Importer-exporter Code Number shall be necessary only when the service or technology provider is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies+

Subject to above change, the Clause was adopted.

Clause 7

In the new proposed sub-section 1(a) of Section 8 of the principal Act, after the words ~~foreign trade policy~~q the words ~~any other law~~qbe inserted.

Subject to above change, the Clause was adopted.

Clause 8

This Clause was adopted without any change.

Clause 9

The Committee noted that the proposed new Clause relating to Quantitative Restrictions are to be made applicable only in respect of goods. To make this amply clear in the Bill, the following modifications are to be made in this clause:

- i) The words ~~%article/articles+~~ wherever appearing in this Clause be substituted by the word ~~%goods+~~.
- ii) The Committee further recommended that it should be ensured that the Rules framed under this Section be displayed on website of the Department and be given wide publicity amongst general public / stake holders.

Subject to above change, the Clause was adopted.

The Committee noted that safeguard duties come under the purview of the Department of Revenue while Quantitative Restrictions will be imposed by the Department of Commerce. Further some of the industry associations had expressed apprehension that Quantitative Restrictions imposed could sometimes be detrimental to the interests of small players in the industry as well as the small scale industries. In order to ensure that there is proper coordination between the various Departments of the Government and to protect the interest of small scale and micro industries, the Committee was of the view that a High Powered Committee headed by Secretary or Additional Secretary in the Department of Commerce should be constituted with very senior representatives from Department of Revenue, Ministry of Micro, Small and Medium Enterprises, Department of Industrial Policy & Promotion, and other Ministries dealing with the major items of import to periodically review the imposition of Quantitative Restrictions. Appropriate provision for the same may be made in the Rules.

The Committee noted that in the proposed Section 9A, the definition of serious injury relates to the domestic industry only. The Department of Commerce should examine whether there are appropriate legal safeguards for imposing Quantitative Restrictions in respect of agricultural goods. The Department should also examine the feasibility of imposing restrictive mechanisms like Quantitative restrictions to restrict the import of goods which are hazardous to human health and environment.

Clause 10

The Committee was of the view that the power of seizure shall be applicable only when a service or technology provider is taking benefits under the foreign trade policy or is dealing with ~~%specified services or specified technologies+~~. For this a Proviso to the following effect be inserted:-

Provided that sub section (1) (b) of Section 10 shall be applicable in case of import or export of services or technology, only when the service or technology provider is taking benefits under the Foreign Trade Policy, or is dealing with specified services or specified technologies.

Subject to above change, the Clause was adopted.

The Committee was also of the view that the search and seizure should be permitted only with the approval of a very senior officer of the Directorate General of Foreign Trade and suitable provision to ensure this be incorporated in the Rules.

Clause 11

In the Heading of Section 11 and also in sub section 5 of Section 11 of the principal Act, the words "export and import policy" be substituted with the words "foreign trade policy"

Subject to above change, the Clause was adopted.

Clause 12 to 19

These clauses were adopted without any change.

Clause 20

In sub clause (b) of Clause 20, the word "articles" appearing twice in the new sub clause (ea) be substituted by the word "goods"

Subject to above change, the Clause was adopted.

Clause 1, Enacting Formula and Title

Clause 1, Enacting Formula and the Title of the Bill were adopted with changes which were of consequential or drafting nature, namely, "2009" and "sixtieth" were substituted by "2010" and "sixty-first" respectively.

3. The Committee decided to consider and adopt the draft Report on the Bill in its next meeting to be held on 16th March, 2010.

4. A verbatim record of the proceedings was kept.

5. The meeting of the Committee adjourned at 5.50 p.m.

XV
FIFTEENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 3.00 P.M. on Tuesday, the 16th March, 2010, in Room No. 63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Shanta Kumar — *Chairman*

Rajya Sabha

2. Shri Arun Jaitley
3. Shri A Vijayaraghavan
4. Shri Rahul Bajaj
5. Prof. P.J. Kurien

LOK SABHA

6. Shri K. P. Dhanapalan
7. Prof Sk. Saidul Haque
8. Shri Deo Raj Singh Patel
9. Shri M.I. Shanavas
10. Shri Kalikesh Narayan Singh Deo
11. Shri Thirumaavalavan Thol

SECRETARIAT

Shri P. Gopalakrishnan, Additional Secretary & FA
Shri Surinder Kumar Watts, Joint Secretary
Smt Subhashree Panigrahi, Joint Director
Smt. Indira Chaturvedi Vaidya, Assistant Director

2. The Committee took up for consideration the draft Report on Foreign Trade (Development & Regulation) Amendment Bill, 2009. After discussions, the Committee adopted the Draft Report with minor editing changes. The Committee was informed that Rajya Sabha was getting adjourned on 16th March, 2010 instead of 18th March, 2010 and hence it will not be possible to lay this Report in the first part of the Budget Session. Since the present extension of time for submission of this Report was only upto 31st March, 2010, the Committee authorized the Chairman to present the Report to Hon^{ble} Chairman, Rajya Sabha, so that seeking further extension of time could be avoided.
3. The Committee adjourned at 3.30 p.m.