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Address

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...I was a little surprised when I saw the subject, for the session, 'The Indian Legal Landscape and Foreign Trade' mainly because most of foreign trade or most of all foreign trade deals with commerce and the only share that the Ministry of Law would have in this matter is restricted to drafting legislation and at best advisory on what the existing legislation is. The policy invariably is made initially by the Commerce Ministry, then the Cabinet. So on policy matters I may be sounding a little restrictive, I may be hedging the question but the reason is that I may not have authority to speak of future policy and policy initiative.

Mr Bhat, while introducing me did have two mild digs. I didn't expect the latter one on the karate portion, but I can assure him that the smoking has brought it down pretty vastly. I would like to congratulate the earlier speakers, but I do think that the organisers would have done a masterly stroke if they have got the Finance Minister for the valedictory rather than inauguration. There were a lot of valid points which came up. Before I give my reactions, one of the reasons why I wanted both the speakers to precede me was that I am not stumped without being given a chance to face the ball. And therefore, I did really ask for it and before I do react what they say, I would like to point out that, today the Government of India has not only registered but has accepted that the times of self-reliance has given way to what is globally called a state of inter-dependence. Those days have gone when countries used to think that closing borders and tightening borders, is one way of protecting yourself and ensuring a disciplined growth internally; isolated from the rest of the world. The world on the whole, I think almost all nations without exception, have realised that there is no other way for us but to remember that we are dependent on each other and humanity as a whole is one. Political borders are political conveniences.

Well, with this as an opening, I would like to say that India as a whole has taken cognizance of this changed atmosphere. We have gone ahead much faster than most of the countries and definitely the fastest among the developing countries, to go ahead and open up the economy. Mr Desai had in fact had a mild criticism about dish washing machine and refrigerator being in the list of restricted or licensed industries, one may use that word, and was saying that it should be open. Without going into specifics, I could inform him that even the Minister for Industries who was here before, Prof. Kurien, did mildly say that we would be reviewing this and I could also tell you that the general view point is that the list needs to be reviewed because lot of these industries which have been put in more for political relevance rather than economic relevance and have now become politically irrelevant and therefore I am sure that a review would take place. But going into the question of world trade, we have, I am sure the whole world does realise that the share of manufactured goods have increased from what was about 45% in 1955 to about 63% in 1985 and now we are in the region

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of nearly 70% of world trade, is part of it is manufactured goods and therefore it is unavoidable that intellectual property would become the major question in any world trade discussion.

There have been papers, I have noticed, circulated questioning us as to why are intellectual property rights becoming part of world trade negotiations. It is unavoidable. Even the UNCTAD as well as the GATT does register their protections. Intellectual property would be one of the issues that has to be discussed in any multi-lateral or even bi-lateral forums when you are talking of world trade. Essentially because intellectual property deals with that section of wealth which is basically necessary for manufacturing and for industrial production, industrial growth. And when you are talking of trade becoming more and more manufacturing than mere trade of goods, then you cannot help realising that intellectual property has got a very important role and it must be given its emphasis and due place. But then if you really want to see the legal landscape with regard to foreign trade it is a very large landscape as usual in a country which was one time a colonial nation. We have inherited, rightly or wrongly, but consciously the Anglo-Saxon system of law. We have to a great extent adopted the technique of parliamentary democracy as seen in the British system. We have also very determinedly gone into law by the letter rather than law by the customs. And that is why we have a lot of legislations. Sometimes foreign investors feel a little hedged in when they see these funny papers and these funny words in black and white and start worrying as to what would be the impact of so many laws and whether you would really restrict them. Let me inform them that the laws are not the problem. If there was any problem in the past, invariably it has been the intention.

I did hear Mr Banerjee winding up in the last session and he was, I must say, very impressive and very informative when he said that God told him that bureaucracy in India would continue when he is no longer there. Partly he does have a point. Of course as usual when you are making a fun or pulling a fast one or trying to express a point of view you tend to over play. But the point is true that if foreign firms and foreign representatives of firms and people interested in investment as well as trade in India have found difficulty in the past, it is essentially being that the system has been negative in its thought process,

The fundamental question that I think we all should address ourselves to is not the nitty-gritty of the letter of the law. I think, it is whether the approach in itself is one where we still believe that higher protection to one's own industry even at the cost of inefficiency, bad production techniques, old fashion technology and lack of utilisation of capacity is better than opening up your economy and ensuring that you have the competitive edge. I personally do belong to that section of people who believe that the Indians, if one may call us, a race; we are so interlinked and so diverse but still we are a race, have often responded to competition and challenge with perfection and have come out on the top and I don't think the clock can be turned back at all now. It is very clear that India as a whole is willing to move in quickly, smoothly and efficiently into the global economy. We are not going to hesitate but at the same time it must be

made clear that we are not thinking of a global economy or an interdependent world because we need funds from the IMF, it is not that. It is not because we need any financial assistance from anybody and it is not because there is a Super 301 at all. It is because we do ideologically and conceptually believe that the universe is one family. It is not a saying that was coined today. The universe being a family is a saying that was coined in the history of civilization itself. It is in fact surprising to note that today the campaigner or the concept builder of free market economy, the United States of America, has more restrictions on foreign trade and international trade than we have. I can balance it on a chart and show it. And the reasons given invariably are that they wish to protect their intellectual property rights. And of course they do not stay there. They say they wish to protect only intellectual property rights. But in the process they are closing their borders either in the form of Super 301 or in the form of tariff rates, but they are closing the doors while the rest of the world is opening up and welcoming free competition and expertise.

I think some of the representatives here, participants here, who come from other nations, some of them from United States, would realise that what I am saying is true. It is surprising but may-be certain experiences in their own country have created this situation. But in India I could say foreign trade is to a large extent regulated through what we call Export Control Orders, Import Control Orders, Baggage Rules, Open General Licence Orders and well if you look at laws, we deal with the whole gambit of it, going into almost 23-25 statutes. We have even Coffee Act, Coir Industry Act, Foreign Exchange, of course FERA is there. We have the Dangerous Drug Act, Ancient Monuments Act, Antiquity Act, etc. etc. There are 23 statutes. But on the overall, all these statutes do not really come in the way of foreign trade or create problems for foreign trade. What really creates problems is when one starts the exercise of interpretation. If one wants to interpret a particular statute from the restrictive point of view, I am sure the administration can do it, as they had done it in the past. But if they want to interpret it from the point of view of a liberal competitive outlook they could do it. Today the approach is the latter and we are going through it but we have taken certain clear steps. I think most of you must be knowing that we have moved in towards the following policies very clearly. De-licensing of imports, making imports more linked to exports and that is vide EXIM Scripts route. We have decanalised a number of sections and would be finally, most probably, completing this exercise and we are removing monopolies and trading by what we use to call public sector. Now we are definitely going through the exercise of simplification of the system of trade classification. We have gone into, moving into maintenance of a competitive exchange rate. We move very fast in removal of direct subsidies to exporters. We replaced them with what is called transport incentives such as exchange and EXIM Scripts. We have moved even further and as I said things like white goods like refrigerators and dish washing machines too may soon, most probably, no longer in the list. We have a definite phased plan for removal of all licensing for imports of capital goods and raw materials. We rationalised tariffs and the Finance Minister announced that he is going to definitely move very soon, and not his three year target, but much shorter maybe, of convertibility of Indian rupee.

So we have, as a policy, taken decisions to move ahead. We have also taken decisions to have a very close look at the Imports and Exports Act 1947 which is a very old Act as well as the Foreign Exchange Regulations Act, 1973. By the very recent amendment of Section 31 of the FERA, we have almost made FERA a toothless tiger, in fact a paper tiger. We have also removed the restriction which we had in the MRTP Act. We are signatories of GATT, the world knows it. With regard to intellectual property, we have participated in the negotiations. I think, it would be coming soon to the rest of the world that with regard to intellectual property, Government of India's stand has been that our laws are sufficient, there is no need to amend it. We have signed and we have been a member of the Bonn Convention as well as Universal Copy Right Convention, but on Paris Convention, we have a few reservations which we have voiced and we are very clear that our law in so far as patents strikes a balance between affording protection for patents without affecting public interest or hampering industrial technology to grow.

There are a few points which might be reviewed but we would not be reviewing this because of any pressure, definitely not the Super 301. If somebody dictates to us they would only hamper the very process of change. Under compulsion of pressure this Government would not react. Why I am making this clear is some people are under the impression that we might be following deadlines given by somebody or given by some authorities, some foreign nationals. We would not be doing it because of that and such actions may only tend to delay the process of globalisation on the question of the intellectual property rather than help in bringing about a global atmosphere on intellectual property. On the whole, I am sure, most of you would agree that there is perceptible change in the legal landscape in India, especially with reference to foreign trade even internal domestic trade. Simultaneously, I think, it is necessary for all those who deal with the arena of trade as a whole, whether internal or foreign, to realise that India is an industrialised developing country. I have used certain definitions because there are a large number of developing countries which haven't been industrialised and it has certain types of problems which are only akin to developing countries. Now, we have some problems which are akin to both. We have problems akin to developed countries and we have problems that are very much those of a developing country. We have a situation where we have to look at these issues together. While we are talking of a free market economy, it is unavoidable that we have to talk of a Welfare State. We have a population definitely around 40% which is below the poverty line. And if one takes the poverty line definitions, internationally, our percentages may go up. We cannot avoid looking at that section of the population, as if we do not, it is quite possible that chaos will reign in this nation which for the last four decades have established before the world that literacy or illiteracy, the civilization of Indian mind has kept it a democratic nation. And that is exactly what I want our foreign trade partners to understand.

I do agree some of the imbalances that were shown on foreign trade taxation are not justified. I do appreciate the points that have been raised with regard to foreign technical experts and approvals. Well, that is directly connected to me

and we have taken steps in the Ministry of Company Law to ensure that these approvals are given within a period of two weeks from the date on which the application is made with the requisite information supplied in the forms. And in fact now we have gone even further. The other day we got a request from a company which is tying up with an Indian company for a foreign multinational company to bring in their expert as a technical expert. They had come up without the requisite forms. We gave them the permission and said within two weeks please give us the requisite form. That has been our approach. We will continue with that because our intention is to ensure that borders are open. But at the same time we would like those who come in and participate do appreciate that India is thinking ahead, is being progressive, we want you to be sympathetic and not take an attitude of belligerence against us. A little amount of time, a little amount of patience will show you that one of the largest, the largest, if you may permit, democracy of the world would respond very favourably and move into world economy on the global concept. But this is a country which has a lot of self-respect. I would not in any way succumb to pressure. We prefer persuasion to pressure and with this I would like to thank you for the opportunity.