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**Press Information Bureau
Government of India
Ministry of Commerce & Industry**

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US Opposition to Section 3(D) of the Indian Patent Act

The United States of America has on 30th April, 2014 brought out the Special 301 Report for the year 2014 which classified India as a “Priority watch list country”. The concerns identified in the report are based on the inputs provided by the US industry on their perception of the level of protection provided by India to Intellectual Property. Issues that have been flagged in the report include, inter-alia, concerns over the provision of section 3(d) of the Patent Act which relates to non-patentability of inventions involving chemical forms that do not show increased efficacy, issue of Compulsory License by the Controller General of Patent, Designs and Trademarks under section 84 of the Patents Act, inclusion of a statement relating to Compulsory License for green technologies in India’s National Manufacturing Policy and challenges relating to enforcement of IP Rights.

Section 3(d) of the Indian Patent Act 1970 (as amended in 2005) does not allow patent to be granted to inventions involving new forms of a known substance unless it differs significantly in properties with regard to efficacy. Thus, the Indian Patent Act does not allow evergreening of patents. This is a cause of concern to the US pharma companies.

The Special 301 process is a unilateral measure taken by the United States under their Trade Act, 1974 to create pressure on countries to increase Intellectual Property Rights (IPR) protection beyond the TRIPS Agreement. It is an extra territorial application of the domestic law of a country and is not tenable under the overall WTO regime.

India has a well-established legislative, administrative and judicial framework to safeguard Intellectual Property Rights which meets its obligations under the Agreement on Trade Related Intellectual Property Rights (TRIPS) while utilizing the flexibilities provided in the international regime to address its developmental concerns.

The information was given by the Minister of State (Independent Charge) in the Ministry of Commerce & Industry Smt. Nirmala Sitharaman in a written reply in Rajya Sabha today.

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