

India and WTO

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Trade

- Value of trade roughly doubled from 1980 to 1992
- 1992-2002 – again doubled
- 2002-2008: Trade in 2008 was five times that in 2002 and 20 times what it was in 1980 (volume of trade has increased substantially since 1990s)
- In 1990: 65% of all imports were subject to nontariff barriers – closed economy. Import weighted average tariff was 77% in 1991. Reduced to 7% in 2010 (import tariffs have reduced to nearly 5% from earlier 77% in 1991)
- While tariffs reduced, India has become world's leading user of antidumping duties.
 - AD considered to be worse than tariffs due to their discriminatory nature and magnitude of duties imposed
- India highly involved in WTO disputes as a complainant

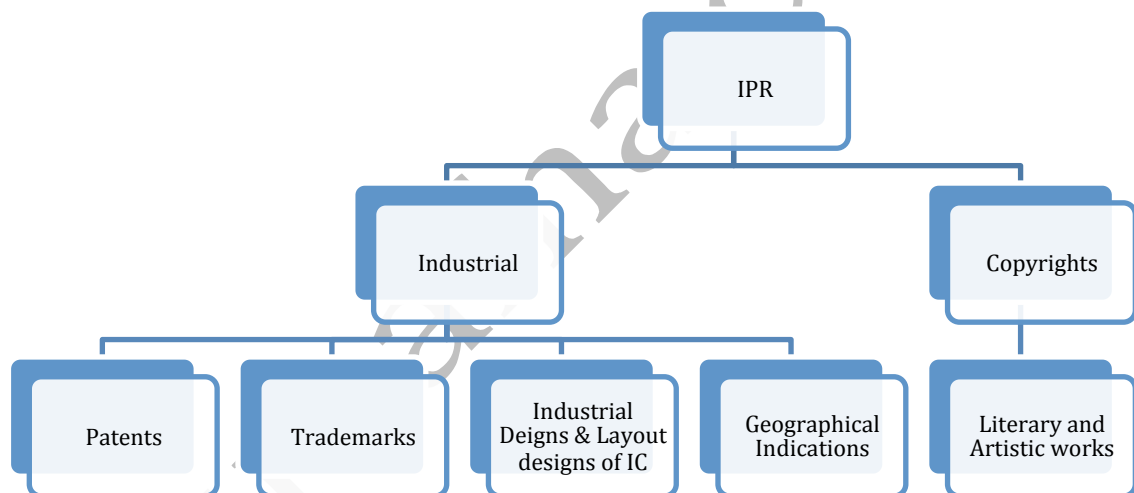
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TRIPS

IPR

Why is IPR becoming important?

- Increasing dominance of the new knowledge economy
- Exponential growth of scientific knowledge – new medicines, high technology products etc.
- Incentivising long term investment in R&D leading to innovations
- Increasing demand for new forms of intellectual property protection as well as access to IP related information
- Address the emerging complexities linked to IP in traditional knowledge, community knowledge and animate objects
- All these pose a challenge in setting up the new 21st century IP agenda, especially for a country like India



Each country would like to pay as little as possible for foreign innovations while charging as much as possible in foreign markets for its own – clashing objectives – creates strong national incentives to discriminate against foreign residents with respect to the enforcement of IPRs. This requires for an international agreement.

TRIPS

The WTO's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules.

- Establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it

strikes a balance between the long term benefits (since IPR encourages creation and invention) and possible short term costs to society.

- Governments are allowed to reduce any short term costs through various exceptions, for example to tackle public health problems, through compulsory licensing
- And, when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.

The agreement covers five broad issues:

- how basic **principles** of the trading system and other international intellectual property agreements should be applied
- how to give adequate **protection** to intellectual property rights
- how countries should **enforce** those rights adequately in their own territories
- how to **settle disputes** on intellectual property between members of the WTO
- **special transitional arrangements** during the period when the new system is being introduced.

TRIPS covers copyrights, trademarks, geographical indications, industrial designs, patents, (all others in the diagram above) and curbing anti-competitive licensing contracts.

- To deal with misuse of market power, governments can issue 'compulsory licenses', allowing a competitor to produce the product or use the process under licensed
- Patent protection must be available for both products and processes, in almost all fields of technology. Governments can refuse to issue a patent for an invention if its commercial exploitation is prohibited for reasons of public order or morality.
- Developing countries in particular, see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement includes a number of provisions on this. For example, it requires developed-country governments to provide incentives for their companies to transfer technology to least-developed countries.

India and IPRs

- India has enacted several laws to protect IPR
 - Copyright Act, 1957
 - Trademark Act, 1999
 - Designs Act, 2000
 - Patent Act, 1970¹ (amended in 2003, 2005)

¹ The main aim in India was to ensure that patents do not lead to monopoly by foreign companies nor lead to high prices for medicines and food items. The patent law of 1970 (the current law) restricts the field of patentability, only grants process and not product patents in food, pharmaceutical and chemical fields, restricts the term of patents and has an elaborate system of licenses to ensure that patents are worked in India.

- Geographical Indications Act, 1999
- Copyright act amendment 2012²

India and TRIPS

- Signed TRIPs in 1994
- India has met its entire TRIPs obligations by 2005 in various stages starting from providing mailbox applications in 1999 with retrospective effect and subsequently recognising product patents in pharmaceuticals
- Amendment to the Patent Act in 2002
 - This amendment brought the Indian Patent Act more or less on a par with the developed countries by providing a 20 year patent term
 - Safeguarded national interest by remodelling compulsory licence provisions by introducing Bolar³ and Import Provisions
- 3rd amendment to Patents act in 2005 provided product patenting in pharmaceuticals, food, and chemicals, rationalising and reducing timelines for processing of patent applications and doing away with Exclusive Marketing Rights

Issues & Resolutions

- Effect on India's pharmaceutical industry – increase in drug prices due to exiting of local firms
 - Resolution: the industry is taking steps to cope with the challenge. It is increasing its investment in R&D. Moving from imitative research to innovative research
 - Recent use of compulsory licensing
- Effect on other knowledge based industries in India, such as the IT industry, biotechnology, and microelectronics
- It is not clear how technology transfer would be conducted by developed countries to developing countries – need clearer framework. TRIPs has clamped down on reverse engineering leading to slowing down of technology transfer

² The Bill, passed by the Rajya Sabha last week, declares authors owners of the copyright, which cannot be assigned to producers, as was the practice till now.

The Bill provides for exemption from copyright for any work prepared for the physically challenged in special formats such as Braille. It also permits compulsory licence to be granted for a certain number of copies in non-special formats to non-profit organisations working to help disabled persons. The Minister said the amendment would allow authors to negotiate with music companies for royalty to be paid to them for their creations. The Bill also exempted students from the copyright laws for using such material for research purposes. It sought to impose a fine and two years' imprisonment for persons indulging in piracy.

³ some countries allow manufacturers of generic drugs to use the patented invention to obtain marketing approval — for example from public health authorities — without the patent owner's permission and before the patent protection expires. The generic producers can then market their versions as soon as the patent expires. This provision is sometimes called the “regulatory exception” or “Bolar” provision

- Effect on limiting monopolies
 - Resolution: there is voluntary licensing and compulsory licensing. For important drugs the government can resort to compulsory licensing.
- The grant of patents on non-original innovations (particularly those linked to traditional medicines) which are based on what is already a part of the traditional knowledge of the developing world is a cause of concern
 - CSIR successfully challenged the US Patent on the wound healing properties of turmeric. Similarly patent on Neem was quashed.
 - These issues need to be addressed jointly by the developing and the developed worlds
 - CSIR has created a Traditional Knowledge Digital Library (TKDL)
- Geographical indication – should include Basmati rice

Way Forward

- India should nurture a strong innovation base through a balanced system of recognition and rewards
- India will have to invest liberally to enhance the skills and knowledge base of scientists and on understanding, interpreting and analysing the techno-legal business information contained in IP documents and in drafting of IP documents

TRIMS

The **Agreement on Trade Related Investment Measures** (TRIMs) are rules that apply to the domestic regulations a country applies to foreign investors, often as part of an [industrial policy](#). The agreement was agreed upon by all [members](#) of the [World Trade Organization](#). The agreement was concluded in 1994 and came into force in 1995.

Policies such as local content requirements and trade balancing rules that have traditionally been used to both promote the interests of domestic industries and combat restrictive business practices are now banned.

Under the agreement, countries must inform fellow-members through the WTO of all investment measures that do not conform with the agreement. Developed countries had to eliminate these in two years (by the end of 1996); developing countries had five years (to the end of 1999); and least-developed countries seven. In July 2001, the Goods Council agreed to extend this transition period for a number of requesting developing countries.

Local content requirements, trade balancing requirements, and export restrictions are prohibited. The efforts of developing countries would be to reduce the prohibitions in view of the experience of these countries based on the operation of the agreement. The Agreement allows developing countries to deviate temporarily from its provisions on balance of payments (BOP) grounds.

India and TRIMS

As per the TRIMs agreement, India notified three trade related investment measures as inconsistent with the provisions of the Agreement:

- Local content (mixing) requirements in the production of news print
- Local content requirement in the production of rifampicin and penicillin-G
- Dividend balancing requirement in investment in 22 categories consumer goods.

All have been eliminated.

Latest developments regarding local content requirement which is not allowed:

- case was brought by US and EU against India (India-Autos) in 2000. In that case both EU and US had expressed concerns over measures under the Indian policy and regulations requiring manufacturing firms in the motor vehicle sector to achieve specified level of local content in order to be eligible for Indian Import licenses for certain motor vehicle parts and components. The Panel ruled against India for violation of Article III and XI of GATT and Article 2 of TRIMs. India withdrew its appeal before the Appellate Body, thereby justifying the findings of the Panel and brought its measures in line with the same within five months.
- The Jawaharlal Nehru Solar Mission (JNSM) has come under harsh criticism from the US and EU owing to its policy which requires use of local content for the project. The Ministry of New and Renewable Energy is executing the mission with the objective of promoting the use of solar energy.

Similarly, 30% requirement in single-brand retail will call for opposition from US and EU as it is against TRIMS

The TRIMs Agreement has been found by the developing countries to be standing in the way of sustained industrialization of developing countries, without exposing them to balance of payment shocks, by reducing substantially the policy space available to these countries.

Developed countries, on the other hand, have been arguing for a further expansion in the list of prohibited TRIMs

<http://www.thehindubusinessline.com/opinion/ways-to-break-the-doha-deadlock/article4663500.ece>

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GATS

The General Agreement on Trade in Services (GATS) is the first and only set of multilateral rules governing international trade in services. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution.

Services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20% of global trade.

Features:

- Total coverage: The agreement covers all internationally-traded services
- It defines four modes of trading services
 - Mode 1 (Cross Border Supply) – services supplied from one country to another (eg international telephone calls) – **developing countries**
 - Mode 2 (Consumption abroad) – consumers or firms making use of a services in another country (eg tourism)
 - Mode 3 (Commercial presence) – a foreign company setting up subsidiaries or branches to provided services in another country (eg. Foreign banks setting up operations in a country) – **developed countries**
 - Mode 4 (Presence of natural persons) – individuals travelling from their own country to supply services in another (eg. Fashion models or consultants) – **developing countries**
- General Features:
 - MFN treatment: favor one, favor all
 - Transparency: The GATS requires each member to publish promptly "all relevant measures of general application" that affect operation of the agreement.
 - Market Access: Market access is a negotiated commitment in specified sectors. The GATS also sets out different forms of measure affecting free market access that should not be applied to the foreign service or its supplier unless their use is clearly provided for in the schedule. For example:
 - Limitations on the number of service suppliers
 - Limitations on the total value of services transactions or assets
 - National treatment: each member shall give treatment to foreign services and service suppliers treatment, in measures affecting supply of services, no less favourable than it gives to its own services and suppliers.

- Other features include transparency, regulations (which should be objective and reasonable), recognition, international payments and transfers

India and GATS

India's negotiating position on services has undergone a paradigm shift since the Uruguay Round (UR). From being a leading opponent of the GATS in the early stages, India has now emerged as one of the forerunners of the services trade liberalisation under the GATS. This more recent negotiating stance of India on services is partly attributable to the growing importance of the services sector in its economy. With a vast pool of educated and skilled workers in its workforce, the country also has a huge offensive interest in the export of Mode 1 and Mode 4-based services. Hence India is aggressively participated in GATS 2000 negotiations predominantly with the aim of securing its offensive interests in the aforesaid two modes of the services trade. Although India's 'Initial Offer', submitted in January 2004, was rather conservative, India came out with an ambitious 'Revised Offer' in August 2005.

In the post-Hong Kong Ministerial period, India has received plurilateral requests in a range of services. It is learnt that the expectation from India would be to meet the requests primarily in telecommunications, finance, parts of energy, distribution (retail), and courier including express delivery. India has indicated that it can meet requests substantially in sectors like construction and related engineering services, maritime transport services, etc. Requests are likely to be fulfilled partially in energy and telecommunications also. However, as it stands now, it would be difficult for India to meet the requests in legal services, retailing services, private education and audio-visual services, owing to the domestic sensitivities associated with these areas.

India needs to take advantage of the current Doha impasse to reconsider and reassess its aggressive policy stance on services. It would be a better strategy on the part of India to hold back any further ambitious offers in services for the time being so that those offers may be used as a bargaining chip in future negotiations to push through its aggressive agenda in Modes 1 and 4. India should also refrain from considering any compromise on its interests in agriculture and Non Agricultural Market Access (NAMA) for pushing through its offensive interests in services. Given the pessimistic scenario in Modes 1 and 4, there are not enough grounds for India to compromise on the livelihood of millions of vulnerable farmers of the country or to put the survival of many a domestic industry at stake.

India has also called for abolition of numerical visa quotas and visa restrictions

Box 7.4 : India's stand on key negotiating issues: A summary

Agriculture

- Substantial and effective reductions in overall trade-distorting domestic support (OTDS) of the US and EU;
- Self-designation of an appropriate number of special products (SPs);
- An operational and effective Special Safeguard Mechanism (SSM);
- Simplification and capping of developed country tariffs.

Non-Agricultural Market Access (NAMA)

- Adequate and appropriate flexibilities for protecting economically vulnerable industries;
- Participation in sectoral initiatives only on a non-mandatory and good faith basis without prejudgment of the final outcome, with substantial special and differential treatment provisions for developing countries;
- Serious consideration of non-tariff barrier (NTB) textual proposals with wide support such as the horizontal mechanism.

Services

- Need for qualitative improvement in the revised offers especially on Modes 1 (cross-border supply) and 4 (movement of natural persons);
- Appropriate disciplining of domestic regulations by developed countries.

Rules

- Tightening of disciplines on anti-dumping (deletion of zeroing clause and reiteration of the lesser duty rule)
- Effective special and differential treatment for developing countries on fisheries subsidies.

Trade-related Aspects of Intellectual Property Rights (TRIPS)

- Establishing a clear linkage between the TRIPS Agreement and the Convention on Bio-diversity (CBD) by incorporating specific disclosure norms for patent applications;
- Enhanced protection for geographical indications (GIs) other than wines and spirits.