

Intellectual Property Rights and International Trade: Conflict or Coexistence?

Karishma Jaiswal

LL.M., Two Year, Roll no.: 247/PLL/031
School of Law, Justice Governance, Gautam Buddha University, Greater Noida (U.P.)
Email: KarishmaJaiswal0309@gmail.com

Co-author

Dr. Krishna Kant Dwivedi

Dean

School of Law Justice Governance, Gautam Buddha University Greater Noida (U.P.)
Email: krishankant@gbu.ac.in

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Abstract: Intellectual property rights and international commercial relations are shown as opposites. Intellectual Property is the exclusive right over an invention, brand, creation, design, geographical indication and trade secret. International trade seeks larger markets, more sources of supply, elimination of tariff and non-tariff barriers, and freer movement across the international community of good, services as well as technology as contrasted to domestic trade. When disagreements on intellectual property occur, they tend to be sharper. This is when patent protection can have an impact on the price of medicine, copyright rules govern the digital trade, trademark enforcement limits parallel importation and when developed and developing countries disagree on protection level. There are difficulties in the relationship, but not just that. Today, the production of news commodities is more brand-oriented and technology-intensive than resource-intensive. Cross-border investment and trade in innovation-intensive sectors may drop without reliable IP protection. Failure to create public-interest constraints and competition safeguards will make intellectual property a tool for exclusion from the market. The paper argues that the intellectual property rights and international trade can co-exist if the legal mechanism preserves functional equilibrium between private incentive and public access. It is tangible that through calibrated legal design and effective implementation of: TRIPS agreement; Doha declaration; compulsory licensing; exhaustion doctrines; competition law; technology transfer obligations and special treatment for the developing countries co-existence is possible.

Keywords: Intellectual property, international trade, TRIPS Agreement, WTO, technology transfer, public health, competition law, compulsory licensing.

I. Introductory Remarks

Over the years, international trade has changed from one that rested on goods to one that rests on knowledge. In the beginning, the realm of international trade revolved primarily around tariffs, quotas, customs valuation, and market access. Today, a considerable amount of value in business trade refers to the patents, trademarks, software, designs, databases, plant varieties, formulations, entertainment content and technical knowledge. The transition has placed IP rights at the heart of international trade systems. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the

World Trade Organization (WTO) shows that intellectual property is no longer an issue of domestic private law, but a multilateral trade order issue.¹

The main dilemma is “conflict or coexistence”. The law serves to protect exclusivity. The trading law advocates for movement. The owner of a pharmaceutical invention can rely on patent law to stop the production of generics in return for a limited term. But health policies may require medicines to be affordable. The trademark law helps to protect origin of brands and consumer trust, parallel importation lowering prices through arbitrage. Copyright laws protect creative expression, but the digital trade relies on the speed of reproduction, transmission, and access. These examples show real tension. Intellectual property is also essential in world trade. When the country offers legal protection for the firm’s intangible assets, it is more likely to license technology, export branded goods or set up research facilities there. It is not a question of whether IP and trade are inherently adversaries but whether we can balance the four corners of incentive access competition and development through legal institutions.

Using a doctrinal and analytical method, this paper analyzes the connection between IPR and international trade. Initially, it describes how IPR has developed in relation to trade. Afterward, it examines major issues that have been a source of tensions such as public health, technology transfer, competition and digital trade, and the inequality in development. In the end, the article concludes that balanced interpretations, TRIPS flexibilities, domestic safeguards, and more international cooperation could make coexistence possible now.

II. Linkage Between Trade and Intellectual Property.

Intellectual property rights are said to be the rights given to people over the creations of their minds. It represents the legal rights that an inventor has over its invention. Such creations or inventions can be anything from music to books to any design. The first two international treaties for industrial property and copyright were the Berne and Paris conventions.² The mechanisms were mainly based on principles like national treatment, priority and minimum procedural standard. The WTO features a certain strong adherence structure that did not exist here.

International trade law, by contrast, lowers discriminative barriers and ensures the predictability of trade relations. The General Agreement on Tariffs and Trade emphasised non-discriminatory, namely, most-favoured-nation treatment, national treatment and tariff commitments.³ Intellectual property has not been in the mainstream of trade architecture for years. The developed world, particularly during the 1980s and 1990s, felt weak protections were distorting the trade of patents, trademarks and copyright. In the past, fakes, piracy and unauthorized copying were considered unfair commercial practices that devalued exports and discouraged investments in technology. Less economically dynamic countries were concerned that stronger intellectual property rules would push prices up and limit technology and damage policy independence.

The TRIPS Agreement sought to narrow that gap by ensuring protection and enforcement of minimum standards for all WTO members.⁴ This secures the rights associated with copy rights, trademark, geographical indication, industrial design, patent, layout designs, undisclosed information and anti-competitive licensing practices. The WTO provides the mechanism for the settlement of dispute that

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

² Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as revised at Stockholm July 14, 1967, 828 U.N.T.S. 305; Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris July 24, 1971, 1161 U.N.T.S. 3.

³ General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187.

⁴ TRIPS Agreement, supra note 1, pts. II-III.

makes the intellectual property-related obligations enforceable through trade remedies. There was a significant structural shift in which intellectual property became a component of global trade.

This indicates that the connection is conceptual. IP can foster trade by innovation, licensing, FDI, technology transfer and consumer confidence in brands, as stated by Danny M. K. Lee. GS1 has been in business for over 75 years and currently offers more than 150 products. However, sources within the organization have indicated that it is seeking ways to attract more products. The legal action seeks to prevent intellectual property from becoming either devoid of meaning or excessive.

III. Reasons of Disagreement.

A. The Pharmacy Patent Policy

The pharmaceutical patents showcase the sharpest clash between property and trade. Patents grant the exclusive right for a predetermined period to encourage R&D investment. The exclusivity granted in pharmaceutical markets allows innovators to recover hefty research costs. The Right to Health and Access to Medicines become important when the patent-protected drug is out of reach of the poor or the middle class. The ongoing controversies relating to HIV/AIDS medicines and later COVID-19 technologies show that global patent rules create unequal access between rich and poor countries.

The Doha Declaration on TRIPS and Public Health further confirmed that the TRIPS Agreement does not and should not prevent members of the WTO from taking measures.⁵ It acknowledged the entitlement of members to compulsory licensing and to determine the grounds on which such licenses are granted. The Paragraph 6 system allowed eligible importing members to import medicines manufactured under compulsory licensing to solve the lack of capacity to manufacture in any country.⁶ India's patent law is one of the best examples of balance. As per the Patents Act (1970) Section 3(d), the new form of a known substance cannot be patented unless it gives enhanced efficacy. The Supreme Court of India argued in *Novartis AG v. Union of India* that patent law must permit evergreen strategy.⁷ However, it must not impede honest innovations. The case shows how IP can coexist, not exclude. Patents don't stop being protected, but the threshold is aimed to protect access and public interest.

B. Imbalance in Scientific Advancement.

Another way that friction arises is with technology transfers. Developing countries incur stronger intellectual property obligations to attract foreign investment and technology flows. LDCs may benefit from longer transition periods as per the provision in TRIPS Agreement. It also calls upon the developed countries to provide incentives to enterprise and institutions for the transfer of technology to LDCs

In fact, strong intellectual property rules by themselves do not lead to genuine transfer of technology.⁸ Technology holders may prefer to sell end products than to license local production.⁹ There may be restrictive provisions in the licenses they issue, high royalties or know-how retention. There's a developmental problem created here: Imported technologies are protected by intellectual property rights but not their own technologies. The most apparent sources of tension are in the pharmaceuticals, seeds, clean energy, telecommunications & digital infrastructure sectors.

Simply legal protection of form is inadequate to ensure a proper coexistence. To implement the objective shall require industrial policy, strengthening of capacities, equitable licensing, collaboration and competition monitoring. Protecting and regulating an intellectual property can give domestic firms the access and leverage to knowledge, which can stimulate development. It prevented advancement if it solely bolstered technological dependency.

⁵ World Trade Organization, Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/MIN(01)/DEC/2, para. 4 (Nov. 20, 2001).

⁶ World Trade Organization, Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/L/540 (Sept. 2, 2003).

⁷ *Novartis AG v. Union of India*, (2013) 6 S.C.C. 1 (India).

⁸ TRIPS Agreement, *supra* note 1, art. 7.

⁹ *Id.* art. 66.2.

C. Laws concerning competition and market power.

Intellectual property rights provide exclusivity, but do they equate exclusivity and absolute economic monopoly? When the use of intellectual property excessively harms competition and succeeds beyond an appropriate reward for innovation. Refusals to license important technology, tying arrangements, excessive pricing, pay-for-delay settlements, patent thickets and abuses of standard essential patents, etc.

TRIPS recognizes that some licensing practices of intellectual properties can restrict competition and may affect trade or tech transfer.¹⁰ As a result, competition law serves an effective corrective function. The competition authorities and courts of the EU and the US have established doctrines that deal with SEP and restrictive licensing abuse. With the U.S. According to the Supreme Court *eBay Inc. v. MercExchange*, court granted injunctions in patent cases in view of equitable principles in similar cases. As a result, the court decreased the likelihood that chance patents could be used to block market activity mechanically.¹¹

In India competition law and intellectual property law should be understood in harmony. Reasonable conditions may be imposed for protection of intellectual property under the Competition Act, 2002. Even so, it does not permit the misuse of dominant position and anti-competitive agreements under the guise of intellectual property rights.¹² An important model to coexist is this: IP law assures exclusivity at law, competition law prevents misuse.

D. The governing rules for copyrights, analytics, and trading of digital commodity exists in complete disarray.

The digitized world has increased complexity manifold in trade it has created. The process of import and export is the selling or transferring of goods between two nations. Rephrased text: There are excessive copyrights and Technological Protection Measures which prevent access to knowledge, interoperability, research and fair use. This hampers the digital market.

The WIPO Copyright Treaty protects the copyright of authors, performers, producers and broadcasters. Increasing number of countries are opting for Notice and Takedown systems and anti-circumvention provisions.¹³ The acts may serve to halt piracy but give rise to adverse problems of over-removal, power of powers and restriction of lawful exception. Restrictions on cross-border access impacts civil society organizations, educational institutions and research organizations.

Artificial intelligence takes on a different level. The European Union has proposed the coordination of a digital technology regime to achieve a stronger, more coherent effort by government and industry partners. The major object of commercial law is to facilitate the transaction and the communication of information along with gateway access access to the digital market. Moreover, he intellectual property laws must limit exclusivity for inputs and outputs. The extent to which IPR and trade converge and which will inspire development will depend on how much the legal regime can constrain or foster digital innovation.

IV. Succinct Spheres Of Coexistence.

A. The flexibilities present in the TRIPS agreement can be used as balancing techniques.

According to many commentators, the TRIPS Agreement is one sided but has a great number of safeguards to balance things out. Under international law, member states may lay down the criteria for patentability; provide exceptions to exclusive rights; resort to compulsory licensing of patents; regulate anti-competitive practices; and adopt regimes of exhaustion of rights for parallel imports.¹⁴ These

¹⁰ Id. art. 40.

¹¹ *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

¹² The Competition Act, No. 12 of 2003, § 3(5), India Code (2002).

¹³ WIPO Copyright Treaty, Dec. 20, 1996, 2186 U.N.T.S. 121; WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 2186 U.N.T.S. 203.

¹⁴ TRIPS Agreement, *supra* note 1, arts. 6, 13, 17, 30, 31, 40.

flexibilities allow countries to devise intellectual property protection systems that meet their social and economic needs.

The effectiveness of these flexibilities will ultimately depend on the political leaders. Although a country has the legal authority to issue a compulsory license, it may decide against doing so due to trade pressures, diplomatic pressures, or lack of manufacturing capacity. In similar terms, but research or educational or regulatory approval exceptions may be there but they are narrow in practice. In order to coexist, we must retain a quality of flexibility in our texts and in an institutional confidence.

B. The geographical indications that inquire about one's identity.

The impact of intellectual property on inclusive trade demonstrates through geographical indications. A geographical indication refers to a sign that is used on products that tend to have a specific geographical origin or location. It protects consumers and allows producers to gain value from the local identity. Having certain products protected by law can provide regional development and international recognition. These same products can also have useful utility.

The security of geographical indications for wines and spirits is boosted.¹⁵ In developing nations, it's reputation as a whole that is protected. Such countries become more able to protect technological inventions as a whole. They can enhance rural producers, traditional trades, and export label branding. In this regard, IP and Trade can interact via the quality of legal protection, origin and consumer confidence.

C. Licenses, franchising and global value chains.

Solving problems, meeting needs and demands, and much more. Joint ventures, technology agreements, licensing and franchising are common in global value chains. Legal Foundation of Transactions in law relating to intellectual property. A business may allow a foreign manufacturer to use its patent, franchise its trademark business system, allow foreign distribution of copyright software, or transfer know-how under confidentiality obligations.

It would be challenging to establish these arrangements if there are no enforceable intellectual property rights. The contract terms will determine the cohabitation between the parties. Licensing and related practice can create dependency when it halts local learning or bans competition. Clauses prohibiting competition make it possible for the licensing of intellectual property to serve as an instrument for the expansion of commerce.

D. Resolving Discrepancies and Ensuring Certainty.

The WTO's dispute resolution process clarified many important aspects of TRIPS. The WTO Appellate Body analyzed India's mailbox obligations during the transition period in the India – Patent Protection for Pharmaceutical and Agricultural Chemical Products dispute.¹⁶ As to the panel Canada – Patent Protection of Pharmaceutical Products, there was still no patent protection at the effective date of the TRIPS agreement. The limited exception of TRIPS may not be so limited regulatory review stockpiling.¹⁷ The WTO panel made findings on national treatment and GI protection in the European Communities – Trademarks and Geographical Indications case.¹⁸

The decisions show that interpretation can lead to coexistence. It is not a question of a State not protecting Intellectual Property more a question of whether or not the measures taken by that State respect the balance between rights and legitimate regulatory objectives. The ruling now will be predicable and ensures the rights holders and governments.

¹⁵ Id. arts. 22-24.

¹⁶ Appellate Body Report, India - Patent Protection for Pharmaceutical and Agricultural Chemical Products, WTO Doc. WT/DS50/AB/R (adopted Jan. 16, 1998).

¹⁷ Panel Report, Canada - Patent Protection of Pharmaceutical Products, WTO Doc. WT/DS114/R (adopted Apr. 7, 2000).

¹⁸ Panel Report, European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, WTO Docs. WT/DS174/R & WT/DS290/R (adopted Apr. 20, 2005).

V. Indian Perspective.

India's an important player in this debate because of its main characteristics which are representative of the large developing country. India has a wide range of interest in many countries. These comprise medicines, information technology, historical awareness, farming and recreation and digital assistance etc. Before the TRIPS provisions came into effect, the Indian Patent law aimed primarily to encourage industry in India, while ensuring availability of medicines. Moreover, products in the pharmaceutical and chemical sector were only able to get product patent. India amended its patent laws to grant patent protection for the product because of the TRIPS agreement. However, it did retain certain clauses concerning public interest safeguards; these are the well-known article 3(d), compulsory licensing and pre-grant opposition.¹⁹

India has also implemented laws that protect trademarks, copyright, geographical indications, designs and biodiversity.²⁰ The 1999 Act for Geographical Indications safeguards products from a defined geographical origin. The Protection of Plant Varieties and Farmers' Rights Act, 2001 was done not only to protect the plant breeders but also to accept farmer's right. Through these legal frameworks, India is not rejecting global Intellectual Property (IP) standards but seeking to adapt these standards to local development priorities.

Courts in India have behaved as balancing agent. The Bayer Corp. Union of India case serves as a good illustration of the issues involved in compulsory licensing of sorafenib tosylate in the context of affordability, reasonable public requirement and local working of the patent.²¹ Entertainment Network v. Super Cassette Industries: Brief Case Overview Case.²²

As per the case of Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd., rulings of the Supreme Court of India established that copyright law must provide a balance between the private rights and the public interest. In scenarios like this one, we see that coexistence isn't a treaty level matter. Rather, it is something that gets achieved by domestic adjudication. India set to become testing ground for innovative trading.

It includes artificial intelligence (AI), digital health, and data analytics and weather tech. The unavailability of protection may hinder innovation and investment. A guard that is too powerful can limit mobility and talent. A balanced IP-trade policy should promote home R&D, fair competition, fair access, and export competitiveness.

Part VI Conflict or Coexistence: A Study.

It is convincing to argue that trade and intellectual property have different short-term objectives. Restrictions imposed by intellectual property regarding use without consent. Trade liberalization leads to lowered barriers. Strong protections for patents may postpone generics. Enforcement copyright affects education and digital access. Trademarks Can Restrict Parallel Trade Activities. Confidential information can hinder knowledge dissemination. Developed nations may use trade negotiations to demand standards (TRIPS-plus obligations) that are higher than those in TRIPs. The ability of developing nations to create policies may be constrained by this pressure.

Nonetheless, the coexistence thesis is more compelling when the relationship is understood institutionally. The trade of branded items, digital services, technology, and creative products cannot efficiently be done internationally without ensuring some safeguard of intangible assets. Intellectual property covers the quality guarantee as well as investment and commercial license. The important question isn't whether intellectual property should exist in trade but how much and for whom? Furthermore, what protection does intellectual property create for the creative in dealing with the competitive?

¹⁹ The Patents Act, No. 39 of 1970, §§ 3(d), 25, 84, India Code (1970).

²⁰ The Protection of Plant Varieties and Farmers' Rights Act, No. 53 of 2001, India Code (2001).

²¹ Bayer Corp. v. Union of India, 2014 S.C.C. OnLine Bom. 963 (India).

²² Ent. Network (India) Ltd. v. Super Cassette Indus. Ltd., (2008) 13 S.C.C. 30 (India).

A balanced model should be guided by four principles. First and foremost, intellectual property is useful, not absolute. Public interest is to accumulate innovations and creativities. In addition, trade regulations must take into consideration the regulatory autonomy in public health, education, environment and competition. Developing nations are not interested in lip service; they want actual flexibilities and capacity development. In order not to interfere with legitimate generics, research, or imports, regulatory controls need to be proportionate.

VII. Suggestions

At the outset, countries must maintain the flexibility offered by TRIPs in their domestic legislation, refraining from making unnecessary TRIPs-plus commitments. Procedures for compulsory licensing of medicines, clean technology and emergencies must be characterised by ‘clarity’, ‘time-boundness’ and ‘legal certainty’, in that order. I believe that patent abuse should be considered by the authorities in relation to the licensing practices and the standards-essential disputes. Developing countries must invest in their own innovation systems in addition to public research facilities which they already have. Furthermore, the patent examination capacity and technology transfer offices should be included. Fifthly, the international cooperation must focus not only on enforcement but equally on access, capacity building and technology diffusion. Digital copyright rules must include the right exceptions to education and research, libraries, accessibility and text and data mining, according to point six. It is important to stress the importance of a trade policy that provides effective safeguards for traditional knowledge and geographical indications to allow communities and local producers to benefit in global markets.

VIII. Conclusion

Intellectual property rights are not incompatible adversaries or natural allies of international trade. Much depends on law, institutional interpretation and political economy in their relationship. Tension occurs when intellectual property is used to limit access, raise price, restrict competition or cause tech dependence. When Intellectual property encourages creativity, supports the licensing of works, serves as a consumer protection mechanism and allows brands to become stronger, gives a boost to domestically manufactured products. It also has fair return for creators without running against public good.

Before this, many countries, especially developing ones, had no formal intellectual property policies. This shift became troubling especially for less developed countries but it also served to generate a common understanding which could balance the rights and obligations. The Doha Declaration, compulsory licensing, exhaustion rules, competition safeguards, geographical indications and domestic public-interest doctrines show that the system contains tools for reconciliation. It is a very important task to use these tools.

Thus, the solution to the question asked in the title is conditional coexistence. International trade and intellectual property rights possibly can coexist, exclusivity can be constrained by public health and competition, technology transfer and development needs and access to knowledge. A fair global trade order should safeguard innovations but also ensure that far-and-wide the fruits of the innovations are available.

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