India continues to be on the ‘Priority Watch List’ of the United States Trade Representative (USTR) for lack of adequate intellectual property (IP) rights protection and enforcement, the USTR said in its Annual Special 301 Report, released.

1. India remained one of the most challenging economies for IP enforcement and protection, the report said, using language it has used previously.
2. Algeria, Argentina, Chile, China, Indonesia, Russia, Saudi Arabia, Ukraine and Venezuela are also on the Priority Watch List.
3. While India made “meaningful progress” to enhance IP protection and enforcement in some areas over the past year, it did not resolve recent and long-standing challenges, and created new ones, the report said. The same assessment was made in the 2019 report.
4. These long-standing concerns were about innovators being able to receive, maintain and enforce patents particularly in the pharmaceutical sector; concerns over copyright laws not incentivising the creation and commercialisation of content; and an outdated trade secrets framework.
5. “India also further restricted the transparency of information provided on state-issued pharmaceutical manufacturing licenses, continues to apply restrictive patentability criteria to reject pharmaceutical patents, and still has not established an effective system for protecting against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceuticals and certain agricultural chemical products,” the report said.
6. The report also mentioned high customs duties on medical devices and Information and Communications Technology. These goods categories were have been persistent challenges in trade talks between the two countries last year — the language used in the 2020 report in this context is the same as in the 2019 report.

“Despite India’s justifications of limiting IP protections as a way to promote access to technologies, India maintains extremely high customs duties directed to IP-intensive products such as medical devices, pharmaceuticals, Information and Communications Technology (ICT) products, solar energy equipment, and capital goods,” it said.

Online IP enforcement in India has improved, the report said, but progress is undercut by factors including weak enforcement by courts and the police, lack of familiarity with investigative techniques and no centralised IP enforcement agency. The USTR also noted that India was ranked among the top five source economies for fake goods by the Organization of Economic Development and Cooperation (OECD) in 2019.
Not good for online rights

The government’s 2019 draft Copyright Amendment Rules, if implemented, would have “severe” consequences for Internet-content rights holders, the report said, as the proposed rules broadened the scope of compulsory licensing from radio and television broadcasting to online broadcasting.

Trademark counterfeiting levels were “problematic”, the report said and there were “excessive delays” in obtaining trademarks due to a lack of examination quality. The U.S., the report noted, continues to urge India to join the Singapore Treaty on the Law of Trademarks, a treaty that harmonises trademark registration.

Analysis - Priority watch list (Mains shot)

What is priority watch list?

“Priority Watch List” and “Watch List” countries are identified by the annual Special 301 Report. “Priority Watchlist countries” are judged by the USTR as having “serious intellectual property rights deficiencies” that require increased USTR attention. “Watch List” countries have been identified by the USTR as having “serious intellectual property rights deficiencies” but are not yet placed on the “Priority Watchlist”. The USTR can move countries from one list to the other, or remove them from the lists, throughout the year.

Why India is placed under this? (PT SHOT)

Lack of sufficient measurable improvements to its Intellectual Property (IP) framework on long-standing and new challenges, which has negatively affected American right holders over the past year. India remains one of the world’s most challenging major economies with respect to protection and enforcement of IP.

1. Long-standing IP challenges facing US businesses in India include those which make it difficult for innovators to receive and maintain patents in that country, particularly for pharmaceuticals, insufficient enforcement actions, copyright policies that do not properly incentivise the creation and commercialisation of content, and an outdated and insufficient trade secrets legal framework.

2. India also further restricted the transparency of information provided on state-issued pharmaceutical manufacturing licenses, and expanded the application of patentability exceptions to reject pharmaceutical patents.

3. India also missed an opportunity to establish an effective system for protecting against the unfair commercial use, as well as the unauthorised disclosure, of undisclosed test or other data generated to obtain marketing approval for certain agricultural chemical products.

4. Last year it engaged with India to secure meaningful IP reforms on long-standing issues, including patentability criteria, criteria for compulsory licensing and protection against unfair commercial use, as well as unauthorised disclosure, or test
Implications:

1. Countries under priority watch list will be the subject of increased bilateral engagement with the USTR to address Intellectual Property (IP) concerns.
2. USTR would be reviewing the developments against the benchmarks established in the Special 301 action plans for countries that have been on the ‘Priority Watch List’ for multiple years.
3. For countries that fail to address US’ concerns, the USTR will take appropriate actions, such as enforcement actions under Section 301 of the Trade Act or pursuant to World Trade Organisation or other trade agreement dispute settlement procedures, necessary to combat unfair trade practices and to ensure that trading partners follow through with their international commitments.

What needs to be done- demands by USTR?

To maintain the integrity and predictability of IP systems, governments should use compulsory licenses only in extremely limited circumstances and after making every effort to obtain authorisation from the patent owner on reasonable commercial terms and conditions.

Such licenses should not be used as a tool to implement industrial policy, including providing advantages to domestic companies, or as undue leverage in pricing negotiations between governments and right holders. It is also critical that foreign governments ensure transparency and due process in any actions related to compulsory licenses. India has yet to take steps to address long-standing patent issues that affect innovative industries.

Special 301 (PT SHOT)

The Special 301 Report is prepared annually by the Office of the United States Trade Representative that identifies trade barriers to United States companies and products due to the intellectual property laws such as copyright, patents and trademarks, in other countries. By April 30 of each year, the USTR must identify countries which do not provide “adequate and effective” protection of intellectual property rights or “fair and equitable market access to United States persons that rely upon intellectual property rights”.


Priority watch list countries: USA uses “carrot” policy to incentivize IPR reforms e.g. funding, capacity building, bilateral exchanges and conferences.

Priority foreign countries: “sticks” policy to force IPR reforms e.g. putting trade sanctions, approaching WTO dispute resolution.
The office of the United States Trade Representative (USTR) has taken off India from the list of countries that are eligible to claim benefits for preferential treatment with respect to Countervailing duties (CVD) investigations.

- The preferential treatment with respect to CVDs investigations falls under the US’ Generalized System of Preferences (GSP) scheme.
  - Generalized System of Preferences (GSP) is an umbrella that comprises the bulk of preferential schemes granted by industrialized nations to developing countries.
  - Countervailing duty (CVD) is an import tax imposed on certain goods in order to prevent dumping or counter export subsidies.
- Along with India, USTR has also eliminated other countries including Brazil, Indonesia, Hong Kong, South Africa, Malaysia, Thailand, Vietnam and Argentina from getting preferential treatment.
- The new lists consist of 36 developing countries and 44 least developed countries.

The move comes ahead of US President Donald Trump’s visit to India to talk and potentially sign a trade deal.

**Background**

- The USA had come up with lists of countries classified as per their level of development to harmonise the USA preferential treatment laws with the World Trade Organization’s (WTO) Subsidies and Countervailing Measures (SCM) Agreement in 1998.
  - The WTO Agreement on Subsidies and Countervailing Measures disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies.
  - Under the agreement, a country can use the WTO’s dispute-settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. Or the country can launch its own investigation and ultimately charge extra duty (“countervailing duty”) on subsidized imports that are found to be hurting domestic producers.
- The classification of the countries (developed, developing and least-developed) is done according to:
  - Per capita Gross National Income or GNI.
  - Share of world trade.
  - Other factors such as Organisation for Economic Co-operation and Development (OECD) membership, EU membership, and Group of Twenty (G20) membership, etc.
- Thus the country with per capita GNI above $12,375 or Rs 8.82 lakh, the share of more than 0.5% to the world trade, and membership to the above-mentioned organisations is considered as a developed country by USTR.

**India- As a USTR’s Developed Country**

- According to USTR, India’s share in global trade was 2.1% for exports and 2.6% for imports in 2018.
- Also India, along with nations like Argentina, Brazil, Indonesia, and South Africa, is part of the G20 bloc and G20 membership indicates that a country is developed.
- Further, being a part of G20 India can be classified as a developed country despite having a per capita GNI below $12,375.

**Impact on India**

- India is the largest beneficiary nation under the GSP, with total benefits from tariff exemptions amounting to $260 million in 2018, according to the data from the USTR’s office.
- In 2018, India exported goods worth $6.3 billion (as per USTR figures) to the US under the GSP, making it around 12.1% of India’s total export to that country.
- India no longer in the list of developing countries allows the USA to hold a CVD investigation.
  - The CVD laws allow the US to hold an investigation into the trade policies of other countries harming the US trade.
  - If the investigation finds that India’s policies allow exporters to sell their products in the US at a lower rate, the US can impose a countervailing duty on Indian goods.
countervailing duty, to make the Indian goods more expensive in the US markets.

- Despite having a **minimal impact on India’s overall outbound trade with the US**, specific exports from India in a diverse set of sectors such as jewellery, leather, pharmaceuticals, chemicals and agricultural products may face higher costs and competition.