

TRIPS-Plus/WTO - Plus IP protection measures will be detrimental to the Indian economy.



TRIPS Agreement is an integral part of the WTO system which itself builds upon the experience of nearly half a century under GATT 1947.

- The WTO panel report "India-Patent Protection for Pharmaceutical and Agricultural Chemical Products" (WT/DS50/R, adopted 5th Sept. 1997, para 7.19)



The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the WTO comes with harmonized standards of protection that each WTO member country has to give to the IP of fellow WTO members.

The TRIPS Agreement sets out the multilaterally agreed standards for all the intellectual property rights (IPRs) including patents, copyrights, industrial designs, etc.

The term "TRIPS-Plus or WTO-Plus measures" refers to the standards that provide protection of intellectual property rights much higher than the requirements mentioned in the WTO-TRIPS Agreement.

Such WTO-Plus standards, if granted, would considerably reduce the flexibilities in the TRIPS Agreement that help developing countries in establishing institutional conditions and policies in supporting their socioeconomic conditions.

The TRIPS -Plus/WTO-Plus measures for IP rights include, among others, the following:

- Patent term extension beyond 20 years.
- Providing data exclusivity and market exclusivity.
- Providing measures to facilitate "evergreening" of the patents.

These TRIPS-Plus/WTO-plus measures focus mainly on generic pharmaceuticals and agrochemicals in which India has gained global prominence.

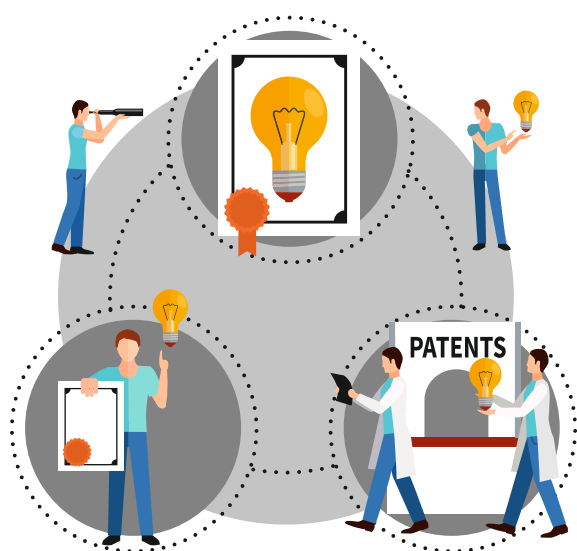
India has a well-established generic pharmaceutical and agrochemical industry that produce for the domestic and export markets. Together, they account for **50%** of India's chemical export and earn the valuable trade surplus from the international trade.



Year	India's total chemical export	Of this, pharma export	Of this, agrochemicals export	Share of these two sectors (%) in India's chemical export
2017-18	37.56	16.45	2.56	51
2018-19	43.76	18.30	3.16	49
2019-20	45.02	19.83	3.35	51
2020-21	48.26	23.47	3.58	56
2021-22	56.31	23.48	4.90	50

Source: Ministry of Commerce data base accessed on 6th June 2022

Unit: \$ bn



India introduced product patents for agrochemicals and pharmaceutical drugs in 2005 after amending the Patent Act -1970 to comply with the requirements of the TRIPS Agreement.

There is no obligation under the WTO-TRIPS Agreement for India to grant TRIPS-Plus/WTO Plus IP rights to the USA/EU/ Japan, etc., under the PTA/FTA.

A short lived "data exclusivity" arbitrarily provided in India to agrochemical formulations in 2007 led to spurt in imports. It was withdrawn following court orders.

Granting the TRIPS-Plus or WTO Plus IP rights in the PTA/FTA would restrict Indian industry's access to post-patent products and delay the launch of inexpensive generics in the Indian and international market. It would considerably cripple the Indian generic industry and erode its share in the international generics market.

The TRIPS-Plus or WTO Plus measures are not recognized/required by the WTO but are forcefully imposed on developing countries through PTA/ FTA by the developed countries, the major producers and exporters of IPR intensive products and services.

It is an acknowledged fact that the developed economies such as USA, EU, Japan and others have significant commercial interests in seeking the WTO-Plus measures from the developing countries.

Sample this. The European Parliament in its resolution of 9th June 2015 on **Strategy for the protection and enforcement of intellectual property rights in third countries** said [It] *"is convinced that better protection of intellectual property rights and effective implementation of related rules in third countries would be a strong incentive for investors from the European Union and elsewhere to invest, share new technological skills and update existing technologies"*.

Better protection of intellectual property rights in third countries?
This is a clear reference to the WTO- Plus measures commonly known as the TRIPS-Plus measures.

The IPR intensive industries contribute enormously to the GDP and employment in the developed economies. For example, in the USA the IPR intensive industries accounted for **\$7.8 trillion** in the gross domestic product (GDP) in 2021. This is **250%** higher than India's GDP!



Share of IPR intensive industries in the economy of developed countries

Developed Countries	% Share of GDP	% Employment
EU	45%	39%
United Kingdom	43%	33%
Korea	43%	29%
USA	41%	33%
Canada	25%	20%

Source: USPTO, EUIPO, Canadian Intellectual Property Office (CIPO), Korea Institute of Intellectual Property



In contrast, the contribution of IPR intensive industries to the Indian economy is so insignificant that it is not even documented.

What fuels the western economy is very different from what fuels the Indian economy.

It requires to be reiterated that the pressure built by developed countries on developing countries into accepting the TRIPS-Plus measures for IP protection is driven by commercial reasons. And, not by any altruistic reasons.

In the year 2020, just two regions of the world - the North America and Europe- accounted for nearly **80%** of the world's receipts of charges for the use of intellectual property. Between 2016 and 2020, India paid **\$34 bn** towards charges for use of IP. (Source: WTO)

It would be naïve for the developing countries to believe that TRIPS-Plus measures would fetch benefits what the TRIPS Agreement has not fetched for over 25 years.

Besides, it is important to recognize that any IPR regime that goes beyond the harmonized standards of the TRIPS Agreement would also involve the most favoured nation (MFN) obligation of the countries bound by the PTA/FTA. The MFN principle requires that if the TRIPS-Plus measures are offered to one country in the PTA/FTA, the same must be equally and unconditionally extended to all other WTO members.

TRIPS Agreement must be interpreted and implemented in good faith taking into account legitimate expectations of other WTO members.

Granting TRIPS-Plus/WTO-Plus IP measures in the PTAs/FTAs would disproportionately benefit the IP producing and exporting developed countries and not India.



Crop Care Federation of India

Crop Care Federation of India (CCFI) is an apex trade body for Indian agrochemicals industry with 50 companies as members. Our members account for over 75% of agrochemicals export from India.
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Abbreviations:

PTA/FTA: Preferential Trade Agreement/Free Trade Agreement

IP: Intellectual Property

IPR: Intellectual Property Rights