

TRIPS FOR TRADE: EVALUATING THE BASIS, BEGINNING AND IMPLICATIONS OF INDIA'S FAUSTIAN BARGAIN

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Abstract

Uruguay round of Multilateral Trade Negotiations, for the first time, significantly linked trade liberalization to intellectual property protection. The industrialized world could no longer dominate the trade in goods and therefore sought the expansion of multilateral rules based trading system to include services, investment and Intellectual Property Rights (IPRs). Though developing countries opposed the inclusion of substantive norms on intellectual property protection within the negotiating mandate of the multilateral trade round, eventually most of them capitulated under the threat of unilateral trade sanction from the United States. A case in point being India, which agreed to inclusion of TRIPS primarily to protect its trade with United States and made the famous "Geneva Surrender". The article is based on the premise that Geneva Surrender epitomizes a faustian bargain by India for India bartered its sovereign prerogative in Intellectual Property (IP) law making in return for market access. Thus, India was required not only to provide market access in return for market access rather it also needed to barter its prerogative in IP law making and establish a regime prevalent in countries like U.S. suited to their development and socio-economic needs. Moreover, the bargain was not a one-time compromise rather it made market access conditional to the level of IP Protection and TRIPS only established the minimum protection that needed to be accorded to IP. There was no bar on according more than the minimum protection rather it was encouraged and soon TRIPS-Plus protection would be demanded for market access. It is against this background that this paper seeks to analyze the constraints that led India to agree to the linkage of IP Protection and Trade in the Uruguay round. The article then describes the implications of the India's bargain on the Patent legislation of the country. Finally the author argues that the bargain continues to this day as the country hardly relies on the flexibilities in the TRIPS amidst U.S. demands of providing TRIPS-plus protection.

Introduction

After the Second World War, international trade cooperation prospered under a provisionally applied agreement called GATT (General Agreement on Tariffs and Trade). Essentially, an international trade agreement on reduction of tariff barriers to trade, the 23 contracting parties to GATT, 1947 intended it to be administered by soon to be created International Trade Organization (ITO).¹ However, the ITO never came into existence due to non ratification of Havana Charter and GATT became a de facto international organization for trade.² While GATT was not conceived as an international organization, it successfully transformed itself into one and was largely successful in reducing tariff on trade in goods.³ In the ensuing years, more countries signed GATT and further trade liberalization continued.⁴ However, in the early 1980s as the cold war was drawing to a close, and also as the world was becoming increasingly more interdependent, GATT rules were proving insufficient for administering international trade.⁵ Countries particularly U.S. favoured a new round of trade negotiations with a broad agenda as American export interests were no longer served by dilution of tariff barriers for exports of manufactured goods.⁶ American exporters sought multilateral trade negotiation to encompass hitherto uncharted areas such as services, investment and intellectual property wherein their competitive edge was still intact unlike in the case of manufactured goods where developing countries had made significant inroads.⁷ The Ministerial Declaration on the Uruguay Round included Trade- related aspects of intellectual property rights (TRIPS) including trade in counterfeit goods within the framework of what would be negotiated within the umbrella of GATT.⁸ While many developing including India agreed to this text construing it to mandate negotiations on Intellectual Property Rights (IPRs) only to the extent necessary to deal with trade in counterfeit goods and other such trade related aspects pertaining to IPRs, this was a patent

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¹DOUGLAS A. IRWIN *et al*, *The Genesis of the GATT* 95 (2008).

²Daniel Drache, *The Short but Significant Life of the International Trade Organization: Lessons for Our Time* (Oct.3, 2019, 11:10 PM), <https://core.ac.uk/download/pdf/47530.pdf>.

³Peter Van Den Bossche & W Zdouc, *The Law & Policy of the World Trade Organization: Text, Cases & Materials* 84 (2017).

⁴Chad P. Brown, *Self Enforcing Trade: Developing Countries and WTO Dispute Settlement* 10-21(2009).

⁵Bossche, *Supra* note 3.

⁶WORLD TRADE ORGANIZATION, *THE MAKING OF THE TRIPS AGREEMENT: PERSONAL INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS*, 83 (Jayshree Watal & Antony Taunman eds., 2015).

⁷Andrew G. Brown, *Reluctant Partners: A History of Multilateral Trade Cooperation-1850-2000* 149 (2004).

⁸*Ministerial Declaration, General agreement on Tariff and Trade*, (Oct.3, 2019, 11:10 PM), https://www.wto.org/gatt_docs/English/SULPDF/91240152.pdf.

misreading as the very first paragraph of the text provided for “ the need to promote effective and adequate protection of IPRs”.⁹ While the developing countries had initially conceded that the subject of counterfeit goods could be discussed in GATT, they did argue for a while that the negotiating mandate did not warrant inclusion of substantive norms and standards for protection of IPRs within multilateral rules based system on trade. Initially, India with other developing countries particularly Brazil opposed inclusion of substantive norms of intellectual Property (IP) Protection in the trade negotiations.¹⁰ Eventually, however, when the scope of the negotiating mandate was settled in April, 1989, it was decided that it did warrant negotiation on substantive norms and standards for protection of IPRs thereby inextricably linking trade and market access with intellectual property protection.¹¹ Though in a communication made to the group of Negotiation on Goods on 10th July, 1989, India stated that the objective of the “intellectual property system is to monopolize rather than to liberalize” and advocated for the need of recognizing the “freedom of the member states to attune their intellectual property protection system to their own needs and conditions”.¹² However since the consensus was already reached in April, 1989 to negotiate on substantive standards on availability and scope of IPRs , India’s communication in July, 1989 had not much relevance. Interestingly, India is said to have played a major role in finalizing the April, 1989 text.¹³ However if India was opposed to inclusion of substantive norms on IPRs in the trade round, then why did it concede in April 1989 by allowing inclusion of “standards of availability of IPRs” in the text that was to clearly establish the negotiating mandate only to again argue differently in July, 1989. What made India surrender its interests and position even as there was fierce opposition on the stand taken in the country?¹⁴

⁹JAYSHREE WATAL, INTELLECTUAL PROPERTY RIGHTS IN THE WTO AND DEVELOPING COUNTRIES 21 (1st edition, 2003).

¹⁰ JAYSHREE WATAL, INTELLECTUAL PROPERTY RIGHTS IN THE WTO AND DEVELOPING COUNTRIES 24 (1st edition, 2003).

¹¹*Id.*, at 27.

¹²MTN.GNG/NG11/W/37(1989); *Group of Negotiation on Goods, standards and Principles concerning the availability, scope and use of Trade-Related Intellectual Property Rights(Communication from India), Multilateral Trade Negotiations*, THE URUGUAY ROUND (Oct.5,2019, 10:00 AM).

https://www.wto.org/gatt_docs/English/SULPDF/92070115.pdf

¹³ Watal, *supra* note 9, at 27.

¹⁴ *Intellectual Property Rights, The Geneva Surrender*, ECONOMIC AND POLITICAL WEEKLY (1989).

1. Trade as the Objective of the Faustian Bargain: The Threat of (special) 301

U.S. may said to be primarily responsible for inclusion of IP in the Uruguay round.¹⁵ While GATT, which primarily governed trade in goods, had few provisions pertaining to IP prior to the beginning of the Uruguay Rounds, they did, not even remotely, lay down minimum standards that contracting parties to GATT were required to follow for determining “recognition, availability and scope of IP”. U.S.’s insistence on inclusion of IP in the trade round lay in the fact that approximately, one fourth of all the U.S. exports consisted of IPs and the lack of IP protection in export markets particularly developing countries including, India and Brazil, was injuring US trade interests and increasing its trade deficit.¹⁶ Particularly in India’s case, its patent system was the direct motivation for US efforts in Uruguay round.¹⁷ The existing Patents Act, 1970, inter alia, did not allow product patents for certain categories of technologies including medicines and chemicals.¹⁸ This allowed domestic pharmaceutical manufacturers of India to reverse engineer and manufacture low cost generic versions of effective medicines that had been produced and patented in industrialized countries such as US and were priced higher due to subsisting patent rights in those countries. In fact, due to the 1970 patent legislation, India’s generic pharmaceutical industry earned itself the epithet of “pharmacy of the world” riding on the strength of its cheap export of medicines, a feat that did not go down too well with innovator pharmaceutical companies who claimed that Indian generic drug manufacturers were free riding on their R & D.¹⁹

In fact the Pharmaceutical Research and Manufacturers of America (PhRMA), an association of the innovator pharmaceutical companies and one of the most influential lobbies is said to have played a major role in determining the US stand in trade negotiations so as to ensure that India’s IP regime gave in to protect its interests.²⁰ And indeed it did give in. India capitulated under US pressure which came in the form of 301 and agreed to barter sovereignty in IP law making.

¹⁵ WORLD TRADE ORGANIZATION, THE MAKING OF THE TRIPS AGREEMENT: PERSONAL INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS, 83 (Jayshree Watal & Antony Taunman eds., 2015).

¹⁶ Prasanth Reddy T, Sumathi & Chandrasekharan, Create, Copy, Disrupt: India’s Intellectual Property Dilemmas, 36 (2017).

¹⁷ *Id.*, at 37.

¹⁸ The Patents Act, 1970 § 5

¹⁹ Prasanth Reddy T, Sumathi & Chandrasekharan, Create, Copy, Disrupt: India’s Intellectual Property Dilemmas, 30 (2017).

²⁰ *Id.*, at 31.

Section 301 finds place in the US Trade Act of 1974 and authorises the president of the country to suspend trade agreement concessions and institute retaliatory action against foreign countries subject to the determination that foreign countries are maintaining trade policies that are unjustifiable, unreasonable, or discriminatory and burden or restrict United States Commerce.²¹ The provision was a result of the dissatisfaction of the U.S. with the dispute resolution system under the GATT, 1947 and was amended a number of times to bolster U.S.'s unilateral authority to deal with erring trade partners by instituting retaliatory action. In 1988, section 301 was further strengthened to taken on what the U.S. considered to be the unfair foreign trade practices. The 1988 enacted Omnibus Trade and Competitiveness Act expanded the executive power to unilaterally retaliate against countries so as to ensure that they fell in line to protect the interests of the U.S. businesses in other countries and introduced what was referred to as Super 301 and Special 301.²² Both these additions were aimed at enhancing the bargaining power of U.S. trade negotiators in promoting international trade liberalization in sync with the interests of the U.S.²³ While, Super 301 required the USTR (United States Trade Representative)²⁴ to probe into a variety of unfair trade practices of the trading partners of the United States and identify priority countries, Special 301 mandated the USTR to identify those foreign countries that “denied adequate and effective protection to IPRs.”²⁵ More specifically, Special 301 required the USTR to identify “priority foreign countries” which were countries whose policies were having the most adverse economic impact on the United States and who were not entering into bilateral or multilateral negotiations to provide adequate protection to IPR. USTR had the onus of initiating investigations into the policies of those countries which were identified as priority foreign countries. The USTR was mandated to complete the investigation and enter into bilateral negotiation with the countries within six months. If the detrimental policies persisted USTR was authorized to retaliate by imposing restriction on imports from countries that were identified as priority countries. Interestingly, USTR was not

²¹ Elizabeth K. King, *The Omnibus Trade Bill of 1988: Super 301 and its Effects on the Multilateral Trade System under the GATT*, 12 U. PA. J. INT'L L. 245 (1991).

²² King, *supra* note 22.

²³ Judith H. Bello and Alan F. Holmer, *"Special 301": Its Requirements, Implementation, and Significance*, 13 FORDHAM INT'L L.J. 259 (1989).

²⁴ Arvind Subramaniam, *The Thorn in India- US Business ties*, BUSINESS STANDARD (Oct.27,11:30PM), https://www.business-standard.com/article/economy-policy/the-thorn-in-india-us-business-ties-114031201298_1.html.

²⁵ 19 U.S.C. §§ 2411-2417.

required to conduct investigation or impose duties if it would be detrimental to the interests of the United States.²⁶

In its first special 301 report, USTR placed India on the priority watch list along with Brazil, Mexico, China, Korea, Saudi Arabia Taiwan and Thailand.²⁷ Further, Indian IP regime was to be reviewed by November, 1989 and if found unsatisfactory India could have been “downgraded” to priority foreign country. Further, India was identified as Priority Country in 1989 pursuant to the newly created Super 301 i.e. Section 310 of the Trade Act, 1974 as amended in 1988. However, U.S. chose not to retaliate against India immediately as it was more interested in India agreeing to its demands in the Uruguay round of negotiations.²⁸ Thus, a retaliatory action was staring India in the face while it was going through a difficult balance of payment situation and export earnings were considered relevant to better the situation.²⁹ And, so to protect the interests of its exporters who lamented “why should they be penalized”, particularly to ensure that the textiles exports from India to U.S. were not impacted adversely, Indian government made the decision of bartering sovereign prerogative in IP Policy making to U.S.

What further necessitated India’s faustian bargain was the stipulation made in the GATT ministerial declaration before the beginning of the Uruguay round of trade negotiations that the result of the negotiations “shall be treated as part of a single undertaking”.³⁰ Thereby, countries had no choice but to agree to abide by all that was negotiated in the multilateral round which meant that if a country was desirous of being a party to Agreement on trade in goods, it necessarily had to agree to Agreement on Intellectual Property referred to as TRIPS.

2. The Faustian bargain: Implications and Continuation

On 1st January, 1995, WTO (World Trade Organization) replaced the earlier GATT by virtue of the Final Act Embodying the results of the Uruguay round of Multilateral Trade Negotiations (Final Act).³¹ India signed the Final Act on 15th April, 1994 and thus was obligated to comply

²⁶ Bello, *supra* note 26

²⁷ Special 301 on Intellectual Property, Factsheet, (Oct.27,11:30PM) (1989).
<https://ustr.gov/sites/default/files/1989%20Special%20301%20Report.pdf> (last accessed on October 3, 2019)

²⁸ King, *supra* note 22.

²⁹ Budget 1988-89, (Oct.27,11:30PM) <https://dea.gov.in/budgetdivision/indiabudgetarchive>

³⁰ Part IB, *General agreement on Tariffs and Trade, Ministerial declaration on the Uruguay Round*, September 20, 1986, (Oct.27,11:30PM) https://www.wto.org/gatt_docs/English/SULPDF/91240152.pdf .

³¹ Final Act embodying the results of the Uruguay round of Multilateral Trade Negotiations, Apr.15,1994, (Oct.27,11:45PM) https://www.wto.org/gatt_docs/English/SULPDF/92160001.pdf (last accessed on October 3, 2019).

with the provisions of TRIPS.³² And the compliance was mandatory for WTO had an elaborate ruled based dispute settlement system wherein every WTO member had recourse to the dispute settlement system against breaches of WTO Law and responding member had no choice but to be bound by the jurisdiction of the WTO dispute settlement system.³³ Further, to ensure effective enforcement of the decision of the WTO DSB (Dispute Settlement Body), WTO dispute settlement system also provided cross retaliation as one of the remedies to the complaining party if the responding party refused to comply with the DSB ruling.³⁴ Cross retaliation implied that if India was found violating TRIPS, the complaining country could impose higher duties on textile imports from India and thus the reasons that may have coerced India into making the faustian bargain would exist till India would choose to remain a WTO member and ensure compliance with TRIPS.³⁵ And thus aside from the immediate implications of faustian bargain which followed soon after India becoming a WTO member, the implications continue till date. The most pronounced impact of India's faustian bargain was and continues to be on the Patents Act, 1970 and Pharmaceutical sector and this section attempts to bring those to the fore

India was required to amend its 1970 enacted Patents Act comprehensively in order to comply with TRIPS. Interestingly, all the members of WTO were exempted for a period of one year from complying with the provisions of TRIPS.³⁶ However, countries like India which did not grant patent based monopoly in certain products like Pharmaceuticals were mandated to comply with TRIPS right away.³⁷ Thus the onus on developing countries like India to protect IPRs was greater than those on the developed countries as explained below.

Article 27.3 of TRIPS required product patents to be granted in all fields of technology including pharmaceuticals for which many developing countries including India only provided process patents till then. And, while article Art. 65 of TRIPS allowed developing countries a period of 10

³² *Id.*, at ¶4.

³³ Art. XXIII:1, GATT, 1994.

³⁴ Art. 22, ¶3(c), Understanding on the Rules and Procedure governing the Settlement of Disputes, Annex 2 of the Agreement establishing the World Trade Organisation.

³⁵ Bossche, *Supra* note 3, at 291.

³⁶ Art. 65(1), Agreement on Trade Related Aspects of Intellectual Property Rights, Annex 1(c) of the Agreement establishing the World Trade Organisation.

³⁷ Art. 70.8, Agreement on Trade Related Aspects of Intellectual Property Rights, Annex 1(c) of the Agreement establishing the World Trade Organisation.

years to comply fully with the mandate of Art. 27, the transition period was not clean.³⁸ This meant that developing countries like India were required to establish a mechanism for allowing filing of product patent applications in pharmaceuticals even during the transition period and grant them with what were known as “Exclusive Marketing Rights(EMRs) subject to fulfilment of certain conditions.”³⁹ Considering, EMRs were very similar to patent rights under TRIPS or even broader in as much grant of right was linked to product patent in other WTO member; it in effect meant that India had agreed to product patent regime from the very first day of TRIPS. Though the narrative was that developing countries like India had a transition period of ten years before they needed to shift to product patent regime stipulated by TRIPS, in reality there was no such transition period.⁴⁰ Interestingly, it was on the non-compliance of Art. 70.8 and Art. 70.9 that India faced its first WTO dispute as a respondent. The dispute was brought by U.S. on account of not providing a means for filing of mailbox application and not establishing a system for grant of EMRs. India lost both before both the adjudicatory forums of WTO i.e. the panel and the appellate body and later also against EU which complained against India on the same issues.⁴¹ Threatened by cross retaliation, India rushed to bring its patent legislation in line with TRIPS thus cementing the faustian bargain once and for all.

India introduced three amendments in the Patents Act, 1970 within a space of six years to bring it in line with the mandate of TRIPS.⁴² The net effect of all the three amendments was that monopoly for inventors/ innovators in the form of patent protection was enhanced thereby diminishing accessibility and affordability of even those inventions which were critical for advancing human rights like right to health. For instance, the product patent regime was extended to food, chemicals and medicines, duration of patent protection increased to 20 years and license of right that allowed the government to disregard the monopoly offered by the patent if “reasonable requirement of the public with respect to the patented invention were not met”.⁴³

³⁸ WORLD TRADE ORGANIZATION, THE MAKING OF THE TRIPS AGREEMENT: PERSONAL INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS, 211 (Jayshree Watal & Antony Taunman eds., 2015).

³⁹ Art 70.8 & Art.70.9, Agreement on Trade Related Aspects of Intellectual Property Rights, Annex 1(c) of the Agreement establishing the World Trade Organisation.

⁴⁰ Biswajit Dhar, *Complying with TRIPS Commitment: EMR versus Product Patent Regime*, ECONOMIC AND POLITICAL WEEKLY, 3230-3231 (1998).

⁴¹ India- Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS 50/ AB/R

⁴² Prasanth Reddy & Sumathi Chandrasekharan, *Create, Copy, Disrupt: Indias Intellectual Property Dilemmas*, 41 (2017).

⁴³ The Patents Act, 1970, § 5.

The only silver lining was that India was able to put some limitation on the monopoly by making use of the a few flexible and open ended provisions in TRIPS.⁴⁴

Interestingly, while India had to amend its patent legislation comprehensively to fulfil its TRIPS commitments, the unilateral U.S. pressure on India for providing enhanced protection and monopoly to patents has not abated.⁴⁵ In fact, as the table below, indicates India has continued to be on the priority watch list in its annually published special 301 report even after complying with the mandate of TRIPS in 2005.⁴⁶

S. No	Year	India's Designation	Areas of Concern as per USTR
1.	2005	Priority Watch List	<ul style="list-style-type: none"> Does not protect undisclosed data against unfair commercial use
2.	2006	Priority Watch List	<ul style="list-style-type: none"> Does not protect undisclosed data against unfair commercial use
3.	2007	Priority Watch List	<ul style="list-style-type: none"> Counterfeit pharmaceuticals,
4.	2008	Priority Watch List	<ul style="list-style-type: none"> Piracy of Pharmaceuticals
5.	2009	Priority Watch List	<ul style="list-style-type: none"> Unfair use of undisclosed data by third parties to obtain marketing approval for medicines
6.	2010	Priority Watch List	<ul style="list-style-type: none"> Unfair use of undisclosed data by third parties Section 3(d) of the Patents Act, 1970, Counterfeiting of medicines

⁴⁴ §3(d) of the Patents Act, 1970; Art. 6 & 30, TRIPS Agreement, 1995.

⁴⁵Sri vidhya Ragavan, *The (Re)Newed Barrier to Access to Medication: Data Exclusivity*, 51 AKRON L. REV, 1163 (2017).

⁴⁶The USTR Special 301 Report, <https://ustr.gov/issue-areas/intellectual-property/Special-301> (Oct.25,09:30 PM).

7.	2011	Priority List	Watch	<ul style="list-style-type: none"> • Unfair use of undisclosed data by third parties • Section 3(d) of the Patents Act, 1970, • Stronger patent monopoly for innovators required
8.	2012	Priority List	Watch	<ul style="list-style-type: none"> • Compulsory Licenses, • Unfair use of undisclosed data by third parties
9.	2013	Priority List	Watch	<ul style="list-style-type: none"> • Section 3(d) of the Patents Act, 1970, • Securing and enforcing patents in the pharmaceutical sector
10	2014	Priority List	Watch	<ul style="list-style-type: none"> • Compulsory licensing
11	2015	Priority List	Watch	<ul style="list-style-type: none"> • Concerns over innovation environment in the pharmaceutical sector • Section 3(d) of the Patents Act, 1970
12	2016	Priority List	Watch	<ul style="list-style-type: none"> • Section 3(d) of the Patents Act, 1970, • Patent linkage required
13	2017	Priority List	Watch	<ul style="list-style-type: none"> • Challenges faced by the pharmaceutical innovators due to Section 3(d) of the India Patents Act, • Compulsory licenses of the Patented Pharmaceutical
14.	2018	Priority	Watch	<ul style="list-style-type: none"> • Criteria for compulsory licensing,

		List	<ul style="list-style-type: none"> • Section 3(d) of the Patents Act, 1970 • Unfair use of undisclosed data by third parties
15.	2019	Priority Watch List	<ul style="list-style-type: none"> • Compulsory licensing, • Section 3(d) of the Patents Act, 1970 • Unfair use of undisclosed data by third parties

Table 1

When U.S. placed India on the priority watch list in 1989 for the first time, its intent was to ensure India agreed to barter its prerogative in IP law making for market access. While India agreed then, U.S. has constantly upped the ante on the standards that Indian IP regime needs to adhere to protect IP and used its special 301 report to promote TRIPS- plus protection of IP.⁴⁷ As the above table indicates, U. S. through its special 301 Report constantly attempts to limit or restrict India's reliance on the flexibilities provided in the TRIPS by pinpointing India's usage of those flexibilities as areas of concern. Thus, while in 1989, India was placed on the priority watch list to ensure that it extended adequate patent protection for all classes of inventions and participate constructively in multilateral IP negotiations, it continues to find itself in the same position in 2019 for relying on the flexibilities provided in the TRIPS pertaining to compulsory license, ever greening, etc.⁴⁸ Interestingly, while U.S. has refrained from initiating the WTO Dispute settlement mechanism against India, it has used bilateral trade forums to exert pressure on India.⁴⁹ While India has reiterated that it is TRIPS compliant and will not "succumb to any pressure from anywhere", and yet the Faustian bargain seems to continue.⁵⁰ For instance in 2014, India and the U.S. established a high level working group under the auspices of Trade Policy

⁴⁷ Sean Flynn, *Special 301 of the Trade Act of 1974 and Global Access to Medicine*, JOURNAL OF GENERIC MEDICINES, 451 (2010).

⁴⁸ Art. 27 & 31, TRIPS Agreement, 1995.

⁴⁹ Kirtika Suneja, *India, US talk restoration of GSP, withdrawal of tariffs*, THE ECONOMIC TIMES, (Oct.23, 11:00 PM) available at <https://economictimes.indiatimes.com/news/economy/foreign-trade/india-us-talk-restoration-of-gsp-withdrawal-of-tariffs/articleshow/71071029.cms?from=mdr>.

⁵⁰ Press Trust of India, *India not to succumb to any pressure on IPR issues: Nirmala*, THE BUSINESS STANDARD, (Oct.23, 11:15 PM), https://www.business-standard.com/article/pti-stories/india-not-to-succumb-to-any-pressure-on-ipr-issues-nirmala-116042601513_1.html.

Forum (TPF) to sort out the “contentious issues”.⁵¹ Around the same time, India initiated the process for drafting a National IPR Policy, a first for the country and this was duly acknowledged and appreciated in the 2015 USTR Report.⁵² Was the exercise to draft a National IPR Policy only to placate the U.S so that India’s trading interests are not adversely affected?

Further, in addition to a few flexibilities offered by TRIPS, one of the notable achievements for India during Uruguay Round of Multilateral Negotiations was to be able to secure an open ended and relatively liberal provision on grant on compulsory license.⁵³ Thus, TRIPS and the Doha Declaration on the TRIPS Agreement and public health gives WTO members a lot of flexibility in granting compulsory licenses on patents to ensure accessibility and affordability of products or processes which otherwise owing to the patent granted monopoly may become inaccessible and unaffordable. However in almost over a decade and a half since TRIPS became fully operative, India has granted just one compulsory license. And thus, India’s faustian bargain from the 20th century continues in the 21st century.

⁵¹ Press Trust of India, *PM Modi’s US Visit: India, US to set up high-level working group on IPR*, THE ECONOMIC TIMES (Oct.23, 11:15 PM), <https://economictimes.indiatimes.com/news/economy/policy/pm-modis-us-visit-india-us-to-set-up-high-level-working-group-on-ipr/articleshow/43985458.cms?from=mdr>.

⁵² Special 301 Report 2005, 8 (Oct.23, 11:45 PM) <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

⁵³ WORLD TRADE ORGANIZATION, *THE MAKING OF THE TRIPS AGREEMENT: PERSONAL INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS* 295 (Jayshree Watal & Antony Taunman eds., 2015).