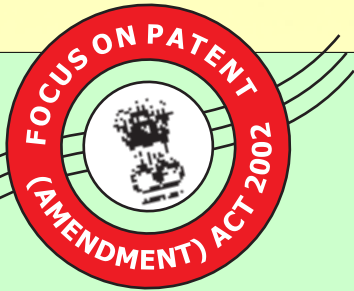


# India & The WTO

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## PATENTS (AMENDMENT) ACT 2002 NOTIFIED

An amendment to the Patents Act, 1970, namely, the Patents (Amendment) Act, 2002 has been notified in the Gazette of India on 25.6.2002. Steps are now under way to bring this law into force at the earliest.

This Act makes the Indian patent law not only TRIPs compliant but also incorporates safeguards for protection of public interest, national security, bio-diversity, traditional knowledge, etc. The opportunity has also been utilised to harmonise the patent granting procedures with international practices and to make the system user friendly.

Some of the important changes made are as follows :

- a) The definition of the term "invention" has been modified in consonance with international practices and consistent with TRIPs Agreement.
- b) Section 3 of the present Act has been modified to include exclusions permitted by TRIPs Agreement and also subject matters like discovery of any living or non-living substances occurring in nature in the list of exclusions which in general do not constitute patentable inventions and also to specifically exclude the inventions which in effect are traditional knowledge.
- c) The rights of patentee have been aligned as per Article 28 of the TRIPs Agreement.
- d) A provision for reversal of burden of proof in case of infringement, suit on process patent, in accordance with Article 34 of the TRIPs Agreement, has been added.
- e) Uniform term of patent protection of 20 years for all categories of invention as per Article 33 of the TRIPs Agreement has been prescribed.
- f) The provisions relating to compulsory licensing have been modified to suit the public interest requirements and also to comply with TRIPs Agreement
- g) A provision has been incorporated for enabling parallel import of patented products at lowest international prices.
- h) To ensure smooth transition of a product from the monopoly status created by the patent to the public domain, a provision has been incorporated for obtaining marketing approval from the appropriate regulatory authorities before the expiration of the patent term.
- i) Several provisions have been incorporated for protecting bio-diversities and traditional knowledge.
- j) The provisions relating to national security has been strengthened.
- k) A provision has been incorporated for hearing of appeals which at present, lie before High Court, by the Intellectual Property Appellate Board, for speedy disposal of such appeals
- l) Several provisions have been incorporated with a view to simplifying and rationalising the procedures.

## PARLIAMENT BRIEFS

### **Amendment of the Patent Act**

Some of the major Indian drug companies, through their associations, have made representations on various issues relating to proposed amendments in the Indian Patent law including those relating to compulsory licensing in the light of the Doha Declaration on TRIPs and Public Health. The Patents Act, 1970 read with the Patents (Second Amendment) Bill, 1999 as reported by the Joint Committee of Parliament, contains adequate provisions for safeguarding national interest and public health including those relating to dealing with circumstances of national emergency and ensuring availability of medicines at affordable prices.

### **ENFORCEMENT OF TRIPS**

TRIPs Agreement covers seven areas of Intellectual Property Rights (IPRs) including plant variety, protected in India by separate legislation. These Acts provide for civil and criminal remedies against infringement of these IPRs. For civil remedies, a right holder may file a suit in a court not inferior to a District Court having jurisdiction to try that suit in a manner specified in the concerned Act. Where there are provisions for criminal remedies for infringement of IPRs like trademark, copyright, etc. a police officer-in-charge of a police station can investigate a case of his own when the commission of a cognizable offence is brought to his knowledge. In case of non-cognizable offences, the police can investigate only on order of a Magistrate having power to try such case. Enforcement of the provisions dealing with criminal penalties is the responsibility of the State Governments through police force. Ministry of Human Resource Development has taken several measures to strengthen enforcement of copyrights. These include setting up of Copyright Enforcement Advisory Council organisation of seminars/ workshops to create greater awareness about copyright law among the enforcement personnel and general public, encouraging setting up of collective administrative societies, creation of separate cells in state police headquarters, etc.

### **TEXTILE CASE AGAINST US**

On 11 January 2002 India requested formal consultations with

the United States under the Dispute Settlement Mechanism of the World Trade Organisation (WTO) regarding the changes in rules of origin for textiles and apparel products set out in the United States' Uruguay Round Agreements Act and the Trade and Development Act of 2000. India has questioned the compatibility of the changes with the provisions of the Agreement on Rules of Origin according to which rules of origin shall not themselves create restrictive, distorting or disruptive effects on international trade, shall not be discriminatory, and shall be administered in a consistent, uniform, impartial and reasonable manner. Formal consultations have been held with the United States on 7 February 2002 and 26 March 2002.

### **ANTI-DUMPING**

The Directorate General of Anti-Dumping & Allied Duties (DGAD) undertakes investigation on the basis of sufficient evidence of dumping, injury and a causal link between the dumped imports and the injury caused to the domestic industry. So far the DGAD has initiated 124 cases of investigations. The present status of these 124 cases is given below: -

- (i) Definitive duties have been recommended in 88 cases, of which, duties have been imposed in 82 cases.
- (ii) Provisional duties have been recommended in 24 cases, of which, duties have been imposed in 20 cases,
- (iii) 8 cases are currently under investigation for preliminary findings.
- (iv) The remaining 4 cases have been closed due to withdrawal of petition and other reasons.

### **IMPORT OF CEREALS**

Import restrictions are being removed as part of economic liberalisation programme of the Government and also in terms of our international obligations. The removal of restrictions has not altered the overall rate of growth of imports of the country. The growth rate of imports was 15.3% in 1993-94, 23.1% in 1994-95, 36.4% in 1995-96, 13.2% in 1996-97, 11% in 1997-98, 15.6% in 1998-99. The process of removal of Quantitative Restrictions on most agricultural items began on 1.4.2000. The import growth rate during the year 2000-2001 was only 7.27% in rupee terms and 0.27% in US dollar terms.