Chapter III

India’s Patent Policy: US Criticism of “Piracy”

India voices strong reservations against US patent policy. United States attempts to increase patents worldwide has met with stiff resistance in India. The United States targets India as one of the main violators of IPRs and accuses India of fostering “piracy”. The United States has utilized bilateral and multilateral pressure against India to ensure that India changes its patent laws. A variety of non-governmental organizations, farmer’s lobbies and other groups have vehemently protested against increasing patent protection in India. India has led the developing countries in battling US attempts to promote its patent policy internationally.

The conflict between the US and India on patents arises from their different approaches to patents. India has focused on economic development in establishing its patent system. The aim has been to ensure protection to domestic industry, availability of commodities and cheaper prices. In contrast with the US, India does not consider all fields of technology as patentable. India has opposed US attempts to link IPR with trade, arguing that they are not related. Certain areas of knowledge, which are thought to require patent protection in the US, are considered best left in the public domain in India.

This chapter focuses on India’s patent policy and attempts to trace the reasons for the differences between the US and India on the issue of patents. It tries to analyze the measures utilized by the US to increase patent protection in India.
and the resistance by India against US policies. It attempts to evaluate the various mechanisms used by the United States to ensure that India is integrated into the US patent regime.

**India's Patent Policy**

One of the main reasons for the conflict between the US and India on patents stems from the historical development of India's patent policy. India's view of patents differs from that of the United States in several ways. India has sought to balance developmental concerns with the need for promoting innovations through its patent policy. The sentiment in India on the issue of patents, especially on pharmaceuticals, is illustrated by an oft-quoted statement made by Indira Gandhi at the World Health Assembly in 1982:

"The idea of a better-ordered world is one in which medical discoveries will be free of patents and there will be no profiteering from life and death."¹

In India, patents are seen more as a tool for economic development. Industrialised nations conceive of patents as a fundamental right comparable to the right of physical property, whereas developing nations view it "fundamentally as an economic policy question."² From the perspective of developed countries, intellectual property is a private right that should be protected as any other tangible property, but for developing nations, intellectual property is a public good that should be used to

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¹ Quoted in Jean Lanjow, “The Introduction of Pharmaceutical Product Patents in India: 'Heartless Exploitation of the Poor and Suffering'”, Economic Growth Center, Yale University, August 26, 1997, p. 1

promote economic development. India has restricted the field of patentability and created various safeguards to ensure that prices are kept low and that foreign companies cannot enjoy a monopoly in India. The patent system in India was developed after a great deal of study and thought. The following table outlines briefly the differences between the US and Indian patent systems:

**Table 3**

**Patent Systems**

<table>
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<tr>
<th>INDIA</th>
<th>US</th>
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<tbody>
<tr>
<td>Patents are a tool of economic development</td>
<td>Patents are a natural right. A form of rewarding and encouraging inventions and enabling public disclosure</td>
</tr>
<tr>
<td>Certain fields of technology are excluded from patent protection</td>
<td>Almost all fields of technology are patentable</td>
</tr>
<tr>
<td>Only process not product patents in pharmaceutical, chemical fields</td>
<td>Process and product patents granted in all fields</td>
</tr>
<tr>
<td>Term of patents 14 years 5-7 in pharmaceutical, chemical fields</td>
<td>Term of patents 20 years</td>
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The philosophy of patents in India differs from the US point of view. There are several knowledge and information areas which India considers unpatentable. India has a large community of scientists and researchers among whom publication rather than gaining patents has been a concern. G.V. Ramakrishna, Chairman of the Disinvestment Commission points out that in India, “We (Indians) are accustomed to the notion that knowledge is free. Our whole orientation has to change from one

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that stresses intellectual attainment to one that protects intellectual property.”

Traditional knowledge systems pose another area where India has not adopted a private property view. A statement that illustrates to some extent the ideological differences upon which the US and Indian value systems are based points out, “(t) he idea that people should be paid to be creative is a point of view that stems from the Judeo-Christian and Muslim belief in a God who created humankind in his own image. It has no analogue in Hindu, Buddhist or Confusion societies. There are real differences in beliefs about what should be freely available in the public domain and what should be for sale in the marketplace.”

History of India’s Patent Policy

A brief focus on the history of India’s patent policy provides a view of how India established its patent system. It enables us to evaluate why India’s patent system differs from that of the US.

Pre-Independence

The patent system in India originated from its colonial past although it became a part of national policy after Independence. The demand for granting patents in India arose from individuals with patents in England who wanted to export to India. They made frequent applications to the East India Company to extend patents in India. The British were in a dilemma as to whether patents could be granted as such rights were clearly within the jurisdiction of the Crown. The earliest possible

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reference to a patent system in India is found in a letter dated 23 September 1835 from the Governor General in Council to the Advocate General of India. The Governor General questioned whether the Government of India had the power to grant patents. The Advocate-General replied that the Government of India had no power to grant patents for new inventions because a British patent that was extended to the colonies may clash with the same patent granted by the Governor-General. The matter was then settled by a select committee which paved the way for India's first legislation on patents: "The Act for Granting Exclusive Privileges to Inventors in India" 1856. The act used the term "exclusive privilege" instead of "patent" in order to distinguish it from patents granted by the Crown. The Queen, however, had not given prior sanction to the act so it was disallowed. Shortly thereafter the act was repealed and re-enacted with modifications in 1859. In 1911 the Indian Patents and Designs Act, a conglomeration of the 1859 act and two other acts enacted thereafter, was passed and became the governing legislation in force at the time when India became independent.

**Post-Independence**

The real history of India's patent policy begins after Independence. It was shortly after Independence that India began to seriously study the issue of patents and determine the type of patent system that should be established in India. Two expert committees were set up to study the issue before embarking on legislation on patents in India. In addition, there were several debates in Parliament on patents. It is clear

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from the extensive attention paid to patents right from Independence that policy makers considered it an extremely important issue in India.

**Patent Enquiry Committee (1948-50)**

The first committee set up to study patents in India was established in 1948. Established by the Ministry of Industry and Supply, the Committee was headed by Bakshi Tek Chand, a retired judge of the Lahore High Court. Also known as the Tek Chand Committee, its purpose was "to survey and report on the working of the patent system in India". The Committee made a detailed survey travelling across the country meeting patent administrators, researchers and others concerned with patents. The Committee studied the issue for two years, submitting an interim report in 1949 and a final report in 1950. The report presents a legislative history of patent laws in India, summarises patent laws in other countries, and provides a review of available patent statistics in India.

The Committee was clearly unhappy with the existing state of patents in India. The report states that, "the Indian patent system has failed in its main purpose, namely to stimulate inventions among Indians and to encourage the development and exploitation of new inventions for industrial purposes in the country so as to secure the benefits thereof to the largest section of the public". The main flaw was that over 90% of the patents in India went to foreigners. The report outlined fourteen specific defects of the patent system including the lack of a clear indication of field of patentability, the criteria for novelty not being spelt out, and the inadequacy of the

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8 Ibid.

provisions relating to the working of a patent. The recommendations of the Committee included: 1) There should be a precise definition of what should be patentable 2) Inventions contrary to law or morality should not be patentable 3) Compulsory licenses should be instituted and 4) India should join the Paris Convention.

The Committee's report laid the foundation upon which the India patent system has been built. The report reflects India's view that its patent system should not be used as a means of monopoly control by foreign interests. India's industrial development should be the main focus of the patent policy. The existing patent legislation reflects to a large extent the view of the Tek Chand Committee, the only difference being on the question of joining the Paris Convention.

Immediate effect was sought to be given to the provisions outlined in the interim report through the Patent Bill of 1953. The Committee's views on foreign monopoly of Indian patents convinced policy makers of the urgency of instituting legislation to prevent such abuse. This was sought to be done through compulsory licensing. However, the bill that was introduced lapsed as the Lok Sabha was dissolved and there was a call for elections.

*Ayyangar Committee Report*

As the legislation on patents could not be settled, another committee was established to study the patent issue. The government decided to institute a second study on patents in 1957. The government wanted advice on the revision of patent laws. A two-member committee headed by N. Rajagopala Ayyangar, then a judge of the Madras High Court, assisted by Dr. S. Venkateshwaran constituted the Ayyangar
Committee. The Committee made one of the most extensive studies of patents and submitted its report entitled "Report on the Revision of Patent Law" in 1959.

The Committee, building on the work of its predecessor, outlined six areas "which were of a controversial nature in the revision of Patent Law..." These were:

1) Patentability of inventions relating to food, medicine and chemical products
2) Degree of patent protection
3) Terms and conditions of compulsory licensing
4) Attempts by patentees to extend patent monopoly
5) Patents relating to atomic energy
6) Patents relating to defence.

The Ayyangar Committee began its study with the basic question of whether patents were desirable for India. The Committee noted "that the monopoly created by the patent and the reward to the inventor by the grant of such monopoly offer advantages which have been claimed for the system, only in the highly industrialised countries which have a large capital available for investment in industries and a high degree of scientific and technological education". Foreign patentees are taking out patents not "in the interest of the economy of the country granting the patent or with a view to manufacture there but with the main object of protecting an export market from competition from rival manufactures particularly those in other parts of the world." Thus India" is deprived of getting, in many cases, goods... at cheaper prices from alternative sources because of the patent protection granted in India. Inspite of this, the Ayyangar Committee felt that patents could not be rejected in India.

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12 Ibid., p.13.
13 Ibid., p.17.
because it is a system practised all over the world. Justice Ayyangar stated "I consider that the Patent system is the most desirable method of encouraging the inventors and rewarding them and though, at present, Indian inventors take a very small share in the benefits of the system... one may look forward to a time when the Indian research worker and inventor will take full advantage of the patent law."\(^{14}\)

The Committee made the following recommendations: 1) A precise definition of inventions that can be patentable should be outlined 2) The scope of anticipation should be expanded to encompass what is known and published outside India 3) Remedies should be provided for foreign patents that are not worked in India 4) Special provisions must be provided for licenses in food and medicine and 5) Remedies must be provided for other forms of abuse resorted to by patentees. The Committee then went into details of how to carry out the above.

The Ayyangar Committee's report formulated the structure of India's existing patent policy. The Committee's report reflects India's attempt to promote a patent system that is not exploited by foreigners but encourages development. Compulsory licenses and licenses of rights, used to ensure that patents are worked in India, are the main checks on foreign monopoly of Indian patents.

A bill to give effect to the Ayyangar Committee Report emerged in 1965. The Patent Bill, 1965 was introduced and piloted through the Lok Sabha by T.N. Singh, Minister of Heavy Engineering in the Ministry of Industry and Supply.\(^{15}\) Debate on various issues of patents had been responsible for the delay in introducing a bill in

\(^{14}\) Ibid., p.19.

\(^{15}\) Rajeev Dhavan et al, no. 10.
Parliament after the Ayyangar Report. Extensive discussion also took place in Parliament when the bill was introduced. This reflects the serious nature with which patents were viewed in India from the very start. Discussion in Parliament was divided between those who favoured patents and those who were opposed. The former argued that domination by foreigners could be countered through compulsory licenses while the latter felt it was not possible to do so. The Bill was sent to a Joint Committee of both Houses. Another detailed examination of patents was conducted by the Joint Committee whose 48 members held 30 sittings receiving memorandum from all parts of the country.\textsuperscript{16} The Joint Committee’s Report, however, could not be debated in the Lok Sabha as the House was dissolved and the bill lapsed with it.

Shortly after Parliament reassembled, a bill to amend and consolidate the law on patents was introduced in the Lok Sabha in 1967. The bill was again sent to a Joint Committee. This committee also conducted a detailed study receiving written memoranda from several individuals and business organisations and personally heard evidence from persons in India and abroad.

Lively exchanges took place in the Indian Parliament on various aspects of patents right from the 1950’s up to the passage of the Patent Act. In 1952, the issue of compulsory licensing figured prominently in Parliament. The debate focused on whether compulsory licensing would be able to restrict monopoly powers or not. The Indian Penicillin Committee had requested the government to incorporate compulsory licensing for food, medicine, curative and surgical inventions.\textsuperscript{17} At Nehru’s insistence, an amendment was proposed to include insecticides, fungicides

\textsuperscript{16} Ibid.

\textsuperscript{17} Ibid.
and germicides in the same category as food, medicine, and chemicals.\textsuperscript{18} The Minister of Commerce at the time, Karmarkar, essentially summed up the argument of those who felt that compulsory licensing would be the solution. He noted that compulsory licenses were not intended "to prohibit the grant of patents to inventions in the field of food, medicine, insecticide, germicide, fungicide, etc.", but that they are required to ensure that such patents "should not be allowed to be exploited to the detriment of national interests."\textsuperscript{19} The Minister's statement evoked strong criticism. V. P. Nayar voiced the opinion that the law of patents is always advantageous to certain foreign nationals.\textsuperscript{20} In 1965, debate occurred in Parliament between those who favoured stronger patents and those who were against. Dandekar, representing those who were for strong patents, stated that, "the greatest advance in medicine, drugs and food has been the consequence of the law of patents."\textsuperscript{21} Inderjit Gupta retorted to this by arguing that food, drugs and medicines should not be patentable.\textsuperscript{22} Such exchanges were found during almost every discussion on patents in the Parliament and included debate on the royalty ceiling, term of patents, protection for industry, and various other topics.

Ultimately, it was possible to settle on the legislation and the Patent Act was passed in 1970. Thus, a thorough and extensively studied history was behind the Indian Patent. The Act stands as the existing legislation on patents in India.

\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
\textsuperscript{21} Ibid.
\textsuperscript{22} Ibid.
The Indian Patents Act, 1970

The Indian patents Act has been hailed as model legislation for developing countries. It seeks to balance both the need for granting rewards for inventors while ensuring that India's developmental needs are not ignored.

The following essential features of the Act reveal the basic patents policy of India.23

1. General Principle of Patent Grant - (a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay; and (b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.

2. Principle of National Treatment - no limitations or restrictions on foreigners in applying for or obtaining patents in India.

3. Inventions Not Patentable - The following are not patentable:

   (a) An invention which is frivolous or which claims anything obviously contrary to well established natural laws;

   (b) An invention the primary or intended use of which would be contrary to law or morality or injurious to public health;

   (c) The mere discovery of a scientific principle or the formulation of an abstract theory;

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23 This section taken from S. Vedaraman, no.7, pp.43-54.
(d) The mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at last one new reactant;

(e) A substance obtained by a mere admixture resulting only in aggregation of the properties of the compounds thereof or a process for producing such substance;

(f) The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;

(g) A method or process of testing applicable during the process of manufacture for rendering the machine, apparatus, or other equipment more efficient or for the improvement or control of manufacture;

(h) A method of agriculture or horticulture;

(i) Any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products.

4. Search for Novelty - compulsory search is required extending to prior publications not only in India but also in any other part of the world.

5. Patentability of Inventions in the Area of Chemicals, Food and Drugs - In case of inventions relating to substances intended for use as food, drug or medicines or
substances produced by chemical process, patentability will be limited to claims for the methods or processes of manufacture only.

6. Term of Patent - The term of the patent is 14 years from the date of patenting, i.e., the date of filing the complete specification. In the case of inventions in the field of food, drug or medicine, the term will be 7 years from the date of filing or 5 years from the date of sealing, whichever is shorter.

7. Licensing Provisions - 2 types of licenses: compulsory licenses and license of rights. Compulsory licenses enabling another party to work the patent can be applied for any time after the expiry of three years from the date of sealing of the patent.

In the area of food, drug, medicine or chemical, after the expiry of three years from the date of patent grant, they shall be endorsed with the word "License of Right". These enable any interested person as a matter of right to be entitled to work such patents.

8. Royalties - In the case of patents related to food, drug or medicines the royalty reserved to the patentee under a license shall not exceed 4% of the net ex-factory sale price in bulk of the patented article.

9. Use of Patented Inventions by the Government - In order to ensure that scarcity of a patented article does not arise and lead to high prices, the government is vested with powers to make use of or exercise any patented invention merely for its own purpose.

10. Appeals - In all cases, appeals will be only with the High Court.
India's Policy on Biotechnology Patents

India allows for patenting in biotechnology when it concerns processes but not products. The provision in India's patent law that provides for only process patents in food, medicine or chemical inventions basically exclude product patents on biotechnological inventions. The Indian patent office has allowed patents in the field of biotechnology on any process that results in a non-living substance. Patents have been granted for inventions relating to processes for the preparation of DNA, rDNA, preparation of peptide by recombinant DNA technique, process for preparing interferon-gamma vaccines, etc. Those areas that are not patentable include genetic engineering involving the production of life forms, plant varieties, tissue culture, etc. Protection has been granted for a process for the preparation of new products from naturally occurring substances. For example, from the naturally occurring plant and/or their parts, if a new product like any new compound is produced, it is possible to protect the process for the isolation of such a compound from the said plant and/or the parts of the plant. Even if the product is not new and is known, but the knowledge of the process of isolating that product from a particular plant is not known, it is possible to protect the process of preparing that product. However India does not grant patents on plants, plant parts, genes, micro-organisms, gene sequences.

26 Ibid., pp.60-61.
27 Ibid., p.61.
India has thus evolved its patent policy out of enormous debate and study. India has established a system that it feels is suited to its developmental needs. The patent system in India emerged out of a great deal of forethought and was the product of a well-planned policy. US attempts to promote its view of patents have therefore led to clashes with India.

**Indo-US Conflict on Patents**

The United States has voiced objection to various aspects of India's patent policy. According to the US, India's inadequate patent laws lead to theft of US technology and ideas. The following areas are the main sources of conflict:

*Process and Product Patents*

The main objection of the US is to the provision in India's patent law that allows for process but not product patents in the area of food, drug or medicine. India, in 1970, adopted a deliberate policy of granting only process and not product patents in these areas. This was done with the specific aim of securing self-sufficiency in medicines. Prior to 1970, the Indian pharmaceutical industry's market share was dominated by foreign companies and India relied heavily on imports to meet its pharmaceutical consumption. Prices of drugs in India were also one of the highest in the world. In order to reverse this, the Indian policy planners put in a Patent Act to protect Indian industry. Product patents could not be granted on drugs and other areas. This allowed companies to find new methods of making drugs patented elsewhere, and sell them at cheaper prices. India's position on the issue was stated as, "The basic rationale behind process patents is that the same product can be manufactured by
totally new and different process. The grant of product patents will inhibit the
discovery of more efficient and economical process for the manufacture of the same
product." 28

The history of this provision in India's patent policy provides an
understanding of the thinking in the minds of planners when laying down this
provision. The position was first discussed by the Tek Chand Committee, which
clearly laid down that "substances prepared or produced by a chemical process or
intended for food or medicine should not be patentable except when made by the
invented process or their obvious equivalents." 29 The Committee felt that foreign
concerns in India do not manufacture their products in India but merely use the
monopoly rights to guarantee for themselves a market free from competition. The
Ayyangar Committee dealt more deeply on the issue and also concluded that there
should be "no patent on inventions claiming (a) substances intended for or capable of
being used as food or beverage or as medicine (for man or animals) including sera,
vaccines, antibiotics and biological preparations, insecticide, germicide, fungicide (b)
substances produced by chemical processes including alloys but excluding glass". 30
Three specific reasons for this were outlined in this report. 31

1. The history of law relating to patents on chemical inventions in Europe in the
past 100 years. The committee examined the case of Germany and was
impressed with the German chemical industry, which occupied a foremost

28 GATT, Submissions from India, MTN GNG\NG. 11\W\37, July 10, 1989
29 Government of India, n. 9, pp.65-66.
30 Justice Ayyangar, no. 11, p.134.
31 Ibid., pp.23-20.
position in Europe. This was due in part to the provision in the country's patent law that didn't allow for product patents in the chemical field.

2. Experience of similar countries - The committee noted that Germany's experience led other nations namely China, Brazil, Australia, Japan, Mexico and USSR to adopt the same system.

3. The Committee felt it would be disadvantageous for UDC's to permit product claims for such inventions, as this would restrict research. It would prevent industry from evolving alternative methods to produce the same product.

This provision in India's patent law provided a great boost to the Indian pharmaceutical industry. Supported by regulatory provisions in addition to this patent law, in 1991 Indian firms accounted for 70% of the bulk drugs and 80% of the formulations produced in the country. In 1996, out of the top ten companies in pharmaceutical sales, six were Indian firms. Domestic firms now produce about 350 to 500 bulk drugs consumed in the country. The pharmaceutical industry in India has developed production process for about 120 drugs. According to a survey by the Operational Research Group, 30 drugs under patents in the US were being produced in India in January 1995. Through the Indian Patent Act's structure, India has been able to achieve self-sufficiency in the production of bulk drugs and prices of most drugs in India are lower than other countries.

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33 Ibid., p.18.
34 Ibid., pp.19-20.
The United States terms the activities of India to find alternative processes as "piracy". According to the US, Indian firms are copying technology developed by advanced nations. This is leading to large-scale losses for the US. The Pharmaceutical industry in the US has been especially vocal on this issue. Phrma (The Pharmaceutical Manufacturers Association), the association that represents US based pharmaceutical companies points out, "Based on the refusal of the Government to provide pharmaceutical patent protection, India has become a haven for bulk pharmaceutical manufacturers who pirate the intellectual property of the world's research-based pharmaceutical industry." The US argues that without adequate intellectual property rights, foreign direct investment will not take place in India, resulting in lack of transfer of technology.

**Compulsory Licensing**

A second issue of dispute between US and India on India's patent law relates to the provision of granting compulsory licenses and licenses of rights especially in the area of food, drug and medicine. The US demands that such licences should be deleted or at least liberalised. India, on the other hand, has been strong in its stance that such licenses are the only means of ensuring that there is no foreign monopoly and that those patents are worked in India. Debate on this claim has featured in both the committee reports, in the Parliamentary debates and in the Joint Committee that studied patent law. During the debate on the patent bill of 1957. Minister of Commerce Karmakar summed up the stance as " Considering the vital part agriculture plays in our economy, it is most important that the manufacture of these

insecticides, etc. on a large scale should be encouraged and that we should not allow any loophole in our legislation which can be exploited by interested people. It is for this purpose, sir, that it is proposed to give power to enable the controller to issue these licenses for the article exactly in the same manner and for food, medicine and surgical and curative devices. Critics felt that even with such licenses it would not be possible to prevent exploitation by foreign concerns. The Tek Chand Committee and the Ayyangar Committee both placed emphasis on the need for licenses.

**Patent Protection of Biotechnology**

The United States wants India to grant greater protection of biotechnological inventions. India has a restricted policy of granting process and not product patents in biotechnology. In addition, several crucial fields of biotechnology research are not patentable. India voices severe opposition to granting protection to life forms. (This aspect is dealt with in detail under the section on TRIPs Negotiations).

**Indo-US Differences on Plant Breeder's Rights**

Plant breeder's rights (PBR's) are a form of protection developed especially for plant varieties which are less stringent than patents. PBRs provides exemptions not found in patent law such as allowing researchers to study the protected subject matter and allowing farmers to use harvested material. India and US adopt different positions on this issue. India has no system of protection for plant varieties while the US grants both patents and PBR's over plant varieties. The US is a signatory to an international agreement on the issue known as UPOV, which India has refused to sign. The United States has tried to convince India that

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36 Rajeev Dhavan et.al, n. 10.
A PBR system is essential to ensure technology transfer and access to good seeds. A strong reaction has emerged from India against PBRs from farmer’s lobbies and non-governmental organizations. Agriculture, being a sensitive issue in India, has led to emotional outbursts. India has voiced the need to protect prices and farmers rights to save and exchange seeds. The differences between the US and India on the issue became evident during the negotiations on TRIPs. (See section on Negotiations on PBRs).

**US Agribusiness Interests and India’s Patent Policy**

Various US agribusiness companies have set up operations in India and are interested in securing patent protection for their products. Pioneer and Cargill are two important seed companies that have been established subsidiaries in India. Monsanto and DuPont have also recently established operations in India. Monsanto, in collaboration with an Indian company Mahyco, is now ready to introduce transgenic cotton in India. Monsanto has a Rs. 20 crore lab in Bangalore where work is being conducted on rice, sugarcane, and ornamental plants for insect resistance. These companies have been the centre of various controversies. Cargill, for example, was attacked by a farmer’s lobby (the KRRS), in Bangalore. Monsanto has been criticised both in India and internationally for the Terminator Gene technology. The farmer’s lobby that attacked the Cargill factory also burnt cotton fields as a protest against Monsanto’s operations. Monsanto has been conducting field trials in Maharashtra.

38 Ibid.
DuPont was not allowed to establish its plant in Goa due to the protest by non-governmental organizations. These companies are interested in ensuring that India grants Plant Breeder’s Rights. There is enormous opposition to the operations of these companies in India. These and other companies are placing pressure on India to change its patent laws.

**US Pressure on India to Change Its Patent Laws**

The type of patent system that India established clearly challenged the global IP regime promoted by the US. India thus became a target of US IPR policies. The United States used trade pressure through various fora and ideological pressure to get India to conform to its IPR policy. India resisted for decades and has only recently begun making changes in its patent policy to meet the demands of the US. This section provides an account of how US attempted to use various measures to coerce India into accepting US patent policies and how India resisted change. The recent changes in India are described in Chapter V.

**US Pressure on India to Accede to the Paris Convention**

One of the initial attempts of the US in the area of patents was to pressurise India to join the Paris Convention. The Paris Convention for the protection of Industrial property was concluded in 1883 and served as the main international agreement on patents until TRIPs. India did not sign the agreement and the opinion of the Ayyangar Committee was that India should not sign. India's patent policy differed from the Paris Convention in several areas including:
1. India allowed only process and not product patents in food chemicals, medicine and places restrictions in the field of patentability. The Paris Convention gives a very wide definition of "industrial property".

2. India has an elaborate system of compulsory licenses where the Paris Convention places restrictions on the use of such licenses.

The US wanted India to sign the Paris Convention and, in effect, change many of its provision of the Indian Patent Act of 1970. The process of "persuasion" to accede to the Paris Convention has been continuing since 1985.\textsuperscript{39} Reports of US pressure on India to sign the Paris convention evoked considerable protest in the Indian Parliament on 4 December 1985 in the Rajya Sabha when a reference was made to the reported campaign for India signing the Paris Convention. Shanker Singh Vaghela calling it a "matter of urgent public importance" said that the Paris convention would have an adverse impact on indigenous production of drugs and pharmaceuticals, agro-chemicals and processed foods particularly. Later on 5 December 1988 a debate took place in the Rajya Sabha on the issue. Shri Shamim Hashmi requested the Ministry of Industry to state (a) whether his attention has been drawn to the news reports published in the Indian Express of July 25, 1988 captioned "India and the Paris Convention" to the effect that the government may succumb to pressure in joining the Paris conservation on IPRs. (b) Whether it is a fact that government are seriously considering the question of joining the Paris Convention? (c) What are the provisions of the Paris Convention which are against the India Patent Act of 1970? The Minister of State in the Department of Industrial Development Shri

M. Arunachalam replied that the government has seen the newspaper article referred to. The proponents for joining the Convention, he explained, argue that it will enhance the confidence of the foreign investors and create a formable climate for the transfer of technology to the country. The main arguments against joining are that it is weighted heavily in favour of protecting the patent holders of the developed market economies. He said the Government has not taken any decision in the matter.

The US wanted India to join the Paris Convention mainly so that India would have to grant process and protect protests in all fields of technology and restrict the use of compulsory license. India, on the other hand, was not willing to yield to the pressure.

**Bilateral and Multilateral Pressure in GATT**

The United States used a combination of bilateral and multilateral pressure to coerce India to change its patent laws. The bilateral pressure came in the form of Special 301 legislation under US trade law. This legislation was formulated to ensure compliance from states on intellectual property. (for details see chapter II). The multilateral pressure came in the form of the TRIPs (Trade Related Intellectual Property Rights Agreement) that was formulated during the Uruguay Round of GATT Negotiations. India was the foremost opponent of TRIPs. The Special 301 clause was used, not only directly against India, but also to isolate India in the negotiations, by placing trade threats against countries that may have provided support to India's position. The following section will focus on the bilateral and multilateral pressure used by the United States during the Uruguay Round negotiations against India. It will look into the reaction of India and the domestic
political influences that played a role in determining India’s strategy in TRIPs. This analysis is not meant to be a comprehensive review of the negotiations (these are provided in several works\textsuperscript{40}, but rather a look into the negotiations to understand US policy towards India and India’s role in the process.

The Special 301 clause was utilized by the US to compel recalcitrant states to negotiate favourably in the Uruguay Round Negotiations. The act was meant to be "supportive and complementary" to US efforts to conclude successfully the Uruguay Round of Negotiations.\textsuperscript{41} The Uruguay Round of GATT Negotiations was launched in Punta del Este in 1986 and lasted until December 1993. The negotiations were formally concluded in 1994, when TRIPs was signed as part of the GATT Final Act establishing the World Trade Organisation (WTO). TRIPs entered into force in 1995.

\textit{Pre-Uruguay}

During the meetings that led up to Uruguay, India and other developing countries were united in their opposition against any inclusion of intellectual property issues within GATT. India’s argument was that IPRs were not trade related and that negotiations on the issue should be conducted in World Intellectual Property Organisation (WIPO). India, along with Brazil, strongly opposed even U.S. attempts to introduce an anti-counterfeiting code in GATT. In the 1982 meeting, the US submitted a formal proposal in this regard. Brazil and India argued against the US


proposal stating that GATT's jurisdiction was limited to tangible goods, and therefore, the GATT lacked legal competence to address an issue within the intellectual property area. They contended that counterfeit trademarked goods belonged to the exclusive jurisdiction of WIPO. In the 1982 meeting the developing countries were partly successful in that they were able to ensure that the 1982 Ministerial Declaration contained only a modest program on counterfeit goods.

The United States used its trade law to make fissures in the developing country alliance on intellectual property. In 1985, the USTR used Section 301 to threaten Korea into reforming its intellectual property laws. According to Michael P. Ryan, in his work on US intellectual property policy, he states, "Because developing countries had been united in their opposition to intellectual property negotiations in the GATT forum, the USTR determined that bilateral negotiations under the treat of Section 301 sanctions could separate Korea from other developing country opponents in the GATT and lead it to reform its policy. The negotiations with Korea ... were important to the Uruguay Round negotiation strategy and as a precedent for bilateral and multilateral negotiations with developing countries."42

The US, supported by Japan, took an even stronger position in meetings held after 1982, tabling a proposal to include all intellectual property rights rather than just trademarked goods in the negotiations. Several developing countries argued vehemently that not only were counterfeit trademarked goods beyond the GATT’s authority, but also GATT could not extend itself to issues regarding copyrights and patents because these protections covered intangible objects. Brazil submitted a

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proposal on behalf of nine other countries43 including India for the new round of negotiations specifically excluding IPRs and Services. But the Swiss-Columbian proposal, which included intellectual property rights, became the basis of the Ministerial Declaration of 1986 that launched the Uruguay Round. In addition to bilateral pressure, developing nations were influenced by other factors in accepting negotiations on intellectual property in GATT. According to Jayashree Watal, who was part of India’s negotiating team during TRIPs, developing nations agreed to the Ministerial Declaration with the expectation that they could limit negotiations to trade in counterfeit goods and other trade-related aspects. Developing countries also believed that they could get concessions in other fields such as textiles. As the Uruguay Round included an entire host of issues such as Services, Agriculture and many others, developing nations were hard pressed to negotiate strongly on all aspects, and could not ignore an agreement that covered such extensive aspects. India and other developing nations also felt that a multilateral forum may be better than dealing bilaterally with the U.S.

The Ministerial Declaration of 1986, thus stated, “In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.”

43 Argentina, Cuba, Egypt, Nicaragua, Nigeria, Peru, Tanzania, Yugoslavia and India.
India, Brazil and other developing nations continued to assert that only trade in counterfeit goods should be the focus of discussions in the GATT meetings in 1987 and 1988. They pointed out that WIPO (World Intellectual Property Organization) was the correct forum for negotiating IPR issues. In 1987 during the first phase of negotiations, there were submissions on IPRs from several developed countries including USA, Japan, EEC and Switzerland. In 1988, the negotiations began to address specific issues. The 1988 Mid-Term Meeting in Montreal ended without a formal agreement due to differences on how to proceed on IPRs and other areas. Right up till this mid-term meeting, India and Brazil were the leading opponents against negotiation of substantive aspects of IPRs. In fact, India and Brazil were key actors in blocking an agreement on discussing substantive intellectual property rights at the Mid-Term Meeting. Muchkund Dubey, a member of the Indian delegation during these meetings, explained the stance of India and developing nations in the following manner, “During the initial years India played a leading role in resisting the move to launch the new round and withstanding Northern pressure. The tenuous unity of the developing countries was maintained almost until the end of the mid-term review in Montreal in December 1988. India until the last days of the resumed mid-term review session firmly adhered to the position that GATT wasn’t the forum to discuss norms and standards of IPR protection nor could higher level of IPR be part of a liberal multilateral trading system.”

Within Parliament in India, the Government assured that there would be no change in India’s patent laws.

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The Shift in India's Policy

In 1989, India made a surprising move, and gave up its opposition to including IPRs in the negotiations. In an April meeting in Geneva in 1989, India made a shift in policy and agreed to include IPRs in the negotiations. India's about turn on the issues was due largely in part to pressure from the US. Analysts have drawn linkages between the threat of US Special 301 law against India and India's change of stance on the issue in GATT. At the time when India made the switch the Times of India reported that "India reportedly decided against taking a firm stand on issue lest the United States invoked Article 301 to retaliate." An analyst in the Economic and Political weekly wrote that India compromised its position on IPR in the hope that it would ease the direct US pressure which India faced being designated "unfair trader" in the Super 301 process. Eric Wolfhard writes that “In retrospect India's April accession seems merely strategic”. Elaborating on the reasons for India's change of position he points out that at the time India was a victim of a series of unilateral measures introduced by the US to deal with some of the major developing countries. He also notes that India required support from US to borrow from IMF and World Bank to meet the depleting foreign exchange crisis caused during the Gulf war.

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46 Ibid.
47 The Times of India (New Delhi) 17 April 1989.
48 Quoted in Rita Manchanda, n. 41., p. 18.
50 Ibid.
51 Ibid.
The United Stated released the National Trade Estimate Report, which formed a basis for finalisation of countries on its Super 301 lists, in April 28, 1989. The report stated that "Indian government officials have not responded positively to repeated US proposals for changes in India's patent, trademark and copyright laws." It pointed out that India's patent protection is weak and has an especially adverse effect on US pharmaceutical and chemical firms. The US decided to place further pressure on India in order to ensure that India followed through on its promise of allowing for talks on IPR in GATT. Indian embassy officials attempted to convince the US not to place India on the "Priority Foreign Country" category on its Special 301 list to be finalized in May. Indian officials pointed out that in an election year in India, it would be detrimental to Indo-US relations if India was targeted as a Priority Country. The US decided not to place India on the highest category of offenders but placed it on the second highest category. On May 25, 1989 when the first Special 301 list was released, India was placed on the "Priority Watch List" an not on the "Priority Foreign Country List." This was done specifically to ensure that India negotiated on IPRs in Uruguay as decided in April. Brazil had been targeted also and was placed on the Priority Watch List. According to the USTR itself, the main motive in naming India and Brazil on the "hit list" was to make them sit down and talk. Howard Rosen of the Washington based Institute for International Economics pointed out, "The heat is now being turned up on India and Brazil.....At the mid-term December ministerial meeting of the GATT, the US watched India and Brazil walk away after

52 Ibid., p.16.
53 Ibid.
blocking US efforts in pushing the area of their trade interest. The US then had no leverage. It is no accident that the 18-month deadline for the negotiations under Super 301 coincide with the conclusion of the Uruguay Round.\textsuperscript{55} Stuart Auerbach, a writer on trade affairs for the Washington Post put it more directly, describing the naming of India and Brazil as "a kind of lesson on GATT process. Don't muck around with the global trading system or we'll pull your chain."\textsuperscript{56}

Placing restrictions on bilateral Science and Technology agreements was also part of the bilateral strategy. This occurred with India in 1988 when the bilateral Science and Technology Initiative (STI) came up for renewal.\textsuperscript{57} The US at the time refused to extend the agreement unless India relented on the patents issue. The reason behind US refusal to extend the agreement is clear from the letter written by Gerald J. Mossinghoff, President of the US Pharmaceutical Association to the then Secretary of State George Schultz, which stated, "US companies are particularly concerned about the lack of intellectual property protection in India and the unwillingness of the Indian government to take any steps to halt the piracy of our innovative pharmaceutical produce.... we believe that adequate intellectual property protection should be a criterion to concluding a science and technology agreement with India or any other country. It would be highly unfair to permit India to take advantage of our strong patent laws when we find ourselves without intellectual property protection in India."\textsuperscript{58} In the end the US decided to renew the STI but with a provision that "India and the US agree to consider the qualification of providing for protection and

\textsuperscript{55} Quoted in Rita Manchanda, n. 41, p.24.
\textsuperscript{56} Ibid.
\textsuperscript{57} The Economic Times, 17 April 1989.
\textsuperscript{58} Ibid.
allocation on a mutually agreeable basis on any intellectual property rights arising out of the STI.\textsuperscript{59}

In addition to US trade pressure, several related explanations have also been forwarded as reasons for India’s change in position. Ms. Jayashree Watal, who was part of the negotiating team for India in TRIPs, explained that at the time the U.S. questioned India’s needs to block the negotiations. The US position was that India could object to any aspect of the treaty, but did not need to refuse discussing the issue of IPRs altogether. This appeared at the time to be rational to Indian leaders. She explained that India was isolated during the negotiations and had to agree to the discussions.\textsuperscript{60} Muchkund Dubey stated, “Unity collapsed at the resumed mid-term review of negotiations in Geneva in April 1989.”\textsuperscript{61}

Thus, a framework agreement on TRIPs was reached in 1989, which agreed to encompass adequate and effective standards for enforcement of IPRs. The shift was perceived in India as a “surrender” to US interests. Domestic criticism within India was sharp against this policy change on the part of India. Within Parliament, there were heated debates on India’s change in position questioning why there was a need for India to shift. Shri Bhandare, for example, stated in the Parliament during discussions on this issue, that India was the leader of the developing world on the issue and asked why there was a need for a change. Kapil Verma also pointed out in Parliament that, “It appears that the U.S. is taking advantage of our economic difficulties in pressurising us into reversing our stand.” An article in EPW entitled,

\textsuperscript{59} Ibid.
\textsuperscript{60} Interview with Jayashree Watal, April 7, 1999
\textsuperscript{61} Dubey, n. 44, p. 7

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"IPRs—Government Buckles Under US Pressure" stated, "It is being contended that what is being done in Geneva is only a shift in the government’s ‘negotiating stance’ rather than a change in ‘negotiating position’. The attempt to cover up the nature and extent of the shift in the substantive position of the government is indeed pathetic. There are claims that India will not join the Paris Convention or amend the Patents Act, but the Geneva Agreement says much more." Criticising the action severely, the People’s Commission on GATT (An independent group aiming to understand the impact of GATT) declared, "... India capitulated to U.S. pressures and agreed to bring the new area of intellectual property rights within the scope of GATT. However, India’s surrender was made without any consultation with Parliament or the States or any public discussion."

The Government tried to pacify domestic criticism by asserting that only certain aspects of IPRs would be focused upon and that there wasn’t a change in India’s position. Dinesh Singh, then Minister of Commerce, explained in the debate on the issue in Parliament, "Our stand has been that only the trade related aspect should be discussed and that position has been maintained by India. A discussion in the Uruguay Round does not commit us to anything. There has not been a shift in our position, but there has been a shift in the negotiating stand." On July 28, 1989 the Indian Government issued a Press statement "Intellectual Property Rights-Standards and Principles Concerning The Availability, Scope and Use - The Indian View." In order to explain its stance on the Uruguay Round negotiations, the Indian government

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63 Iyer, n. 45, p. 33
64 India, Rajya Sabha Debates, Official Reports, April 27, 1989

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took the position in this paper that talks in Uruguay would be limited to "trade-related intellectual property rights" which comprises only the restrictive and anti-competitive practices of intellectual property rights.\textsuperscript{65}

Inspite of India's turn around in GATT India attempted to ensure that there would only be a narrow focus on IPRs. When Peter Collins, the point man on India in the USTR came to New Delhi in May 1989 as a part of the review under the 301 process, Indian officials were at pains to stress that there was no question of negotiations, though clarifications were possible.\textsuperscript{66} India was the first developing country to submit views on each of the substantive issues, and in this document attempted to stress that only trade related aspects would be discussed. It emphasised that only restrictive and anti-competitive practices could be considered trade related. The submission expressed the view that only those practices that distorted international trade should be the subject of negotiation.\textsuperscript{67} India emphasized the need for more favourable treatment for developing countries in the area of patents and trademarks, and proposed that such countries should remain free to adapt their domestic legislation to their economic development and public interest needs.\textsuperscript{68} India also argued that concepts such as most favoured nation and national treatment could not apply to intellectual property because these concepts were applicable to goods rather than the right of persons, rights that the intellectual property conventions

\textsuperscript{65} Justice V.K. Iyer et al, n. 45, pp. 33-34.
\textsuperscript{66} Ibid., p.17.
\textsuperscript{67} Standards and Principles Concerning the Availability Scope and Use of Trade-Related Intellectual Property Rights, Communication from India, GATT Doc. No. MTN.GNG/NG11/W/37 July 10, 1989, p. 1
\textsuperscript{68} Ibid. pp. 2-13
Submissions were made by several other developing and developed countries, resulting in numerous proposals by the end of 1989. Developing nations were able to gain one concession at this time as consensus was reached that less developed countries should be allowed time to make transitions to conform to TRIPs.

Negotiations then followed on the actual content of the text. The United States and EC attempted to reach a common negotiating position. Countries were called upon to submit draft texts. By 1990, five draft texts were introduced in the negotiations. Four of them were from the developed countries: EC, Japan, Switzerland and US. Developing nations submitted a text that was sponsored by fourteen countries: Argentina, Brazil, Chile, China, Columbia, Cuba, Egypt, India, Nigeria, Pakistan, Peru, Tanzania, Uruguay and Zimbabwe. The developed countries text called for a comprehensive agreement, whereas developing nations asserted that IPRs were an instrument of public policy and not a property right.

The United States utilized trade pressure against various countries to ensure their stance in the negotiations. Trade pressure was used by US against Brazil and Chile, and with Mexico US was discussing NAFTA (another agreement on intellectual property). India was of particular concern to the US at the time. The United States reviewed the situation in India on intellectual property and submitted its statement to the Senate in 1990. It stated, "Recent elections in India resulted in a new coalition government led by Prime Minister V.P. Singh. The new government's policies have not been fully articulated, and there is considerable uncertainty about

\[69\] Stewart, n. 3, p. 2271

\[70\] Ibid., p. 2272
the barriers U.S. business may continue to face in India. On patents, it stated that there was, "No significant change. While there are preliminary indications of somewhat greater Indian government co-operation in reviewing intellectual property protection at the GATT, the Indian government has not even discussed, let alone agreed to, any specific improvements in Indian law or practice."

Upset by India's tactics, US trade negotiator Carla Hills took a tough line in a speech in the Indo-US joint Business council in mid-April 1990. Calling Indian economic policy short-sighted and flawed, Hills warned that the US "would not hesitate to retaliate against India" if Super 301 issues remained unresolved.

In 1990 therefore when the second Special 301 list was drawn up by the USTR, India was again placed on the "Priority Watch List" category. New Delhi continued its tough stance and rejected trade talks. Arun Nehru, Commerce Minister in the V.P. Singh government, told parliament that India was not going to be "intimidated or policed by anybody on the issue of sovereignty or economic independence." With India's tough position retaliation seemed imminent at the time. India was however able to convince the US to postpone the penalties as India was negotiating in the Uruguay Round. Abid Hussain, India's ambassador to the US at the time played the role in getting the US to postpone retaliation. In June 1990 the

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72 Ibid., p. 65
74 Ibid.
75 Ibid.
76 Ibid., pp.436-7.
USTR therefore announced that no response action would be taken under US trade law against India given the potential for results through Government of India's participation in the Uruguay Round Negotiations.

In the 1990 meeting in Brussels, the Uruguay Round negotiations dissolved due to the dispute over agriculture. The negotiations within Uruguay continued with a special group on TRIPs. Formal negotiations took place by some forty countries, whereas informal negotiations were held by “10 plus 10”, QUAD, and bilaterally between countries. In 1991 US, EC and Japan spent time ironing out differences. At this time, US negotiated with great determination and forcefully used its trade pressure against India. India was placed on highest category of offenders, Priority Foreign Country from 1991-1993. In 1992, in a major move the, U.S. suspended GSP (Generalised System of Preferences) benefits to India on pharmaceutical and chemical products. The GSP allowed concessions for developing countries on exports. The action meant that duty-free treatment of US $ 60 million worth of imports from India were suspended. The following chart shows US placement of India in the Special 301 category. It was during the 1991-93 period, when the negotiations on TRIPs were being finalized, that the US placed India on the highest category.
In 1991 a major breakthrough was made with the tabling of the Dunkel Draft in the Uruguay Round Negotiation. The Director General of GATT, Arthur Dunkel, presented a text on the negotiations in Uruguay. Most countries, at this stage, were ready to accept the text. The agreement was presented as a package covering various areas including IPRs. Countries could not afford to be left out of this comprehensive agreement. The United States and India objected to various aspects of the text. On intellectual property, while the US felt the agreement did not go far enough, India wanted to ensure that a transition period would be granted. India was the only major country that expressed opposition to the treaty. The United States, following complaints from the pharmaceutical and motion picture industry, objected to the five and ten year transition periods for developing and least developed countries. In addition, the US disagreed with the absence of any “pipeline” protection on patents.

In the negotiations in 1992, both India and the US proposed changes to the Dunkel
Draft. The United States, in recognition of the concerns of US pharmaceutical manufacturers, proposed that the TRIPs Agreement provide "pipeline" protection for patented drugs which have not been marketed in foreign countries. India proposed that the exclusive right to market patented products be omitted from the TRIPs Agreement. The deletion of this right, in effect, would extend the transition period for developing countries to provide patent protection. India also demanded that countries be required to establish facilities to "work" a patent and that absent such facilities, there should be compulsory licensing. India also tried to propose changes on biotechnology patents. On the transition period, ultimately the Swiss proposal for a mailbox was accepted. India was not able to make much headway and became convinced that there was sufficient transition period in TRIPs. Inspite of severe reactions within India, the government decided to sign the agreement.

*Indo-US Differences on Patenting of Biotechnology in TRIPs*

A particular area of the TRIPs negotiations where India and US had enormous conflict was on patenting of biotechnology. The Indian opposition to US policy on this issue is clear from various statements made in Indian Parliament. On 3 April 1992 during the debate in the Lok Sabha on TRIPs there were several voices raised against patents being extended to biotechnology. Nitish Kumar questioned: "Can plants and animals be patented? A very dangerous argument is being put forward. Tomorrow they would say that human beings too would be patented. We should ponder over its ethnical aspects too. When plants and animals would be patented, it would be left to America to decide on the kind of human beings to be produced in this country... US tells us they would combine genes A and B and they would patent the
new product. It would mean gradual destruction of our agriculture. We can't take the onslaught of the MNCs."

M.M. Joshi in the discussion over the Dunkel Draft in December 1993 in the Rajya Sabha stated, "Biotechnology patents are the real source of trouble now. It would destroy the entire R and D if patents in biotechnology were granted, if the patent laws in India are changed to incorporate the patents of seeds and biotechnology. The honourable Minister (referring to earlier speech by Minister of Commerce) says that we have no obligations to patent seeds. But America can patent seeds. Cotton seed has been patented in America...."78

Inderjit Gupta in the same session spoke of the issue as immoral. He stated that life form should not be allowed to be patented in this way which they are thinking to do. On March 21, 1995 Malivi Bhattacharya in Lok Sabha discussion on new Patent Bill pointed out that on March 1,1995 after the WTO had been set up, the European Parliament vetoed a controversial legislation on patenting of micro-organisms.

Several Parliamentarians pointed out that during the GATT negotiations India's aim should be to keep micro-organisms out of field of patents. V.P. Singh for example, stated "We are seeking a change in the TRIPs Agreement on naturally occurring life forms and genetic materials being patented. We do not want them to be patented is our clear view."79 An MP repeated A.V. Ganeshan's remark in the Lok Sabha: "I feel that it is in our own interest to keep micro-organism completely out of

79 Ibid.
patenting. If we do not keep micro-organism out of patenting, we must keep naturally occurring gene sequences, etc. out of patenting.\textsuperscript{80}

Minister of Commerce Pranob Mukerjee outlined the stance of the government. He noted that patenting of genetic material is one of the main issues of concern for India. He said "Biotechnology is a new field and there is no unanimity or uniformity regarding scope of patenting in this field even in developed countries. The draft agreement is itself ambiguous. We are seeking an explicit exclusion of naturally occurring genetic materials, however derived, from the scope of patentability.\textsuperscript{81}

Shri B.K. Zutshi, ambassador of India to GATT stated, "India's position was that gene sequences should not be patented; micro-organisations should not be patented. According to him, Americans are taking the view that any genetic material that has been evolved by human intervention, i.e., sliced or put on to another thing, is patentable because it has been made by man. He stated that India was trying to get an explicit statement from the international community that microbiological research and all genetic engineering is not patentable. The statement would say that, "all genetic material, however derived they are, are not patentable."\textsuperscript{82} Several others in different Ministries reiterated this viewpoint. Dr. J.C. Pant special secretary of the Ministry of Agriculture said that his Ministry had communicated to the Commerce Minister that naturally occurring genes, however derived, should not be patented."\textsuperscript{83} Tejandra Khanna, Secretary, Ministry of Commerce informed the Committee that India has

\textsuperscript{80} Government of India, Lok Sabha, Debates, 29 march 1994.
\textsuperscript{81} Government of India, Rajya Sabha Debates, Official Reports, Rajya Sabha Secretariat, New Delhi, 16 December 1992.
\textsuperscript{83} Ibid.
tabled its proposition in the negotiations that any type of gene sequences, however
derived should not be covered by the patent regime. India is saying that the gene
sequence should not be eligible for patenting at all and this will be pressed up to the
end in Geneva. Developing countries, he noted, are of the view that gene patenting or
gene sequence patenting should not be made a part of the final agreement.\textsuperscript{84} Dr
Mangala Rai of the Indian Council of Agricultural Research said the question was
whether naturally occurring genes should not be patented. That was the reason why
India was the first country to sign the 1993 Undertaking. "We made it clear in no
uncertain terms that the exploitation of germplasm, the genetically occurring material,
should be made available to one and all for the benefit of mankind."\textsuperscript{85} It was only Dr.
Bhatia, Secretary of the Department of Biotechnology, who held a slightly different
view. He felt that genes and microbes developed through human innovation should be
protected, but pointed out that genetic diversity in nature should not be patentable.\textsuperscript{86}

Representatives from the NGO sector pointed out the American pressure on
India to conform to their standards of patent protection. Dr. Suman Sahai of the Gene
Campaign noted that in order to enforce patents on genetic material, the Americans
have recently threatened to withdraw funding for Indo-American research projects,
particularly on biological materials, that could lead to commercially marketable
products and processes, unless India accepted intellectual property protection in this
area. Research aimed at basic science could continue but anything that will have a
practical application will be stopped until Americans get the rights to patent processes

\textsuperscript{84} Ibid. \\
\textsuperscript{85} Ibid., p.21. \\
\textsuperscript{86} Ibid., p.19.
and products in the field of life sciences, medicine, environment, and ecology as well as physical and material sciences. Dr. Sahai recommended that a guarantee should be made that genes stored in international gene banks cannot be protected by any system of IPRs. The entire instruments of patents, in her view, are directed at genetic resources because genetic resources are the foundation material of this new technology.

Dr. M.S. Swaminathan, former Director-General of ICAR and now head of the Swaminathan Institute, spoke of biotechnology patents and gave possible arguments for India to base its stance. He pointed out that the spread of patenting of biotechnological inventions and more particularly of naturally occurring genes since the mid-80's will hamper free germplasm exchange. The biotechnology industry of developed countries is keen to strengthen patenting law at all levels, product, process and product by process. Formerly only finished varieties (genotypes) were registered for benefit under breeder rights. Now there is pressure for patenting individual genes and DNA sequences. The US court stated: The laws of nature, physical phenomena, and abstract ideas have not been held patentable. Thus a new mineral discovered in earth or a new plant found in the world is not patentable subject matter. Taking this analogy, it can be argued that naturally existing genes are also not patentable.

Shri A. Hoda, special secretary of the Ministry of Commerce explained that under Indian law, patenting of chemicals, pharmaceuticals, food products and anything related to atomic energy and living organisms are not permitted and the law doesn't envisage patenting of these things. He felt that patenting of life forms would be against the interests of research and against the interests of developing countries.
The negotiations in Uruguay were aimed at securing an agreement that naturally occurring genes were not patentable.

Shri A.V. Ganeshan, former secretary of the Ministry of Commerce pointed out what the negotiating strategy of India should be. According to him, India should seek some changes in the Dunkel Text regarding patenting of micro-organisms and microbiological processes. The word micro-organism has not been defined in the Dunkel Text, he said. But he noted that micro-organism in the common man's language is an organ which can be seen under a microscope. There are other definitions of micro-organisms. A cell is a micro-organism. A component of a cell is a micro-organism. In the same view, there are different interpretations of micro-organism. India's future should be to see that micro-organisms are kept out of patenting because the future is in biotechnology, not in synthetic molecules. Indian negotiators should, till the last minute, see that micro-organisms and components are not brought under the ambit of patentable subject matter. If there is any problem to achieve this objective, our fall back position should be that naturally occurring gene-sequences, howsoever derived, shall not be patentable subject matter. This is where our real interest lies, because under the Dunkel Text we will have to undertake obligations. He felt so strongly on this matter that he said that even if the Dunkel Text goes through as it is, and India enacts new legislation in keeping with that, pertaining to patent protection, the Text should be disobeyed. India should simply say that micro-organisms will be patented only if they are genetically engineered. When questioned whether such acts would not invoke cross-retaliation, he replied that since there was a strong position even in some developed countries against patenting in biotechnology, such cross-relation would not take place.
Patent officials also come forward to express their views against extending patents in biotechnology. Dr. S. Vedarman, former Controller-General of Patents reiterated that micro-organisms should be kept out of the patent regime.

The National Working Group on Patent Laws emphasised that it is absolutely necessary to exclude life-forms from the scope of patentability in order to protect vital national interest of technological developments in the field of biotechnology. They pointed out that the extension of product patents to the results of biotechnological process is one of the most pernicious developments that must be opposed. They felt that there are strong reasons for avoiding even process patents when it comes to biotechnological processes. Such processes fall more within the class of products of scientific activity and the current extension of patenting to such activities make a mockery of the distinction between not patenting scientific discoveries and only patenting inventions in certain circumstances.

India, during the Uruguay Round Negotiations, attempted to ensure that gene sequences and micro-organisms would not be patentable. Attempts were made to evolve a statement from all nations that genetic material, however it was derived should not be patentable. The US, on the other hand, strongly pushed for inclusion of micro-organisms and genetically modified organisms within the field of patents.

**Plant Breeders Rights and Indo-US Negotiations under TRIPs**

Plant Breeder’s Rights formed another contentious issue in the TRIPs negotiations. In reaction to US pressures to evolve mechanisms to grant protection to plant varieties, India tried to ensure that farmer’s rights would be upheld. Shri Anuwat Hoda Special Secretary of the Ministry of Commerce explained to
Parliament India's attempts to secure farmer's rights under the TRIPs agreement as follows: The matter of farmer's privilege of retaining part of the seed was being checked up with the main negotiating countries and all that there was no problem. All countries including the US informally agreed and the Ministry was trying to obtain a textual resolution which would form either a part of the Dunkel proposals or the final accord or there would be a side agreement. On the clause of farmer-to-farmer exchange he felt it would be difficult to check and therefore would be allowed. However, India's proposal that this should be put in writing had not been agreed to, because the industrialised countries agreed argued that this would result in further dilution of PBRs. Shri B.K. Zutshi, Ambassador of India to GATT, further added that India had already tabled a proposal in the negotiations which stated that our system "will not be challenged on the ground that it provides such exemptions (farmer's and breeders exemption)."

The TRIPs text on PBRs basically states that nations must provide an "effective sui generis system" for plant varieties. By inserting the clause "effective", the US had in mind the UPOV model of PBRs. The UPOV 1978 treaty was revised in 1991 and had a much stronger regime of protection. A great deal of debate took place in India on the issue. On interpreting the clause "sui generis" in the Dunkel Text, the Commerce Ministry gave a written submission to the Gujral Committee that India is free to adopt its own system of PBRs but that UPOV '78 would be used for guidance. It was not being forced on countries to conform to UPOV '91. Several others, however, criticised the stance of Indian government on

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87 Draft Dunkel Proposal, n.82, p.18.
88 Ibid., pp.18-19.
the issue pointing out its mistake. Shri Muchkund Dubey differed with the Commerce Ministry and felt that India would have to accord to UPOU ’91 as the whole trend today was to make developing countries conform to the most stringent and latest system. Smt. Usha Menon of the NWGPL stated that India would be forced to accept the system that developed countries considered "effective". Dr. Suman Sahai of the Gene Campaign maintained that India failed to get any guarantees to protect farmers rights during the negotiators. Those who spoke before the Gujral Committee emphasized that such rights may give a free hand to MNC's and that could be dangerous for Indian agriculture. A system of "farmer's rights" must be incorporated in the PBRs system and there should be measures to preserve bio-diversity. The Gujral Committee concluded in its report that "keeping the interests of the farmer's of our country uppermost in mind while dealing with the issues pertaining to IPRs application to agriculture, the traditional rights and practices of our farms for preservation, sale and free exchange of seeds must remain unaffected. The Committee therefore feels that safeguards should find specific mention in GATT. An informal understanding in this regard that the Ministry of Commerce may have obtained from the industrialised countries collectively or on bilateral levels may not serve the purpose in days to come".\textsuperscript{89}

On 15th April 1994 when the Uruguay Round Final Act was ratified at Marrakesh, India too become one of the signatories. India accepted the TRIPs Agreement, but implementation at home on patents was difficult due to domestic opposition. In the area of copyrights, however, India did revise its laws in 1994. This resulted in the US taking India off the priority foreign country of the Special

\textsuperscript{89} Ibid., p.28.
301 list and restoring GSP privileges. Due to India’s resistance to implement changes in patent laws despite TRIPs, the US continued to use the Special 301 mechanism by placing India on the priority watch list category. The following chart describes the Indian position on patents vis-à-vis TRIPs:

**Table 5**

**Patents—TRIPs and Indian Law**

<table>
<thead>
<tr>
<th>Trips Requirement</th>
<th>India’s Law</th>
<th>Current Transition Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>By January 1, 1995 provide a “mailbox” to accept applications for pharmaceutical and agrochemical products; grant Exclusive Marketing Rights for these products</td>
<td>No product patents on food, medicines, drugs or chemicals</td>
<td>In March 1999 law was passed amending the 1970 Patent Act to provide for mailbox and EMRs; applications being accepted into a mailbox</td>
</tr>
<tr>
<td>By January 1, 2000 provide for “an effective sui generis system for plant varieties”</td>
<td>No system of plant breeder’s rights; method of agriculture or horticulture not patentable</td>
<td>Draft of a Plant Variety Bill circulating in the Ministry but has not been introduced into Parliament Negotiations being held on the issue in the TRIPs Council in 1999</td>
</tr>
<tr>
<td>By January 1, 2000 grant process patents for a period of twenty years in almost all fields of technology</td>
<td>Several exceptions to patentable subject matter; term of patents 14 years and 5-7 for food, medicines, etc.</td>
<td>None</td>
</tr>
<tr>
<td>By January 1, 2005 grant product patents</td>
<td>No product patents on food, medicines, chemicals</td>
<td>None</td>
</tr>
</tbody>
</table>

**US Pressure on India through the WTO**

The Uruguay Round Agreement established a new international trade body to replace GATT known as the World Trade Organization. This Organisation houses a Dispute Settlement Body to decide any areas of conflict. The DSB provides countries
with a mechanism to ensure that the Agreement is implemented. India's failure to conform to the TRIPs agreement even after its signature, led the US to resort to the DSB of the World Trade Organisation as a way of getting India to comply.

Under the TRIPs Agreement, India was obliged to immediately bring into effect two specific changes in its patent law. All other changes were given transition periods. One was to provide a "mailbox" facility to receive applications for pharmaceutical and agro-chemical products and two was to provide "Exclusive Marketing Rights" for these products. This would mean a change in India's patent law, which doesn't allow for product patents in the area of food, drugs on substances made by chemical processes. This was to be done under Article 70.8 and 70.9 of the TRIPs Agreement which stated:

Where a member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall: (a) notwithstanding the provisions of Part IV, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed; (b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement that a Member or, where priority is available and claimed, the priority date of the application; and (c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

Where a product is the subject of a patent application in a Member in accordance with the paragraph 8(b), exclusive marketing rights shall be granted, notwithstanding the provisions of Part IV, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.
In January 1995 the Indian government issued an ordinance to comply with its obligations under TRIPs. An ordinance was issued because at the time Parliament was not in session and no bill could be introduced in the House. A statement issued by the Government explained the need for ordinance as follows, "After a careful and detailed examination of the matter, Government took a final decision on 31st December 1994 to undertake some amendments to the Patents Act 1970 in order to meet immediate international obligations, while safeguarding our interests. Since the measures were to be brought in force with effect from 1st January 1995 and as Parliament was not in session, the President promulgates on 31st December 1994, The Patents (Amendments) Ordinance 1994. The bill to replace the Patents (Amendment) Ordinance, 1994 shall be introduced in the current session of Parliament." 90 The Government was severely criticised for introducing the Ordinance rather than waiting for a debate in the House.

In order for the Ordinance to take effect it required approval from both House of Parliament within six weeks of the next parliamentary session. The Patent Amendment Bill 1995 which contained basic provisions of the ordinance was introduced in the Lok Sabha March 1995. An enormous opposition to the bill occurred during its introduction in the House. Many voiced the opinion that there was no need for the government to promulgate this ordinance in such a hurry when Parliament was not in session. Tarit B. Topdar for example stated in Parliament that, before the promulgation of the Ordinance the Parliamentary committee was not

90 Government of India, Statement to be said on the Table of Lok Sabha Under Rule 71(1) of the Rule of Procedure and contract of Business in Lok Sabha Explaining the Circumstances which Necessitated the Promulgation of the Patents (Amendment) Ordinance 1994 (13, of 1994) 12.2.95, pp. 1-2.
consulted. Before signing the Marrakesh Agreement the Parliamentary Committee discussed the Dunkel draft. After an exhaustive study, it submitted a report where it clearly mentioned that the Government shouldn't change process patenting into product patenting on the pressure of some member countries. On clear violation of the suggestion of the Committee, the government had promulgated ordinances and now taken it up in the form of a bill. This is a clear violation of parliamentary practice. The bill provided for 2 basic changes in India's patent Law:

(1) **Mailbox** - the creation of a facility to accept applications for pharmaceutical and agro-chemical products. Examination of such applications would be deferred until after December 31, 2004. However, there will be a preliminary examination of the applications filed to ensure that they do not claim non-patentable subject matter under see 3&4 of the Patent Act.

(2) **Exclusive marketing Rights** - The applicant for such products would be eligible, subject to certain conditions, to claim exclusive rights to sell or distribute the product in India for a period of 5 years (or until the date of grant of the patent or date of rejection of the application, whichever is earlier.)

EMRS can be granted if:

a) an application for the grant of a patent in India should be filed after January 1, 1995.

b) an application for the grant of a patent should, have been filed in a convention country (country of invention), on or after January 1, 1995 and the patent obtained on an identical invention.
c) marketing approval should have been obtained in the same convention country, and

d) marketing approval has been obtained in India. For inventions made in India, a process patent should have been granted for the substance in India, and marketing approval should have been received for the said substance from the specified authority in India.

Fulfilment of these conditions would grant exclusive rights to the applicant, his agents or licenses to sell or distribute the product in India for an approved term. These rights can be enforced and licensed in the same way as a patent, i.e., vide an infringement action in the courts. Products or substances for which patent applications were filed in a convention country before January 1, 1995 would not be eligible for the grant of EMR in India. Government will have the right to grant compulsory licenses if reasonable requirements of the public with respects to the patented invention have not been satisfied, if the invention is not available to the public at a reasonable price. The bill permits importation as meeting the working requirement. The government can impose price controls on any substance which is the subject of EMRs by notification in the Official Gazette.

Inspite of opposition, the Bill was passed in the Lok Sabha. The bill, however, was rejected by the Rajya Sabha and therefore lapsed. Due to the fact that India failed to implement the provisions of TRIPs, the US decided to utilize the WTO mechanism to get India to comply. In July 1996 the United States lodged a complaint with the WTO that India had failed to adequately protect pharmaceutical and agricultural chemical product patents. India was also named for the violation in the
National Trade Estimate Report released in April 1996 and was placed on the Priority Watch List of Special 301. India was at the time busy with elections. According to an international trade expert in New Delhi, "From the US point of view, the move could not have been timed better. The US has chosen to mount presume at the most vulnerable point, thereby firmly seeking to put the controversial issue of patents act amendments on the top of the incoming governments agenda."91

In December 1996 India decided to allow for the formation of a panel under the WTO to examine the complaint of the US. At talks in Geneva, India's Chief negotiator S. Narayan, said that India had nothing against allowing for a panel. India could have blocked the formation of the panel but this would have given India only a month's reprieve whereas this way it could hope to present its case to the panel.

The WTO panel examined the issue and presented its report ruling that India had failed to implement the TRIPs provisions and must do so. India then appealed and the appellate body in the WTO looked into the matter. This report also ruled against India. The WTO than formally adopted the reports of both the bodies in January of 1998 making it mandatory for India to comply or face tariff reductions. India then requested the US to grant it time until 1999 to amend its laws. However the US rejected India's request. A US trade official stated that "During discussions this weekend (i.e., February 16-18) Washington rejected India's claim that it needed time till June 1999 to amend its laws. We find this time period much longer than the usual case."92 The US continued to insist that India had to revise its laws. India has been attempting to resist, but has found it difficult in the face of US pressure.

91 V.K. Iyer, et. al., n. 45, p.37.
92 The Telegraph (Calcutta) February 18, 1998.
Protest in India

The Indian government has been under intense pressure from domestic lobbies in India who oppose any change in India’s patent laws. The protest in India on the issue has been significant. India has a long history of such opposition to revising patent laws. It is an emotional issue that has raised cultural and nationalistic feelings. Non-governmental organisations, farmer’s lobbies and industry have all played a role in fostering resistance to changing patent laws in India.

The National Working Group on Patent Laws

The NWGPL was established in New Delhi with the specific purpose of promoting India’s interests on the issue of patents. Under the guidance of its Convenor, Mr. B.K. Keayla, the National Working Group played a key role in fostering public opinion in India on the issue. The NWGPL received support from industry, particularly the pharmaceutical sector in India. The National Working Group has published a great deal of material detailing India’s interests on patents. A host of conferences, both national and international, have been organized by the NWGPL. Through publications, meetings and lobbying, the NWGPL effectively built up a resistance to revising patent laws in India. Signature campaigns and letters to Parliamentarians from prominent citizens were taken up by the Working Group during the TRIPs negotiations. Under its body, the Centre for Study of Global Trade System and Development, the Group published an important report entitled “Peoples’ Commission on GATT: On the Constitutional Implications of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations” in 1996. This report was widely read in India. It heavily criticized the GATT Agreement
as being unconstitutional. It stated, "The Final Act is, in short, an invasion of a new form, a transformed East India Company, which seeks to subject the structure and function of the Indian economy to external diktat."\(^93\) The NWGPL continues to warn that TRIPs would be harmful to India. In his study, "Conquest by Patents: TRIPs Agreement on Patent Laws: Impact on Pharmaceuticals and Health for All", (Centre for Study of Global Trade System and Development, New Delhi), Mr. Kealya analyzes the impact that patent laws will have on Indian medicine prices and health. Through effective lobbying and building of public opinion, the NWGPL has created a strong domestic voice in India against succumbing to US pressure on patent laws.

**Debate in Parliament**

The patent issue has been discussed in the Indian Parliament right from the days of Independence. Parliamentarians heatedly discussed the need for ensuring developmental concerns while setting up the patent system in India. US pressure on India to change its patent laws has evoked enormous opposition within Parliament. The Special 301 trade restrictions and other pressure tactics by the US have received severe criticism. Reacting to a question on the Super 301 provision, the then Minister of Commerce Dinesh Singh on April 27, 1989 told the Parliament, "The Governments feeling is that this US Act is unfair. It is not in keeping with the multilateral system of trade in the world and violates certain sections of GATT. But the US is a powerful economy and therefore it attempts to force its views on others. We will have to live in such an unequal world."\(^94\) Mr. I. K. Gujral speaking on the IPR issue stated in Parliament, "The US Trade Representative, Mr. Kantor, has the audacity to tell India

\(^93\) V.K.Iyer et al, n. 45, p. 172
\(^94\) Government of India, Rajya Sabha Debates, Official Reports, 27 April 1989
as to what it should or should not do. On this point, opposition and Government should rise against the power that thinks it is the policeman of the world, and therefore it can do anything.⁹⁵

A group of Parliamentarians have been influential in resisting legislation on changing India’s patent laws. The Forum of Parliamentarians on Intellectual Property, established on 3rd November 1995 with support from the National Working Group, worked to ensure that opposition to US moves on intellectual property emerged in Parliament. The Group held various meetings and presented letters on the issue. An important Conference was held on January 24, 1996 by the Forum in New Delhi which issued a “Declaration on the TRIPs Patent Regime”. Supported by over 75 participants, the declaration stated, “Recalling that the patent rights granted by the State confer a privilege and not an absolute monopolistic private right, as has been embodied in the TRIPs Agreement; Affirms that since the proposed patent system under TRIPs would require changing fundamentally the fine balance between private and public interests in the Indian Patents Act, 1970, the TRIPs Agreement in its present form is unacceptable to us...”

Protests by NGOs and Farmer’s Lobbies

Several rallies, protest marches and meetings have been organized by various NGO’s and farmer’s lobbies in India against TRIPs and GATT. The Dunkel Draft received the most vehement criticism in India. The word ‘Dunkel’ came to signify exploitation and cries of ‘Dunkel Go Home’ were heard in India after the text was presented. On March 3, 1993 a large gathering of several thousand protestors

⁹⁵ Ibid., 2 May 1995
marched in New Delhi against the Dunkel Draft and the GATT Agreement. Rallies were held all over India on the issue. One recent example is that of the ‘Joint Action Forum of Indian People Against WTO and Anti-People Policies’, an organization composed of various groups all over India, which held a gathering in Hyderabad in April-May 1998 demanding that India withdraw from the WTO. In addition, various groups have published extensively on the impact of TRIPs and WTO on India. These groups have been very effective in creating domestic resistance against changing patent laws.

**The Gujral Committee Report**

The large-scale protests both within and outside Parliament in India against the Dunkel Draft led the government to initiate a study on the issue. A Parliamentary Committee was given the task of studying the implication of the Dunkel Draft for India. The Department Related Parliamentary Standing Committee on Commerce presented its report on 14th December 1993. Known as the Gujral Committee, as it was headed by I.K. Gujral, the committee examined the issue of patents in a special section and focused on patenting in biotechnology under the section on TRIPs and the section on Agriculture. The committee held 24 sittings and received memoranda from several individuals and organisations.

The Gujral Committee conducted an extensive study of the Dunkel Draft and its impact on India. In the area of patents, the report pointed out several implications of the Draft for India. According to the Committee, the Dunkel Draft would completely change certain aspects of the Indian Patent Act of 1970. Patent protection would have to be extended to all areas excluding plants and animals. Plant varieties
would have to be protected by plant breeder’s rights. The term of patents would have to be increased to twenty years. Exclusivity of the license of right and compulsory licensing would be restricted. Importation would be treated as working of the patent.

The report noted that The Ministry of Commerce expressed the view that compulsory licenses could be issued if prices were high. The Ministry felt that the claim that patents would increase the price of drugs was incorrect as only 10-15% of all drugs were under patents. Several witnesses before the Committee, however, expressed strong reservations about the Ministry’s statement and noted that increase in patent protection would lead to a rise in the price of drugs.

The Committee also expressed its apprehension about the impact of patents on drug prices. It noted, “The Committee views with concern the grave impact that the proposed patent regime would have on the drug price in the country. The Committee is of the view that specific instruments must be provided in the TRIPs Agreement to ensure that patent holders do not use their monopoly to cause steep increases in the prices of drugs and also to ensure that our fast developing indigenous drug industry is not gobbled up by foreign MNC’s.”\(^{96}\) The Committee noted the need to keep foremost the primacy of public interest and expressed strong reservations about product patents. The report pointed out that transfer of technology should be a primary concern and the importation should not be viewed as working of the patent. The report concluded, “Countries at different stages of development should be treated differentially. The Dunkel Draft on TRIPs militates against this principle in as much

\(^{96}\) Draft Dunkel Proposals, n. 86, p. 46
as the interests of developing countries like India have been ignored in favour of developed countries.⁹⁷

The Gujral Committee made the following observations and recommendations on patents:⁹⁸

1) The Indian patent law has rightly been emphasizing patenting of process and not the product and this should be maintained.

2) The proposed extension to 20 years period virtually discourages R&D and should not be conceded.

3) India should insist for grant of automatic licensing in certain circumstances.

4) Micro-organism and biological process should be kept out of the patent regime.

The enormous resistance against revising patent laws in India was due both to ideological factors and economic interests. Indian pharmaceutical companies played a major role in ensuring that India did not succumb to US pressure. These companies had benefited from patent laws that enabled them to produce cheaper drugs and were interested in ensuring that such protection remained. Indian consumer groups and non-governmental organizations emphasized that increase in patent laws would lead to a rise in prices. In addition to the perceived economic losses that would result from increasing patent protection, there were certain ideological factors that played a role in India's vehement reaction. India had established a patent system based on its developmental needs after a process of enormous study. The need to ensure that certain commodities were kept in the

⁹⁷ Ibid.
⁹⁸ Ibid.
public domain was important. India did not adopt a purely market based view of patents as that found in the US.

The United States used both coercion and moral persuasion to ensure that India changes its patent laws. The United States used bilateral pressure through Special 301 trade laws against India. During the Uruguay Round Negotiations, India led the developing nations in resisting US pressure to sign TRIPs. India initially opposed the inclusion of IPRs within the talks, arguing that IPRs were not trade related. The United States convinced India that the discussion would be only on trade related aspects of IPRs and there was no need to block the discussion of the issue within Uruguay. Due to trade pressure and persuasion, India agreed to include IPRs. This decision met with enormous protest in India. Throughout the negotiations, India aimed to project developing nations interests, but was unable to withstand US pressure. India signed the TRIPs Agreement but continued its resistance to implementing it.