

USTR report on IPR won't have major impact on India-US trade, say experts



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The report released by the USTR notes that India lacks laws relating to trade secret protection. Credit: iStock Photo

The United States Trade Representative (USTR) on Thursday put India on its priority watch list for shortcomings in the intellectual property rights regime. This is not the first time India has been put on the watch list by the USTR on IPR. India is placed with other countries like Ukraine, Venezuela, Russia, China, and Argentina.

“This is not the first time India has been put on the list and most certainly will not be the last. We need to “up” our game when it comes to IP awareness, sensitisation, protection and enforcement. The continued absence of any centralised IP enforcement agency and passing off arbitrary ordinances to abolish IPAB send wrong signals to the world,” says Mehak Kalsi, an IP lawyer

Despite this, IP lawyers feel that India’s trade with the US will not be affected. Rohan George, an IP lawyer says, “The USTR report will have minimal impact because of India’s engagement with IPR. It is a political statement persuading India to further tighten the IPR regime.”

The report released by the USTR notes that India lacks laws relating to trade secret protection. The USTR says that companies continue to face uncertainty caused by insufficient legal means to protect trade secrets in India. It has also noted that even in 2021 there are no civil or criminal laws in India that specifically address the protection of trade secrets protection in India.

Lawyers feel that while being put on the priority watch list might not affect the industry, the Indian government has to work on the observations made on trade secret protection among other issues raised by the USTR. “It is high time we had our own trade secret legislation for one. Especially now, working from home during the pandemic has raised several new issues relating to confidentiality and protection of trade secrets of businesses,” says Lynn Lazaro, partner at Kochhar & Co. “Our enforcement of IP in trade secrets currently lies only under our Contract Act and we don’t have a specific trade secret legislation to regulate this area.”

“This needs to change sooner than later.”

Intellectual property rights are crucial in the pharmaceutical and healthcare sectors. This sector has also found a mention in the USTR’s report. It also goes on to say that a lot of the counterfeit medicines the US seized were from India among few other countries.

While Lazaro feels it might not affect the industry as such, this area needs to be one of India’s focus areas. “This is essentially secondary patenting to increase the patent term of pharma products to increase profitability,” says Lazaro. “India prohibits this to protect its people from lower sections who cannot afford big pharma prices and to encourage domestic drug makers.”

Sudarshan Jain from the Indian Pharmaceutical Alliance (IPA) who is also present on the board of pharma companies like Abbott India says that the industry will continue to work with the US government to tell them Indian companies don't flout and also will ensure that patent norms are not flouted.

United States India intellectual property rights