



Building Blocks for an Indo-U.S. Innovation Alliance – A U.S. Perspective

A natural U.S.-India innovation partnership exists, but much more needs to happen to turn this into an alliance that both countries and their firms can rely for a sustainable future. One key component is around intellectual property (IP). In many ways, IP is already central to the U.S.-India trade and innovation relationship given the way their respective firms, people, knowledge, capital, and services complement each other in developing new goods and services for domestic and global production networks and markets.

Yet, the two sides are more defined by their conflicts over IP. While a [new bilateral MOU](#) on IP was sidelined due to the failure to resolve broader trade talks, both sides should re-double efforts to work on IP issues as part of an effort to build an Indo-U.S. innovation alliance.

Under Prime Minister Modi, India has made strides toward an innovation-focused economic policy. As [he](#) has said, “innovation is key to realising the dream of ‘New India,’” along [with the mantra](#) “to innovate, patent, produce, and prosper.” In 2016, India released its comprehensive National IP Policy. In 2017, the Ministry of Commerce’s new IP unit conducted the first-ever all-India enforcement workshop for police officers and launched an IP toolkit for them.

Improvements at the Indian Patent Office have helped address the patent application backlog. Progress is also being made at the state-level with Telangana, Mizoram, and Maharashtra setting up digital IP enforcement units.

At the international level, in 2018 and 2019, India finally acceded to the World Intellectual Property Organisation (WIPO) Internet Treaties, namely the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, and ratified the Lisbon, Nice, and Lacarno Agreements on classification of various types of IP.

No doubt, all of this is done with an eye to India’s global rankings on IP and innovation—India has been one of [biggest improvers](#) on the Global Intellectual Property Center’s International IP Index ranking since it started in 2002, rising to 36th out of 53 countries in 2020.

But it hopefully also points to a shift in the strategic calculus for many Indian policymakers in that they realise that India needs to truly embrace IP if it wants to challenge China, the U.S., and others in the global race for innovation advantage.

Yet, for every step forward there is a step or two backwards. Many people in India see individual IP provisions as a transaction cost to minimise and a discreet issue to trade off for other outcomes (both of which miss the broader point about the aggregate value each plays in in supporting innovation).

Government procurement rules require the IP of cybersecurity products to be transferred to an Indian firm. India’s Ministry of Agriculture proposed (then withdrew) rules to force firms to license their technology. India’s Ministry of Health pursues restrictive rules on drug manufacturing, IP, and price controls.

Similarly, India remains a leading advocate for weak IP policies internationally, especially on technology transfer and the liberal use of compulsory licensing and price controls.

The gravity of IP contentions

India’s approach to IP has been a major concern for the United States [since 1989](#), the year the United States Trade Representative’s (USTR) launched the first “Special 301 report” on IP issues. Each year, USTR consistently puts India on its “priority watch list” for inadequate IP protections. It is also a second tier priority country on the [European Union’s](#) own global assessment of IP protection.

For example, as per the USTR, India's laws make effective patent protection very difficult. As [USTR highlights](#), "The potential threat of compulsory licenses and patent revocations, and the narrow patentability criteria under the India Patents Act, burden companies across different sectors."

India also requires rules to protect undisclosed testing and other data generated to obtain marketing approval for pharmaceutical and agrochemical products against unfair commercial use and unauthorised disclosure.

Moreover, civil enforcement of IP remains a costly and lengthy matter. The absence of stronger IPR regimes acts as a trade barrier as U.S. firms can't be paid in full—or at all—for their products, creating an unfair trade and innovation playing field. Indian firms and users get cutting-edge, productivity-enhancing goods without paying market prices, while still enjoying fair and open access to the U.S. market.

For America, the lack of reciprocity and action has worn thin, leading to the withdrawal of [India's](#) tariff-free entry benefits under the U.S.'s Generalised System of Preferences. On top of this, America is one of the few countries with which India has a [trade surplus](#)—in 2018-2019, the surplus was \$16.85 billion—which puts India in a tough position given the Trump administration's focus on trade deficits.

Scope for improving partnership

Despite these barriers and frustrations, there is clearly potential and avenues for constructive engagement—and change. In 2019, the United States [surpassed](#) China to become India's top trading partner. [From 2015-2019](#), India was the 9th-largest source of patents applications filed by foreigners in the United States, growing from 7,835 in 2015 to 9,808 in 2018. This shows that a great deal of potential in the trade relationship remains untapped, much of which is knowledge and IP-intensive.

For example, government leaders have spoken about their goal to work together on [COVID-19 treatments](#). The Indo-U.S. Science and Technology Forum is supporting [collaborative research](#) related to COVID-19. Both play to the capabilities of their respective life-sciences sectors.

Furthermore, in 2018, the U.S. Chamber of Commerce's Global Innovation Policy Center and the Federation of Indian Chambers of Commerce and Industry launched [a new dialogue](#) around a solutions-driven approach to IP policy.

Engagement and conflict over IP have waxed and waned over the years. Most recently, both sides have used the IP working group in the Trade Policy Forum

(launched in 2005) to try and address various issues.

The new MOU on IP could be a helpful catalyst for constructive engagement, but with a clear eye to action. The Trump administration has shown that engagement is not an outcome and patience is not a given. Thankfully, there is still good will, and a good relationship between respective leaders, to support renewed engagement.

A way forward

Both sides, but especially the United States, need to provide the leadership and resources to arrange an ongoing series of policy discussions on strategic and technical issues of mutual interest and benefit to both sides, building on earlier [workshops in 2016](#) on copyright (held in the United States) and another on trade secrets (held in India). The United States Patent and Trademark Office posted an IP attaché to India for the first time in 2019, who could support future efforts.

The United States and India are home to two of the world's most prominent entertainment industries, so there should be IP issues worthy of discussions and exchanges of best practices. Likewise, they're both home to world-leading IT services. [Tata Consultancy Services and the Confederation of Indian Industry](#) has called for IP reforms to account for artificial intelligence, much like many stakeholders have done as part of a [U.S. Patent and Trademark Office inquiry](#).

Both sides could explore the issue and potential policy options. Pushing ahead poses challenges for both sides. For the United States, change will be iterative. It'll require consistent engagement at all levels. But if maintained, it could help given the alignment of growing calls for better IP protection domestically in India with an Indian administration that is genuinely interested in innovation policy.

For India, engagement will ultimately depend on its strategic calculus—does India truly want to be a global innovation leader through a clear, predictable, and robust IP regime for its entertainment, services, IT, and other sectors or does it want to pursue selective IP policies and purposely weak IP as a form of industrial policy for low-value manufacturing. Underlying this calculation is the fact that innovation drives economic productivity, which recent indicators show India [needs to improve](#).

If India fully embrace IP's role in empowering innovation, and the United States commits to provide consistent and long-term support as a good faith trading partner, then the U.S.-India innovation alliance may actually come into being.

This Policy Note is written by [Nigel Cory](#), Associate Director, Trade Policy, Information Technology and Innovation Foundation. It does not reflect the views of CUTS International.