

ARTICLE

PROMISE, PROGRESS, OR POSTURING?

INDIA AND THE INTELLECTUAL PROPERTY
CHAPTER IN THE UNITED KINGDOM-INDIA
COMPREHENSIVE ECONOMIC AND
TRADE AGREEMENT

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ABSTRACT

This Article presents the first in-depth and critical analysis of the intellectual property rights (IPR) Chapter in the United Kingdom–India Comprehensive Economic and Trade Agreement (CETA), concluded in 2025. Negotiated across fourteen rounds over three years, the CETA’s IPR Chapter represents the most ambitious IP chapter India has negotiated in any trade agreements to date. Against the backdrop of the United Kingdom’s post-Brexit trade strategy and India’s long-standing “policy-space-first” approach, this Article examines the IPR Chapter’s design, substantive provisions, and implications for developing country IP governance. The Article advances three central contributions. First, it contextualizes the IPR Chapter within India’s wider and evolving IP policy framework, particularly following the adoption of the 2016 National Intellectual Property Rights Policy, and demonstrates how India’s negotiating stance continues to prioritize flexibility and development-oriented outcomes despite India’s acknowledgement of its growing role as an IP-producing economy. Second, it assesses whether the IPR Chapter could

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feasibly serve as a reference point or model for other developing countries navigating bilateral free trade agreement negotiations, particularly those navigating tensions between international IP obligations and domestic policy autonomy. Third, it argues that while the IPR Chapter offers valuable reference points, particularly in balancing international obligations with domestic policy space, advancing public health measures, and strengthening geographical indication protection, it falls short of providing a comprehensive template. The Chapter's silences on equitable technology mechanisms, sustainability-driven IP reforms, and contemporary challenges such as artificial intelligence-related concerns underscore inherent limitations of such trade agreements in advancing forward-looking IP governance.

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I. INTRODUCTION

On 6th May 2025, the United Kingdom and India signed the Comprehensive Economic and Trade Agreement (CETA) after fourteen rounds of negotiations spanning more than three years.¹ Since the outset of negotiations, the deal has garnered significant attention in both countries, reflecting its strategic importance to their bilateral relations. The agreement aligns with the broader objectives of the UK-India 2030 Roadmap for Future Relations, released in 2021 by the Conservative government.² The United Kingdom's growing interest in new trade deals is rooted in the post-Brexit landscape, which introduced customs checks, rules of origin requirements, and regulatory divergence from the European Union. These changes have reduced trade efficiency, increased business costs, and prompted shifts in laws and regulations.³ While the Windsor Framework, implemented in October 2023, addressed some of the pressing trade issues concerning Northern Ireland, it did not remove the uncertainty surrounding the United

1. See Comprehensive Economic and Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and India, U.K.-India. July 24, 2025 (Country Series -1/2026: CP 1496) [hereinafter UK-India CETA]; see also *The UK-India Trade Agreement: What Do We Know About the Deal?*, DELOITTE: TAXSCAPE (Aug. 5, 2025), <https://taxscape.deloitte.com/article/a-new-uk-india-fta.aspx> [perma.cc/4RWL-JAST].

2. See *2030 Roadmap for India-UK Future Relations*, GOV. UK (May 4, 2021), <https://www.gov.uk/government/publications/india-uk-virtual-summit-may-2021-roadmap-2030-for-a-comprehensive-strategic-partnership/2030-roadmap-for-india-uk-future-relations> [perma.cc/59SH-T33G].

3. See Hailey Low & Benjamin Caswell, *Five Years On: The Economic Impact of Brexit*, NAT'L INST. OF ECON. & SOC. RSCH. (Jan. 31, 2025), <https://niesr.ac.uk/blog/five-years-economic-impact-brexit> [perma.cc/F2JZ-YYDH]. For a comprehensive analysis of Brexit and its legal and economic implications, see 5 *THE LAW & POLITICS OF BREXIT* (Federico Fabbrini ed. 2024).

Kingdom's trade relationship with the European Union.⁴ More recently, the United Kingdom's post-Brexit economic strategy has shifted towards rebuilding trade ties with the European Union and simultaneously diversifying market access through agreements with other partners. As part of this strategy, the United Kingdom signed Free Trade Agreements (FTAs) with Australia⁵ and New Zealand⁶ and, in 2024, acceded to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).⁷

The UK-EU Agreement *on a Common Understanding* in 2025 has been widely viewed as a step toward deepening the parties' post-Brexit partnership and signals a move toward closer economic relations.⁸ Against this backdrop, the recently signed UK-India CETA represents a parallel effort to diversify trade relationships, reduce friction, and create new market opportunities. These developments unfold against a broader backdrop of shifting geopolitics, evolving geoeconomic trends, technical development, and a rise in trade protectionist measures by some countries.⁹ This also aligns with the United Kingdom's

4. For a general discussion on the Windsor Framework, see Billy Melo Araujo, *The Windsor Framework and Its Impact for Northern Ireland and EU-UK Relations*, in *THE LAW & POLITICS OF BREXIT: THE TRADE AND COOPERATION AGREEMENT* (Federico Fabbrini ed. 2024).

5. See Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, Dec. 17, 2021, Aus.-U.K., GR. BRIT. TS No. 37 (Cd. 936) [hereinafter UK-Australia FTA].

6. See Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, Feb. 28, 2022, N.Z.-U.K., GR. BRIT. TS No. 36 (Cd. 937) [hereinafter UK-New Zealand FTA].

7. See *The United Kingdom Joined the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, HOUSE COMMONS LIBR. (Dec. 16, 2024), <https://commonslibrary.parliament.uk/research-briefings/cbp-9121/> [perma.cc/6J3N-9ZAU]. For a general discussion on CPTPP and U.K. accession, see *THE COMPREHENSIVE AND PROGRESSIVE TRANSPACIFIC PARTNERSHIP: ANALYSIS AND COMMENTARY* (Jorge A. Huerta-Goldman & David A. Gantz eds., 2021). See also Maria Garcia, *Transcending Geography: The United Kingdom's Access to the Comprehensive and Progressive Trans-Pacific Partnership*, 31 *GEOPOLITICS* 113 (2024).

8. See European Commission Press Release 25/1267, *A Renewed Agenda for European Union–United Kingdom Cooperation Common Understanding* (May 19, 2025), https://ec.europa.eu/commission/presscorner/detail/en/statement_25_1267 [perma.cc/7DZJ-V797].

9. See Rodrigo Balbontin, *Free Trade Protectionism: U.S. Tariffs Are Creating a New Trade Policy Paradox*, INFO. TECH. & INNOVATION FOUND. (July 7, 2025), <https://itif.org/publications/2025/07/07/free-trade-protectionism-us-tariffs-are-creating-a-new-trade-policy-paradox/> [perma.cc/B6WJ-RSMQ]. More recently, the United Nations Conference on Trade and Development (UNCTAD) highlighted the impact of protectionism in global trade. *Global Trade in 2025: Resilience under Pressure*, UNITED

Modern Industrial Policy 2024, which sets out a ten-year plan to boost business investment and deliver long-term economic growth and prosperity.¹⁰ The United Kingdom views the trade deal with India as a gateway to accessing the fast-growing Indo-Pacific market, which accounts for over forty percent of global GDP.¹¹

India's push for a trade deal with the United Kingdom is driven not only by the desire for greater market access but also by the opportunity to strengthen ties with the United Kingdom in the post-Brexit landscape. While the agreement has a strong economic rationale, it also carries geopolitical significance, as India aims to attract global firms including UK firms looking to diversify investments away from China.¹² Through the FTA, India is positioning itself as a global hub for manufacturing and services, offering both market access and investment security. This has become even more relevant since its withdrawal from the Regional Comprehensive Economic Partnership (RCEP)¹³—the world's largest mega-regional trade bloc—due to disagreements over several market access issues.¹⁴

Although both the United Kingdom and India adhere to the minimum standards set by the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property

NATIONS CONF. ON TRADE & DEV. (Mar. 14, 2025), <https://unctad.org/news/global-trade-2025-resilience-under-pressure> [perma.cc/U6LQ-67EP].

10. See *The UK's Modern Industrial Strategy 2025*, GOV'T U.K. (Aug. 1, 2025), <https://www.gov.uk/government/collections/the-uks-modern-industrial-strategy-2025> [perma.cc/8V7V-JAZL].

11. See DEP'T FOR INT'L TRADE, UK-INDIA FREE TRADE AGREEMENT: THE U.K.'S STRATEGIC APPROACH 5 (2022), <https://assets.publishing.service.gov.uk/media/61e1b75e8fa8f5058d5a76bf/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf> [perma.cc/7C9Q-SCR8].

12. See Agatha Kratz & Camille Boullenois, *Irrational Expectations: Long-Term Challenges of Diversification Away from China*, RHODIUM GRP. (Sep. 13, 2023), <https://rhg.com/research/irrational-expectations-long-term-challenges-of-diversification-away-from-china/> [perma.cc/NGB3-JF76].

13. The Regional Comprehensive Economic Partnership ("RCEP") was signed by ten Association of Southeast Asian Nations ("ASEAN") Member States and Australia, China, Japan, New Zealand, and the Republic of Korea. See Regional Comprehensive Economic Partnership Agreement, Nov. 15, 2020 [hereinafter RCEP Agreement], <https://asean.org/wp-content/uploads/2024/10/Regional-Comprehensive-Economic-Partnership-RCEP-Agreement-Full-Text.pdf> [perma.cc/W26T-EV3F].

14. See Pankhuri Gaur, *India's Withdrawal from RCEP: Neutralising National Trade Concerns*, 27 J. ASIA PAC. ECON. 277, 277–81 (2020).

Rights (TRIPS Agreement),¹⁵ their domestic practices differ according to policy priorities. Public attitudes toward intellectual property (IP) in the United Kingdom and India also diverge, shaped by distinct social, cultural, and economic values. The United Kingdom's IP system is characterized by strong protection, efficient administration, and effective enforcement, often positively associated with business success. India's IP system and, more broadly, much of South Asian IP development are rooted in its historical context and development policy and is often seen as advocating for the social function of IP rights.¹⁶ As a result, domestic IP interpretation tends to prioritize public interest and equity.¹⁷ In recent years, however, India has increasingly been perceived as an IP-exporting country¹⁸ and has strengthened its IP infrastructure and witnessed an exponential rise in IP filing over the past years.¹⁹ It is hoped that the trade deal will bring the two countries' IP systems closer together and further facilitate businesses and creators seeking to protect and invest in IP. Perhaps, in the broader context, given that the agreement was negotiated post COVID-19, there was hope that it would address tensions arising from pressing international IP issues during a

15. See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

16. For a general account of the values and effects of intellectual property on social and cultural life, see generally Madhavi Sunder, *FROM GOODS TO A GOOD LIFE: INTELLECTUAL PROPERTY AND GLOBAL JUSTICE* (2012); see also *INTELLECTUAL PROPERTY DEBATES IN SOUTH ASIA: LAW, DEVELOPMENT AND PRACTICE* (2025).

17. For example, Indian courts have adopted a public interest interpretation of patent and copyright provisions in *Novartis AG v. Union of India*, [2013] 6 S.C.C. 1 (India); *The Chancellor, Masters and Scholars of the Univ. of Oxford & Ors v. Rameshwari Photocopy Sers.*, [2016] 235 D.L.T. 409 (India). For a detailed discussion of these cases see generally Yogesh Pai & Virender Chandel, *The Enduring Enigma of Novartis v Union of India: The 3D (Third Dimension) of Indian IP Values*, in *INTELLECTUAL PROPERTY DEBATES IN SOUTH ASIA: LAW, DEVELOPMENT AND PRACTICE* 37 (Pratyush Nath Upreti ed., 2025); Arpan Banerjee, *Copyright and Academic Photocopying: The Delhi University Case*, in *THE CAMBRIDGE HANDBOOK OF COPYRIGHT LIMITATIONS AND EXCEPTIONS* 304 (Shyamkrishna Balganeshe et al. eds., 2021); see also Arul George Scaria & Rishika Rangarajan, *Fine-tuning the Intellectual Property Approaches to Fostering Open Science: Some Insights from India*, 8 *WORLD INTEL. PROP. ORG. J.* 109 (2016) (discussing how IP-related legal and policy measures can foster open sciences movement in India).

18. See Pratyush Nath Upreti, *The Changing Nature of International Intellectual Property*, 19 *J. INTEL. PROP. L. & PRAC.* 201, 201 (2023).

19. See Press Release, Ministry Com. & Indus., India Witnesses 44% Surge in IP Filings Over Five Years, Driven by Key Policy Reforms and Digitization (July 22, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146928> [perma.cc/6GDD-7CCB].

health crisis, as well as engage with new IP thinking in a post-pandemic world.²⁰

Against this background, this Article critically evaluates the UK-India CETA, with a particular focus on its IPR Chapter. It makes two main contributions. *First*, it situates CETA in the broader context of Indian IP policy, highlighting that India's negotiating stance continues to prioritize flexibility, even as it recognizes its growing role as an IP-producing economy. India is known for promoting a public interest-oriented IP system and has been vocal since the negotiation of the TRIPS Agreement, often expressing skepticism toward the over expansion of IP norms through TRIPS plus trade agreements.²¹ That said, it is also true that in recent times India is increasingly showing interest in including IP chapters in FTAs.²² This reflects a broader strategy to liberalize its market while carefully framing IP provision as to safeguard its domestic IP system and retain flexibility, even as it seeks to project its emerging strength as an IP-exporting country, a design choice that is particularly visible in the CETA context.

Second, it assesses whether the IPR Chapter could serve as a model for other developing countries. This inquiry is essential given India's consistent opposition to the inclusion of detailed IP chapters in FTAs and its preference for preserving regulatory autonomy through a strategic use of policy space, particularly via

20. See Srividhya Ragavan & Swaraj Paul Barooah, *Historic Tensions Involving International Intellectual Property Protection of Medical Technology with Disastrous Public Health Consequences*, 54 SETON HALL L. REV. 339, 379 (2023); see also INTELLECTUAL PROPERTY RIGHTS IN THE POST PANDEMIC WORLD: AN INTEGRATED FRAMEWORK OF SUSTAINABILITY, INNOVATION AND GLOBAL JUSTICE (Taina Pihlajarinne, et al. eds., 2023) (discussing post-pandemic IP debates concerning public health, access, IP flexibilities, and global fairness).

21. On India's position during TRIPS negotiations, for example on patents, see Jayashree Watal, *Patents: An Indian Perspective*, in THE MAKING OF THE TRIPS AGREEMENT 295, 311 (Jayashree Watal & Antony Taubman eds., 2015), https://www.wto.org/english/res_e/booksp_e/trips_agree_e/chapter_16_e.pdf [perma.cc/8XS5-4A4U].

22. See Ajay Srivastava, *Shifting Trade Ties: India's FTA Strategy Moves West*, FORBES INDIA (Mar. 17, 2025), <https://www.forbesindia.com/blog/economy-policy/shifting-trade-ties-indias-fta-strategy-moves-west-330769.html> [perma.cc/5R4A-RLDR]; see also DIVESH PANDEY & MEERA UNNIKRISHNAN, FREE TRADE AGREEMENT (FTAs) BY INDIA: REVIEW AND IMPLICATIONS FOR INDIA 1, https://www.iima.ac.in/sites/default/files/2023-03/MCFME_FTAs.pdf [perma.cc/UJ39-XLBD]; Viraj Solanki, India's Renewed Focus on Free-Trade Agreements, INT'L INST. FOR STRATEGIC STUD. (Jan. 26, 2026), <https://www.iiss.org/online-analysis/online-analysis/2026/01/indias-renewed-focus-on-free-trade-agreements/> [perma.cc/EKX2-5KWL].

a broad interpretation of TRIPS flexibilities. This approach has frequently been characterized as a ‘model’ for developing and emerging economies. In this context, this Article argues that this IPR Chapter may serve as a starting point of negotiation rather than a prescriptive template, cautioning against a ‘one size fits all’ approach. Building on this analysis, this Article finally concludes that while the agreement offers valuable reference points, particularly in balancing international obligations with domestic policy space, it falls short of providing a comprehensive template. Its silences on critical issues, including equitable technology access and sustainability-driven IP reforms, suggest the limits of trade agreements in advancing forward-looking IP governance.

To advance these contributions, this Article adopts a comparative approach, analyzing provisions in light of India’s broader IP policy objectives and recent trade deals signed by both parties. It is structured in six parts. Part II, following the introduction, provides a general overview of the agreement, Part III analyzes the IPR Chapter by examining relevant provisions related to patents, geographical indications, trade secrets, and enforcement more broadly. Parts IV and V offer a critical evaluation of the IPR Chapter, assessing its design, the extent of policy space it leaves to countries in regulating IP, and whether it could serve as a template for developing countries. Lastly, Part VI concludes that the IPR Chapter reflects India’s evolving engagement with contemporary IP governance while revealing concerns about technology transfer and sustainability. It argues that the IPR Chapter represents an important step in balancing stronger IP protection with developmental policy objectives.

II. UK-INDIA COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

The trade connection between India and the United Kingdom dates back to colonial rule, when Britain exploited India as a source of raw materials and market, a relationship that enriched British trade and directly contributed to its economic development.²³ Fast

23. See generally Prabir Bhattacharya, *India in the Rise of Britain and Europe: A Contribution to the Convergence and Great Divergence Debates*, 33 J. INTERDISC. ECON. 24 (2021). On this point and more generally on exploitation of the British Empire and its relationship with India, see also DOUGLAS M. PEERS & NANDINI GOOPTU, *INDIA AND THE BRITISH*

forward, the newly signed UK-India CETA represents a significant realignment of bilateral trade relations and has been hailed as a 'historic' economic agreement between the two countries. The CETA aims to strengthen economic integration and increase bilateral trade volume to approximately \$100 billion by 2030, a goal reflecting both parties' commitment to deepening engagement.²⁴

The CETA contains several firsts for India that reflect India's evolving approach to trade liberalization. On Market Access for goods,²⁵ India will remove or reduce tariffs on 89.5% of its tariff lines that cover 91% of the United Kingdom's exports to India whereas the United Kingdom will eliminate tariffs on 99% of its tariff lines.²⁶ In this initial offer, India's substantial tariff concessions include automobile goods such as electric, hydrogen, and hybrid vehicles—a steep reduction in import duties to 10% from 100% under a tariff rate quota system.²⁷ However, according to India, the immediate duty-free market will be given to only 24.5% of the United Kingdom's exports.²⁸ The United Kingdom will gain access to other Indian sectors in a phased manner.²⁹ The gradual reduction of tariffs is a strategic choice for India and will help its domestic industries that are in the process of development such as under Make in India and Production Linked Incentive (PLI) schemes.³⁰

In terms of technical barriers to trade (TBT), the CETA's TBT Chapter enhances market access for Indian exports by promoting the acceptance of Indian technical regulations and conformity assessment results in the United Kingdom, while also increasing

EMPIRE (2012); JOHN DARWIN, *THE EMPIRE PROJECT: THE RISE AND FALL OF THE BRITISH WORLD-SYSTEM, 1830–1970* (2009); SHASHI THAROOR, *INGLORIOUS EMPIRE: WHAT THE BRITISH DID TO INDIA* (2018).

24. See Press Release, Ministry Com. & Indus., India and UK Sign Comprehensive Economic and Trade Agreement (CETA) (July 24, 2025).

25. UK-India CETA, *supra* note 1, ch. 2.

26. Press Release, Ministry Com. & Indus., India-UK CETA: 99% Tariff Elimination, Stronger Bilateral Trade, Catalyst for Inclusive Growth (July 27, 2025).

27. See AJAY SRIVASTAVA, *INDIA'S UK TRADE DEAL: GAINS, GAPS, AND A GLIMPSE OF THE FUTURE 2* (2025), <https://gtri.co.in/gtriFlagshipReports> [perma.cc/WYE6-9BXX] (Report 108).

28. See Press Release, Ministry Com. & Indus., *supra* note 26.

29. See *id.*

30. See Press Release, Ministry Com. & Indus., PLI Scheme: Powering India's Industrial Renaissance (Aug. 24, 2025).

transparency regarding UK regulations and procedures.³¹ It reduces compliance cost for Indian exporters through the recognition of international standards, online conformity assessment procedures, and a “reasonable interval” for adapting to new regulations.³²

Beyond these market access provisions, the CETA incorporates unprecedented openness in a sector traditionally shielded from foreign competition—India’s government procurement market.³³ It grants UK companies access to approximately 40,000 government procurement tenders for high-value contracts in sectors such as green energy, transport, and infrastructure.³⁴ This represents a significant departure from India’s historically protectionist procurement policies drawing criticism. While the government maintains that Indian firms reciprocally access certain UK procurement opportunities, critics argue that the provision enables UK companies with minimal local content and major outsourcing to other countries to compete with Indian suppliers, thereby setting what some view as a problematic precedent for future trade agreements.³⁵ The trade deal distinguishes itself from earlier Indian trade agreements and makes itself “more inclusive”,³⁶ by explicitly addressing social and developmental issues: labor rights, gender equality, environmental sustainability, and anti-corruption mechanisms, in line with modern trade priorities.³⁷

The above analysis of the CETA reveals important nuances about its substantial impact. While the Indian government representatives highlighted the near-total tariff elimination on

31. See UK-India CETA, *supra* note 1, ch. 7, arts. 7.6, 7.9.

32. See UK-India CETA, *supra* note 1, ch. 7, arts. 7.5, 7.7(3), 7.9(12).

33. See PTI, *India, UK Ink Major Trade Deal: An Explainer*, NEW INDIAN EXPRESS, (July 25, 2025), <https://www.newindianexpress.com/business/2025/Jul/25/india-uk-ink-major-trade-deal-an-explainer> [perma.cc/4BJ4-6LZM].

34. See Nikhil Inamdar, *UK Firms Chase £38bn India Contracts but Challenges Loom*, BBC NEWS (Aug. 12, 2025), <https://www.bbc.com/news/articles/ce3jy1g5x3go> [perma.cc/WTF8-8VRP].

35. See SRIVASTAVA, *INDIA’S UK TRADE DEAL*, *supra* note 27; see also Mukesh Jagota, *Government Procurement: Govt Defends Leeway for UK, Says \$112-Billion Market Opened for India*, FIN. EXPRESS (July 26, 2025), <https://www.financialexpress.com/policy/economy-government-procurement-govt-defends-leeway-for-uk-says-112-billion-market-opened-for-india-3926997/> [perma.cc/9S6N-ZMFC].

36. See Press Release, Ministry Com. & Indus., *supra* note 24.

37. See UK-India CETA, *supra* note 1, ch. 20, 23, 26.

Indian exports as a major achievement, some critical analysis suggests these gains may be more limited than characterized. Critics contend that more than 50% of India's exports to the United Kingdom already entered under zero tariff rates prior to the CETA, raising questions about the genuine increment in market access provided by the CETA.³⁸ However, it must be noted that the CETA preserves protection for India's sensitive sectors, including dairy, gold, lab-grown diamonds, etc.³⁹ Beyond these concessions, however, one widely welcomed provision for India is the Double Contribution Convention, which exempts professionals on short-term UK assignments from social security payments.

The overall balance of the CETA in terms of tariff concessions appears asymmetric. The United Kingdom gains broad access to the Indian market of 1.4 billion persons with 90% tariff lines benefiting from tariff reduction, while India's concessions affect a relatively smaller UK market.⁴⁰ Perhaps, this apparent asymmetry convinced critics that the CETA may confer relatively greater commercial benefits to the United Kingdom, particularly in sectors such as advanced manufacturing and life sciences where the United Kingdom firms enjoy technological advantages.⁴¹ Nevertheless, Indian negotiators have consistently characterized the deal as balancing short-term market opening with long-term strategic positioning in a key global market.⁴² Thus, the CETA represents more than a conventional bilateral trade agreement and reflects evolving geopolitical and economic dynamics in the post-Brexit era. For India, it demonstrates sophisticated negotiation strategy of accepting market-opening concessions in

38. See SRIVASTAVA, *INDIA'S UK TRADE DEAL*, *supra* note 27, at 1–2; see also Press Release, Forum for Trade Justice, *The UK-India CETA: For Illusory Gains in Exports, India Loses Massive Policy Space to Protect its Health, Data, and Livelihoods* (July 31, 2025) (describing the gains as illusory and criticizing policy space in other areas).

39. See Press Release, Ministry Com. & Indus., *supra* note 26.

40. See *Policy Paper: UK-India Trade Deal: Conclusion Agreement Summary*, GOV'T UK: DEP'T FOR BUS. & TRADE (July 24, 2025), <https://www.gov.uk/government/publications/uk-india-trade-deal-conclusion-summary/uk-india-trade-deal-conclusion-summary#chapter-summary> [perma.cc/7B6P-758M]; see also Business and Trade Committee, *UK-India Comprehensive Economic and Trade Agreement (CETA)* (Jan. 2026), <https://publications.parliament.uk/pa/cm5901/cmselect/cmbeis/996/report.html> [perma.cc/K88K-AW4W] (discussing strategic assessment of the CETA in terms of economic, geopolitical, and regulatory implications).

41. *Policy Paper: UK-India Trade Deal: Conclusion Agreement Summary*, *supra* note 40.

42. See Press Release, Ministry Com. & Indus., *supra* note 26.

non-sensitive sectors while protecting strategic industries and securing recognition of its emerging technological capabilities. For the United Kingdom, the CETA provides leverage in India's big-billion market while advancing post-Brexit objectives of demonstrating Britain's capacity for bilateral deal-making independent of the EU frameworks.

The subject matter of this Article—the IPR Chapter—must be understood within the broader context of trade-offs and strategic positioning as discussed above. The following analysis of the IPR Chapter shows that it reflects both parties' attempt to establish meaningful commitments on intellectual property protection and enforcement while preserving regulatory flexibility on development centric and public health priorities.

III. INTELLECTUAL PROPERTY CHAPTER IN UK-INDIA CETA

Free trade agreements can serve as a space for negotiating competing and complex interests in intellectual property. The outcomes of these negotiations reflect asymmetries in bargaining power, divergent philosophical approaches to IP, and strategic compromises. This section contextualizes the IPR Chapter's substantive provisions within strategic negotiating logic of the parties and their legal and policy implications.

A. India's Approach to Intellectual Property Provisions in FTAs

To understand the IPR Chapter from Indian perspective, it requires inquiry into India's negotiating framework for IP. Broadly, India's IP-related FTA practice can be divided into two phases: pre-2016 and post-2016. In 2016, India adopted the National Intellectual Property Rights Policy, setting out a future roadmap for IP governance with seven objectives:⁴³ raising IPR awareness, generating IPRs, strengthening the legal and legislative framework, improving administration and management, promoting commercialization of IPRs, enhancing enforcement and adjudication, and developing human capital.⁴⁴ The adoption of the

43. See Press Release, Ministry Com. & Indus., Cabinet Approves National Intellectual Property Rights Policy (May 13, 2016).

44. See MINISTRY OF COM. & INDUS., DEP'T OF INDUS. POL'Y & PROMOTION, NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY 1-2 (2016), <https://ipindia.gov.in/uploads/>

IPR policy was grounded in India's IP producing capabilities that were clearly visible between 2006 and 2016 in terms of significant growth of patent, design and trademarks applications by Indian origins/residents.⁴⁵ Therefore, the IPR policy had to articulate a fundamental tension between recognizing India's IP producing capabilities and preserving policy space. In this regard, one of the objectives of the IPR policy, which is objective 3, "Legal and Legislative Framework," sets the tone for establishing a balanced, strong, and effective legal framework for IPR in order to drive India's knowledge economy, while also reaffirming the use of flexibilities under international IP treaties, including the TRIPS Agreement, and upholding India's commitment to the Doha Declaration on TRIPS Agreement and Public Health.⁴⁶ The policy made clear that new negotiations for trade agreements or treaties will not affect India's use of the flexibilities. Accordingly, India will object to any proposal that may hinder its use of the flexibilities at the domestic level.⁴⁷ Overall, the IPR policy sets a '*Lakshman Rekha*' (explicit constraints) for Indian negotiators to operate which is to preserve TRIPS flexibilities.

Additionally, the IPR policy recognizes the importance of India's traditional knowledge, particularly in the medicinal domain, and emphasizes protecting such knowledge from misappropriation while preserving scope for its utilization. The policy calls for engagement in developing legally binding international instruments, which may be TRIPS-plus, to protect traditional knowledge (TK), genetic resources (GR), and

National_IPR_Policy_English.pdf [https://perma.cc/HQ49-C5GY] [hereinafter National IPR Policy]. For a critical appraisal of Indian National IP Policy, see S. Basheer, *India's New IP Policy: A Bare Act?* 13(2) INDIAN J. L. & TECH. 1 (2017).

45. See OFF. CONTROLLER GEN. PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2016-2017 44, https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_94_1_1_79_1_Annual_Report-2016-17_English.pdf [perma.cc/NTN2-H2SC].

46. See World Trade Organization, Doha Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/MIN(01)/DEC/2 (Nov. 20, 2001). The Doha Declaration has been further affirmed; see also Appellate Body Report, *Australia—Certain Measures Concerning Trade Marks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WTO Doc. WT/DS435/AB/R; WT/DS441/AB/R (June 29, 2020). For general discussion on TRIPS and public health, see Geraldo Vidigal & Pramiti Parwani, *TRIPS at Thirty: The Evolving Interactional Law of Public Health Exceptions to Intellectual Property Protection*, 57 VAND. J. TRANSNAT'L L. 1489 (2024).

47. National IPR Policy, *supra* note 44, at 9.

traditional cultural expressions (TCE).⁴⁸ It does not specify whether this protection should take the form of defensive or positive measures. However, given India's core concern of the misappropriation of such knowledge, the focus is likely to be on instruments ensuring defensive protection.⁴⁹ The policy also calls for the transfer of clean technology and know-how from developed countries to India,⁵⁰ while its objectives on Enforcement and Adjudication adopt Article 51 of TRIPS Agreement as guiding principles for identifying acts of counterfeiting and piracy.⁵¹

Overall, the strategic framing of the IPR Chapter represents conceptual maturation; unlike earlier Indian positions that viewed stronger IP protection as antithetical to development.⁵² The IPR policy acknowledged India's transformation while maintaining, as it appears, principled opposition to certain TRIPS-plus obligations but exploring TRIPS-plus obligations that are in India's interests. This policy is crystal clear in the IPR Chapter of the CETA which is analyzed in subsequent parts of this Article.

Pre-2016, India's FTAs either lacked a dedicated IP chapter or contained only limited provisions. For example, neither the Agreement on South Asian Free Trade Area (SAFTA)⁵³ nor the India-Malaysia FTA⁵⁴ contain a dedicated IP chapter, whereas

48. *See id.*

49. *See* N.S. Gopalakrishnan, *TRIPS and Protection of Traditional Knowledge of Genetic Resources: New Challenges to the Patent System*, 27 *EUR. INTEL. PROP. REV.* 11, 11 (2005).

50. *See* National IPR Policy, *supra* note 44, at 10.

51. *See* TRIPS Agreement, *supra* note 15, art. 51. The agreement requires WTO members to establish procedures allowing right holders to request customs authorities to suspend the release of suspected counterfeit or pirated goods. Members may extend this to other IP infringements and goods intended for export if the section's requirements are met.

52. *See* Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* 108–10 (2003); *see also* JAYASHREE WATAL, *INTELLECTUAL PROPERTY RIGHTS IN THE WTO AND DEVELOPING COUNTRIES* (2001).

53. *See* Agreement on South Asian Free Trade Area (SAFTA), Jan. 6, 2004.

54. *See* Comprehensive Economic Cooperation Agreement between the Government of Malaysia and the Government of the Republic of India, India-Malay., Feb. 18, 2011 [hereinafter India-Malaysia FTA].

India's FTAs with Singapore,⁵⁵ South Korea,⁵⁶ and Japan,⁵⁷ do. A closer look reveals that the India-Singapore FTA merely obliges the parties to cooperate on IPRs, with a particular emphasis on plant varieties.⁵⁸ In contrast, India's FTAs with South Korea and Japan reaffirm the rights and obligations under the TRIPS Agreement, and require the parties to provide adequate and effective protection consistent with its provisions.⁵⁹ A key distinction, however, is that the IP chapter in the FTA with South Korea is excluded from the scope of the dispute settlement mechanism.⁶⁰ As a result, any violation of IP obligations cannot be addressed through the dispute settlement process, rendering the IP chapter largely toothless. By comparison, the India-Japan FTA is broader in scope, requiring the streamlining of procedural and administrative matters related to IP and measures to raise awareness of IP protection. It also prohibits the exclusion of computer programs from patentability, mandates the provision of reasoned patent refusals, and calls for preferential examination of certain trademark applications, among other commitments.⁶¹ The pre-2016 FTA practice may be due to lack of sufficient institutional or political confidence to undertake IP obligations.

Since 2016, the IPR policy has shaped India's negotiating stance in all bilateral and multilateral IP negotiations. India's recent FTAs with the United Arab Emirates (UAE), the European Free Trade Association (EFTA), Oman and the United Kingdom (UK) contain unprecedentedly detailed and substantively ambitious IP chapters with hard obligations.⁶² By contrast, its FTAs

55. See Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore, India-Sing., ch. 11, June 29, 2005 [hereinafter India-Singapore FTA].

56. See Comprehensive Economic Partnership Agreement between the Republic of Korea and the Republic of India, India-S. Kor., ch. 12, Aug. 7, 2009 [hereinafter India-Korea FTA].

57. See Comprehensive Economic Partnership Agreement between Japan and the Republic of India, India-Japan, ch. 9, Feb. 16 2011 [hereinafter India-Japan FTA].

58. See India-Singapore FTA, *supra* note 55, art. 11.1.

59. See India-Korea FTA, *supra* note 56, arts. 12.2, 102.1.

60. *Id.* art. 12.6.

61. See India-Japan FTA, *supra* note 57.

62. See Comprehensive Economic Partnership Agreement between the Government of the Republic of India and the Government of the United Arab Emirates, Feb. 18, 2022, India-U.A.E., ch. 11 [hereinafter India-UAE FTA]; Trade and Economic Partnership between the EFTA States and the Republic of India ch. 8, Mar. 10, 2024 [hereinafter India-EFTA FTA]; Comprehensive Economic Partnership Agreement between the Government

with Mauritius and Australia contain no substantial IP provisions.⁶³ India is also negotiating FTAs with the European Union, the Association of Southeast Asian Nations, and New Zealand, although details of these negotiations are not yet publicly available.⁶⁴ A detailed analysis of the IP chapters in these agreements falls outside the scope of this Article. Nonetheless, an overview through the lens of the IPR policy suggests that these chapters generally refrain from creating hard obligations regarding compliance or implementation of the TRIPS Agreement, beyond reaffirming the rights and obligations it contains.⁶⁵ It remains unclear how these provisions, which simply reaffirm the TRIPS Agreement, will be interpreted in the future. In particular, the parties appear to intend that FTAs should not become a basis for IP disputes over matters they did not intend to cover. In practice, the IP chapters often incorporate certain strategic provisions from the TRIPS Agreement verbatim and wherever necessary, with slight modifications or makes direct reference to the relevant provisions of the TRIPS Agreement. For instance, the principles and objectives of the TRIPS Agreement are incorporated verbatim in India-UAE FTA.⁶⁶ Some of India's FTAs also feature dedicated provisions on TRIPS and Public Health clarifying that the provisions of the IP chapters do not undermine public health related provisions of TRIPS Agreement including Doha Declaration and Amendment to the TRIPS Agreement.⁶⁷ Further, the FTAs contain provisions on GR, TK, and TCE.⁶⁸ The nature of obligations regarding their protection varies; for instance, the India-UAE FTA imposes a hard obligation for the protection of TK, GRs, and TCEs, whereas India-EFTA FTA adopts a soft obligation, merely

of the Republic of India and the Government of Sultanate of Oman, India-Oman, ch. 10 [hereinafter India-Oman FTA]; *see also* UK-India CETA, *supra* note 1, ch. 13.

63. *See* Comprehensive Economic Cooperation and Partnership Agreement between the Republic of Mauritius and the Republic of India [hereinafter India-Mauritius FTA]; India-Australia Economic Cooperation and Trade Agreement between the Government of India and the Government of Australia [hereinafter India-Australia FTA].

64. *See India's Current Engagements in RTAs*, GOV'T OF INDIA, MINISTRY OF COM. & INDUS., <https://www.commerce.gov.in/international-trade-trade-agreements-indias-current-engagements-in-rtas/> [perma.cc/W6RQ-XMZU] (last visited Aug. 14, 2025).

65. *See infra* Part IV.

66. *See* India-UAE FTA, *supra* note 62, arts. 11.2–11.3.

67. *See id.* art. 11.6; India-EFTA FTA, *supra* note 62, annex 8.A, art. 3.

68. *See* India-UAE FTA, *supra* note 62, art. 11.28; India-EFTA FTA, *supra* note 62, art.

acknowledging the importance of the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore.⁶⁹

B. Intellectual Property Rights Chapter: Overview and Analysis

Post-TRIPS Agreement, the IPR Chapter of India-UK CETA is the most ambitious and extensive IP chapter that India has negotiated so far. With nine Sections and one hundred and eleven articles, the IPR Chapter does not alter substantive standards for grant or registration of IPRs but sets high standards for maintenance and enforcement of IPRs. This is crucial for the United Kingdom for its IP intensive exports.⁷⁰ The parties' intention seems to have been a balanced chapter that fosters innovation and creativity while preserving policy space for domestic interests. This section focuses on the provisions of the IPR Chapter that have sparked public debates, particularly those concerning patents and public health, geographical indications, trade secrets, and other areas that may require amendments in domestic laws.

1. General Provisions: Balancing the Interests

The IPR Chapter begins by setting out general provisions that establish interpretative frameworks that fundamentally shape how subsequent obligations are understood. As discussed earlier, since 2016, India has consistently reaffirmed its rights and obligations under TRIPS and other international IP treaties in its FTAs.⁷¹ This approach, however, remains to be tested. The UK-India CETA illustrates that such reaffirmation does not, by itself, lead to automatic incorporation of treaty obligations into the agreement.⁷² In some instances, the IPR Chapter incorporates language directly from the TRIPS Agreement, thereby making it an internal part of the FTA. Similar to the India-UAE FTA, it

69. For more detail on World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, see *Intergovernmental Committee (IGC)*, WIPO, <https://www.wipo.int/en/web/igc> [perma.cc/8NGG-DWZS] (last visited Aug. 14, 2025).

70. See Policy Paper: UK-India Trade Deal: Conclusion Agreement Summary, *supra* note 40.

71. See UK-India CETA, *supra* note 1, arts. 13.5(1), 13.7.

72. See UK-India CETA, *supra* note 1, art. 1.2(1).

incorporates Articles 7 and 8 of TRIPS Agreement.⁷³ Innovatively, the IPR Chapter includes paragraph 1 of the TRIPS Agreement's preamble as a second objective, namely, to reduce distortions and impediments to trade and investment. By doing so, the IPR Chapter links IP protection to trade and ensures that the IP protection should be neither insufficient nor excessive.⁷⁴ However, the second part of paragraph 1 of the TRIPS preamble, which states "*measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade*" is excluded from the language of the objectives in the IPR Chapter.⁷⁵ In view of India's investment protection practice, it is interesting to note that the objectives also link IP protection to investment, which is also not the case in the TRIPS Agreement. Overall, the objectives closely align the aims of the IPR Chapter with those of the TRIPS Agreement.

With respect to the nature of the obligations, the IPR Chapter clarifies that it complements and further specifies the rights and obligations under IP treaties, including TRIPS.⁷⁶ Compatibility is therefore ensured not only with the TRIPS Agreement, but also other IP treaties to which the parties are signatories, nothing in the IPR Chapter may be interpreted in a way that contravenes these rights and obligations. The IPR Chapter also borrows language from TRIPS, allowing the parties to provide the FTA plus protection and enforcement of IPRs, provided such measures are consistent with the provisions of the IPR Chapter.⁷⁷

The codification of the parties' understandings regarding TRIPS Agreement and public health measures⁷⁸ has prompted criticism from public health groups, who argue that it undermines policy space to facilitate access to medicines.⁷⁹ However, an

73. See UK-India CETA, *supra* note 1, arts. 7, 8, 13.2–13.3.

74. See DANIEL GERVAIS, *THE TRIPS AGREEMENT: DRAFTING HISTORY AND ANALYSIS* 166 (2021).

75. See TRIPS Agreement, *supra* note 15, preamble ("[d]esiring to reduce 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.").

76. See UK-India CETA, *supra* note 1, art. 13.5(1).

77. See TRIPS Agreement, *supra* note 15, art. 1.

78. See UK-India CETA, *supra* note 1, art. 13.6.

79. See *UK-India CETA — Reflections on the IPR Chapter (Chapter 13)*, KNOWLEDGE ECOLOGY INT'L (July 25, 2025), <https://www.keionline.org/40943> [perma.cc/LCG3-B2NH];

examination of the provision indicates that, on one hand, it is strongly tilted in favor of public health measures. It expressly states that nothing in the IPR Chapter prevents a party from taking measures to protect public health,⁸⁰ including the use of flexibilities recognized in the Doha Declaration⁸¹ on TRIPS and Public Health. Moreover, the parties have agreed that the provisions of the IPR Chapter should be interpreted and implemented to protect public health and “promote access to medicines for all.”⁸² The reference to “all” could be interpreted as allowing a party to take public health measures extending beyond its own jurisdictional boundaries. In essence, the public health understandings reinforce the implementation principles agreed by the parties.⁸³ Further, unlike Article 8 of the TRIPS Agreement and Article 13.3 of the IPR Chapter, freedom to protect and promote public health is not subject to the requirement of “necessary.”⁸⁴ On the other hand, in an attempt to balance interests, the provision includes a soft paragraph acknowledging preference for voluntary mechanisms to facilitate access to medicines.⁸⁵ Article 13.6(1) states: “The Parties recognise the preferable and optimal route to promote and ensure access to medicines is through voluntary mechanisms, such as voluntary licensing, which may include technology transfer on mutually agreed terms.”⁸⁶

The concerns that a preference for voluntary mechanisms undermines compulsory licensing and Doha Declaration are unfounded. The relevant provision seems to balance two interests—public health and the rights of IPR holders—but the balance is tilted in favor of public health due to the presence of

India-UK Free Trade Agreements: A Response on Access to Medicines, WORKING GRP. ON ACCESS TO MEDS. (July 26, 2025), <https://accesstomedicinesindia.wordpress.com/2025/07/26/india-uk-free-trade-agreement-a-response-on-access-to-medicines/> [perma.cc/XN5R-WU5C].

80. UK-India CETA, *supra* note 1, art. 13.6(2)(b).

81. *See id.* art. 13.6(2)(c); Doha Declaration, *supra* note 46.

82. UK-India CETA, *supra* note 1, art. 13.6 (1)(c).

83. UK-India CETA, *supra* note 1, art. 13.3.

84. UK-India CETA, *supra* note 1, arts. 13.3, 13.6. Art. 13.3 states: “A Party may, in formulating or amending its law, adopt measure necessary to protect public health . . . provided that those measures are consistent with the provisions of this Chapter.” Whereas art. 13.6 states: “the Parties agree that this Chapter does not and should not prevent a Party from taking measure to protect public health.”

85. *See* UK-India CETA, *supra* note 1, art. 13.6(1).

86. *Id.*

hard obligations on public health measures. In any event, if the voluntary mechanism is ineffective or inappropriate, a party remains free to adopt any measure to address the situation. The scope of Article 13.6 is not limited to patents; it can extend to other IPRs that may hinder access to medicines.⁸⁷ The preference for voluntary mechanisms can also be understood in light of real-world factors and the need for alignment with the TRIPS Agreement. In the context of patents, Article 31 of the TRIPS Agreement recognizes “other use” without the authorization of the right holder, including compulsory licenses and government use.⁸⁸ Any such authorization is subject to the proposed user’s efforts to obtain a voluntary license from the right holder.⁸⁹ If these efforts fail, a compulsory license or government use may be granted, provided the other conditions under Article 31 are met.⁹⁰ This demonstrates that the TRIPS Agreement itself incorporates voluntary mechanisms as part of the compulsory licensing process. The TRIPS Agreement also allows the waiver of voluntary licensing requirements in cases of national emergency or other circumstances specified therein. Thus, the critics’ arguments misunderstand the TRIPS Agreement’s own architecture. Further, the provisions on TRIPS and public health in the IPR Chapter safeguard the Parties’ right to take measures to protect public health, which may include waiving voluntary mechanisms.⁹¹ The scope of the right, unlike in the TRIPS Agreement, is not limited to national emergencies, or other circumstances of extreme

87. See Hannah Brennan, *The Cost of Confusion: The Paradox of Trademarked Pharmaceuticals*, 22 MICH. TELECOMM. & TECH. L. REV. 1 (2015); see also Arul George Scaria & Kavya Susan Mammen, *Non-Traditional Trademarks in the Pharmaceutical Sector: Non-Traditional Barriers to Access to Medicine?*, in THE PROTECTION OF NON-TRADITIONAL TRADEMARKS: CRITICAL PERSPECTIVES 271, 279 (Irene Calboli & Martin Senftleben eds., 2018); TANYA APLIN & JOHN LIDDICOAT, WORLD INTELL. PROP. ORG., DISCUSSION PAPER: THE INTERPLAY BETWEEN PATENTS & TRADE SECRETS IN MEDICAL TECHNOLOGIES 55 (2023); Olga Gurgula & John Hull, *Compulsory Licensing of Trade Secrets: Ensuring Access to COVID-19 Vaccines via Involuntary Technology Transfer*, 16 J. INTELL. PROP. L. & PRAC. 1242, 1251–52 (2021).

88. See TRIPS Agreement, *supra* note 15, art. 31. For various discussions on Article 31 and its practice at the national level, see Van Anh Le, *COMPULSORY PATENT LICENSING AND ACCESS TO MEDICINES: A SILVER BULLET APPROACH TO PUBLIC HEALTH?* (2022); Emmanuel Kolawole Oke, *PATENTS, HUMAN RIGHTS, AND ACCESS TO MEDICINES: THE ROLE OF STATES AND PHARMACEUTICAL CORPORATIONS* (2022).

89. See TRIPS Agreement, *supra* note 15, art. 31(b).

90. See *id.* art. 31.

91. UK-India CETA, *supra* note 1, arts. 13.6(1), 13.6(2)(b).

urgency.⁹² In this sense, the IPR Chapter goes one step ahead of the TRIPS Agreement in terms of flexibilities.

Even a far-fetched reading of Article 13.6(1) in isolation, disregarding other provisions, would not support the conclusion that it absolutely dilutes compulsory licensing. Such an interpretation conflates preference with prohibition and treats voluntary licensing as an alternative rather than a complement. This would indicate that a party with a TRIPS-compliant compulsory license regime would need to amend its laws. In this regard, it is notable that both the United Kingdom and Indian patent laws require evidence of attempted voluntary licensing before compulsory license is granted.⁹³ It is therefore doubtful that the parties intended to adopt a provision inconsistent with their own domestic laws.

However, the only relevance of the far-fetched reading may arise in situations where domestic law does not require voluntary licensing as a precondition for compulsory licensing or other non-voluntary use. For example, under India's patent law, provisions on compulsory licensing for national emergencies⁹⁴ and export,⁹⁵ or the use of patented inventions for government purposes,⁹⁶ do not require prior efforts to obtain voluntary license. Some of these instances of non-voluntary licensing are also covered by Articles 31(b) and 8 of the TRIPS Agreement.⁹⁷ In such cases, Article 13.6(1) may oblige a party to consider voluntary licensing before exercising its power under these provisions, and real-world experience—particularly lessons learned from COVID-19 regarding access to medicines and IPRs⁹⁸—may have influenced and facilitated the acceptance.

92. See TRIPS Agreement, *supra* note 15, art. 31(b).

93. See The Patents Act, 1970 (Act No. 39 of 1970) §§ 48A (2), 84(6)(iv) (India); see also The Patents Act 1977, 1977 c. 37, §§ 46–48, 48A(1) (U.K.).

94. The Patents Act, 1970, § 92 (India).

95. See *id.* § 92A.

96. See *id.* § 100(2).

97. See TRIPS Agreement, *supra* note 15, arts. 8, 31(b); see also Yousuf A. Vawda, *Compulsory Licenses and Government Use: Challenges and Opportunities*, in *ACCESS TO MEDICINES AND VACCINES* 73, 94 (Carlos M. Correa & Reto M. Hilty eds., 2022).

98. See *MPP Releases Analysis on the Vital Role of Licensing in Increasing Access to Medical Countermeasures, with a Focus on Low- and Middle-Income Countries*, WORLD INTELL. PROP. ORG. (Oct. 10, 2023), https://www.wipo.int/web/global-health/w/news/2023/news_0018 [perma.cc/P669-ZUNA].

During COVID-19, Gilead entered into voluntary licensing agreements with Cipla, Dr. Reddy's, Eva Pharma, Hetero Labs, and Mylan to expand supply of Remdesivir in India.⁹⁹ Eli Lilly also inked royalty-free voluntary licensing pacts with eight Indian manufacturers for Baricitinib.¹⁰⁰ While the Delhi High Court acknowledged the need for a compulsory license for COVID-19 drugs, particularly Remdesivir, it directed the government to first pursue negotiations with rights holders, and if necessary, invoke remedial measures under the Patents Act of 1970.¹⁰¹ The government, however, considered compulsory licensing counter-productive,¹⁰² and instead promoted active partnerships¹⁰³ as a more viable option. Thus, India's agreeing to voluntary mechanisms reflects its experience with IPRs during COVID-19, but this neither dilutes its regulatory freedom on compulsory licensing nor diminishes its preference for voluntary mechanisms over compulsory licenses.¹⁰⁴ The Parties' acceptance of voluntary licensing language reflects pragmatic recognition that collaborative mechanisms often serve development objectives better than adversarial measures.

99. See *Voluntary Licensing Agreements for Remdesivir*, GILEAD, <https://web.archive.org/web/20210118145645/https://www.gilead.com/purpose/advancing-global-health/covid-19/voluntary-licensing-agreements-for-remdesivir> [perma.cc/LWD3-5BEF] (last visited May 22, 2026); see also Press Release, Ministry of Health & Fam. Welfare, Centre Prohibits Exports of Injection Remdesivir and Remdesivir Active Pharmaceutical Ingredients (API) till the COVID Situation in the Country Improves (Apr. 11, 2021).

100. See PTI, *BDR Pharma Inks Licensing Pact with Eli Lilly for COVID-19 Treatment Drug*, *ECON. TIMES*, May 19, 2021, <https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/bdr-pharma-inks-licensing-pact-with-eli-lilly-for-covid-19-treatment-drug/articleshow/82764535.cms?from=mdr> [perma.cc/9L9A-UJN C]; EP News Bureau, *BDR Pharma Signs Voluntary Licensing Agreement with Lilly for Baricitinib*, *EXPRESS PHARMA* (May 19, 2021), <https://www.expresspharma.in/bdr-pharma-signs-voluntary-licensing-agreement-with-lilly-for-baricitinib/> [perma.cc/9KEQ-4HB2].

101. See *Rakesh Malhotra v. Gov't of NCT of Delhi*, W.P. (C) 3031/2020 (Del. High Ct. Feb. 1, 2022) (India), <https://indiankanoon.org/doc/54130714> [https://perma.cc/7PN9-38WT].

102. Affidavit on Behalf of the Union of India ¶ 31, In re: Distribution of Essential Supplies and Services During Pandemic, *Suo Motu Writ Petition* (C) No. 3/2021 (Sep. 5, 2021).

103. See Press Release, NITI Aayog, Myths and Facts on India's Vaccination Process (May 27, 2021).

104. This understanding of the provisions is also shared by the Government of India. See DEPARTMENT OF COMMERCE, RAJYA SABHA UNSTARRED QUESTION NO. 1510 ON INDIA-UK FTA (2025).

2. Patents

India's patent policy and law have long been subject to international scrutiny and domestic debates, particularly provisions aimed to protect public health and its generic pharmaceutical industry that earned India the title "Pharmacy of the World".¹⁰⁵ Upon joining the WTO, India made substantial amendments to its patent law to address core compliance issues,¹⁰⁶ but these changes were deemed insufficient by technology-intensive stakeholders in developed countries.¹⁰⁷ India continues to face criticism for exploiting TRIPS flexibilities to favor its domestic industry rather than closing the gap. For instance, even now the European Union identifies India as a Priority Country causing the *greatest economic harm* to EU interests,¹⁰⁸ mainly because of strict patentability/patent eligibility¹⁰⁹ and robust provisions on compulsory licensing. Similarly, UK stakeholders are of the view that IP protection is *difficult to obtain* and *even harder to enforce* in India and argue that Indian IP laws defy TRIPS provisions.¹¹⁰ Against this backdrop, the United Kingdom, which is home to several globally leading pharmaceutical R&D companies, has clear interests in securing enhanced, predictable and robust patent protection in a major market like India, which possesses formidable pharmaceutical manufacturing capabilities. The patent provisions might appear as capitulation; however, as the following analysis demonstrates, the patent provisions in the IPR Chapter largely reaffirm TRIPS standards while introducing limited enhancements aimed at improving procedural efficiency within the parties' patent systems.

105. See generally PRASHANT T. REDDY & SUMATHI CHANDRASHEKARAN, *CREATE, COPY, DISRUPT: INDIA'S INTELLECTUAL PROPERTY DILEMMAS* (2017) (providing a detailed account of the evolution of Indian patent law).

106. On India's pre-TRIPS position on patent law at WTO, see Watal, *supra* note 21.

107. See generally Johanna Sheehee, *Indian Patent Law: Walking the Lines*, 29 NW. J. INT'L L. & BUS. 577 (2009).

108. See *Commission Releases Report on Intellectual Property Rights in Third Countries, Counterfeit & Piracy Watch List*, EUR. COMM'N (May 22, 2025), https://policy.trade.ec.europa.eu/news/commission-releases-report-intellectual-property-rights-third-countries-counterfeit-piracy-watch-2025-05-22_en [perma.cc/2NEC-PLKB].

109. See Patents Act § 3 (India).

110. See HOUSE OF LORDS, INT'L AGREEMENTS COMM., *UK-INDIA FREE TRADE AGREEMENT: SCRUTINY OF THE GOVERNMENT'S NEGOTIATING OBJECTIVES 2* (2022).

The IPR Chapter explicitly acknowledges rights of patent owners and reaffirms the committed TRIPS level obligations regarding patentable subject matter,¹¹¹ with the exception of plant varieties.¹¹² The patent section also incorporates exceptions and limitations of patent rights in line with Article 30 (Exceptions)¹¹³ and Article 31 (Other Use Without Authorization of the Right Holder)¹¹⁴ of the TRIPS Agreement. The ‘Exceptions’ provision is reproduced verbatim from the TRIPS Agreement, while Article 13.50—titled ‘Other Use Without Authorization of Right Holder’, mirroring the title of Article 31 of TRIPS—states that nothing in the IPR Chapter limits rights and obligations under the TRIPS Agreement *to authorize **the use** of a patent without the authorization of the right holder*. Although the text of the provision does not explicitly mention “other use”, it can be understood that the parties intend it to have the same meaning as in the TRIPS Agreement. Accordingly, the scope of Article 13.50 is limited to Article 31 of TRIPS.

Additionally, the IPR Chapter includes a regulatory review exception,¹¹⁵ which borrows verbatim from the UK-Australia FTA¹¹⁶ and, to some extent, draws from the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.¹¹⁷ The provision is subject to Article 13.48, which ensures that patent exceptions do not unreasonably conflict with the normal exploitation of a patent and prejudice the legitimate interests of the patent owner.¹¹⁸ In case of pharmaceutical product inventions, it mandates the regulatory exception regardless of the country where regulatory approval is sought. In contrast, for non-pharmaceutical product inventions, it is left to the parties’ discretion whether to provide regulatory exceptions. The mandatory nature of regulatory review exception is a significant

111. UK-India CETA, *supra* note 1, art. 13.46.

112. *See id.* art. 13.47.

113. *See id.* art. 13.48.

114. *See id.* art. 13.50.

115. *See id.* art. 13.49.

116. *See* UK-Australia FTA, *supra* note 5, art. 15.40.

117. *See* Comprehensive and Progressive Agreement for Trans-Pacific Partnership art. 18.49, Mar. 8, 2018 [hereinafter CPTPP].

118. *See* UK-India CETA, *supra* note 1, art. 13.48.

departure from the TRIPS Agreement's optional language for similar exceptions.¹¹⁹

In terms of procedural aspects, the provisions are aimed at streamlining and improving the efficiency of patent procedures and address amendments and publication of patent applications, the availability of information on pending and granted patents, disclosure requirements, and the timely disposal of pre-grant opposition applications. Regarding the working of patents, the parties are prohibited from requiring annual disclosure of patent working statements.¹²⁰ However, they may require periodic disclosure, provided the interval is no less than three years.¹²¹ The parties are also obliged not to disclose any confidential information submitted by a right holder to comply with such requirements.¹²² Overall, the patent section in the IPR Chapter seems to largely adhere to TRIPS level commitments and was therefore unlikely to become a sticking point for either party. Notably, controversial provisions such as patent term extension and data exclusivity on which both parties have maintained divergent positions, are not included in the patent section and are examined separately in Part IV.¹²³

In a nutshell, the patent obligations oblige the parties to maintain a stable and transparent patent system that ensures adequate protection for right holders without mandating any substantial change in domestic laws. For India, this represents a sophisticated model of middle-grounded IP governance, one that prioritizes its developmental trajectory while fulfilling baseline multilateral commitments. For the United Kingdom, procedural certainty and predictability represent gains even without substantive TRIPS-plus provisions. It also reaffirms the United Kingdom's support for the Doha Declaration on TRIPS and Public Health, underscoring its commitment to the global supply of affordable medicines.

119. For discussion on mandatory nature of exceptions, see Prashant Reddy T., *Will RCEP Redefine Norms Related to Pre-Grant Opposition and Experimental Use Exceptions in International Patent Law?*, in ASIAN TRADE DEALS AND IP 159 (Kung Chung Liu & Julien Chaisse eds., 2019).

120. See UK-India CETA, *supra* note 1, art. 13.56.

121. See *id.*

122. See *id.*

123. See *infra* Part IV.

3. Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions

The protection of traditional knowledge, genetic resources, and traditional cultural expressions, as critics argue,¹²⁴ remains a critical fault line in international IP law, pitting the innovation driven IP systems of the Global North against the heritage and biodiversity-centered concerns of the Global South.¹²⁵ Developing countries possess territories rich in biological resources and traditional knowledge, often described as “green gold.”¹²⁶ Over decades, they have voiced growing concerns over the misappropriation of these resources by private entities asserting IP rights in foreign lands “around” or even directly “on” such resources and knowledge. In response, they have advocated for benefit sharing arrangements that recognize the rights of indigenous peoples and local communities.¹²⁷ India, as a megadiverse country, has consistently taken a leading role in trade and IP negotiations on these issues, advancing policies that emphasize recognizing community rights, preventing biopiracy, and respecting indigenous and local traditions. Against this backdrop, the IPR Chapter embodies a calculated compromise

124. See generally Ruth L. Okediji, *Grafting Traditional Knowledge onto a Common Law*, 110 GEO. L. J. 75 (2021) (examining the protection of traditional knowledge within conventional international IP framework and Australian IP law and misuse and suppression of traditional knowledge in these legal frameworks); NIRMALYA SYAM & THAMARA ROMERO, MISAPPROPRIATION OF GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE: CHALLENGES POSED BY INTELLECTUAL PROPERTY AND GENETIC SEQUENCE INFORMATION (2021) (discussing IP frameworks serving as means of misappropriation of genetic resources and associated traditional knowledge particularly genetic sequence data); Aman Gebru, *The Global Protection of Traditional Knowledge: Searching for the Minimum Consensus*, 17 J. MARSHALL REV. INTELL. PROP. L. 42 (2017) (emphasizing on failure of like-minded countries to reach at minimum consensus regarding protection of traditional knowledge); see also Martin Fredriksson, *Dilemmas of Protection: Decolonising the Regulation of Genetic Resources as Cultural Heritage*, 27 INT'L J. HERITAGE STUD. 720 (2021) (examining protection of genetic resources through the lens of cultural heritage protection within the framework of Convention on Biological Diversity and suggests incompatibility between indigenous laws for genetic resources and associated traditional knowledge and the Western property system including the TRIPS Agreement).

125. See Graham Dutfield & Uma Suthersanen, *Traditional Knowledge and Genetic Resources: Observing Legal Protection through the Lens of Historical Geography and Human Rights*, 58 WASHBURN L. J. 399, 399 (2019).

126. See T.R. Eimer, Susanne Lütz, & Verena Schüren, *Varieties of localization: international norms and the commodification of knowledge in India and Brazil*, 23 REV. INT'L POL. ECON. 450, 456 (2016).

127. See *supra* note 124.

where India successfully secures defensive safeguards to protect its knowledge sovereignty, most notably integrating traditional knowledge into the patent examination process. While the United Kingdom safeguards the core tenets of its patent system, it avoids more onerous obligations, such as a mandatory disclosure requirement.¹²⁸

Given this context, TK, GRs and TCEs remain key priorities for India in any FTA, both because of their importance to the domestic market and India's role in international IP debates. This priority is reflected in the IPR Chapter, which emphasizes mutual cooperation in improving international IP regulatory framework by joint initiatives at the WTO and World Intellectual Property Organization (WIPO).¹²⁹ The parties also agreed to work jointly on a "cooperative basis" on the WIPO Intergovernmental Committee (IGC), which facilitates text-based negotiations for the protection of TK, GRs, and TCEs.¹³⁰ In 2024, WIPO member states adopted the WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge to address the interface between IP, TK, and GRs.¹³¹ The treaty includes provisions on disclosure requirements if inventions in patent applications are based on GRs or TK associated with GRs.¹³² India and the United Kingdom have yet to sign the treaty.¹³³ Although India has hailed the adoption of the treaty as a major victory for both the country and Global South,¹³⁴ some commentators suggest that one reason for not signing it may be that its implementation would require

128. See generally WORLD INTEL. PROP. ORG., DISCLOSURE REQUIREMENTS TABLE RELATED TO GENETIC RESOURCES AND/OR ASSOCIATED TRADITIONAL KNOWLEDGE (2024), https://www.wipo.int/documents/d/traditional-knowledge/docs-en-genetic_resources_disclosure.pdf [perma.cc/VK2K-2Q58] (listing countries having disclosure requirements in their domestic law).

129. See UK-India CETA, *supra* note 1, art. 13.14.

130. See *id.* art. 13.20.

131. See Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, May 24, 2024, WIPO Doc. GRATK/DC/7 [hereinafter GRATK Treaty]. For a detailed discussion on this treaty, see Ian Goss, *25 Years in the Making: The WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*, 66 HARV. INT'L L. J. 35 (2025).

132. GRATK Treaty, *supra* note 131, art. 3.

133. *WIPO Administered Treaty: WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*, WIPO, <https://www.wipo.int/en/web/treaties/ip/gratk/index> [perma.cc/6338-R4E7] (last visited May 23, 2026).

134. See Press Release, Ministry Com. & Indus., WIPO Treaty, A Big Win for India and Global South (May 26, 2024).

amendments to the Patents Act of 1970—particularly to provide patentees with an opportunity to rectify failures to submit the required information.¹³⁵ Yet this concern seems overstated. Sections 57–59 of the Act already contain a framework for amending patent applications and specifications, providing a pathway for patentees to correct such omissions.¹³⁶ In particular, Section 58 empowers Indian High Courts to permit amendments to a patent specification in certain cases instead of ordering revocation. This aligns with the treaty design of imposing post-grant sanctions, including revocation and invalidation of patents, for cases involving fraudulent intent in failing to provide required information.¹³⁷ In a recent case before a division bench of the Delhi High Court, which involved failure to disclose information about foreign patent applications,¹³⁸ the court framed the issue of revocation around whether the omission was deliberate or willful, or indicative of an intent to mislead the Patent Office.¹³⁹ A similar liberal approach could be expected in cases involving failure to disclose the origin of TK or GRs. On the other hand, UK patent law does not mandate a disclosure requirement whose non-compliance would lead to revocation or invalidation of patents. Nevertheless, in its recent FTAs with Australia¹⁴⁰ and New Zealand,¹⁴¹ the United Kingdom has accepted provisions on the work of the WIPO IGC that mirror those in the UK-India CETA.

The parties also agreed to cooperate to ensure quality patent examination with the objectives of these provisions linked to soft defensive protection of GRs and TK associated with GRs.¹⁴² Similar provisions appear in the United Kingdom's FTAs with Australia and New Zealand, requiring the parties to make their best efforts to pursue quality patent examination.¹⁴³ While the agreement does

135. See Prashant Reddy T., *WIPO Treaty on Rights to Genetic Resources*, THE INDIA FORUM (Aug. 5, 2024), <https://www.theindiaforum.in/international-affairs/wipo-treaty-genetic-resources-reflects-newfound-pragmatism> [perma.cc/5HPQ-MYPN].

136. See Patents Act, 1970, §§ 57–59.

137. GRATK Treaty, *supra* note 131, arts. 5.3–5.4.

138. See Patents Act § 64(1)(m).

139. See *Koninklijke Philips N.V. v. Maj. (Retd.) Suresh Behl*, [2025] CS (COMM) No. 423/2016 (India).

140. See UK-Australia FTA, *supra* note 5, arts. 15.12, 15.18.

141. See UK-New Zealand FTA, *supra* note 6, art. 17.19.

142. See UK-India CETA, *supra* note 1, art. 13.21.

143. See UK-Australia FTA, *supra* note 5, art. 15.18; *see also* UK-New Zealand FTA, *supra* note 6, art. 17.18.

not define “quality patent examination”, it highlights actions such as consulting publicly available information on TK associated with GRs and using databases or digital libraries, such as India’s Traditional Knowledge Digital Library (TKDL).¹⁴⁴ These provisions give effect to the 2010 agreement between the United Kingdom and India, which granted the UK Intellectual Property Office access to India’s TKDL.¹⁴⁵ Under the FTA, the United Kingdom now is obliged to use the TKDL in its patent examination processes wherever required under its laws. Further, the obligation to provide an opportunity for third-party intervention in patent prosecution strengthens the ability of India’s Council of Scientific & Industrial Research (CSIR)¹⁴⁶ to file third-party observations or pre-grant opposition in the United Kingdom. CSIR actively submits TKDL-based evidence in patent applications worldwide to prevent the misappropriation of TK¹⁴⁷ and claims that a total of 324 patent applications have been withdrawn, cancelled, or amended. According to its data, CSIR interventions have affected 135 patent applications in the European Union, whereas in the United Kingdom, only one patent application has been affected.¹⁴⁸ This has practical significance and questions the structural placement of such provisions. In the UK-New Zealand FTA, provisions on IP, TK, GR, and TCE are placed in a distinct article, rather than under “Cooperation”.¹⁴⁹ Their placement within the cooperation section in the India-UK CETA raises questions, since the language of the provisions appears to go beyond mere cooperation, particularly in light of TKDL obligations and third-party intervention mechanisms, and may, in fact, create binding obligations for the

144. See UK-India CETA, *supra* note 1, art.13.21(2)(c). For a detailed account of India’s Traditional Knowledge Digital Library, see Martin Fredriksson, *Balancing Community Rights and National Interests in International Protection of Traditional Knowledge: A Study of India’s Traditional Knowledge Digital Library*, 43 THIRD WORLD Q. 352 (2022).

145. See Press Release, World Intell. Prop. Org., WIPO and India Partner to Protect Traditional Knowledge from Misappropriation (Mar. 22, 2011).

146. See *Traditional Knowledge Digital Library Unit (TKDL): About TKDL*, COUNCIL SCI. & INDUS. RSCH., <https://www.csir.res.in/en/documents/tkdl> [perma.cc/VCV6-635G] (last visited Aug. 14, 2025).

147. See SCI. COMM’N & DISSEMINATION DIRECTORATE, COUNCIL SCI. & INDUS. RSCH., ANNUAL REPORT 2022-23 (2023) [hereinafter CSIR REPORT].

148. See *Traditional Knowledge Digital Library Unit (TKDL): Outcomes against Bio-Piracy*, COUNCIL SCI. & INDUS. RSCH., <https://www.csir.res.in/en/documents/tkdl> [perma.cc/VCV6-635G] (last visited Aug. 14, 2025).

149. See UK-New Zealand FTA, *supra* note 6, arts. 17.19, 17.20.

parties. This ambiguity may have been intentional due to the parties' positions on the concerned issues.

4. Trade Secrets

Trade secret protection represents a fundamental divergence between the approaches of India and UK to IP. In its previous trade agreements, India avoided negotiating trade secret protection and at some occasions had limited the protection of undisclosed information, including test data.¹⁵⁰ This approach reflected India's cautious stance against undertaking binding treaty obligations in this area and its reliance on the existing domestic framework for trade secrets to satisfy TRIPS requirements.¹⁵¹ The inclusion of trade secrets in CETA therefore marks a shift in India's position. This has come in light of broader discussions internationally on codifying trade secrets law and its relevance in the innovation ecosystem and the new economic order.¹⁵²

At present, India does not have a codified law specifically governing the protection of trade secrets (also known as undisclosed information).¹⁵³ Instead, the protection is derived from the common law approach, either through the equitable duty of confidence or under contract law.¹⁵⁴ During the Uruguay Round, India firmly maintained that trade secrets should not be considered as a form of intellectual property, contending that such protection fundamentally contradicts one of the core principles of IP protection, *i.e.* disclosure.¹⁵⁵ India, therefore, advocated for the exclusion of trade secrets from the TRIPS negotiating mandate.¹⁵⁶ By contrast, the United Kingdom protects trade secrets under the Trade Secrets (Enforcement, etc.) Regulations, 2018

150. See India-EFTA FTA, *supra* note 62, art. 15; India-UAE FTA, *supra* note 62, art. 11.29.

151. See TRIPS Agreement, *supra* note 15, art. 39.

152. See WORLD INTELL. PROP. ORG., WIPO GUIDE TO TRADE SECRETS AND INNOVATION 9–10 (2024).

153. See World Trade Organization, *Trade Policy Review: Report by the Secretariat: India*, WTO Doc. WT/TPR/S/403/Rev.1, at 107.

154. See Prashant Reddy T., *The "Other IP Right": Is It Time to Codify the Indian Law on Protection of Confidential Information?*, 5 J. NAT'L L. UNIV. DELHI 1, 1 (2018).

155. See *Standards and Principles Concerning the Availability, Scope and Use of Trade Related Intellectual Property Rights: Communication from India*, GATT Doc. MTN.GNG/NG11/W/37, at 18 (July 10, 1989).

156. See *id.*

(regulations),¹⁵⁷ which contain detailed provisions on the scope and limits of the protection as well as the limitation period for initiating proceedings. Against this background, it is particularly interesting to examine how India came to accept codified obligations on trade secret protection in the UK-India CETA.

Section H of the IPR Chapter addresses trade secrets, comprising one detailed article alongside definitions of “trade secrets” and “trade secret holder,”¹⁵⁸ and delineates the scope of protection required by the parties.¹⁵⁹ Paragraph 1, which sets out this obligation, borrows language from Article 39 of TRIPS which contains three essentials for protection.¹⁶⁰ First, secrecy; the information must be secret and not accessible in the public domain. Second, commercial value: the secret must have economic value. And third, reasonable efforts to maintain secrecy by the parties.¹⁶¹ In the first sentence of said paragraph of the TRIPS Agreement, the parties reaffirm their position that the protection of trade secrets is a form of protection against unfair competition, as provided in Article 10*bis* of Paris Convention.¹⁶² One noticeable difference between TRIPS and the language in the IPR Chapter is that TRIPS refers to “undisclosed information” as the subject matter of protection required under Article 39, whereas the IPR Chapter uses the term “trade secrets”.¹⁶³ While there may be ongoing discourse concerning the interchangeability of the terms “undisclosed information” and “trade secrets”,¹⁶⁴ the explicit

157. See The Trade Secrets (Enforcement, etc.) Regulations 2018, SI 2018/597, § 1 (U.K.) (implementing Directive (EU) 2016/943); see also Tanya Frances Aplin & Richard Arnold, *UK Implementation of the Trade Secrets Directive*, in *THE HARMONISATION AND PROTECTION OF TRADE SECRETS IN THE EU—AN APPRAISAL OF THE EU DIRECTIVE 64*, 64 (Jens Schovsbo, Timo Minssen & Thomas Riis eds., 2020).

158. See UK-India CETA, *supra* note 1, arts. 13.1, 13.73.

159. See *id.* art. 13.73.

160. See TRIPS Agreement, *supra* note 15, art. 39(1).

161. For an overview of and debates on trade secrets, see Margaret Jackson, *Keeping Secrets: International Developments To Protect Undisclosed Business Information and Trade Secrets*, 1 INFO., COMM’N & SOC’Y 467 (1998); Michael Risch, *Why Do We Have Trade Secrets?*, 11 MARQ. INTELL. PROP. L. REV. 1 (2007); ORG. FOR ECON. CO-OPERATION AND DEV., ENQUIRIES INTO INTELLECTUAL PROPERTY’S ECONOMIC IMPACT 127–72 (2015).

162. See TRIPS Agreement, *supra* note 15, art. 39(1); Paris Convention for the Protection of Industrial Property art. 10*bis*, July 14, 1967, 21 U.S.T. 1583, T.I.A.S. No. 6923.

163. See UK-India CETA, *supra* note 1, sec. H.

164. See TANYA APLIN ET AL., GURRY ON BREACH OF CONFIDENCE: THE PROTECTION OF CONFIDENTIAL INFORMATION, ¶ 22.08 (2d ed. 2012); Virender Chandel, *Confidential Information (Know-How) Licensing*, 41 EUR. INTELL. PROP. REV. 714, 714 (2019).

definition of trade secrets provided within the IPR Chapter removes any doubt over the nature of the information to be protected and it¹⁶⁵ is aligned verbatim with the TRIPS Agreement.¹⁶⁶ An identical definition is also found in UK's regulation¹⁶⁷ and in its FTAs with Australia and New Zealand.¹⁶⁸ Another difference lies in the implementation part of the provisions that require each party to *ensure* that trade secret holders have legal means to prevent the unauthorized disclosure, acquisition, or use of trade secrets in a manner contrary to honest commercial practices.¹⁶⁹

The TRIPS Agreement requires only that trade secret holders have the possibility of preventing the unauthorized acts mentioned above.¹⁷⁰ A similar TRIPS-based approach is adopted in the UK-New Zealand FTA,¹⁷¹ where New Zealand, like India, does not have codified law on trade secrets and instead follows a common law approach.¹⁷² It is widely accepted that the TRIPS Agreement does not require member states to enact specific legislation for the protection of undisclosed information (trade secrets), an interpretation largely based on the fact that the relevant provision merely requires the possibility of preventing unauthorized acts.¹⁷³ It may be argued that India has undertaken an obligation in the CETA that could be interpreted as requiring it to establish concrete mechanisms, such as a statutory right to provide legal means to prevent unauthorized acts involving trade secrets. In this context, India's IPR policy identifies the protection of trade secrets as an area for study and research to inform future policy development.¹⁷⁴ Recently, the Law Commission of India, in its report on trade secrets and economic espionage, proposed a bill on

165. See UK-India CETA, *supra* note 1, art. 13.1.

166. See TRIPS Agreement, *supra* note 15, art. 39(2).

167. See The Trade Secrets (Enforcement, etc.) Regulations 2018 § 2.

168. UK-Australia FTA, *supra* note 5, art. 15.1; UK-New Zealand FTA, *supra* note 6, art. 17.1.

169. UK-India CETA, *supra* note 1, art. 13.73(1).

170. TRIPS Agreement, *supra* note 15, art. 39(2).

171. See UK-New Zealand FTA, *supra* note 6, art. 17.63(1).

172. See Rob Batty, "Trade Secrets" Under New Zealand Law, 22 CANTERBURY L. REV. 235, 236 (2016).

173. See CARLOS MARIA CORREA, TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS: A COMMENTARY ON THE TRIPS AGREEMENT 351–76 (2d ed. 2020).

174. See National IPR Policy, *supra* note 44, at 9–11.

the protection of trade secrets—The Protection of Trade Secrets Bill, 2024.¹⁷⁵

The protection of trade secrets, under both the India-UK CETA and TRIPS Agreement, is essentially anchored to the concept of “a manner contrary to honest commercial practices,” which both agreements define in identical terms.¹⁷⁶ On the contrary, the United Kingdom’s FTAs with New Zealand and Australia have TRIPS-plus¹⁷⁷ provisions, which broaden the scope of protection to encompass not only the acquisition of trade secrets by the third parties, but also their disclosure and use within the same conceptual framework.¹⁷⁸ The leaked draft of the IPR Chapter of UK-India CETA reveals that such TRIPS-plus provisions were proposed but dropped suggesting either India’s negotiating strength or the United Kingdom’s recognition that India would not accept additional protection expansion.

Unlike the TRIPS Agreement, the IPR Chapter also specifies certain practices that are deemed consistent with principles of honest commercial practices.¹⁷⁹ These practices include the acquisition of information obtained through independent discovery or creation, or reverse engineering, acts relating to trade secrets that are required or permitted under a party’s laws, and trade secrets disclosed or obtained in exercise of workers’ right to information as per a party’s laws.¹⁸⁰ A similar list of the exceptions is also found in the United Kingdom’s FTAs with Australia and New Zealand¹⁸¹; however, such exceptions are absent from the United Kingdom’s domestic regulations on trade secrets.¹⁸²

Lastly, the FTA permits limitations or exceptions to the rights of trade secret holders where the legitimate interests of third parties, the general public or the Party outweigh the legitimate

175. See LAW COMM’N OF INDIA, TRADE SECRETS AND ECONOMIC ESPIONAGE 198 (2024).

176. See TRIPS Agreement, *supra* note 15, art. 39(2).

177. See *id.* art. 39(2); Nari Lee, *Hedging (Into) Property?—Invisible Trade Secrets and International Trade in Goods*, in GLOBAL INTELLECTUAL PROPERTY PROTECTION AND NEW CONSTITUTIONALISM: HEDGING EXCLUSIVE RIGHTS 106, 116 (Jonathan Griffiths & Tuomas Mylly eds., 2021).

178. See UK-Australia FTA, *supra* note 5, art. 15.69(2)(c); see also UK-New Zealand FTA, *supra* note 6, art. 17.63(2)(c).

179. See UK-India CETA, *supra* note 1, art. 13.73(3).

180. See *id.*

181. See UK-Australia FTA, *supra* note 5, art. 15.69(3); see also UK-New Zealand FTA, *supra* note 6, art. 17.63(3).

182. See Trade Secrets (Enforcement, etc.) Regulations 2018, SI 2018/597.

interests of trade secret holders.¹⁸³ The proposed bill provides for the compulsory licensing of trade secrets for use by government or third parties in case of national or extreme emergency, including public health and national security emergencies.¹⁸⁴ The consistency of such provisions with the TRIPS Agreement and their efficiency in real-world scenarios has been a subject of debate in the context of COVID-19 and IP debates.¹⁸⁵ Nevertheless, the provisions in the proposed bill appear to be consistent with the UK-India CETA.

Overall, the trade secret provisions in the IPR Chapter create modest implementation burden for the United Kingdom as its existing legal framework substantially satisfies the obligations. But for India, the provisions may require implementation adjustments and will guide future Indian legislative actions for trade secret law. The provisions appear to be well-balanced, preserving policy space for government use, whistleblower disclosure, and emergency situations. Additionally, the Digital Trade (DT) Chapter of the FTA recognizes the protection of source code by prohibiting any requirement of transfer or access to source code of software except in certain cases including regulatory requirements. However, the agencies are required to maintain secrecy of the source code so disclosed.¹⁸⁶ As a result, the FTA effectively offers additional protection for companies to rely on source code as a basis for trade secret protection, particularly in the context of emerging AI technologies and IP inventions.¹⁸⁷ This could be a concern for stakeholders, given that India represents a significant market for AI-driven innovations. In particular, India's potential inability to access source code on public interest grounds could be a concern.

183. See UK-India CETA, *supra* note 1, art. 13.73(4).

184. See LAW COMM'N OF INDIA, *supra* note 175, at 201.

185. See ERIC SOLOVY & DEEPAK RAJU, GEO. MASON UNIV. CTR. INTELL. PROP. X INNOVATION POL'Y, RECENT THREATS TO GLOBAL TRADE SECRET PROTECTION: WHY COMPULSORY LICENSING IS NOT (AND SHOULD NOT BE) A VIABLE LEGAL OPTION 3–4 (2021); Olga Gurgula & John Hull, *Compulsory Licensing of Trade Secrets: Ensuring Access to COVID-19 Vaccines via Involuntary Technology Transfer*, 16 J. INTELL. PROP. L. & PRAC. 1242, 1242 (2021); APLIN & LIDDICOAT, *supra* note 87.

186. See UK-India CETA, *supra* note 1, art. 12.15; see also Sonia K. Katyal, *The Paradox of Source Code Secrecy*, 104 CORNELL L. REV. 1184 (2019).

187. See generally Magdalena Słok-Wódkowska & Joanna Mazur, *Secrecy by Default: How Regional Trade Agreements Reshape Protection of Source Code*, 25 J. INT'L ECON. L. 91 (2022) (explaining how specific source code provisions in recent FTAs expand traditional trade secret protections to better shield algorithms and emerging technologies).

Such constraints may also extend over time to AI-related pharmaceutical inventions, which could undermine India's position within the health sector. These concerns raise important questions for further inquiry; however, at this stage they remain speculative and would depend significantly on future regulatory choices and interpretative practices.

5. Geographical Indications

The debate around geographical indications (GIs) generally centers on two competing legal approaches. On one side is the *sui generis system*, championed by the European Union and India, which treats GIs as collective/public rights that calls for strong protection.¹⁸⁸ On the other is the trademark-based approach, prevalent in countries such as the US, which regards GIs as private commercial assets.¹⁸⁹ For India, a country with a rich repository of iconic products ranging from Darjeeling Tea to Alphonso Mango and Basmati Rice, securing a strong GI regime has been a primary offensive interest.¹⁹⁰ Unsurprisingly, Section D of the IPR Chapter reflects this tension. In what follows, we analyze the architecture of the compromise between two distinct legal models.

Section D on GIs is the most ambitious section of the IPR Chapter. It defines GIs, sets out the conditions for their protection and details the procedures for protecting a party's GIs in the territory of the other party, and outlines the enforcement of GI protection. This section largely mirrors the provisions in the leaked IP Chapter of the UK-India CETA, with some additional provisions. India presently boasts over six hundred registered GIs,

188. See Sayantani Datta, et al., *Enhancing Geographical Indication Protection in India for Community Welfare*, 24 J. WORLD INTELL. PROP. 420, 422 (2021); see also DEV GANGJEE, PROTECTING GEOGRAPHICAL INDICATIONS AS COLLECTIVE TRADEMARKS: THE PROSPECTS AND PITFALLS, INSTITUTE OF INTELLECTUAL PROPERTY (2006), https://www.iip.or.jp/e/summary/pdf/detail2005/e17_14.pdf [perma.cc/CW35-3D7T] (discussing collective interests in geographical indications and examines suitability of protection of GIs in trademark systems).

189. European Commission-IP Helpdesk, *EU-India Agreement on Geographical Indications (GIs) – A Means to FastTrack GI Registrations?* (July 2023), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/eu-india-agreement-geographical-indications-gis-means-fasttrack-gi-registrations-2023-07-16_en [perma.cc/PJV8-NB2Y].

190. India has faced challenges in other countries regarding geographical indication application, such as basmati rice. See generally Pratyush Nath Upreti, *The Battle for Geographical Indication Protection of Basmati Rice: A View from Nepal*, 54 IIC INT'L REV. INTELL. PROP. & COMPETITION L. 710 (2023).

covering a diverse range of categories including agricultural products, natural goods, manufactured goods, and handicrafts.¹⁹¹ In a recent statement, the Commerce Minister of India articulated the aim to elevate the number of registered Indian GIs to ten thousand by the year 2030.¹⁹² Whereas in contrast, the United Kingdom protects GIs only for wines, spirits, agricultural goods and foodstuffs. It seems obvious that GI protection may have been a sticking point for India.

Section D strategically divides its scope into two categories of goods: (i) agricultural products, wines, spirits, and foodstuffs, and (ii) other goods, such as handicrafts, natural goods, and manufactured products.¹⁹³ All provisions in Section D apply fully only to the first category. The limited coverage likely reflects the United Kingdom's domestic law, which grants GI protection only to a narrow range of goods. Since India's law¹⁹⁴ extends protection to the second category as well, the parties agreed on a flexibility clause permitting each side to provide GI protection for additional goods.

Notably, the agreement requires that goods in the first category must be protected through a *sui generis* system, a trademark or other legal means. One commentator observes that during the RCEP negotiations, India—along with several other countries—opposed protecting GIs through a trademark system, even though the provision provided flexibility to protect GIs through other means.¹⁹⁵ On the contrary, in the UK-India CETA, India has partially softened its position by agreeing for a diluted version of Article 11.29 of RCEP with respect to second category

191. See European Innovation Council & SMEs Exec. Agency, *Geographical Indication Tag Registrations in India Surpass 600*, EUR. COMM'N NEWS (Apr. 30, 2024), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/geographical-indication-tag-registrations-india-surpass-600-2024-04-30_en [perma.cc/PQL7-RFGP].

192. See Press Release, Ministry Com. & Indus., Commerce Minister Piyush Goyal sets a Target of 10000 GI Tags by 2030; Committee to be Formed to Oversee Implementation (Jan. 22, 2025).

193. See UK-India CETA, *supra* note 1, art. 13.34.

194. See Geographical Indications of Goods (Registration and Protection) Act, 1999, § 2(e) (India).

195. See Ananthu S. Hari & K.D. Raju, *Free Trade Agreements and Geographical Indications Standards in Asia*, in GEOGRAPHICAL INDICATION PROTECTION IN INDIA: THE EVOLVING PARADIGM 49, 57 (Niharika Sahoo Bhattacharya ed., 2022).

goods.¹⁹⁶ This is significant, as handicraft GIs constitute a large share of India's registered GIs after agricultural products.¹⁹⁷

Nevertheless, this shift need not be viewed as a setback for India. India retained the flexibility to protect GIs within its territory through any legal means, including a *sui generis* system. Recent studies show growing export value of India's agricultural GIs, where targeted government initiatives are already yielding results.¹⁹⁸ Furthermore, India secured a commitment from the United Kingdom to review its domestic laws and regulations within three years of the date of entry into force of this agreement, with an emphasis on extending GI protection to goods in the second category.¹⁹⁹

The substantive scope of GI protection in the FTA is broadly aligned with Article 22 of the TRIPS Agreement. However, it goes further, explicitly requiring the Parties to protect GIs against their use on goods that do not conform to GI specification.²⁰⁰ The United Kingdom's FTAs with Australia and New Zealand do not mandate this additional protection. The rationale for including this protection in the UK-India FTA appears to be the need for adequate and effective quality control mechanisms for GI goods, aimed at addressing concern over compromised GI products.²⁰¹ In addition, the IPR Chapter allows for flexibility to exclude names from GI protection on certain grounds, including conflict with the names of plant varieties or animal breeds.²⁰²

With respect to homonymous GIs, unlike TRIPS, the CETA nowhere imposes an explicit obligation to protect each indication. Nevertheless, the parties have agreed to determine practical conditions of their use in respective territories that allow such GIs to be distinguished from one another. While a similar obligation

196. See RCEP Agreement, *supra* note 13, art. 11.29.

197. Press Release, Ministry Com. & Indus., *supra* note 19.

198. See Press Release, Ministry Com. & Indus., Centre Focuses on Promoting Exports of GI-Tagged Niche Agricultural Products (Mar. 17, 2022); Press Release, Ministry Com. & Indus., APEDA Facilitates Export of GI-Tagged Dalle Chilly from Sikkim to the Solomon Islands (Mar. 24, 2025).

199. See UK-India CETA, *supra* note 1, art. 13.45(5).

200. See *id.* art. 13.41(1)(a).

201. See Yogesh Pai & Tania Singla, 'Vanity GIs': India's Legislation on Geographical Indications and the Missing Regulatory Framework, in GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE 333, 335 (Irene Calboli & Ng-Loy Wee Loon eds., 2017).

202. UK-India CETA, *supra* note 1, art. 13.41(2).

exists under the TRIPS Agreement in relation to wines,²⁰³ the IPR Chapter introduces TRIPS-plus features by extending this obligation to goods beyond wine.²⁰⁴ Moreover, to safeguard each parties' GIs against homonymous GIs from a non-party, the IPR Chapter requires a party to notify the other if it intends to protect a non-party's homonymous GIs.²⁰⁵ Such provisions are absent from the United Kingdom's FTAs with Australia and New Zealand.

The IPR Chapter establishes a complex relationship between trademarks and GIs by deviating from TRIPS standards in certain aspects. The IPR Chapter requires the Parties to refuse or invalidate a trademark that conflicts with a protected GI if the trademark application is filed after the GI application.²⁰⁶ In contrast, under TRIPS, protection against a conflicting trademark is available only where the trademark's use misleads the public as to the true place of origin.²⁰⁷ In the case of wines and spirits, this requirement of misleading the public does not apply.²⁰⁸ In this context, the additional protection afforded to wines and spirits under Article 23.2 of TRIPS Agreement has been extended by the IPR Chapter to goods beyond wines and spirits.²⁰⁹ However, the IPR Chapter stipulates an additional condition; protection against a conflicting trademark applies only where the trademark application is filed after the GI application.²¹⁰ This requirement further marks the FTA's deviation from TRIPS, as the corresponding TRIPS provisions do not explicitly mention such requirements.²¹¹ Nonetheless, drawing upon the WTO Panel ruling in *EC—Trademarks and Geographical Indications*,²¹² one could argue that the India-UK CETA codifies a key interpretation of articles 22.3 and 23.2 of TRIPS: it gives priority to GIs only in case of later trademarks but not over pre-existing ones. Such interpretation may hold some value given that Article 24.5, as well

203. See TRIPS Agreement, *supra* note 15, art. 23.3.

204. UK-India CETA, *supra* note 1, art. 13.41(6).

205. See UK-India CETA, *supra* note 1, art. 13.41(7).

206. See *id.* art. 13.43(1).

207. See TRIPS Agreement, *supra* note 15, art. 22.3.

208. See *id.* art. 23.2.

209. See *id.*

210. See *id.* arts. 22.3, 23.2.

211. See *id.*

212. See Panel Report, *European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, ¶ 7.622, WTO Doc. WT/DS174/R (adopted Apr. 20, 2005).

as Article 13.43(2) of the UK-India CETA, specifically addresses the issue of conflict between GIs and prior trademarks.²¹³ In any case, where a trademark application is submitted in bad faith, regardless of whether it pertains to pre-GI or post-GI application, the parties are required to reject such applications.²¹⁴

The GI section is neither a victory for India nor a defeat for the United Kingdom, but rather a pragmatic compromise reflecting different GI inventories and export priorities. India secured substantive protections for its core GI interests (agricultural products) while maintaining domestic flexibility, plus a forward-looking mechanism for category-ii expansion.²¹⁵ The United Kingdom also secured concrete protections for its premium GI exporters while preserving strategic flexibility on category-ii requirements. Overall, both parties' fundamental interests were accommodated in the CETA. This balanced outcome likely explains why the GI section received relatively little domestic controversy in either country compared to other trade-sensitive provisions.

6. Enforcement

IPR enforcement represents distinct challenges for India and the United Kingdom, shaped by their respective institutional capacities and domestic legal frameworks. For India, enforcement has long been identified as the weakest link in its IP infrastructure. Although India has taken positive steps to strengthen its IP system, in recent years, international attention continues to center on its weak IP enforcement mechanisms—both legislative and institutional. The U.S. Trade Representative's (USTR) latest Special 301 Report places India on the "priority watch list" for inadequate IP enforcement,²¹⁶ and other similar assessments likewise highlight the need for more effective enforcement.²¹⁷ The United Kingdom has acknowledged India's efforts to modernize its IP

213. See UK-India CETA, *supra* note 1, art. 13.28.

214. See *id.*

215. See *id.* (category-ii deals with non-agricultural geographical indications).

216. See OFF. OF THE U.S. TRADE REPRESENTATIVE, 2025 SPECIAL 301 REPORT 54–56 (2025).

217. See European Innovation Council & SMEs Exec. Agency, *India Ranks 42 in 55 Countries on International IP Index*, EUR. COMM'N NEWS (Apr. 3, 2023), https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/india-ranks-42-55-countries-international-ip-index-2023-04-03_en [perma.cc/X5PR-5XGJ].

system.²¹⁸ In the past, the United Kingdom sought to strengthen IP cooperation with India through arrangements such as MOU and technical assistance, with a particular emphasis on effective enforcement.²¹⁹ Building on this, the enforcement provisions in the IPR Chapter aim to obligate India to further enhance its IP enforcement environment, both by recognizing existing measures and by introducing certain obligations that go beyond the minimum standards set out under TRIPS Agreement.

The IPR Chapter obliges India to ensure that right holders have access to civil judicial procedure and remedies concerning IP enforcement, which are already prescribed under the Indian IP system.²²⁰ What is noteworthy, however, is the use of the language “each party shall make available” and “shall ensure”, which places a clear obligation on parties to implement these provisions within their domestic legal systems. In principle, the obligations are aligned with the TRIPS standards, but some provisions, like Article 13.76, oblige the parties to grant judicial authorities the power to adopt provisional and precautionary measures, including interlocutory injunctions, lodging of guarantees, seizure or blocking of bank accounts and other assets.²²¹ Similarly, Article 13.77 emphasizes the judiciary’s authority to order prompt and effective measures to preserve evidence.²²² The scope of such provisions is beyond the TRIPS Agreement because they further specify the TRIPS standards.

While the TRIPS Agreement does not mandate specific forms of injunctions and gives freedom to member states to implement such enforcement procedures, the IPR Chapter makes explicit reference to interlocutory injunction.²²³ Similarly, while TRIPS Agreement is silent on asset freezing, Article 13.76 expressly empowers authorities to order the precautionary seizure of movable and immovable property, bank account, and other assets. The Indian IP regime does not contain a specific statutory framework for asset freezing in cases of IP infringement; rather,

218. See Press Release, Intell. Prop. Off.,—UK and India Agree to Increase IP Cooperation (Nov. 8, 2016).

219. See *id.*

220. See UK-India CETA, *supra* note 1, art. 13.75(1).

221. See *id.* art. 13.76.

222. See *id.* art. 13.77.

223. See *id.* art. 13.76(a).

most such remedies are developed and applied through case law. For example, a Mareva injunction is employed to freeze assets, while other forms of injunctive relief developed through case law—such as the Anton Piller order (used to obtain search warrants and prevent the destruction of evidence) and John Doe orders (*ex parte* injunctions commonly applied in cases of digital piracy, where the defendant is unidentifiable)—are widely used in India.²²⁴ From a TRIPS-plus compliance perspective, however, India may be required to have legislative and institutional adjustment, to incorporate such provisional and precautionary measures. This is only one illustration. However, the inclusion of these provisions does not affect the United Kingdom, as such measures are standards already embedded within its IP enforcement framework.²²⁵ For India, however, it is unclear whether the obligation under enforcement provisions requires codifying remedies that currently exist only through judicial development. What is clear, though, is that it marks a significant shift in approach.

India negotiated enforcement provisions that could be satisfied largely through existing judicial practice rather than requiring wholesale legislative reform. Indian courts have developed sophisticated provisional remedies through case law: Mareva injunctions (asset freezing), Anton Piller orders (search warrants), John Doe injunctions (*ex parte* digital piracy orders)—which provide functional equivalents to statutory remedies in UK law.²²⁶ Overall, the enforcement obligations codify what Indian courts already do, potentially requiring statutory formalization but not fundamentally changing enforcement outcomes.

224. For a detailed account of IP remedies in India, see Ananth Padmanabhan, *INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND REMEDIES* (2017).

225. See generally Matthew Hariss, *Enforcement of Intellectual Property Rights in the United Kingdom*, in *ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN EU MEMBER STATES* 1161 (2019) (discussing IP enforcement regime of the United Kingdom).

226. See JUSTICE PRATIBHA M. SINGH, NAT'L WORKSHOP FOR HIGH COURT JUSTICES ON COM. LS., *INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT* (2023), https://nja.gov.in/Concluded_Programmes/2022-23/P-1340_PPTs/2.J.%20Pratibha%20M%20Singh%20-%20IPR.pdf [perma.cc/G7K3-QSL7].

IV. CRITICAL APPRAISAL OF INTELLECTUAL PROPERTY RIGHTS CHAPTER

A. *The Design of Intellectual Property chapters*

1. Soft law approach or hard law or in between?

When negotiating trade deals or other international agreements, states have full autonomy over the terms and language they choose, which in turn shape the nature of obligations, whether legally binding or more aspirational. In other words, the design of an agreement is key.²²⁷ Accordingly, countries may opt for a soft law, hard law, or a hybrid approach, depending on what best serves their interests. A good example of hard law obligations in a trade agreement is the United States-China Phase One Trade Deal, concluded in 2020, in which the IP chapter appears as the very first chapter.²²⁸ The structure of this agreement reflects the US interest in securing China's commitment to protecting and enforcing IP rights within its domestic system.²²⁹ For example, Article 1.12 of the IPR Chapter obliges China to provide patent term extensions to compensate for unreasonable delays in the granting of patents or in obtaining market approval of pharmaceutical products.²³⁰ The text of the provision states:

China, at the request of the patent owner, shall extend the term of a patent to compensate for unreasonable delays, not attributable to the applicant, that occur in granting the patent. For purposes of this provision, an unreasonable delay shall at least include a delay in the issuance of the patent of more than

227. For an excellent account of design of international agreements, see Andrew T. Guzman, *The Design of International Agreements*, 16 EUR. J. INT'L L. 579 (2005); Laurence R. Helfer, *Flexibility in International Agreements*, in INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 175 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013); Jean Galbraith, *Treaty Options: Towards a Behavioral Understanding of Treaty Design*, 53 VA. J. INT'L L. 309 (2013).

228. See Economic and Trade Agreement Between The Government of the United States of America and the Government of The People's Republic of China, China-U.S., ch. 1, Jan. 15, 2020 [hereinafter US-China Trade Deal].

229. See Pratyush Nath Upreti & María Vásquez Callo-Müller, *Phase One US-China Trade Deal: What Does It Mean for Intellectual Property*, 69 GRUR INT'L J. EUR. & INT'L IP L. 389, 390 (2020).

230. In most free trade deals, the United States has a provision on patent term extension. See Iain Osgood & Yilang Feng, *Intellectual Property Provisions and Support for US Trade Agreements*, 13 REV. INT'L ORG. 421, 429 (2018).

four years from the date of filing of the application in China, or three years after a request for examination of the application, whichever is later China may limit such adjustments to no more than five years and may limit the resulting effective patent term to no more than 14 years from the date of marketing approval in China.²³¹

In this case, China is obliged to provide patent term adjustments, including limits on their duration. As a result, China introduced patent term extension practices through legislative amendments.²³² This represents a form of hard law obligation that led to concrete changes in domestic practice. In contrast, the UK-India trade deal does not adopt such an approach. Instead, it primarily relies on a soft law framework to maintain flexibility and preserve domestic policy space.²³³ The IPR Chapter, in particular, is built around non-binding commitments, emphasizing cooperation and mutual understanding on certain issues rather than imposing specific, enforceable obligations as seen in hard law treaties. The frequent use of terms such as “may” or “endeavor” reflects the parties’ intention not to create new binding norms, but to foster a cooperative relationship. This approach is also evident in the preamble of the trade agreement, which emphasizes cooperation and the efficiency of the system.²³⁴ To this end, Section B—comprising eleven articles—focuses on cooperation across various sectors and institutional engagement.²³⁵ It emphasizes coordination and the exchange of information in several areas related to IP, which are examined in the following section.

2. Shifting the emphasis on IP Cooperation and Administration

For many years, India strongly opposed TRIPS-plus rules in free trade agreements, viewing them as a threat to TRIPS flexibilities and a constraint on its ability to regulate IP and

231. See US-China Trade Deal, *supra* note 228, arts. 1.12(2)(a)–(b).

232. See Benjamin Bai & Tina Tai, *China’s New Patent Term Extension: A Welcome Change for Innovators*, KLUWER PATENT BLOG (Jan. 19, 2024), <https://legalblogs.wolterskluwer.com/patent-blog/chinas-new-patent-term-extension-a-welcome-change-for-innovators/> [perma.cc/NQ7B-Y3XK].

233. See Guzman, *supra* note 227, at 591 (discussing the two salient features of soft law: flexibility and accommodation of domestic issues).

234. UK-India CETA, *supra* note 1, pmbl.

235. See *id.* arts. 13.13–13.23.

safeguard public interests such as public health.²³⁶ It is therefore not surprising that the UK-India CETA does not include TRIPS-plus rules generally except a few provisions on enforcement and GIs. Instead, the IP chapter focuses on co-operation and administrative efficiency, primarily through the exchange of information and best practices. Article 13.14 states: “The Parties recognise the growing importance of the protection of intellectual property and shall endeavour to cooperate on the subject matter covered by this Chapter, including through appropriate coordination and exchange of information between agencies or institutions of the Parties.”²³⁷

In line with the spirit of the preceding paragraph, three forms of cooperation can be identified in the IP chapter. First, there is a commitment to international IP treaties and to fostering harmonization and collaboration on IP issues at the multilateral level. In this regard, the agreement explicitly incorporates the language of Articles 7 and 8 of the TRIPS Agreement—its objectives and principles—into Articles 13.2 and 13.3, which set out the objectives and principles of the IP Chapter in the UK-India CETA.²³⁸ Similarly, both parties reaffirm their rights and obligations under TRIPS Agreement and other international IP treaties to which they are signatories.²³⁹ Article 13.5 explicitly recognizes the importance of the Declaration on the TRIPS Agreement and public health.²⁴⁰ Such reference to TRIPS provisions has become increasingly common in recent trade agreements. Since 2015, FTAs have more frequently included direct references to TRIPS Agreement, with many explicitly incorporating its principle and objectives alongside broader multilateral commitments to IP treaties.²⁴¹ In the same spirit, India and the United Kingdom have also affirmed their commitment to

236. See Jayashree Watal, *From Punta del Este to Doha and Beyond: Lessons from the TRIPS Negotiating Processes*, 3 WIPO J. 24, 27 (2011).

237. UK-India CETA, *supra* note 1, art. 13.14.

238. See TRIPS Agreement, *supra* note 15, arts. 7, 8; UK-India CETA, *supra* note 1, arts. 13.2, 13.3.

239. UK-India CETA, *supra* note 1, art. 13.5.

240. See UK-India CETA, *supra* note 1, art. 13.5.

241. See Pratyush Nath Upreti, *Intellectual Property Objectives*, in *INTERNATIONAL INVESTMENT AGREEMENTS* 199, 239 (2022).

collaborate and exchange information in ongoing discussions within the WIPO.²⁴²

Second, the IP chapter emphasizes cooperation on the enforcement and administration of IP, as well as collaboration between parties at the WTO and WIPO on IP-related matters. Article 13.14(2) states:

[T]he Parties shall endeavour to cooperate in relation to activities for improving the international intellectual property regulatory framework, including by:

(a) fostering intellectual property harmonisation, administration and enforcement of intellectual property rights; and

(b) working together at the WTO and WIPO on relevant activities including in relation to relevant multilateral intellectual property agreements²⁴³

Third, from the perspectives of international IP treaties, India consistently advocated for protecting public interest and preserving policy space in the implementation of the TRIPS Agreement. The literature widely discusses the unequal bargaining power between developed and less developed countries during the negotiation of the TRIPS Agreement, as well as the divergent position of Western and developing countries—India being a key example—on various IP-related issues.²⁴⁴ For instance, the United Kingdom and India held different positions on the proposed TRIPS waiver on COVID-19 vaccines and treatments.²⁴⁵ India was one of

242. See UK-India CETA, *supra* note 1, art. 13.20.

243. See *id.* art. 13.14(2).

244. See, e.g., Peter K. Yu, *TRIPS and Its Discontents*, 10 MARQ. INTELL. PROP. L. REV. 371, 371 (2006); WATAL, *supra* note 52, at 21; SELL, *supra* note 52, at 9. Many scholars also used Third World approaches to international law as a framework to critique the IP system. See Pratyush Nath Upreti, *Debating International Intellectual Property: A TWAIL Perspective*, in *THE INCOHERENCE OF HUMAN RIGHTS IN INTERNATIONAL LAW: ABSENCE, EMERGENCE AND LIMITATIONS* 96, 102 (Louisa Ashley & Nicolette Butler eds., 2024); AMAKA VANNI, *PATENT GAMES IN THE GLOBAL SOUTH: PHARMACEUTICAL PATENT LAW-MAKING IN BRAZIL, INDIA AND NIGERIA* 10 (2020); Marsha S. Cadogan, *A TWAIL-Constructive Critique of the IP and Development Divide in the Age of Innovation—Has the Protection of Place-Based Goods changed the Narrative for the Caribbean?*, in *THE OBJECT AND PURPOSE OF INTELLECTUAL PROPERTY* 57, 63–64 (Susy Frankel ed., 2019).

245. See Council for Trade-Related Aspects of Intell. Prop. Rts., *Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19: Communication from India and South Africa*, WTO Doc. IP/C/W/669 (Oct. 2, 2020) [hereinafter *Waiver Proposal*]; see also Council for Trade-Related Aspects of Intell. Prop.

the main proponents of the TRIPS waiver, whereas the United Kingdom was more skeptical about supporting the proposal.²⁴⁶ Despite these differences, the agreement's language promoting cooperation on relevant activities at the WTO and WIPO is a welcome development. This is particularly important in the current geopolitical climate, where trust in multilateralism is under strain and collaborative approaches to global challenges are increasingly fragile.

The Agreement provides for cooperation between the United Kingdom and Indian patent offices in the harmonization, administration, and enforcement of intellectual property rights. This cooperation aims to enhance the efficiency of patent registration, including the effective sharing and use of search and examination work.²⁴⁷ This provision aligns with the 2016 Memorandum of Understanding (MOU) between the UK Intellectual Property Office (UKIPO) and the Indian Department of Industrial Policy and Promotion, under which both countries agreed to exchange best practices in the field of IP, particularly in the processing of registration for patents, trademarks, and design.²⁴⁸ The MOU also emphasizes technical exchange in IP enforcement and assisting mechanisms for the judicial resolution of IP disputes, among other areas.²⁴⁹ This indeed captures the important role of IP and Patent offices in shaping innovation policy and governance structures.²⁵⁰

While the stated "endeavor" to cooperate in Article 13.14(2) is promising, certain issues are noticeably absent from the text—most notably, the digital divide in the context of artificial

Rts., *Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19: Communication from the African Group et al.*, WTO Doc. IP/C/W/669/Rev.1 (May 21, 2021) [hereinafter Revised Waiver Proposal]; see also World Trade Organization, Draft Ministerial Decision on the TRIPS Agreement, WTO Doc. WT/MIN(22)/W/15/ Rev.2 (June 17, 2022). For a general discussion on TRIPS waiver debate, see Bryan Mercurio & Pratyush Nath Upreti, *From Necessity to Flexibility: A Reflection on the Negotiations for a TRIPS Waiver for COVID-19 Vaccines and Treatments*, 21 WORLD TRADE REV. 633, 645 (2022).

246. See Mercurio & Upreti, *supra* note 245.

247. See UK-India CETA, *supra* note 1, art. 13.16.

248. See Press Release, Intell. Prop. Off., *supra* note 218.

249. See *id.*

250. See PETER DRAHOS, THE GLOBAL GOVERNANCE OF KNOWLEDGE: PATENT OFFICES AND THEIR CLIENTS xiv (2010).

intelligence (AI).²⁵¹ Although the IPR Chapter does emphasize sharing “information in relation to intellectual property policy and law relevant to new and emerging technology such as artificial intelligence,”²⁵² an explicit reference to digital inequality and the broader AI discussion would have further elevated the agreement. The omission is particularly significant, as global debates around the unilateral development of AI standards highlight the risk of entrenching imperialist dynamics and exacerbating inequalities in the Global South.²⁵³ Another issue of concern for India is digital misappropriation through AI training datasets. Many AI systems are trained on vast amounts of data collected from the internet, which often include Indigenous narratives, cultural texts, and traditional knowledge, such as details about medicinal practices.²⁵⁴ This information is often used without obtaining consent from Indigenous communities or offering them any share in the benefits derived from their knowledge.²⁵⁵ Although the recently adopted WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge requires patent applicants to disclose the use of traditional knowledge or genetic resources, it does not tackle the growing problem of digital misappropriation or online piracy of such materials.²⁵⁶ WIPO continues to act as a collaborative platform for exploring the relationship between intellectual property and emerging technologies. While debates on the implications of generative AI for IP law and policy are ongoing,

251. See UK-India CETA, *supra* note 1, art. 13.14(2). The parties agree to cooperate on international IP regulatory framework and work together at WTO and WIPO; however, the agreement does not explicitly address emerging AI and IP discussion, leaving readers to speculate on the parties’ position in this area.

252. See UK-India CETA, *supra* note 1, art. 13.14(1)(e).

253. See generally Pratyush Nath Upreti, *AI and Technocolonialism (Not) by Design?*, 56 IIC—INT’L REV. INTEL. PROP. & COMPETITION L. 1059 (2025) (arguing that AI systems are not merely tools for innovation, but also instruments of asymmetrical control, where the rules of the digital economy are set by a powerful few, while the majority are expected to comply, often without meaningful participation or digital sovereignty. This raises important questions about digital transplants and competitive advantage. In response, countries are drafting AI laws intending to set global standards that can apply to other parts of the world, thereby securing a strategic edge or competitive advantage).

254. See *id.* at 1062.

255. See *id.*

256. See generally Chidi Oguamanam, *Information Systems and Digitization of Traditional Knowledge: Trends in Cultural Heritage and Memory Institutions and the WIPO Genetic Resources Treaty*, 29 J. WORLD INTEL. PROP. 130 (2025) (discussing holistically several issues related to digital indigenous knowledge including WIPO Genetic Resources Treaty).

WIPO's institutional processes remain focused on consultations regarding AI-related challenges to the IP system. This moment underscores the importance of ensuring that the ongoing "*WIPO Conversation on IP and AI*"²⁵⁷ moves beyond purely technical discussions to seriously consider how the intersection of AI and IP supports or aligns with WIPO's Development Agenda.²⁵⁸ As the Development Agenda is a foundational element of WIPO's mission, it must be thoughtfully and substantively integrated into AI-related discussions.²⁵⁹ Several forums, including the United Nations Human Rights Council²⁶⁰ and reports of the United Nations Conference on Trade and Development (UNCTAD), raised concerns over digital inequality driven by AI and the implications of the growing relationship between AI, cultural heritage and IP.²⁶¹

B. Policy Space and Domestic Practice

The IPR Chapter safeguards policy space for both parties, as reflected in several provisions that acknowledge their policy flexibility and domestic priority. As discussed earlier, the treaty's design is largely co-operative in nature, focusing on various IP aspects, and emphasizing the affirmation of TRIPS flexibilities, while also going a step further to recognize the developmental needs of the parties. In other words, the framing of the text reaffirms India's position on public interest and IP, particularly its

257. See World Intellectual Property Organization, *WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI)*, WIPO/IP/AI/GE/19 (Sep. 27, 2019); see also *WIPO Conversation on Intellectual Property and Frontier Technologies*, WORLD INTELL. PROP. ORG., https://www.wipo.int/en/web/frontier-technologies/frontier_conversation [perma.cc/SYH4-KN8Y] (last visited Aug. 15, 2025).

258. See WORLD INTELL. PROP. ORG., DEVELOPMENT AGENDA FOR WIPO, <https://www.wipo.int/ip-development/en/agenda/> [https://perma.cc/HQ9S-5VZX].

259. See Upreti, *supra* note 253.

260. See Alexandra Xanthaki (Special Rapporteur in the Field of Cultural Rights), *Digitalization of Cultural Heritage: Preserving Cultural Rights*, U.N. Doc. A/HRC/58/60, ¶ 37 (Feb. 24, 2025) ("The relationship between digitization, artificial intelligence and copyright has not been addressed. Artificial intelligence systems often use digitized cultural content for training purposes, giving rise to the need for careful regulation regarding the source communities of that content. When it comes to decisions regarding heritage data sets, which are increasingly valuable in artificial intelligence development, heritage communities should be recognized as decision-making entities and their moral and material interests respected.").

261. U.N. Conference on Trade and Development, *Technology and Innovation Report 2025: Inclusive Artificial Intelligence for Development*, at 24, U.N. Doc. UNCTAD/TIR/2025 (2025).

advocacy for preserving policy space in domestic IP practice. Article 13.4 of the IP chapter urges the parties to interpret the IP chapter in light of the ‘public policy objectives of [their] national systems, while recognizing the different levels of economic development and capacity and differences in national legal systems’.²⁶² At the same time, the provision emphasizes that the protection and enforcement of IP must instill confidence in both right holders and users, and take into account the interests of relevant stakeholders, including right holders, service providers, users, and the general public.²⁶³ In this context, the provisions affirming the parties’ right to determine their exhaustion regime, their freedom to determine the grounds for the use of a patent without the authorization of the right holder,²⁶⁴ and the requirement of annual disclosure of information concerning the working of patents, often known as the “patent working disclosure requirement”²⁶⁵ serve to preserve India’s regulatory approach.

The most contested provisions during the negotiations—patent term extension (PTE) and test data protection—have been excluded from the IP chapter, thereby safeguarding India’s policy space. Patent protection generally lasts twenty years from the date of filing of a patent application. In the case of pharmaceutical patents, however, the effective term is often shorter due to delays both in the granting of the patent and the marketing approvals required for pharmaceutical products, resulting in an average effective protection period of eight to twelve years.²⁶⁶ In other words, PTE is aimed at compensating inventors of pharmaceutical products for the time lost due to regulatory approval.²⁶⁷ By contrast, protection of test data (also known as data exclusivity) protects data generated by right holders from being used by another person or a company during the period of protection.²⁶⁸ It prevents others from using or relying on clinical trial or related data to seek marketing approval and further restricts drug

262. UK-India CETA, *supra* note 1, art. 13.4.

263. *See id.* art. 13.4(1)(f).

264. *See id.* art. 13.50.

265. *See id.* art. 13.56.

266. BRYAN MERCURIO, DRUGS, PATENTS AND POLICY: A CONTEXTUAL STUDY OF HONG KONG 90 (2018).

267. *See id.* at 90; *see also* Meyke A. Kang, *Incentivizing Lower Drugs Prices Through Patent Extension*, 103 N.C. L. REV. 1245, 1258 (2025).

268. *See* MERCURIO, *supra* note 266, at 158–59.

regulatory authorities from using such data to approve generic versions of a pharmaceutical product during the term of protection.²⁶⁹ The TRIPS Agreement does not require the granting of PTE to compensate for regulatory delays, such as the time spent obtaining marketing approval of pharmaceuticals. It is mostly a supplementary protection introduced by developed countries into their national systems. By contrast, TRIPS leaves ambiguity regarding the protection of test data. Article 39(3) of the TRIPS Agreement implies two kinds of obligations. First, WTO Members are required to protect test data both from unfair commercial use and disclosure—except where disclosure is necessary to protect the public or where measures exist to prevent unfair commercial exploitation.²⁷⁰ While the obligation to prevent disclosure by regulatory authorities is relatively clear, the requirement to guard against “unfair commercial use” is far more ambiguous.²⁷¹ TRIPS offers no guidance on how this obligation should be implemented or how long such protection should last. This has led to debate over whether Article 39(3) prohibits regulatory authorities from relying on originator-submitted test data when assessing generic pharmaceutical applications.²⁷² Consequently, developed countries often use FTAs to clarify test data protection, treating it as a form of IP protection.

India’s hesitation towards PTE and data exclusivity stems from its long-standing opposition to TRIPS-plus standards since the early 2000s. Various government-appointed committees, at different stages, have recommended against including such provisions in the Indian patent regime. In 2007, the Reddy Committee, in its interpretation of Article 39(3) of the TRIPS Agreement, did not endorse data exclusivity for pharmaceutical

269. *See id.* at 158–59.

270. *See* TRIPS Agreement, *supra* note 15, art. 39(3).

271. *See* CARLOS M. CORREA, PROTECTION OF DATA SUBMITTED FOR THE REGISTRATION OF PHARMACEUTICALS: IMPLEMENTING THE STANDARDS OF THE TRIPS AGREEMENT (2002).

272. *See generally* Daria Kim, *An Elusive Pursuit to Strike a Balance between Affordable Drugs and Investment Incentives*, in *THE CAMBRIDGE HANDBOOK OF INVESTMENT-DRIVEN INTELLECTUAL PROPERTY* 54 (Enrico Bonadio & Patrick Goold eds., 2023) (discussing criticism of test data exclusivity in the literature); ADAM BUICK, *INTELLECTUAL PROPERTY RIGHTS IN PHARMACEUTICAL TEST DATA: ORIGINS, GLOBALISATION AND IMPACT* (2023) (for an excellent account of the origins and globalization, and impact of test data exclusivity on public health); MARTIN BENSADON ET AL., *PHARMACEUTICAL TEST DATA EXCLUSIVITY: A MULTI-JURISDICTIONAL SURVEY* (2022) (drawing on test data protection practices adopted in several jurisdictions).

products.²⁷³ As one commentator observed, the Committee adopted a “nationalist approach”²⁷⁴ to protect data exclusivity rather than viewing it through the lens of TRIPS Agreement.²⁷⁵ Subsequently, the Parliamentary Standing Committee Report on the Patents and Trademarks Systems in India also recommended that the Government of India refrain from incorporating such provisions into the domestic system and cautioned against including them in FTAs. The Report states:

The Committee feel that conceding to demand for Data Exclusivity would amount to agreeing to TRIPS plus provisions. Once such a demand is agreed at bilateral forum, there will be additional demands, which may relate to higher level of intellectual property right ²⁷⁶

Since the consequences of Data Exclusivity are quite serious, the Committee strongly recommend that the Government should not fall prey to such demands of multi national companies. The Government must thwart such attempts, being made at the behest of certain vested interests. It should also guard against moves to enter into a free trade agreement with the United States, as developed countries, particularly the United States, are trying to bring in certain TRIPS Plus measures through Bilateral and Regional Agreements.²⁷⁷

Since these recommendations, policymakers largely avoided serious debate on recognizing data exclusivity. In the case of PTE, discussions arose over whether additional terms of protection should be granted in cases involving delays caused by the patent office, particularly due to excessive backlogs of pending applications. However, policymakers have not framed the PTE debate specifically around pharmaceutical patents, instead treating it more broadly as an issue of administrative delays within the patent office. This issue arose in *Nitto Denko v. Union of India*,

273. See SATWANT REDDY & GURDIAL SINGH SANDHU, REPORT ON STEPS TO BE TAKEN BY GOVERNMENT OF INDIA IN THE CONTEXT OF DATA PROTECTION PROVISIONS OF ARTICLE 39.3 OF TRIPS AGREEMENT (2007) [hereinafter REDDY REPORT].

274. See Prashant Reddy T., *The Data Exclusivity Debate in India: Time for a Rethink*, 10 INDIAN J.L. & TECH. 8, 20 (2014).

275. See *id.*

276. See REDDY REPORT, *supra* note 273.

277. See PARLIAMENT OF INDIA, DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON COMMERCE, 88TH REPORT ON PATENTS AND TRADEMARKS SYSTEM IN INDIA § 5.54 (2008).

where the Delhi High Court directed the government to constitute a committee to examine it.²⁷⁸ The committee concluded that PTE is not viable for India, noting that the existing twenty-year patent term already accommodates delays and that additional protection could unnecessarily extend monopolies.²⁷⁹ The relevant paragraph of the Committee Report states:

[P]atent term extension for the time lost in the processing of the application in the Patent Office, it was observed that such provision exists only in the US and the proposal is not conducive to India, where the monopoly for 20 years itself is considered too long to block genuine competition. In today's world, technologies covered by inventions/patents become obsolete too fast. Encouraging obsolete technologies and protecting them with longer patent term is not advisable. The 20 year patent term (originally 7 yrs. /14 yrs.) provides for delays. Nothing prevents the applicant / inventor from taking steps for regulatory approvals and commercialization in the meantime, while the Patent Application is pending.²⁸⁰

In line with the Committee's position, Indian courts have rejected the idea of introducing PTE in their interpretation of the relevant provision of Indian patent law.²⁸¹ By contrast, advanced economies, such as the United States, European Union, Japan, Australia, China, Singapore, Korea, and Taiwan, incorporated PTE into their national systems.²⁸² Over time, many scholars continued to voice opposition to the inclusion of PTE and test data protection

278. See *Nitto Denko Corp. v. Union of India*, [2013] W.P. (C) Nos. 3742, 3756 (Del. HC).

279. See REPORT OF THE COMMITTEE CONSTITUTED UNDER THE ORDER OF HON'BLE HIGH COURT OF DELHI ¶ 3(i)(b) (2014), <https://spicyip.com/wp-content/uploads/2015/03/U-207-Nitto-Denko-vs-UOI-report-of-the-committee-in-compliance.pdf> [perma.cc/6KXY-G4CY].

280. *Id.*

281. For example, more recently, the Calcutta High Court dismissed the writ petition filed challenging the constitutionality of the 20-year patent term from the date of the application. See *Gunjan Singh a/k/a Kanishk Sinha & Anr. v. Union of India & Ors.*, [2024] 903 (Cal. HC); see also Hrushika Addlagatta, *Calcutta High Court Refuses to Hold 20-Year Patent Term from Date of Application as Unconstitutional*, SPICY IP (May 21, 2025), <https://spicyip.com/2025/05/calcutta-high-court-refuses-to-hold-20-year-patent-term-from-date-of-application-as-unconstitutional.html> [perma.cc/6JNX-LWY6].

282. See K.D. RAJU, *Patent Linkages and Its Impact on Access to Medicines: Challenges, Opportunities for Developing Countries*, in ACCESS TO MEDICINES AND VACCINES: IMPLEMENTING FLEXIBILITIES UNDER INTELLECTUAL PROPERTY LAW 329 (Carlos M. Correa & Reto M. Hilty eds., 2022).

in FTA for numerous reasons.²⁸³ Mainly, both PTE and test data protection delay generic market entry and increase pharmaceutical costs. Moreover, these provisions are viewed as TRIPS-plus measures that reinforce the monopolistic nature of patent rights, giving disproportionate advantages to pharmaceutical companies.

Commentators often estimate the potential delay in the entry of generics before trade deals are concluded. For example, prior to the signing of the EU-Canada CETA, Lexchin and Gagnon argued that extending data exclusivity to 'non-innovative drugs' under the agreement would delay the average market entry of generics by 741 days, resulting in an additional cost of CAD\$1.645 billion, or 12.9 percent of the total costs of patented drugs.²⁸⁴ A contrasting perspective can be found in the literature. One study, reviewing FTAs containing PTE and test data protection signed from 2004 to 2013, found that drug spending did not increase significantly and remained consistent as a proportion of overall health expenditures in countries with recent U.S. FTAs. This highlights the lack of conclusive evidence on the actual impact of PTE and data exclusivity.²⁸⁵ Moreover, scholars have not examined how domestic courts shape PTE and data exclusivity, particularly in countries that adopted these provisions through FTA obligations, in balancing such rights against public interest considerations within the domestic system.²⁸⁶ Despite the lack of clarity in the

283. *Id.*; see also ELLEN 'T HOEN, *Protection of Clinical Test Data and Public Health: A Proposal to End the Stronghold of Data Exclusivity*, in ACCESS TO MEDICINES AND VACCINES: IMPLEMENTING FLEXIBILITIES UNDER INTELLECTUAL PROPERTY LAW 183 (Carlos M. Correa & Reto M. Hilty eds., 2022) (discussing why countries should refrain from adopting data exclusivity and instead use TRIPS flexibilities in general to safeguard public health).

284. Joel Lexchin & Marc-André Gagnon, *CETA and Pharmaceuticals: Impact of the Trade Agreement between Europe and Canada on the Costs of Prescription Drugs*, 10 GLOBALIZATION AND HEALTH 14 (2014); see also Bryan Mercurio & Pratyush Nath Upreti, *Patent Term Extension and Test Data Protection Obligations: Identifying the gap in Policy, Research and Practice of Implementing Free Trade Agreements*, 10 J.L. & BIOSCIENCES 1, 28 (2023).

285. See Mercurio & Upreti, *supra* note 284, at 28 ("we conclude that most of the discussion related to the impact of FTA provision of PTE and test data protection on the pricing of pharmaceutical products lacks solid empirical grounding. This is not to argue that one should assume the potential implications of PTE and test data protection obligations to be nil: rather there is a need for governments to conduct a detailed analysis of PTE and test data protection so that policymakers can be better prepared and make better decisions leading to improved provisions in FTAs and health outcomes").

286. See generally *id.* (discussing case law from Australia and Canada).

literature, the United Kingdom's post-Brexit trade deals with Australia, signed in 2021, and with New Zealand, signed in 2022, contain detailed provisions on PTE and data exclusivity.²⁸⁷ The leaked 2022 draft of the UK-India CETA, especially its IP chapter, also included language from both provisions:

Article E.12: Extension of the Duration of Rights Conferred by a Patent

1. The Parties recognise that pharmaceutical products and plant protection products protected by a patent in their respective territories may be subject to a marketing approval procedure before being put on their respective markets.
2. Each Party shall provide an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent term resulting from that marketing approval procedure, through either:
 - (a) a period of additional *sui generis* protection conferring the rights conferred by the patent; or
 - (b) an extension of the patent term

Article F.1: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for granting marketing approval for a new agricultural chemical product, the submission of undisclosed test or other data, that Party shall ensure that, in accordance with its law, either:
 - (a) third parties are not permitted, without the consent of the person that previously submitted such information, to market the same or a similar product on the basis of that information for at least 10 years from the date of marketing approval of the previously approved agricultural chemical product; or
 - (b) applicants for marketing approval are generally required to submit a full set of test data, even in cases where there was a prior application for the same product, for a period of at least

287. See UK-Australia FTA, *supra* note 5, arts. 15.47, 15.49; UK-New Zealand FTA, *supra* note 6, art. 17.62 (UK-New Zealand FTA does not include provisions on patent term extension).

10 years, counted from the date of approval of a prior application.²⁸⁸

Article F.2: Protection of Undisclosed Test or Other Data for Pharmaceutical Products

1. If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data, that Party shall not permit third parties, without the consent of the person that previously submitted that information, to place on the market the same or a similar product on the basis of:

(a) that information; or

(b) the marketing approval granted to the person that submitted that information for at least six years from the date of marketing approval of the previously approved pharmaceutical product; such date to be determined in accordance with each Party's law.²⁸⁹

The inclusion of these provisions in the leaked IP chapter appears to reflect the United Kingdom's position on the issues. This raises the question: why were both provisions ultimately dropped from the final text of the trade deal with India? This question can be approached from two distinct perspectives. First, one could argue that their inclusion in the leaked draft Chapter reflects a potential shift in India's approach to both PTE and test data protection. As discussed above, India's domestic patent law does not endorse either PTE or test data protection, making it somewhat far-fetched to suggest a shift in India's approach to these issues. Moreover, such commitments would require India to amend its domestic policy, which would in turn become antithetical to the IPR Chapter's objective of safeguarding regulatory space. The United Kingdom was clear from the outset of negotiations that its trade agreement with India was never intended as a strategy or means to change India's domestic policy.²⁹⁰ Moreover, the United

288. See *UK-India FTA: Draft Intellectual Property Chapter*, BILATERALS, <https://www.bilaterals.org/?uk-india-fta-draft-intellectual> [perma.cc/65JC-7ZYB] (last visited May 23, 2026).

289. See *id.*

290. See HOUSE OF LORDS, INT'L AGREEMENTS COMM., *supra* note 110, ¶ 8 ("The fact that the UK is not one of India's top trading partners—ranking only as India's 17th largest trading partner for goods means the UK Government's leverage to secure changes to India's domestic policies will be limited. Even if India agrees to make changes to its domestic legislation, implementation could take a long time. We do not see how the

Kingdom also faced pressure from domestic stakeholders to avoid including provisions likely to increase drug costs. Generic medicines imported from India have helped reduce cost for the National Health Service (NHS). It is reported that 80 percent of the medicines used in the NHS are generic, and India supplies one-third of these, amounting to 25 percent of the total medicines used.²⁹¹ During the trade negotiations, the NHS Confederation²⁹² and a group of medicines coalitions raised concerns that including TRIPS plus provisions in the IP chapter could increase medicine costs in the United Kingdom and negatively impact the NHS.²⁹³ Therefore, excluding provisions such as PTE and data exclusivity, which could impact public health, was a rational and win-win outcome for both parties. That said, the EU's publicly available text proposal for the IP chapter in the ongoing EU-India FTA negotiations does include provisions for PTE for medicinal products.²⁹⁴ Time will tell whether such provisions remain in the final negotiated text.

C. Greening IP: commitments but no direction

In recent years, both the United Kingdom and India have become increasingly vocal about promoting sustainability in their

Negotiating Objectives can be met [and business benefit] without India agreeing to make some changes to its domestic laws or practices").

291. See Julia Bradshaw, *Indian Crisis Risks Severing Supply of Vital Drugs to the UK*, TELEGRAPH (May 29, 2021), <https://www.telegraph.co.uk/business/2021/05/29/indian-crisis-risks-severing-supply-vital-drugs-uk/> [perma.cc/8FDY-8D6K].

292. See NHS Confederation, *Written Evidence to Parliament of the UK*, PARLIAMENT U.K., ¶ 37, [https://committees.parliament.uk/writtenevidence/43753/html/\[perma.cc/R7Q3-PCNA\]](https://committees.parliament.uk/writtenevidence/43753/html/[perma.cc/R7Q3-PCNA]) (last visited Aug. 15, 2025) ("We urge that the UK medicines pricing system between government, the NHS and industry that has successfully kept UK medicines prices lower than in many other countries should not be threatened by the IPR or other provisions in the Agreement. This is an important issue in relation to trade with India, which supplies a high proportion of the UK's (and the world's) generic (non-branded) medicines. We therefore support the Government's intention in their outline approach to secure patent provisions which achieve an effective balance between rewarding research and innovation, whilst reflecting wider public interests such as ensuring access to medicines").

293. See Letter from Missing Medicines Coalition & Stop AIDS, to Kemi Badenoch, Sec'y of State, Regarding UK-India Free Trade Agreement and Access to Medicines (Nov. 2, 2022).

294. See *EU-India Agreements: Documents*, EUR. COMM'N, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreements/documents_en [perma.cc/CZS8-KLP7] (last visited Aug. 14, 2025).

domestic policies. To this end, in 2010, the United Kingdom introduced a dedicated fast-track program, known as the Green Channel, to accelerate the examination of environment related patent applications.²⁹⁵ Unlike the United Kingdom, India does not have a standalone fast-track program for green patents; however, it may support accelerated examination of environmentally friendly inventions through the amendment to the Indian Patent Rules.²⁹⁶

While the agreement does not include substantive provisions addressing IP issues related to climate change or ecological sustainability, it does contain general commitments to cooperation. This includes an agreement between the parties to “exchange information in relation to intellectual property policy and law relevant to new and emerging technologies, such as artificial intelligence and clean and green technology.”²⁹⁷ That said, the Environment Chapter of the trade deal reaffirms the parties’ commitment to “implement the Paris Agreement with the aim of strengthening the global response to climate change. . .” and to “endeavour to encourage the transition to clean energy.”²⁹⁸ It also recognizes the importance of transitioning towards a resource-efficient and circular economy.²⁹⁹

For example, Article 21.14(2) states: “The Parties also recognise that policy objectives to facilitate the transition to a resource efficient and circular economy include extending product life cycles and sustainable product design, increasing re-use and recycling, and reducing waste.”³⁰⁰ Similarly, Article 13.14(1)(f) states: “sharing of best practices on aspects of intellectual property policy and law with the aim of supporting the development and deployment of environmentally friendly and low-emissions

295. See INTELL. PROP. OFF., *Patents: Accelerated Processing*, GOV’T UK (June 13, 2014), <https://www.gov.uk/guidance/patents-accelerated-processing#green-channel> [perma.cc/M394-3649].

296. See Patents Rules, 2003, r. 24C (India) (providing for expedited examination of patent applications where the application pertains to a sector which is notified by the Central Government on the basis of a request from the head of a department of the Central Government. However, no such notification is made by the government so far. But there remains a possibility that the government may announce anytime in future specific sectors for expedited examinations, which may include green technologies).

297. UK-India CETA, *supra* note 1, art. 13.14(1)(e).

298. See *id.* art. 21.5(2).

299. See *id.*

300. See *id.* art. 21.14(2).

technologies, clean and renewable energy and enabling infrastructure, and energy-efficient goods and services.”³⁰¹

In the context of IP and sustainability debates, there is growing discussion on embedding sustainability in IP law.³⁰² In particular, an increasing number of countries are exploring the possibility of introducing *sui generis* “right to repair” exceptions under IP regimes or the addition of new “use” exceptions in copyright law. For example, the *Australian Productivity Commission Inquiry Report on Right to Repair* recommended amendments to the technological protection measures (TPM) provisions in the Copyright Act, as well as the introduction of a new use exception.³⁰³ More recently, Canada amended its Copyright Act to allow the

301. See *id.* art. 13.14.

302. See, e.g., Taina Pihlajarinne & Rosa Ballardini, *Paving the Way for the Environment: Challenging ‘Strong’ Sustainability into the European IP System*, 42 EUR. INTELL. PROP. REV. 239 (2020) (discussing the rationale for embedding environmental sustainability into the European Union intellectual property law); Helena R. Howe, *Property, Sustainability and Patent Law—Could the Stewardship Model Facilitate the Promotion of Green Technology?*, in CONCEPTS OF PROPERTY IN INTELLECTUAL PROPERTY LAW 282 (Helena Howe & Jonathan Griffiths eds., 2013) (examining the role of patent law in promoting the development and dissemination of green technology); INTELLECTUAL PROPERTY AND SUSTAINABLE MARKETS (Ole-Andreas Rognstad and Inger B. Ørstavik eds., 2021) (more generally, the chapters in this volume explore emerging issues and challenges in the evolving discourse on intellectual property and sustainability); Reto M. Hilty & Pedro Henrique D. Batista, *Potential and Limits of Patent Law to Address Climate Change*, 72 GRUR INT’L J. EUR. & INT’L IP L. 821 (2023) (critically analyzing the role of patent in addressing climate change, particularly in relation to market failure and incentives); THE ELGAR COMPANION TO INTELLECTUAL PROPERTY AND THE SUSTAINABLE DEVELOPMENT GOALS (Bita Amani, Caroline B. Ncube & Matthew Rimmer eds., 2024) (more broadly, examining the role of intellectual property in achieving the sustainable development goals).

303. See *Right to Repair: Productivity Commission Inquiry Report Overview & Recommendations*, PRODUCTIVITY COMM’N, GOV’T AUSTL. (2021), <https://www.pc.gov.au/inquiries/completed/repair/report/repair-overview.pdf> [perma.cc/P2G9-2GFM]; see generally Leah Chan Grinvald & Ofer Tur-Sinai, *Intellectual Property Law and the Right to Repair*, 88 FORDHAM L. REV. 63 (2019) (discussing right to repair, its justification and its implications for intellectual property rights); Matthew Rimmer, *Shane Rattenbury, the Productivity Commission, and the Right to Repair: Intellectual Property, Consumer Rights and Sustainable Development in Australia*, 37 BERKELEY TECH. L. J. 989 (2023) (analyzing the recommendations of Australia’s Productivity Commission on the right to repair); Anthony D. Rosborough, Leanne Wiseman & Taina Pihlajarinne, *Achieving a (Copy) Right to Repair for the EU’s Green Economy*, 18 J. INTELL. PROP. L. & PRAC. 344 (2023) (examining the European Union’s approach to the right to repair and copyright issues, drawing on Australian and Canadian experiences); Joshua D. Sarnoff, *The Right to Repair, Intellectual Property, Exhaustion and Preemption*, in THE CAMBRIDGE HANDBOOK OF EMERGING ISSUES AT THE INTERSECTION OF COMMERCIAL LAW AND TECHNOLOGY 215 (Stacy-Ann Elvy & Nancy S. Kim eds., 2025) (discussing relationship between right to repair and exhaustion doctrine in intellectual property).

circumvention of technological protection measures (TPMs) in computer programs, provided the circumvention is solely for the purpose of diagnosing, maintaining, or repairing a product in which the program is embedded.³⁰⁴ While such developments are not explicitly reflected in the UK-India CETA, this is likely due to the nature of the agreement, which focuses more on cooperation than on norm setting. However, the relevant chapter makes a broad reference to best practices concerning effective legal remedies against the unauthorized use. Article 13.14(3) states:

The Parties shall cooperate and share best practices on legal protection and effective legal remedies against the unauthorized circumvention of technological protection measures, which includes the manufacturing and trafficking of devices that may be used for the circumvention of any effective technological measures.³⁰⁵

A plain reading of the above text suggests that the provision's primary intention is to promote cooperation on copyright enforcement, rather than to engage with current debates on exceptions to anti-circumvention measures for repair products. As a result, much is left to the discretion of the parties to regulate domestically, without imposing any obligation to develop norms on the right to repair and other pressing IP-related sustainability issues. One could argue that this represents a missed opportunity, given that both countries have previously demonstrated strong commitments to sustainability and the circular economy in their domestic regimes. An explicit endorsement of the right to repair within the context of IP could have signaled a stronger joint commitment and positioned both parties as leaders in shaping the global IP and sustainability discourse. While the recognition of policy objectives, such as extending product life cycles and promoting sustainable product design, is welcome, it falls short. This is particularly relevant as there is growing interest in

304. The Canadian Copyright Act was amended through Bills C-244 and C-294 to address issue of right to repair and technological protection measures. See *Right to Repair Consultation Document*, GOV'T CAN., <https://ised-isde.canada.ca/site/ised/en/right-repair-consultation-document> [perma.cc/65JC-7ZYB] (last visited Aug. 15, 2025).

305. UK-India CETA, *supra* note 1, art. 13.14(3).

embedding the principle of sustainability into the repair-reconstructing dichotomy in patent law.³⁰⁶

V. *LESSONS FROM UK-INDIA IPR CHAPTER FOR DEVELOPING COUNTRIES*

The IPR Chapter within the UK-India CETA signifies a critical juncture in the governance of bilateral trade, reflecting key trends in the evolving domain of development-oriented trade negotiations. Before extracting lessons for other developing nations, it is essential to recognize both the chapter's contributions to the respective parties and the structural limitations it manifests. This Part engages in a threefold analysis: first, it evaluates the IPR Chapter's tangible successes in reconciling developmental priorities with intellectual property protection; second, it appraises its potential as a model or reference framework for other developing economies; and third, it identifies the substantive gaps that underscore the inherent constraints of bilateral agreements in addressing multilateral intellectual property challenges.

Traditionally, India's stance on FTAs has been open in pursuing trade liberalization. However, despite being a signatory to only a limited number of FTAs, rising trade deficits with FTA partners, together with the perception of imbalanced outcomes have raised concerns with the government. The tipping point came when India faced expansive investment protection obligations through dispute resolution provisions in its bilateral investment treaties.³⁰⁷ As a result, from 2015 onwards, India began reviewing its investment treaties and FTAs and terminated most of its older bilateral investment treaties following the adoption of its Model Bilateral Investment Treaty in 2016.³⁰⁸ In other words, since 2016

306. See Taina Pihlajarinne, *Responsible Production And Consumption (SDG 12)—A New Emphasis for Material Lifespans in Intellectual Property Rights Regulations?*, in *THE ELGAR COMPANION TO INTELLECTUAL PROPERTY AND THE SUSTAINABLE DEVELOPMENT GOALS* 398, 403 (Bita Amani, Caroline B. Ncube & Matthew Rimmer eds., 2024).

307. See PRABHASH RANJAN, *INDIA AND INVESTOR-STATE DISPUTE SETTLEMENT: AFFRONTING SOVEREIGNTY OR INDICTING CAPRICIOUSNESS?* (2024).

308. See INT'L INST. FOR SUSTAINABLE DEV., *MODEL TEXT FOR THE INDIAN BILATERAL INVESTMENT TREATY* (2016), <https://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/wp-content/uploads/2016/06/Model-Text-for-the-Indian-Bilateral-Investment-Treaty.pdf> [perma.cc/YK62-AHT6]. For a detailed discussion on Indian approach to bilateral investment treaties, see PRABHASH RANJAN, *INDIA AND BILATERAL INVESTMENT TREATIES: REFUSAL, ACCEPTANCE, BACKLASH* (2019).

there has been a formal shift in approach to FTAs, with the country adopting a more cautious and selective strategy. In 2018, the government constituted the High-Level Advisory Group (HLAG) to review the global economic environment and provide recommendations to enhance India's share in global trade and services.³⁰⁹ The HLAG report recommended adopting an integrated approach of free trade agreements aimed at securing reciprocal benefits.³¹⁰ This marks a deliberate shift to minimal obligations that align with and prioritize its domestic policy space. The same strategic posture is evident in recent FTA negotiations, where India has resisted TRIPS-plus provisions and emphasized the use of flexibilities to safeguard the public interest. The IPR Chapter in the UK-India CETA is no exception; it reflects India's "policy-space-first" trade strategy.³¹¹ Moreover, the IPR Chapter does not offer new carve-outs. Therefore, arguing that the IPR Chapter is a template for developing countries would be an overstatement. While the IPR Chapter contains many positives, as discussed throughout this Article, emphasis on public health measures, and explicit recognition of different levels of economic development, capacity, and national legal systems represent an important development.

This is important for two reasons. First, given the current crisis in multilateralism, much of international IP reform is likely to occur through FTAs. In the past, many developing countries struggled or were compelled to implement IP obligations agreed under FTAs, often with long-lasting effects on their domestic systems. Second, while the gap in IP practice and infrastructure between developing and developed countries has narrowed, it has widened between least developed countries (LDCs) and developing and developed countries. In this context, the explicit reference to differing levels of development and capacity among trading partners provides an important interpretative lens for reading the IPR Chapter. Moreover, the IPR Chapter reflects a

309. See Press Release, Ministry Com. & Indus., High Level Advisory Group Constituted for Trade (Sep. 28, 2018).

310. See GOVERNMENT OF INDIA, REPORT OF THE HIGH-LEVEL ADVISORY GROUP 35 (Sep. 12, 2019).

311. See Pritam Banerjee, *India's Trade Strategy for the 21st Century: Tariffs, Supply-Chains, Investment and Technology*, INDIA FOUND. (July 1, 2025), <https://indiafoundation.in/articles-and-commentaries/indias-trade-strategy-for-the-21st-century-tariffs-supply-chains-investment-and-technology/> [perma.cc/AP5R-K9C2].

balanced approach, addressing the nuanced interests of both parties while adhering to international standards set by agreements like TRIPS. India's evolving IP policy post-2016 illustrates a strategic shift toward more comprehensive and detailed IP chapters, emphasizing the protection of traditional knowledge, genetic resources, and public health interests. Conversely, the United Kingdom's post-Brexit IP strategy highlights its aim to secure robust protections for its industries while fostering international cooperation. Although the agreement introduces ambitious commitments, it also maintains flexibility, enabling both nations to safeguard public health measures while promoting innovation.

The IPR Chapter falls short in addressing or setting out positions on some of the more pressing IP issues, particularly technology transfer, which is critical for developing countries and LDCs. Although the IPR Chapter refers to technology transfer in provisions related to its objectives and principles, as well as in the TRIPS and public health-related provisions, it does not adequately address the long-standing challenges of technology transfer under TRIPS Agreement. Article 66.2 of the TRIPS Agreement states that developed country members shall provide incentives to their companies to promote and encourage technology transfer to LDCs.³¹² The enforcement of this provision has been ineffective due

312. Many have pointed out the ambiguities surrounding Article 66.2 of the TRIPS Agreement, see e.g., David M. Fox, *Technology Transfer and the TRIPS Agreement: Are Developed Countries Meeting Their End of the Bargain*, 10 HASTINGS SCI. & TECH. L. J. 3 (2019) (discussing implementation of technology transfer obligations under TRIPS); Jessyca van Weelde et al., *Reflection on the Implementation of Decision on Implementation of Article 66.2 of the TRIPS Agreement: Incentive for Technology Transfer to Least-Developed Countries* (WTO Staff Working Paper: Policy ERSD-2023-12, Dec. 13, 2023), (broadly explaining implementation of technology transfer provision under TRIPS in least developed countries); Jayashree Watal & Leticia Caminero, *Least-Developed Countries, Transfer of Technology and the TRIPS Agreement*, in INTELLECTUAL PROPERTY AND DEVELOPMENT: UNDERSTANDING THE INTERFACES 199 (Carlos Correa & Xavier Seuba eds., 2019); Opeyemi I. Kolawole, *The Problems With The Nature of The Obligation in Article 66.2 of TRIPS*, 28 J. WORLD INTELL. PROP. 762 (2025) (examining the history of technology transfer provisions in the WTO TRIPS Agreement and how lack of interpretative guidance and enforceability has posed significant barriers for least developed countries); Pratyush Nath Upreti, Van Anh Le & Sy Luong Nguyen, *The "Intellectual Property" Puzzle in the WHO Pandemic Preparedness Treaty: An Appraisal*, 46 EUR. INTELL. PROP. REV. 716, 724 (2024) ("A major obstacle has been the lack of clarity regarding the provision's scope and meaning. Many LDCs, such as Zambia, Haiti, and Lesotho, have sought clarification on what constitutes "incentives" and how developed countries have fulfilled their obligations. To this end, LDCs

to the lack of clarity regarding the obligation of developed countries. The Working Group on Trade and Transfer of Technology, established to explore the possibilities for augmenting the flow of technology to developing countries, has yet to produce substantial outcomes. In this regard, the IP chapter of the UK-India CETA neither defines technology transfer nor includes any binding obligations on the matter, instead emphasizing cooperation and the exchange of views and information on the practice of voluntary technology transfer.³¹³ Given that technology transfer has been a subject of debate in the recent Pandemic Treaty negotiations, one might have expected more from the IPR Chapter. Further, the bilateral nature of the agreement inherently limits its ability to respond to the demands raised by developing countries at multilateral forums such as the TRIPS Council. For instance, the review under Article 71 of the TRIPS which deals with review and implementation of the agreement, advocated³¹⁴ by developing countries including India, remains explicitly unaddressed in this bilateral context.³¹⁵ It now remains to be seen how India will invoke the 'shall endeavour to cooperate' clause in working with the United Kingdom at international forums to address relevant issues.

All in all, the IPR Chapter demonstrates that the intricate language of trade agreements does not necessarily result in restrictive obligations if appropriately structured. By focusing on cooperation, employing soft law language, and explicitly acknowledging development asymmetries, India successfully secured a comprehensive chapter while maintaining policy space. Developing countries can prioritize negotiating the framework architecture over substantive concessions, as demonstrated by the CETA's soft law approach. If structured correctly, such soft law can satisfy developed country partners while preserving flexibility.

requested clarification on the meaning of technology transfer and incentives at the WTO Ministerial conference but to no avail").

313. See UK-India CETA, *supra* note 1, arts. 13.14, 13.23.

314. Council for Trade-Related Aspects of Intell. Prop. Rts., *TRIPS for Development: Post MC13 Work on TRIPS-Related Issues*, WTO Doc. IP/C/W/708 (Mar. 8, 2024).

315. TRIPS Agreement, *supra* note 15, art. 71.

VI. CONCLUSION

The UK-India CETA's IPR Chapter represents a sophisticated equilibrium between the parties' divergent policy priorities within an increasingly complex global IP landscape. In particular, since the adoption of the TRIPS Agreement, the IP landscape has evolved significantly over the past three decades. India, which historically resisted detailed IP chapters in FTAs, has now, through the UK-India CETA, agreed to its first comprehensive IPR Chapter. This development reflects the growing reality that IP norms are increasingly shaped—and harmonization of domestic rules among trading partners achieved—in FTAs; in particular, the UK-India IPR Chapter reflects this.

This is not to suggest that the IPR Chapter of the UK-India CETA creates new IP norms. Rather, India's engagement illustrates how contemporary free trade deals function as key sites for the negotiation, refinement and consolidation of IP standards. By placing India at the center of the analysis, this Article highlights India's evolving negotiating capacity to protect developmental concerns while acknowledging the legitimacy of IP protection for trade and investment purposes.

Overall, this Article makes an intervention in three ways. First, as discussed throughout this Article, the incorporation of TRIPS provisions, particularly objectives and principles, reflects both parties' commitment to balanced innovation frameworks. For India, this signals a mature understanding that modern contemporary trade governance cannot ignore IP concerns, while demonstrating that such integration need not come at the expense of public health, development, or environmental objectives. Moreover, the co-operation arrangement with the UK IP Office, together with working commitment on international IP debates, reflects collaborative efforts between two IP systems. Traditionally, these IP systems have been perceived as being driven by different rationales. Second, India's careful design of certain provisions in CETA, particularly those related to geographical indications that allow exclusive protection over names on such agricultural products, enables it to secure a competitive advantage in South Asian markets. Historically, Europe has adopted a similar approach by tightly linking GI protection to agricultural products in FTA to protect their domestic GIs. Given that the United Kingdom remains an important market,

several South Asian products, including Basmati rice, are likely to receive GI protection in the United Kingdom, thereby excluding other similarly named products from the UK market. This, in turn, confers a competitive advantage over comparable products that do not enjoy such protection.

Third, as argued in this Article, despite positive developments, several important gaps remain. Although the IPR Chapter refers to technology transfer in provisions related to its objectives and principles, as well as in the TRIPS and public health-related provisions, it does not adequately address the long-standing challenges of technology transfer under TRIPS Agreement. Moreover, the chapter does not contain binding provisions addressing IP issues related to climate change or ecological sustainability, only general commitments to cooperation. Finally, the absence of language safeguarding against the use of IP enforcement measures disguised as trade barriers is surprising, particularly given past incidents involving the seizure of Indian generic goods in transit.

To conclude, the IPR Chapter reflects a compromise between countries with established pro-IP regimes and those seeking greater policy space. It advances IP norms in areas such as traditional knowledge, GIs and trade secrets, while stopping short of addressing long-standing TRIPS-related demands of developing countries, including mandatory technology transfer. As such, the Chapter represents only partial progress on priorities repeatedly raised in the TRIPS Council, revealing both incremental gains and persistent gaps. From a practical standpoint, however, parties to comprehensive trade agreements tend to prioritize the protection of their own strategic interests and may be willing to concede on selected IP issues in exchange for advantage elsewhere. In this context, the UK-India CETA's IPR Chapter is likely to serve as a significant test case as India deepens its integration into the global trade architecture through bilateral agreements. The coming years will determine whether it establishes replicable precedents for development-conscious IP governance or requires further refinement to strike an appropriate balance between competing interests.