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# Emerging Opportunity For Indian Manufacturing Exports:

## Compliance Under US Unfair Competition Act

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## Compliance Under US Unfair Competition Act

# Preface

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Manufacturing sector occupies a critical position in Indian economy, accounting for nearly 15.4 per cent of its real GDP during the Financial Year 2011-12 and employing about 12.0 per cent of India's labour force. The sector has been contributing significantly to India's international trade; and registering a robust export at the rate of 20 per cent over the last 5 years. The scenario has been somewhat different in 2011-12 as the share of manufacturing exports plummeted dramatically and further came down in 2012-13 mainly due to fall in shares of traditional items like textiles, leather and leather manufactures and gems and jewelry. In terms of markets, share of manufactured goods in India's exports to the USA has fallen from 89.1 per cent to 74.2 per cent during 2012 and 2013. Specific sectors that were hit hard include textiles, gems and jewelry, organic chemicals, glass and glassware, electrical and electronic items. Considering the fact that USA has traditionally been a major destination for India for these products, the fall in market share is a cause for concern.

Indian exporters have been facing tough competition in the US market mainly from China which holds 19.5 per cent market share of total US imports as compared to India's share of 1.6 per cent. Other competitors are Nigeria, South East Asia, Peru, Argentina, Algeria and other SAARC countries. The reasons for such a dip in India's market share in USA may be attributed to the prevalence of regional trade agreements (RTAs) between USA and competing suppliers, high CIF prices of India's manufactured goods compared to China, preferential status extended by the US to the LDCs such as Bangladesh; who is encashing such trade preference by supplying better quality products to USA market.

In such a scenario, there are not too many options for Indian exporters to retain or increase their market share in the US.

Therefore, there is a need to understand the current export ecosystem in the US market for the benefit of Indian exporters especially in this non-tariff era of global trade. US market is known for its compliance laws irrespective of domestic or foreign goods. Indian exporters can gain better access in the US market primarily through efficient and timely compliance at all stages for their products. While compliance related to labour, environment and quality have been quite prevalent across the globe, information technology (IT) compliance is becoming a prime concern for the importers in the US wherein the US buyers/importers are prevented from buying any product manufactured out of pirated versions of software or hardware used anywhere in its systems as per the new Unfair Competition Act (UCA) law passed in the two states namely Louisiana and Washington of the US recently. This is likely to impact the preferences of the US buyers from traditional factors like weightage, quality, pricing, duties, etc to preferably buying from countries where companies are using legal hardware and software in their manufacturing processes. Thus, use of illegal IT could result in loss of access to the US market. To be UCA compliant, is going to be a serious issue in global trade. This is reflected in the efforts made by many countries such as China, Mexico, Pakistan, Japan, Korea, Mexico, vying for the US market.

An interesting observation is that most of the competitors of India in the US market have much higher IT piracy rates in the manufacturing. This encourages US buyers to turn to India to buy such products instead of sourcing it from the countries having higher piracy rates. This reflects that there may be an emerging business interest for Indian manufacturing exports in the sectors where these countries have traditionally been the competing suppliers in the US market. This opportunity can be availed only by fair and legal use of IT in the manufacturing process and in its effective deployment. Under the new manufacturing policy, the Government of India has announced to increase the share on manufacturing in GDP from 16 per cent to 25 per cent by 2020. The policy supports the fact that modernization of technology is critical to attain the stated objectives of the Policy. It's therefore high time for Indian exporters to act on this opportune situation of IT compliance not only to retain their current share in the US market but also to increase their market share from other non-compliant competitors taking first mover advantage. The Study has systematically explored such possibilities and suggested how different sectors may likely to respond to early compliance benefits. The Study has also prioritized different sector for Indian policy makers for introducing appropriate interventions through policy instruments.

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Dr. K. Rangarajan is Professor at IIFT. He is also Head, IIFT Kolkata Chapter and SME Centre at IIFT. His expertise includes Business Strategy and Strategic Planning, Corporate and Business Level Strategies and Cluster Development. He has widely traveled including UK, US, and Asia Pacific on various academic assignments. He has lectured on Strategic Issues of the industry on various national and international forums and Associations like SIMA, KNITMA, Textile Committee and Management Development Forum. He has coordinated with SMEs at various levels on strategic issues. He has conducted several seminars/ workshops in Textile Clusters like Tirupur, Coimbatore, Madurai, Noida, Kolkata, Ludhiana, and Karur. He is also serving as National Expert for UNIDO, Austria for their Innovation in Textiles Industry Project.

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Gopal Naik is Professor of Agricultural and Rural Development Policy at the Centre for Public Policy, Indian Institute of Management, Bangalore (IIMB). He is Ph.D. from University of Illinois, USA. He works on issues such as agribusiness, commodity markets, forecasting and international trade. In the recent years he has been working in the area of use of technology for delivery of public services in rural areas. . He has been consultant to organizations such as Ford Foundation, Food and Agriculture Organization, World Bank, International Food Policy Research Institute; national level public sector organizations such as National Agricultural Cooperative Federation, the Central Silk Board, Spices Board, Indian Council for Agricultural Research, Food Safety and Standards Authority of India, National Dairy Development Board, Forward Markets Commission and private sector.

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Mr. Rajveer Singh is an economist and management professional with specialization in local industrial development, sub-sector-cluster based industrial development, and local economic policy. He has worked as a key team member in the cluster development program of UNIDO and has been appointed as International expert on cluster based industrial development for Cambodia. He has served as technical advisor in Gujarat and MP for cluster based development of MSMEs in these states. He has taken Institution building initiatives to ensure Industrial Development and integrated/ competent BDS across India and designed a scalable program based on the theme ICT for SMEs as PROJECT Vikas for Microsoft to improve their outreach to MSMEs clusters all over India. He has served as a member (Working Group), in DST, GoI, under different committees for technology adoption among entrepreneurs.

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Dr. Tamanna Chaturvedi is Assistant Professor at Indian Institute of Foreign Trade (IIFT), Ministry of Commerce, Government of India, in the area of WTO and Trade Policy issues. She is empanelled regional consultant with WTO; Geneva for South East Asian region and have wide expertise in handling SME related issues with GMS countries. She has extended consultancy to various government agencies and ministries which has given her the opportunity to closely work with Govt. officials at Planning Commission, Ministry of Food Processing Industries, Ministry of Agriculture, Ministry of MSME and various export promotion agencies/authorities within India.

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# 1

# Introduction

The evolution of IT sector globally has brought in huge changes in the manufacturing sector through effective integration of upstream and downstream linkages in the value chain. The intensive use of technology by China and other competitors in Asia is visible in the increasing trade share of these countries in the global market. On the other hand, infusion of relatively poor IT intensity and lack of technological advancement in the Indian manufacturing processes have been largely responsible for its poor performance in world market, thus lagging behind China, Thailand, and the rest of Asia.

While the emergence of technology over the past few decades has brought in humongous advancements in the competitiveness of the manufacturing sector across globe; however its legitimate and responsible usage tend to curtail future growth opportunities of genuine businesses in the world. The international pricing and competitiveness of goods with the use of pirated software were found to be completely distorting the market and bringing losses not only to the genuine users of the software but also to the software makers. The elimination of such entity that poses a threat to the free and fair competition regime at the international level should be the first priority for any competing country. Lack of effective enforcement of Intellectual Property Rights and compliance laws at the global level have therefore raised new concerns on the adaptability of such advancements in the IT sector. Taking cognizance of such a situation some states in the USA have enacted a law called Unfair Competition Act (UCA).

The intensive use of technology by China and other competitors in Asia is visible in the increasing trade share of these countries in the global market.

# 2

# The Unfair Competition Act (UCA) in USA

The UCA includes Sale of Products-Stolen or Misappropriated Information Technology and was enacted by the State of Washington became effective on July 22nd, 2011 (later on introduced by Louisiana). Under this act, a business that manufactures a product while using stolen or misappropriated information technology in its business operations engages in unfair competition when the product is sold in Washington, either separately or as a component of another product, in competition with a product made without use of stolen IT. The law also implies that a US Company selling within the State of Washington is responsible for the suppliers who may be located anywhere in the world. It applies to all manufactured products and to all suppliers from any country, and allows the Government to block the US Company from selling the finished product in the State and compel them to pay damages for what either the Company themselves or their overseas supplier (s) did.

The State of Louisiana also passed a similar act. Similar regulations have also been introduced to other states including Arizona, California, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Missouri, New York, North Carolina, Oregon and Utah.

# 3 Possible Implications for Indian Manufacturing Sector

Indian exporters have been finding it difficult to compete in the US with other competing suppliers. The largest suppliers to the US imports of goods comprise 15 countries capturing more than 75 per cent of the total US imports from the world. India has been witnessing tough competition from countries like China capturing the market share of almost 18.4 per cent followed by Canada (14%), Mexico (11.7%) and Japan (5.9%). Other players who are making a small dent in the market include Saudi Arabia, Venezuela, Chinese Taipei, Ireland, etc. Sector-wise analysis indicates a similar trend wherein China's share in total imports into the US is much higher as compared to India except for certain goods like electronics, electrical goods, chemical goods, automobile sector goods, iron and steel, engineering goods and aerospace products.

Other competing countries include Pakistan, Bangladesh and Thailand for textiles; Thailand, Argentina and Vietnam for iron and steel products; Argentina, Vietnam, Indonesia and Nicaragua for most of the processed food items, etc. Apart from these, there are emerging suppliers from countries like Venezuela, Nigeria, South East Asia, Peru, Algeria etc. South Korea also enjoys a better position than India, but does not provide a tough competition to India unlike what China does to India.

Losing out its share in US imports may be attributed to better price competitiveness leading to high CIF prices of our manufactured goods as in case with China; prevalence of regional trade agreements (RTAs) between USA and competing suppliers (NAFTA) , preferential treatment in the US market to the LDC as in the case of Bangladesh and delivering better quality. In such a scenario, there are not too many options for Indian exporters to retain or increase their market share in the US.

## Advantage India: lesser piracy rates in India than China & South East Asia

UCA clearly states that state may take actions against US companies if they are found undertaking any business transaction with companies which are using pirated software. Therefore, there is an obvious shift witnessed in preferences of the US buyers from buying ONLY from the IT complaint firms. It follows that they will also choose to trade with countries where use of pirated software is minimum. There is an imperative need to understand the ecosystem for the benefit of Indian exporters in the context of UCA since many Indian enterprises are currently using illegal IT, especially computer software leading to the piracy rates as high as 64 per cent as per the latest BSA report. It is important for the Indian manufacturers to recognize that use of infringing IT in the production process is similar to deploying any other illegal factors of production.

However, this piracy level is still lower than many competing countries including China (78%), Bangladesh (90%), Sri Lanka( 86%), Vietnam (83%) etc. Sardonically, the effect of the UCA is not one-sided. Major trading competitors (India's) are technologically advanced and possess mechanism to make rapid changes in the economy due to easy availability of technology and deployment of the same (some more than others).

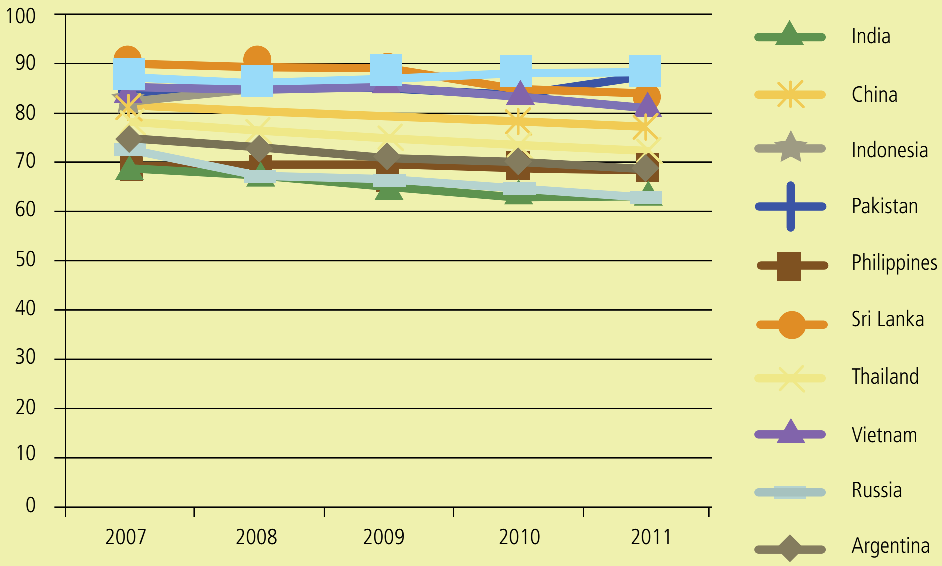
Therefore, the compliance of Indian enterprises to UCA is urgent and necessary to ensure that they do not incur losses when exporting their products to the US market.

In case of being sued, Indian enterprises will face danger of having to pay damages to competitors and incurring attorney's fee. In addition, the products of these enterprises may be attached or they may be banned from selling their products in these states. Not abiding by IP laws makes the competitiveness of many Indian enterprises worse than their counterparts in the region. According to the provisions of UCA, Indian enterprises can even be sued by the regional competitors in the US courts. In their mandates, it is imperative the state authorities should therefore take specific actions to help Indian enterprises understand basic requirements of UCA and improve their awareness of the necessity to comply with the IP laws.

## The China Factor

Indian exporters have been facing tough competition in USA vis-a-vis China, which

**Software piracy rates across countries (%)**




*Source: www.bsa.org*

captures almost 19.5 per cent share of total US imports as compared to India's share of only 1.6 per cent. Sector wise analysis indicates the extent of lag witnessed by Indian manufactured imports as compared to China in the US. Except for gems and jewelry segment where India leads China registering a decent share. Rest of the manufacturing sectors has witnessed stiff competition with China. This trend is clearly noticeable in sports goods, footwear, electronics, textiles, plastics, engineering goods, etc

Chinese goods are available in the international market at competitive rates because of the low cost production. Chinese manufacturers are able to produce the finished products at a highly subsidized price. A greater level of mechanization and IT intervention throughout the manufacturing processes and their logistics and supply chain management has further added to this competitive edge.

UCA therefore brings good news to the Indian exporters of the select sectors since the impact of UCA on China would be more severe on account of two reasons. First, the existing level of use of stolen IT is already very high in China in comparison to India. Secondly, the awareness level especially the SMEs is relatively low. Therefore the question of the hour is how should the Indian manufacturers take benefit of the situation emerging of UCA compliance requirements? Is it possible that by enhancing the awareness of intellectual property, and using lawful IT, Indian manufacturer can respond to this and be better compliant in comparison to China?

| Product line | Share in US imports (%) | |
|---|---|---|
| | **China** | **India** |
| Sports goods | 81.6 | 0.2 |
| Footwear | 71.9 | 1.1 |
| Electrical and electronics | 38.2 | 0.5 |
| Knitted Apparel | 36.5 | 3.1 |
| Engineering goods | 32.5 | 0.7 |
| Plastics | 29.7 | 1.0 |
| Rubber | 16.8 | 1.2 |
| Organic Chemical | 12.2 | 4.1 |

*Source: ITC, 2013*

# 4

# Scope & Objectives

Considering the fact that this new UCA law would lead to the shift in buying preferences of the importers in US from giving weightage to quality, pricing, duties, etc to buying ONLY from countries where companies are IT compliant, trade benefits to the Indian manufacturing units wherein the piracy levels are relatively found to be lower seems bright. This study therefore captures the implications of the law and analyzes the extent of emerging opportunity to Indian manufacturers and exporters due to need for compliance with this law in comparison to its competitors in the US market. The study examines the benefits emerging out of the rising uncertainties in the US market for Indian manufacturers and exporters targeting USA.

Since the intensity of use of IT varies from one manufacturing unit to another, across different processes i.e. marketing, production, design, distribution, finance, etcs the piracy rate and the awareness of the relevant law and its impact on trade varies across manufacturing sectors within the country. This study analyzes the sector specific implications of this law. It further extends an extensive list of specific products within the sector which might probably gain better market share in the US as valuable input to the Indian exporters.

Considering that manufacturing sector accounts for a decent share of employability across sectors, is India in a position to afford negligence on UCA compliance leading to a huge loss in its foreign exchange earnings and employment?" This study captures such crucial issues and highlights the sectors which need immediate attention both from the viewpoints of individual exporter with regard to IT compliance and the Government in respect of drafting suitable policies in terms of providing necessary assistance and support to the manufacturing sector.

The study is relevant in the existing context as the Government of India has announced a national manufacturing policy with the objective of enhancing the share of manufacturing in GDP to 25 per cent within a decade. India can aspire to become one of largest exporters of manufactured goods among low cost countries (LCCs) by 2015 for which the manufacturing sector exports have to take the lead.UCA compliance requirements comes timely and handy in this regard considering the US as one of our biggest trading partners.

# 5

## Monitoring & Guidance

The Study was carried out under a strong guidance from the stakeholders comprising of the sector experts as steering committee members backed by a strong support from one of the leading national chambers of India, ASSOCHAM. Members of Steering Committee were selected on the basis of the identification of Indian manufacturing sectors that have intensive exports to the US; comprising academicians, researchers, IPR experts, industry representatives, heads of Export Promotion Councils & officials from ASSOCHAM. The Committee played a key role in providing valuable advice for conducting research and enriching the study through statistical and analytical tools.

# 6

## Conceptual Framework & Methodological Approach

With the aim of analyzing the business opportunity for Indian manufacturing exports to the US market in light of the law under UCA by virtue of its lower piracy rates vis-a-vis its competitors in the rest of the world ; it was assumed that India would be able to exploit this opportunity only if it had the comparative advantage to supply and at the same time the import demands in the US were on rise and subsequently US buyers were ready to accept products of Indian origin.

The methodology was therefore built with an assumption that for tariff lines in which India had witnessed high growth rate and also carried high comparative advantage, India should have emerged either as a major exporter or have a reasonable presence in the international market, including the US.

Any violation of this trend had encouraged the researcher to look into the possibilities of the reasons hampering this growth. This may be attributed to the prevalence of regional trade agreements (RTAs) and preferential trading arrangements (PTAs) between USA and competing suppliers including NAFTA, Thailand, Ghana, Indonesia, Kenya, Kuwait, Malaysia, Mauritius, Mozambique, UAE, Ecuador and Qatar.

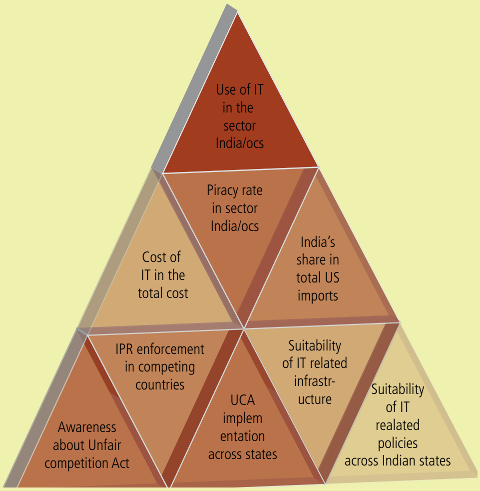
Considering the fact that the software piracy rates in the above mentioned countries were much higher than that found in India, Indian manufacturing sector can attain prominent place in the US market by increasing its use of genuine IT. Hence, a sectoral analysis was conducted of all such sectors which were included in various trade agreements signed between USA and other international suppliers in sectors of export importance to Indian manufacturing sectors.

It was also assumed that the sectors depicting the above trend and witnessing poor share in the US market may be facing restricted acceptance due to higher prices emerging out of poor use of IT and low technological interventions. Hence after identifying the sectors with declining trade flows between India and USA, it became essential to identify the sectors where IT usage were high in India as compared to other competing suppliers. After having analyzed the country-wise and sector-wise IT usage, the next step was to understand the piracy rates prevalent in these countries. A higher piracy rate would be directly linked with the emerging business opportunity for Indian manufacturing and exports sectors. Similarly, a higher piracy rate in India would be deterrent to capitalizing on this emerging opportunity and hence would demand special and serious attention.

It was assumed that India would be able to exploit this opportunity only if it had the comparative advantage.

Countries including China, Saudi Arabia, Israel Venezuela, etc were found to be much more alert and active on IP Renforcement. Therefore the likely impact of the law under UCA also depended on the level of IPR/UCA enforcement in India versus other competing countries. A detailed analysis of these efforts was made across all the major competing countries for the identified sectors and countries were ranked accordingly. Better the enforcement and awareness in those countries; lower was the opportunity for India.

### UCA benefit Index




Finally an effort towards measurement of the emerging business opportunity for Indian manufacturing and export sector had been made by developing a "UCA benefit Index" based on these factors including the use of IT usage the sector, cost of IT in the overall cost, piracy rate in India in the sector, Use of IT in competing countries, piracy rate in competing country, India's share in total US imports, awareness about UCA law, IPR enforcement in the competing countries and suitability of IT infrastructure and policies and UCA implementation across Indian states.

# 7

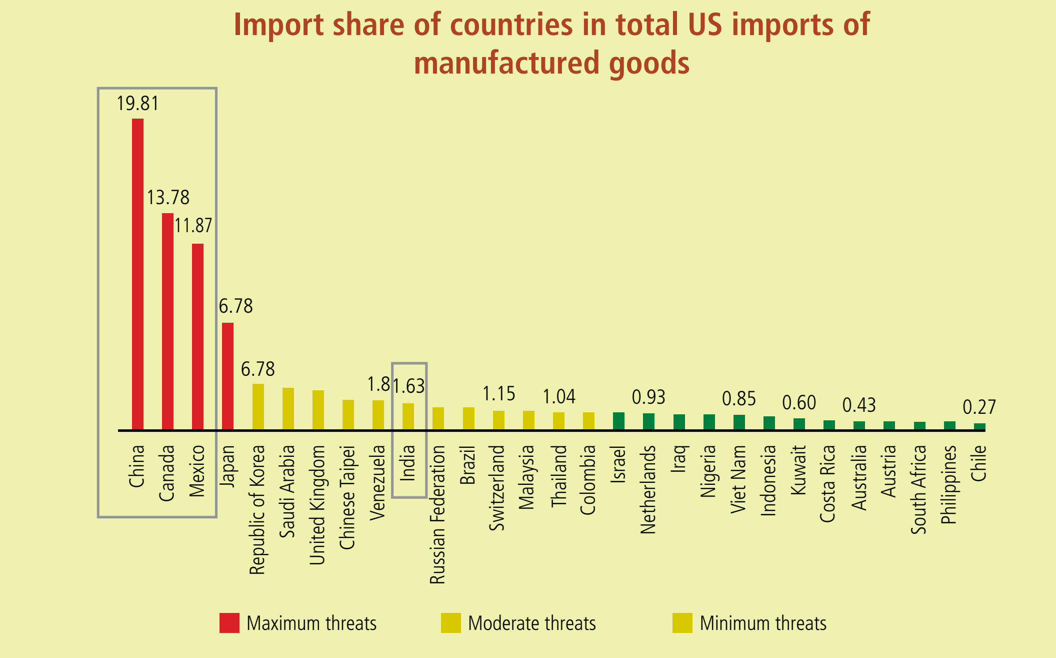
# UCA: an Instrument to get Market Access in the USA

In light of the fact, UCA would result in an obvious shift in the preferences of the US buyers from buying ONLY from the IT complaint firm, it was assumed that apparently the benefit would go to those countries where the firms were being recorded as IT compliant. These assumptions however, led to an interesting set of questions as listed below.

1. Does the benefit out of the law under UCA flow equally to all those countries exporting to the US? If yes, where does Indian manufacturing sector stand?
2. Can this business opportunity be reaped equally by all manufacturing sectors operating in a particular country, in our case India?
3. If not, which factors will drive this opportunity?
4. Which sectors will be more benefitted as compared to the others?
5. Which of these sectors need policy attention on priority basis?

### UCA benefit: India versus competing suppliers in the US

It is quite clear by now that the law under



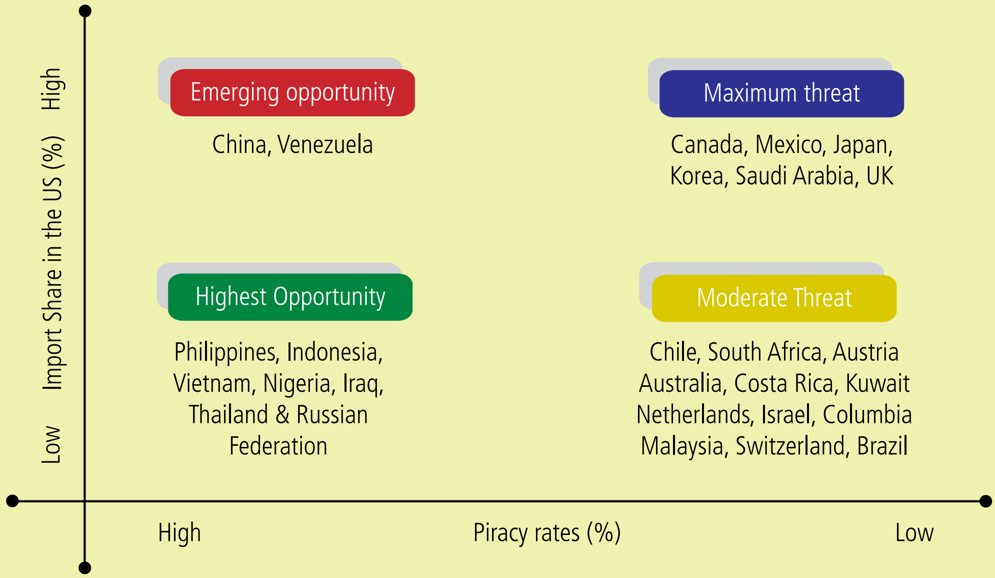

*Source: IIFT analysis based on ITC database (2013)*

UCA may bring about a change in the level of acceptance of goods manufactured in India against similar goods originating from countries with poor compliance levels. The next question therefore was to find out to what extent and against which countries/products does this opportunity exist? For this, a cross country analysis of the piracy levels vis-m̀-vis their import share of manufactured goods in the US was conducted.

As indicated above, the poor share and competitiveness of Indian manufacturing products had been witnessed as compared to other suppliers like China, Canada, Mexico and Japan. Assuming that UCA law may result into shifting priorities of the importers from all other prominent factors like pricing, trading agreements, quality, and standards to only IT compliance, a clear advantage to Indian exporters of the manufactured goods goes against countries where the import shares in the US market is low paralleled with high rates of piracy. This brings us to four scenarios of opportunity/ threats for India vis-m̀-vis other suppliers to the US:

The matrix brings forth the emerging opportunity for India in the sectors/product lines currently supplied by Philippines, Indonesia, Vietnam, Nigeria, Iraq, Thailand and Russia since India already enjoys a better share in the US imports as compared to these countries. Existing Higher piracy rates in these countries will give an additional benefit to India. In the case of China and Venezuela, the situation is slightly different. These countries have a better share in the

**Opportunity versus threat for India in UCA context: cross country analysis**




| Scenario | Competing Country Status | | UCA impact for India (opportunity versus threat) |
|---|---|---|---|
| | Import share | Piracy rate | |
| (i) | Low | High | Maximum opportunity |
| (ii) | High | High | Emerging Opportunity |
| (iii) | High | Low | Maximum threat |
| (iv) | Low | Low | Moderate threat |

US with China capturing almost 19 per cent and Venezuela 1.78 per cent as compared to 1.63 per cent of India. With piracy rates being higher in these countries than India, there is an expected shift of the preferences of US buyers away from these countries in favour of India.

While lower piracy rates and higher share gives advantage to India, at the same time an opposite scenario unfolds, which extends threat to Indian manufacturing exports. This would mean competition for Indian manufacturing exporters is likely to become intensive in sectors currently supplied by Canada, Mexico, Japan, Korea, Saudi Arabia and UK.

## Sectors/Products benefitting from UCA Compliance: Incentive for Indian Exporters

A broad country wise analysis has provided a detailed scenario with regard to India's stand as against other global players in the US. However, the advantage/disadvantage for India against these players would vary from one country to another depending on the product lines in which these players are operating in the US. For instance China, Bangladesh and Vietnam competes with India in textiles; Mexico, Israel and Belgium in gems and jewelry; Ireland, China, Canada in organic chemicals; and China and Mexico in electronics. The sectors expected to reap benefit by UCA compliance turned out to be gems and jewelry, worn clothing, musical instruments, pharma, knitted or crochet fabric, essential oils, sports good, metal products, engineering goods, organic chemicals, electronic, laminated textile fabric, ship base metals, misc. chemical, woven fabric, rubber, cotton, carpets, articles of apparel, construction material, silk, glassware, leather.

> In order to compete better Indian gems and jewelry sector needs to intensify its efforts for enhancement of usage of IT and UCA compliance at a much

To further analyze the sectoral variations in UCA impact, prominent factors including piracy and use of IT were estimated using the UCA benefit index. It was found that in all the competing countries, out of the identified sectors, gems and jewelry; tanning, dyeing extracts and auto components sectors, have high IT usage intensity and lower piracy rates. Hence, in order to compete better Indian gems and jewelry sector needs to intensify its efforts for enhancement of usage of IT and UCA compliance at a much faster rate to secure a greater share in the US market. UCA compliance benefits seem to be highest in case of leather, worn clothing, woven yarn, articles of apparel (knit or crochet), plastics, metal, footwear, rubber, electronics, engineering and glassware considering higher piracy rates in almost all the existing exporters to the US.

On the other hand, India will be able to reap benefits of UCA only if IT compliance is ensured in leather, essential oils and footwear industry followed by metal, textiles, engineering goods and chemicals considering that high piracy prevalence may act as deterrent towards our export growth into the US. Moreover considering higher IT usage by the competing countries across almost all sectors in question, India needs to expedite its IT applications in these sectors. Currently, levels of ICT adoption in India have been found ranging from medium to low. Most of the IT adoptions if found high were in applications dealing with finance typically reported in case of auto components, chemicals, gems and metal. While auto industry has been seen using IT prominently in finance, design and production; chemicals have been found using it in ERP applications as well.

## Analyzing role of Piracy and IT usage towards UCA benefit index

| Sectors | UCA advantage to India due to higher piracy in competing countries<br>Low Moderate High Very High | UCA disadvantage due to high Piracy rate in India<br>Low Moderate High | UCA disadvantage due to high IT usage in competing countries<br>Low Moderate High |
|---|---|---|---|
| Gems and Jewellery | | | |
| Tanning, dyeing extracts | except China all compliant | | |
| Clothing | | | Against Vietnam, Indonesia, Honduras and Cambodia |
| Chemical | | | |
| Leather | Against China | | Against Vietnam |
| Wovens yarns | Advantage against all | | Against Vietnam, Indonesia, Honduras and Cambodia |
| Essential oils | | | |
| Articles of apparel(knit or crochet) | Advantage against all | | Against Vietnam, Indonesia, Honduras and Cambodia |
| Plastics | | | |
| Pharma | | | |
| Metal | Against China and Taiwan | | |
| Footwear | Against China, Vietnam and Indonesia | | Against Vietnam & Indonesia |
| Rubber | Against China, Vietnam and Thailand | Low | |
| Laminated textile fabric | | | |
| Electrical, electronic equipment | Against China and Taiwan | Low | |
| Engineering goods | Against China | | |
| Glassware | High(against China) | Low | |
| Auto components | | Low | |

*Source: IIFT compilation*

## Implications of US RTAs

Further, it has been witnessed that in most of the countries with which US have either an existing RTA or the trade agreements are in pipeline, the piracy rates are much higher as compared to India and therefore US buyers would prefer to buy from India despite having an RTA. These countries include Thailand with 72 per cent piracy, Indonesia (86%), Kenya (78%), Ecuador (68%), Botswana (80%), Morocco (66%), and Peru (67%) as compared to India's piracy rate of 63 per cent. This indicates emerging business opportunity for Indian manufacturing exports in the sectors where these countries have traditionally been the competing suppliers in the US market.

## Advantage India: survival of the fittest!!

| US RTA partner | Piracy rate | Trade advantage to India due to lower piracy rate of 63% |
|---|---|---|
| Peru | 67% | Pearl, mineral fuel, textiles, tin, copper |
| Thailand | 72% | Electronic equipment, machinery, rubber, pearl, plastic, textiles |
| Indonesia | 86% | Knitted apparel, rubber, electronic, footwear, engineering goods |
| Kenya | 78% | Textile, toys, pearl, machinery |
| Ecuador | 68% | Mineral fuel, pearl, wood |
| Morocco | 66% | Electronic, pearl, textile |

*Source: ITC, 2013*

However, Indian exporters need to be cautious of the competition coming in textile sector from Canada, Mexico under NAFTA, Australia, Korea, Singapore and Israel. Almost all the FTA partner countries trading in textiles with the US have lesser piracy rate as compared to India and therefore Indian textiles manufacturers needs to become IT compliant on priority basis.

## Increasing competition in the US for Indian exporters under UCA regime

| US FTA | Sectors under threat for India |
|---|---|
| NAFTA | Textiles, Footwear, Electronics |
| Australia | Metal, electronics, textiles, umbrella |
| Korea | Textiles, Metal, Electronics |
| Singapore | Textiles |
| Columbia | Gems and jewelry, leather |
| Israel | Leather, Essential oil, Textiles, Pharma, Footwear, umbrella |

*Source: IIFT analysis*

## Product lines benefitted out of UCA

After having identified sectors expected to gain in the UCA context, the Study further explores specific tariff lines. From the table above, it is clear that the Indian manufacturing sector is at a better and advantageous position as compared to its competing exporters by virtue of its lower rates of piracy. Hence, a compilation of specific product lines being exported by these competing countries becomes an opportunity window for Indian manufacturing exporters operating in these tariff lines.

| Sector | HS code at 2 digit | Competing country with higher piracy rate |
|---|---|---|
| Textile | 56 | China |
| Chemical | 29 | China |
| Leather | 42 | China, Vietnam |
| Plastics | 39 | China |
| Metal | 82 | China, Taiwan |
| Footwear | 64 | China, Vietnam and Indonesia |
| Rubber | 40 | China, Indonesia, Thailand |
| Engineering goods | 84 | China |
| Electronics | | China |

In-depth analysis of these sectors at tariff lines within the identified sectors at 6-8 digit HS codes below these levels provides an exhaustive list of the sector specific product lines listed in pull-out.

## Import analysis for Indian manufacturing sector

Finally, UCA law requires IT compliance to be ensured throughout the global value chain. IT compliance therefore may help India become a preferred supplier to all those intermediate markets finally targeting the US. This also implies that non-compliance at any stage in the backend value chain may result in the loss of business for final exporter of value added goods to the US. It is because of this reason that the exporters/traders are cautioned against using any pirated versions themselves and also against procuring/ importing from any foreign/domestic market without confirming their IT compliance. An analysis of existing import destinations have been carried out for select manufacturing sectors and an alternate have been suggested depending on their piracy levels in pull-out.

## Analysing role of State level interventions to derive UCA benefit

A regional analysis of IT policies of states was conducted and UCA readiness index across Indian states having prevalent presence of SME clusters was developed. It was assumed that states with better infrastructure in place will have higher probability of enhancing the IT usage and hence the manufacturing clusters present in these states have better chances of reaping benefits in the UCA regime. Finally, it was reported that certain states in the country have taken lead in UCA compliance and it was obvious to assume that benefits to the units operating in these states will be higher. There is a strong need to prioritize UCA compliance in states including Gujarat, Tamil Nadu, Kerala, Karnataka and Andhra Pradesh considering the fact that most of the sector specific clusters expected to derive benefit out of the UCA are located in these states currently leading to disadvantage to sectors including leather, plastic, pharma, metal, electronic and electrical goods highlighting need for better enforcement in these states.

## Developing A Compliance Strategy

Companies having legal software and hardware can actually register their software on a web based initiative of BSA- the Software Alliance. This initiative presents a solution by which companies can better manage their software and connect with those customers, who want to do business with ethical and legally compliant entities, through registration on Verafirm (earlier known as LMR360). Verafirm is a unique platform which provides a brand identity by self-declaration of an entities software licences. You get digital certificate confirming you are Verafirm verified or Verafirm certified company using genuine hardware and software. One can go at www.verafirm.org to get the benefits of a self-guided tool, to manage and monitor software inventory for multiple publishers in one place and help in devising a scalable IT policy for the company for better efficiency and productivity and last but not the least is acquiring a digital certificate to become UCA compliant.

### LMR 360 REGISTRY

The newly-announced License Management Registry 360 (LMR360) initiative–a worldwide on-line voluntary computer software license compliance programme – launched by the Business Application Alliance (BSA). The BSA is a non-revenue trade association created to advance the objectives of the application sector and its hardware partners. The programme is developed in association with software publishers, the programme accommodates the different sorts of licensing structures, terminology and other individuals, to assist firms effectively document, see and verify their licensing computer software information. Firms have a option of limited registration or full fledged registration i.e. LMR360-Registered, LMR360-Verified or LMR360-Licensed – each offering its unique set of positive aspects and benefits. The registration is free. The Registrants will acquire a digital “badge” which they can use to market their products .

## Conclusion

IPR issues are an important feature of the new global economy and plays a critical role especially in a knowledge based economy. The fairness of it lies in profiting from the ownership of IP by paying fairly to the user of other's IP simultaneously. Unfair Competition Act may be a blessing in disguise for India for improving its competitiveness in the US market as the piracy rates are relatively lower compared to the competitors form the rest of the world, by providing an opportunity for industry to cut costs, increase productivity and improve quality by becoming IT intensive. India can encash a huge opportunity by quickly adhering to the licensed software and increase its competitive edge in SME predominant sectors like chemicals, textiles, leather and gems and jewellery since these industries are prominent growth area showing a 27 per cent increase from 2007-11.

## Can we afford negligence? …it's now or never!!

UCA compliance, a serious IPR issue in global trade, is clearly reflected in the efforts taken up by many countries including China, Mexico, Costa Rica, Pakistan, Paraguay, Peru, Tajikistan, Ukraine, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland as explained in the Study. It's therefore high time for Indian manufacturing exporters to take up IT compliance as a serious management activity and gain market share before other non-compliant competitors taking 'first mover' advantage. More so considering that most of these SME predominant industries accounts for nearly 5-15 per cent share of the country's total exports basket; forms about 4-8 per cent of the total exports of the world; and are one of the leading sectors in India in terms of value of exports and employment generation. This sector is currently providing employment to around 1.8 million people. In such a scenario where SME has become the lifeline of India's economy; is India in a position to neglect the UCA compliance? Such negligence will bear a huge cost for the country leading to a big loss in its foreign exchange earnings and further leading to loss in employment.

This is an important area in the conduct of international trade – and one that provides immense opportunity to Indian manufacturers. It is definitely in the interest of the Indian manufacturers and exporters not to put their businesses at risk by exposing them to lawsuits; rather they should strengthen their position as the preferred suppliers to the US in the longer run by using legal IT. UCA willing, the world will see and use more of Indian manufactured goods in times to come. It is time for us – to ACT and LEGALIZE.