

**SCOPE AND CHALLENGES OF INTELLECTUAL
PROPERTY RIGHTS OF BATB**

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LETTER OF TRANSMITTAL

12 December, 2005

Dr.Golam Ahmed Faruqui
Assistant Professor
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Dear Sir,

Subject: Letter of Transmittal for the Internship Report on Intellectual Property Rights of British American Tobacco Bangladesh.

It gives me immense pleasure in presenting herewith the dissertation report which was assigned to me for fulfillment of the Bachelor of Business Administration degree and as well as studentship of EWU. In accordance to your instruction, I tried my level best to prepare this report on Intellectual Property Rights of BATB. The internship program was very important as it helped me to gain experience from the practical field and I am grateful to you providing me this opportunity of gaining such practical experience on company Secretarial matters of British American Tobacco Bangladesh.

Thank you for your valuable guidance, tiresome effort and constant attention as and when required in preparing this report.

With Regards.



Sabrina Islam
ID-2001-2-10-013

Acknowledgement

Effort of one is not sufficient to materialize one's dream to create a beautiful thing. It needs good wish, a number of assistance, guidance, help and co-operation from various sources. Based on such co-operation and guidance I have prepared this report.

At first I would like to express my sincere gratitude to my Professor Dr. Golam Ahmed Faruqui who encouraged me to prepare and submit this report in due manner. Not only that he also provided me his valuable time and advice.

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At the end, I seek apology for the errors and shortcomings as contains in this report in spite of my best effort.

✓ Presentation is well prepared.
✓ Report is good.
Final grade **A**

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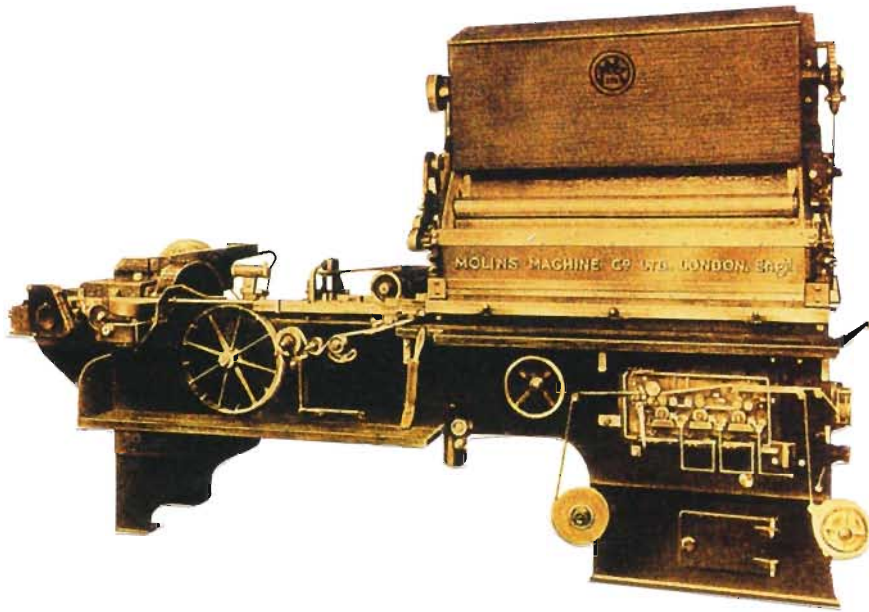
SCOPE AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF BATB

EXECUTIVE SUMMERY

All objects which can be owned by an individual under a legal system are termed as property. The objects to which the right to ownership so extends are either corporeal, i.e. having some tangible existence or incorporeal, i. e. having intangible existence. This incorporeal property having intangible existence is the creation of developed system of law. Those are termed as intellectual property. Those properties are the creation of the human mind, the human intellect. In general, the most important feature of such property is that the proprietor or owner may use his property as he wishes and nobody else can lawfully use his property for commercial purposes without his authorization. A strong and were functioning intellectual property system is a 'SINE QUA NON' for social, cultural, economic and technological development of a country. The intellectual property law, a product of the industrial civilization, has assumed equal importance both at national and international level. The laws relating to Copyright, Patent, Design, Trade Mark etc, are known as the intellectual property laws. The word 'intellectual' means possessing or showing intellect or mental capacity especially to a high degree of an intellectual person; guided or developed by or relying on the intellect rather than upon emotions or feeling; characterized by or suggesting a predominance of intellect. 'Property' means that which a person owns, the possession of a particular owner; ownership right of possession; enjoyment of any 'Rights' means that which is due to anyone by just claim, legal guarantees, moral principles. Therefore, Intellectual Property Rights of any Patents or Process must have some ingenuity and fall within the category of 'inventions' where the 'intellect' must have played a predominant role. 'Discoveries' which already have existed in nature but only have been retrieved by someone and put to benefit of people should not be equalized with inventions. Biotechnology involves use of scientific and engineering principles for processing of materials (organic or inorganic) using biological agents to provide goods and services.

Intellectual property laws of Bangladesh had its origin in British India. In India, there was no statutory law on copyright until 1914. The English Copyright Act, 1911 was extended to India in 1912. In 1914 the Indian Legislature passed the Copyright Act, 1914 The Indian Copyright Act, 1914 was the law on copyright until 1962 when the Copyright Ordinance, 1962, was promulgated in the then Pakistan of which Bangladesh was part. The provisions of the Ordinance were the law in force in Bangladesh by virtue of Article 149 of the Constitution of the Peoples Republic of Bangladesh. The said Ordinance was promulgated to bring the laws in conformity with the International Convention for the Protection of Literary and Artistic Works, 1886, known as the Berne Convention. The Berne Convention was amended from time to time, the latest being in Paris in 1971. There have been several other International conventions for protection of copyright among the states-parties to the Conventions such as, the Universal, Copyright Convention signed in Geneva in 1952, the Universal Copyright Convention-Paris Revision, 1971, signed in Paris and the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organization, 1961, known as the Rome Convention. In addition, there is the Agreement on Trade Related Aspects of Intellectual Property, 1994, known as the TRIPS Agreement. Bangladesh is a party to the TRIPS Agreement. Intellectual Property Rights were first raised as a multilateral trade issue in 1986 under the General Agreement on Tariffs and Trade (GATT) to crack down on counterfeit goods. But with many industrial countries interested in negotiations on trade liberalization to tighten control over technology, this narrow focus was soon extended to include many other areas. Although each country implements the Intellectual Property Rights law at the national level, the TRIPS Agreement imposes minimum standards on patents, copyright, trade marks and trade secrets. These standards are derived from the legislation of industrial companies, applying the form and level of protection of the industrial world to all WTO members. This is far tighter than existing legislation in most developing countries and often conflicts with their national interest and needs.

SCOPE AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF BATB



1. INTRODUCTION

1.1. Background Of The Company



BACKGROUND

The name of organization is British American Tobacco Bangladesh. It is a subsidiary of the regional division known as the MESCA (Middle East, South and Central Asia). British American Tobacco Bangladesh has several regional divisions across Bangladesh however; the head office is located in DOHS Road, Mohakhali, Dhaka, Bangladesh.

Historical background: The inception of British American Tobacco Company Limited was in 1902 through a mutual agreement between Imperial Tobacco Company of the UK to form a joint venture with The American Tobacco Company of the USA. The parent companies agreed not to trade in each others territory, for providing brand rights for use in their respective markets, and assigning trademarks, export businesses and other subsidiaries. Two-thirds of the company stock was owned by The American Tobacco Company.

BAT started operating in several but diverse countries. However in 1911 The American Tobacco Company was adjudged to be a monopoly and was broken up resulting in the shares of the British – American venture to be divested. British American Tobacco was listed on the London Stock Exchange and most of its American parent shares were purchased by British investors. The company was free to conduct business activities all over the world except in the UK where there were still territorial agreements with Imperial Tobacco. Imperial Tobacco still held on to its one -third ownership but the situation finally changed during the 1970's.

In 1914 the company expanded into Brazil, acquiring the Brazilian Tobacco Company at Souza Cruz. It is one of the worlds leading tobacco leaf processors and exporters and sells seven of the country's ten most popular brands. BAT entered the US market by purchasing Brown and Williamson which now has become the third largest cigarette manufacturer and marketer. BAT started growing during the 1930s. Independent distribution networks were developed which then became subsidiaries of the company. Leaf growing and manufacturing operations were established in India, Indo-China, Argentina, Mexico, and Nigeria.

After the 1960s' there was a diversification and expansion towards pulp and paper. The companies formed were Wiggins Teape and Appleton Papers, British American Cosmetics and later financial services that in the 1980's the group owned Eagle Star, Allied Dunbar and Farmers Group. By 1990 BAT industries had decided to focus on tobacco and financial services and disposed of almost all the other companies. In late 1997 the Board of BAT industries announced a proposal to de-merge the financial business and merge with Zurich Group. When the above task was completed in 1998 British American Tobacco p.l.c was separately quoted on the London Stock Exchange. The other activities include the merging with Rothman Intentional in 1999.

British American Tobacco Bangladesh: It is one of the oldest and largest multinational companies operating in Bangladesh.

BATB started its journey as Imperial Tobacco Company Limited in the undivided India in 1910. Its head office was located in Calcutta and in 1926 a branch office was setup in the Sales Depot of Moulovi Bazar and cigarettes were made in Carreras Ltd., Mungair. Calcutta. Imperial and Carreras merged into a single company in 1943. At that time it used to produce Scissors 105, Passing Show, State Express 999 and Gold Leaf, locally. It also used to import State Express 555 from UK. Later, Imperial Tobacco Company Limited changed its name to British American Tobacco.

Pakistan Tobacco Company was established in 1949 to meet the demand for cigarettes of Pakistan. The monthly sales volume in the former East Pakistan soon reached 40 million. All the local cigarettes i.e. Capstan, Wills, Scissors, Passing show, Berkeley and Tiger were manufactured in Mouripur Factory, Karachi, West Pakistan. And Tiger were manufactured in Mouripur Factory, Karachi, and West Pakistan. Some were sold in Bangladesh too. Ardath F.T., The Three Churchman No. 1, Player's No. 2, Senior Service, Craven 'A' F.T., The Three Castles", Gold Flake, Player's Navy Cut, State were soon added to the list of top brands of cigarettes available along side the Express F.T. 999, State Express 555. These cigarettes imported from London.

The competing brands were Abdullah, Imperial preference, Cavander's STD, Virginia No. 10, Du-Maurrior F.T., De-Luxe Tenor, Orient, Montes, Gold Link & Jeep.

The sales Depot was separated from the cigarettes warehouses and were shifted to Omar Sons Building, Motijheel (1954)-now known as Red Cross Chamber. In 1965, the Sales Depot was upgraded to the status of the Branch Office and was shifted to ALICO Building in Dhaka. The building, after the emergence of Bangladesh became the Head Office Of Bangladesh Tobacco Company Limited till 1992.

26.18 acres of private land was requisitioned and acquisition between 1952-54 in Vhatiary, Fouzdarhat Area, Chittagong for PTC by the Government of the then East Pakistan. The first cigarette factory set up on that location and production of its first cigarettes resumed- King Stork in 10ss, in March 1954.

The second factory was set up in 1965, 30th June in Dhaka on a 16 acres of land on a 90 years lease that was purchased from the Cantonment Board. Following the 1965 war with India, the import of 'Tendu' leaves; used as wrappers for hand made biris, was banned. This gave rise to huge demand for paper wrapped machine-made-cigarettes and a large number of cigarette factories about 19, were set up. Initially Capstan, Bristol, Scissors, Star were manufactured in Dhaka Factory while the Chittagong Factory produced Star and Scissors. The monthly sales of cigarettes in East Pakistan in the 1970's reached 1200 million while the combined production capacity of the two Factories at Dhaka and Chittagong was only 900 million.

After Bangladesh came into being , all properties of Pakistan Tobacco Company Limited (PTC) were declared as " abandoned property" and the ownership of the Company was vested in the Government under the Bangladesh Abandoned Property (Control Management and Disposal) Order, 1972 (know as P. O. 16).

The new infant Government allowed the local and the expatriate British Management of the former PTC to continue to operate the Company and the reconstitution process was set in motion in 1972 by BAT.

The Marketing Department afterwards became an allotment centre. Its functions were limited to the allotment of whatever cigarettes that could be produced in the two cigarettes factories. There was an acute shortage of skilled man power, tobacco, Wrapping materials, spare parts and foreign currency.

All these except the foreign currency used to come from West Pakistan. BTC after the exhaustion of the pre-independence stocks of tobacco and the wrapping materials ran hand to mouth for a few years.

After independence of Bangladesh, import of hand-made biris and 'Tendu' leaves as wrappers for locally made biris, were allowed from India and low-priced paper wrapped cigarettes rapidly lost both grounds and the volume to biris due to economic hardship, scarcity of cigarettes-for want of tobacco, wrapping materials and spare parts for the running of the Mollins Mark V makers and the M 2 and the Duplex packers. The sales volume came down to 550 million per month in 1972-73 from its early peak of 1,200 million of a year ago. As the company fell into a crisis of foreign exchange along with management and technical support, the company had to develop its own resources mainly the raw inputs.

The proposed name of the company to be incorporated in Bangladesh was Tobacco Company Limited (TC) and the company operated under this name till 2.2.1972. TC sought permission from the Ministry of Finance on 28 December, 1971 and the Ministry of Industries (the Ministry) on 30 December, 1971 for permission to operate the bank accounts which were in the name of Pakistan Tobacco Company Limited (PTC).

The majority shareholders of British American Tobacco Company Limited of former PTC proposed to the Government, on 24 January 1972, that BAT be allowed to reconstitute Bangladesh Tobacco Company Limited as a joint venture company. The UK shareholders will have 2/3rd interest and the Government a 1/3rd interest in the Company. The business, assets, liabilities of the former PCT will be vested in BTC by authority of the Government. On 25.1.72 the proposal was granted. The Bangladesh Tobacco Company Limited (BTC) was incorporated on 2.2.1972 as a private limited company with only three shareholders of Tk. 10.00 each-2 from BAT and 1 from the Govt.

On receipt of the Ministry of Industries 'letter dated 11th October, 1973 vesting the right of the assets of the former Pakistan Tobacco Company Limited located in Bangladesh into Bangladesh Tobacco Company Limited and the Directors capitalized those assets to the extent of Tk. 4,49,99,970 which added to Tk 30 capital already subscribed, amounted to Tk. 4,50,00,000. The first AGM was held on 27th August, 1974 in Motijheel.

As BTC has always been a part of BAT and over the years BTC has proved to be the perfect representative of BAT by manufacturing and marketing quality brands of cigarettes which met the standards of BAT. In recognition to its commitment towards BAT and the important role it played on BAT group, BTC was later named as British American Tobacco Bangladesh Company Limited (BATB).

SCOPE AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF BATB

MISSION of BATB

Double the net revenue by 2005

Growing our share of the total tobacco market

Dominating key identified segments

GLOBAL VISION OF BAT

To achieve leadership in all aspects of the global tobacco industry

GLOBAL BUSINESS FOCUS

“Market leadership”

VISION of BATB

“To extend our leadership through World Class performance”

In its brand portfolio British American Tobacco Bangladesh has a wide range of cigarettes for different consumer segments. Starting from Benson & Hedges (Lights & Regular), which are currently imported from Europe, to locally produced International Brands such as State Express 555 and John Player Gold Leaf (Lights and Regular) and also National Brands like Capstan, Star family and Scissors family are members of the portfolio. BATB strictly practices the industrial safety measures and is committed to conform to internationally accept environmental standards. All of the BATB areas are equipped with sufficient equipment, gears and water supply. BAT group head quarters recognized BATB's level of safety practices with awards. It has also received the prestigious Environmental, Health and Safety Silver Award in 1998 and 1999 in a row for no lost time accident in any part of the company. British American Tobacco Bangladesh is involved in various types of social activities. It is proactively involved in afforestation program in the rural areas of the country since 1980's. Every year it distributes amongst the farmer and other agencies over two million plants free of charge. Till now the company, has planted 32 million trees across the country. The company has been awarded Prime Minister Afforestation Award in 1993, Presidents Award in Agriculture in 1975, Sports Journalist Award and FAO Award in 1998. Besides this, the company is also involved in vegetable seed multiplication project, supports philanthropic organizations like Sandhani and other Social and Cultural groups.

At the end of 1993 the company adopted a change management program called MRP II, the acronym for Manufacturing Resource Planning, with the objective of becoming a world-class company with world-class systems, processes, products, and people. The strategy for "Partnership Excellence Program" is based on a clear understanding on meeting world-class performance and to achieve MRP II Class A. BATB conducted series of training for the vendors and the result was very positive in terms of quality and delivery improvements. Back in 1997, the organization was a Class C company. In 1999 it had achieved the status of Class B and in this year, 2000 the company was awarded Class A status which has made BATB the only member in BAT group to achieve A in four categories in one go. The categories are Strategic Planning, People and Team, Planning and Controlling, New product

development, reducing lead-time. This year, the company is working on getting class A in Continuous improvement. The parent company of BATB is called BAT Co or British American Tobacco. They are the major shareholder of BATB. The operations of BATB are done according to BAT Co regulations and BAT Co looks after the management of BATB. BATB management is trained by BAT Co and on many occasions BAT Co sends their own managers to work in BATB. Different departments have different structure according to their function and responsibility. BAT maintains a modern organizational structure headed by Managing Director. Managing Director is the operational head and national sales manager. Head of every department carries out their functions with the help of line managers. Other positions of the organogram are directors, regional manager, secretary, assistant manager, area manager, territory officer, supervisor and other staffs. It has seven departments with two supporting departments.

The “Board of Directors” and Executive Committee (EXCO) govern the overall activities of the company. The Board of Directors is responsible for protecting the rights and interests of all shareholders and are held accountable for the overall management of the entity. The British American Tobacco Bangladesh Board consists of eight Directors, comprising the Non-Executive Chairman, five other Non-Executive Directors and three executive Directors which include the Managing Director. The key functions of the Managing Director are clearly defined. The Board meets at least 6 times a year and makes decisions on key matters. The Board is responsible for the overall system of internal control for the company and for reviewing the effectiveness of these controls. The system is designed to manage risks that may impede the achievement of the company’s business objectives rather than to eliminate these risks. Responsibilities for implementing the company’s strategy and day to day operations are delegated to the Executive Committee, which meets monthly. The Executive Committee is chaired by the Managing Director. The other members include the Deputy Managing Director and the functional heads of Human Resources, Corporate and Regulatory Affairs, Operations, Leaf, Brand Marketing, Trade Marketing & Distribution, Finance and Information Technology of whom three are Executive Directors.

Company Mission

Double the net revenue by 2005

The company is the aim of doubling its net revenue by the year 2005. This requires continuous and consistent growth in revenue in the coming years. The idea that the word used is REVENUE and not PROFIT shows that BATB is a responsible company and wants to generate profit for all its stakeholders and create and maintain a win-win situation for all.

Growing our share of the total tobacco market

The biri segment has captured the major share of the total tobacco market. BATB plans to shift smokers with the habit up from the biri segment into the cigarette segment. This would ultimately help them achieve their first mission statement.

Dominating key identified segments

The total brand portfolio of the company is divided into 3 major segments- Premium, medium and low. BATB is already dominating the Premium and medium segment in the market. It faces tremendous competition in the low segment. BATB wishes to dominate all the key identified segments and they have plans to act accordingly. The company doesn't have any brand competing in the very low segment.

Company Vision

“To extend our leadership through World Class performance”

BATB vision to achieve leadership is not only about market share in domestic or the global markets alone. It is also about the Company taking qualitative leadership i.e. to be true leaders in their own eyes and in the eyes of stakeholders. They want to be recognized as being a responsible company. The company believes that the management already possesses world class products and skilled people. They are now focusing on improving their process capability through a variety of world class certification programs. The company has already achieved the prestigious MRPII Class A certification in all five chapters.

GLOBAL GUIDING PRINCIPALS:

Strength from Diversity:

✦ **Actively utilizing diversity - of people, cultures, viewpoints, brands, markets and ideas - to create opportunities and strengthen performance. Strength from Diversity reflects the cultural mix within the Group and a working environment where employees' individual differences are respected. It also reflects their aim of harnessing diversity - of people, cultures, viewpoints, brands, markets and ideas - to create opportunities and strengthen performance.**

Open Minded:

✦ **Being an active listener, genuinely considering others' viewpoints and not prejudging. Open Mindedness reflects openness to change, opportunities and new ideas, including ways of addressing regulatory issues and the changing expectations in society. They seek to be active listeners, genuinely considering others' viewpoints and not prejudging.**

Freedom through Responsibility:

✦ **The freedom to take decisions and act on them obliges BATB to accept personal responsibility for the way they affect BATB's stakeholders. Freedom through Responsibility reflects the devolved nature of the Group and their belief that decisions should be taken throughout the organization at the appropriate level, as close to the consumer as possible, and that decision makers should accept responsibility for their decisions.**

Enterprising Spirit:

👑 The confidence to seek out opportunities for success, to strive for innovation, and to accept the considered risk-taking that comes with it. Enterprising Spirit has been a characteristic of BAT's business through a century of operations. It is reflected in their ability to grow the business and its value amongst many challenging environments. Enterprising spirit also includes the constant strive for innovation and the acceptance of risk taking as a part of doing business.

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2.0 Methodology

It is clear that the survival of any company is based as much on information as it is on raw materials, agriculture or manufacturing. The information age is a fact of life, it is here and we are living it. Companies are increasingly becoming aware of the value of the information system that would allow them to gain competitive advantage by better managing their Information Systems. At the heart of effective Information System is access to data. Whether intuitive or learned, whether in manual or automated form, the ability to access appropriate information is the ultimate success factor for the company.

2.1 Data collection methods:

2.1.1 The interviews:

The initial source of data was series of some semi-structured interviews undertaken. For this project data was collected through interviewing the operators and the managers of the Distribution Houses. The author went through an informal discussion on a basis of semi – structured interview to find out the general findings. Finally the author also interviewed the managers of distribution houses so that the main managerial problems can be figured out.

2.1.2 Secondary Data:

The analysis of the functions of the various departments of BATB and to get better idea about the system, author used secondary data. Company literature was used to get a clear picture of the organization and DIS usage in the organization. Computer operators of distribution houses showed and explain how DIS works. As mentioned before in the literature review, problems, benefits, reasons for failure, ways to develop DIS was evaluated through talks and observation plus demonstration of the system by the computer operators of the distribution houses of BATB.

BATB is a process-based organization, instead of having isolated departments the company has some support functions and some core functions. Typically the structure of the organization can be explained through the supply chain. In BATB it is called seed to smoke as the supply chain process.

The core functions of BATB are:

- **Leaf**
- **Production**
- **Brand Marketing**
- **Trade Marketing**
- **CORA.**

Along with the core functions there are some support functions such as

- **HR**
- **IT**
- **Finance**

CORE FUNCTION:

Leaf Operations

Mission:

To exceed customer expectations by providing quality tobacco at competitive price.

The leaf department of BATB is responsible for Tobacco Growing, Production & Procurement, Green Leaf threshing and packing, leaf bending, leaf export and import. BATB procures almost 80% of their leaf from their own cultivation. The Leaf department is involved in cultivating and purchasing flue-cured tobacco. BAT does not own farmland nor does it employ farmers directly to produce the tobacco it uses for cigarette production. Instead, each year the company registers thousands of farmers along with their land, to grow and cultivate tobacco crop. The company provides seed, fertilizer, and other loans to the farmers throughout the crop season to ensure quality growth. At the end of the season BAT buys fixed quantities of tobacco from the farmers, paying rates based on the grade of the crop. Tobacco growing and buying activities is conducted throughout the country. The two main areas are Kushtia Leaf Division and Chittagong Development Area.

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3.0 GENERAL INFORMATION

3.1 Company Profile and Structure



Tobacco processing

The Green Leaf Threshing Plant in Kushtia is used to treat the raw tobacco and convert it to a form suitable for use in cigarette production. It is a seasonal factory operating for six months of the year, on two shifts per day. The remainder of the year is used to clean the machinery and make modifications as necessary. Each tobacco leaf that is processed at the GLT is separated into four components- tip, lamina, stem, and by product. At the beginning of the process flow, tips of the tobacco leaves are cut off by a calibrated cutter. The leaves are then passed through the sand reel where foreign materials and dirt are separated. The tobacco leaves are then proceeds to the threshing line to separate the lamina from the stem by hitting the leaves. The separated lamina are then dried and the re-dried lamina is then packed at a temperature of about 43 Degrees Centigrade with approximately 12% moisture content for storage. The separated stem, meanwhile, moves to the stem dryer where it is re-dried for storage purposes and then sent to the stem packer. The moisture content level of the stem is brought to around 12% at the time of storage. By-products are sold to the outside contractors.

Exports

Although the primary objective of leaf department is to ensure continuous supply of tobacco, leaves to export in a highly competitive world market as well. Exports of tobacco during 1997 generated more than two million dollars, with sales being made to UK, Hungary, New Zealand, Egypt, and the USA. In the year 2000 BATB made a profit of \$ 309,506 from leaf exports.

The various Advantages of leaf export are:

- **Exports earn foreign exchange**
- **Exports help in attain favorable attitudes of Govt. and Public**
- **Helps to improve overall domestic quality**
- **Preferential corporate tax on export profit**
- **Inter group trading**
- **Handling of BAT and international Leaf dealers enriches Knowledge and Awareness.**

FUTURE CHALLENGES:

The cigarette market is growing and in order to sustain the current pricing of the products, more and more imported tobacco grades are being substituted by locally grown tobacco grades. This means that Leaf Department has to manage the future challenges to sustain competitive advantage and in order to do those following programs have been identified:

- **Improvement of barn capacity.** This means that barn efficiency & utilization has to be increased through technological innovation but without increasing the cost of manufacturing Barn.
- **Green Leaf threshing plant is currently over manned.** Employee productivity has to be improved so that tobacco-processing cost becomes competitive.
- **Striving for continuous quality improvement is essential in order to substitute the imported grade by local grades for the premium brands.**

Leaf department has to ensure that the buying cost of the tobacco should not increase compare to the current buying pricing policy. But this does not mean that the farmer

- **will lose any money in the overall process.** In order to achieve that Leaf has to ensure that the overall growing yield has to increase significantly.

Manufacturing

Mission

We delight our customers with superior quality product through flexible operations

In order to support the mission, Production department is performing the following activities successfully:

- **Support brand portfolio / new product launch.**
- **Availability/product harmonization.**
- **Quality/ meet international standards.**

- **System/ ISO 9002.**
- **Low cost producer.**
- **Competitive position of EH&S in the group (Achieved 3.4 on scale 4.0).**

The PMD(Primary Manufacturing Division) process

The Primary Manufacturing Department (PMD) is responsible for further conditioning of the domestic and imported tobacco to make it ready for cigarette production. The tobacco passes through a set of integrated and regulated machinery whose purpose is to blend the different "Packing grades" in specified proportions, convert bales into "Rag" suitable for use in cigarettes, and bring tobacco to a uniform temperature and moisture.

Threshed lamina and stem are not of the size suitable for cigarette preparation. To make them suitable for cigarette making the following operation have to be performed.

- **The bales of lamina which comes in a compressed form. Have to be 'opened'.**
- **Lamina has to be cut to a size suitable for cigarette making.**
- **Before cutting, the moisture content has to be raised to be a level, which is required so that excessive dust is not produced.**
- **After cutting, the moisture content has to be raised to a level, which is required for cigarette making.**
- **After the dryer stage, the temperature of the tobacco is bit higher. It has to be cooled down.**
- **The moisture content of the stem has to be increased to a level, which is required for cutter stage.**
- **Stems are to be cut to a very thin size.**
- **The 'fill value' of the cut stem has to be increased by applying sudden High Velocity Steam (in the HVST. Stage)**
- **After the HVST. Cut stem has to be dried to a level required for cigarette making.**
- **Apart from the above 'normal' functions, casing has to be added to some Air Cured Tobacco to increase the sugar content.**

SMD (Secondary Manufacturing Division)

The secondary manufacturing department (SMD) uses the tobacco that is blended and conditioned by the PMD along with wrapping materials to manufacture cigarettes. The PMD delivers its final processed tobacco to the Cut Tobacco Store (CTS). The CTS has a 50-ton storage capacity and the tobacco is stored there typically for one and a half days before it is used. The SMD brings in the processed tobacco from the CTS as needed for production along with wrapping material.

Shipping

The finished cigarette stock is brought in from the holding room at the Secondary Manufacturing Department and kept at the shipping prior to delivery. The godown has a capacity of 260 million cigarettes. Trucks belong to outside contractors arrive daily to deliver the stock to the various Regional Trade Marketing Offices (RTMOs) around the country. The marketing department issues a daily shipping program specifying the stock that needs to be allocated. This information is processed by software to generate a truck allocation scheme. Trucks going to Dhaka carry 2 million cigarettes per trip and those going outside Dhaka carry 3 million cigarettes per trip. Vat documents are sent along with the trucks.

Trade Marketing & Distribution Department

TM&D Mission:

To reach our target consumers in the most efficient and effective way by becoming the benchmark supplier to the trade within strategic channels in every market place where we do business. The Trade Marketing and Distribution department identifies the areas in which best practice must be achieved to enable markets to meet the Trade Marketing and Distribution *objectives*, which are:

- Create an efficient entry barrier against international competition.
- Improve our benchmark supplier status to the trade pioneer among all FMCG companies.

Trade Marketing & Distribution Department has the responsibility to reach the ultimate consumers through *trade*, e.g. Retailer. The emphasis is not only on what volume is being sold to the retailers (Sell-In), but also on the volume sold out to

consumers (Sell-Out). The mission of TM&D is to reach the target consumers in the most efficient and effective manner by becoming the “Benchmark Supplier” to the trade within strategic channels in every market where they do business.”

The Marketing Department and the Production Department activities are highly correlated. According to the needs of the Marketing Department, Production Department carries out the cigarette manufacturing. The marketing Department forecasts the sales volume of the different brand cigarettes for the coming business year and based on this, prepare a marketing plan known as the Sales Operational Plan (SOP). According to the Plan, Marketing Department communicates the brand wise sales target for each month to the Production Department. Based on the SOP, Production Department sets its production schedule. The inventories of cigarettes are also evaluated at this stage to find out the actual output to be produced.

The British American Tobacco Bangladesh has a well-defined mission for the marketing and distribution of products, which is to reach the target consumer in the most efficient manner by becoming the benchmark supplier to the trade within the strategic channels in every market where the company operates. A well-organized trade marketing team is working continuously to make this mission successful; furthermore the whole country has been divided into six regions to perform the marketing activities efficiently. Moreover the regions are further spitted into 11 areas. Right now there are 6 regional managers, 12 area managers and 42 territory officers working under the Head of Trade Marketing. At present, there are 62 distributors involved with BATB who are responsible to make the products of the company available throughout the country.

Distribution Channel

The Company sells their product to the distributors; in turn the distributors sell to the retailers and cash & carry as well. Cash & carry are nothing but wholesalers. Cash & Carry are needed because at times the retailers may not have adequate funds to buy the required quantity.

Regional Go-down: There are five regional go-downs through out the country to fill every regional demand just at the time of need, and to overcome various uncertainties related to physical distribution of products, every regional go-down is

directly controlled by separate Regional Manager to face the regional physical distribution challenge.

Carrying Contractor: They are the party engaged in the physical movement of cigarettes from head office godown to regional office godown. Normally they are the truck owners who take all the risk and responsibilities of physical movement of goods between two warehouses.

Distribution Warehouse: All distributors have their own warehouse, where cigarette can be kept safely while not degrading its product quality. Distributors buy the cigarette from BATB and from that point ownership and all responsibilities of the products go under the distributors.

Internal Carrying Agent: They are like carrying agent but carry small volume of products. Normally they are local truck owners. They carry products from, regional go downs to distributor warehouses. They also take al the responsibilities and risk engaged in physical movement of products.

Opening Stock at Distributors' Office: Apart from the warehouse, every distributor also maintains another stock at their office. This stock *is* for maintaining any change in market demand instantly. Dealers sometimes sell cigarette through their counters to face special situation.

Delivery Van: All the delivery vans are owned by the dealers to assure the supply of cigarette on the door of wholesalers, cash & carries and retailers just according to their demand. There are two types of delivery vans. One is Scooter van and another is Rickshaw van.

Cash & Carry: They are businessmen who sell cigarette directly to consumers and at the same time they sell cigarette to the retailers.

Retailers: Retailers are at the end of the physical distribution system of cigarette Selling products directly to the consumer.

Distributors: The financial standing of the distributors, their reputation in the local region, and prior related business experience are some of the key criteria examined when a distributor is selected. The regional manager, supply chain manager and head of trade marketing prior to making a decision check the evaluation forms and field recommendations. After a distributor is selected, they issue a 'letter of intent'

that specifies certain requirements of the company. After these requirements are satisfactorily fulfilled, a formal 'letter of appointment' is issued.

Distributors buy fixed volumes of cigarettes from BATB at a set price and resell to the retailers. The company closely monitors their activities and performance and ensures them to operate in the market at the highest standard. Distributors follow a work routine set by the company, generating paper work, and reports as required. Distributors are assigned a certain geographic region within which they sell their cigarettes. Different routes are assigned within the region that helps to sell their stock. Vehicles owned and operated by the distributors are responsible for carrying stock along these routes and selling it to the retailers.

Retail Outlet Classification

The British American Tobacco Bangladesh has classified all the retail outlets into three categories, these are - Convenience, Grocery and HoReCa.....

Convenience Outlet: All shops where consumers generally go without any purchasing intention fall in this category. The consumers like to buy product on impulse from this sort of outlets. These outlets generally maintain a limited product range and do not offer flexibility in prices.

Grocery: These are the outlets where consumers visit on a regular basis with a purchasing intention. They generally make a list of items before they will visit these sorts of outlets. These outlets typically offer variety in terms of product range and also flexibility in prices.

HoReCa: Shops like hotels, restaurants, and cafes are considered in this category. The prime characteristic of a HoReCa is that the shops must have a seating arrangement. It is assumed that consumers visit those shops with the intention to spend some time. These outlets range from small roadside cafes with seating arrangements to luxurious restaurants of fast food outlets.

CORA- Corporate Regulatory Affairs

CORA is the department which is responsible for upholding the corporate image of the company. Since BAT is in a controversial industry it is very much important for it to manage all its stakeholders as well as to manage the media. All these are done

by CORA. It also looks after the legal aspects and taxation of BATB. CORA carries out different activities such as :

Managing taxation and excise

Looking after stakeholders interest

Correspondence with media

Maintaining government lobby

Working towards development in the field of mal nourishment, poverty and cultural adoption

Discouraging under aged i.e. under 18 smoking

Managing external and internal communication

Publicity management

Selling the idea of socially responsible corporate business practices inside the organization

Looking after the legal issues of BATB

Through projects and initiatives around the world BAT is committed to help to protect and improve the environment, support local employment and tertiary education, promote artistic and cultural activities and assist with disaster aid. The Corporate & Regulatory Affairs Department (CORA) of the company is dedicated towards achieving the company's fifth strategic imperative, which is: To be a responsible company in an industry seen as controversial.

Globalization and increased scrutiny of businesses by consumers and the general public mean that companies are today judged not only by the quality of products that they produce but also the manner in which they carry out their business activities. It is therefore, an imperative that corporate bodies are responsible not just in their businesses but also in the social domain that they operate in. British American Tobacco's philosophy has been to be conscious corporate citizens wherever they operate, respectful of local cultures.

The company recognizes that it manufactures a product, which carries significant risks. In this light, the company believes that only informed adults should use its products and that under-age persons should not smoke. It also believes that the company must act, behave and carry out its business activities in a manner accepted

by society at large as responsible. This includes dissemination of the company's positions on issues. The Corporate & Regulatory Affairs function is charged with driving reputation management to the heart of the business and ensuring the company's involvement as a leading development partner of the country.

The CORA

Mission:

“To proactively build strengthen relationships based on mutual benefit and trust with all our stakeholders and enhance our corporate reputation through visible responsible activities”

Reputation management involves identifying and prioritizing the company's stakeholders and preparing and implementing plans to engage and communicate with these stakeholders.

In a competitive market, BAT wants adult smokers to choose its brands over those of its competitors. Advertising has two purposes – to maintain brand loyalty and to encourage smokers to switch brands. Advertising provides consumers with information to make choices. BAT believes that the use of tobacco products should be an adult choice. Advertising programs, including promotional activities for tobacco products should be carried out in a responsible manner. BATB has carried out significant activities for society such as Blood Donation Programs, Immunization programs . The afforestation program of BATB in khustia chittagong and some other areas of Dhaka have made tremendous contribution to the environment.

RELATIONSHIP WITH THE PARTNERS/ STAKEHOLDERS

British American Tobacco Bangladesh is widely respected among its business partners. In BATB's journey towards continuous improvement and excellence in every area of BATB's operations, BATB always strive to take BATB's valued business partners with BATB – with them acquiring skills and expertise which they apply to develop their own businesses as well. BATB's registered farmers receive seed and advice on planting, growing and harvesting from the company. They apply their tobacco growing skills to growing other agricultural crops as well. It is through

the farmers that BATB have been able to sustain such a successful afforestation program. BATB's distributors are fully integrated into its business, continually improving standards in partnership with the company. BATB's local suppliers benefit from skills transfer of modern, cost effective working practices, resulting in increased velocity and efficiency in their own internal processes.

Different Activities Carried Out by CORA :

Environment, Health and Safety:

✦ Environmental issues, health and safety are high priorities for responsible companies, and British American Tobacco is no exception. BAT accepts their business operation impact on the environment, and they are committed to following the best international standards of environmental protection and to the principles of sustainable development. Their environmental management systems conform to international standards such as ISO 14001; in safety management, they have a zero target for accidents across our operations; and they are developing occupational health management from a sound basis already in place. In 1999, group expenditure on Environment, Health and Safety (EHS) was over £20 million. International Standard in EHS Practices: BATB is committed to the principles of Environment, Health and Safety (EHS) best practices which include: The Factory Bio-filter, Zero Lost Workday Case (LWC) , Zero Accident program, high EHS awareness levels among employees, regular EHS reinforcement activities etc.

Afforestation Programs (Globally)

In some countries, wood is burned as a fuel for tobacco curing or used for building curing barns, in the same way as it is used for other crops and building purposes. Since the 1970s, BAT have run ambitious afforestation programs, sponsoring and promoting the planting of 267,000 hectares of managed, renewable woodlands worldwide to date. The scale of these woodlands effectively makes British American Tobacco one of the world's largest tree-planters outside the timber and paper industries. The aim is to provide a sustainable source of wood fuel for contracted

tobacco growers who require wood, and to contribute to conservation and biodiversity in developing countries.

Afforestation in Bangladesh

British American Tobacco Bangladesh began its afforestation program in 1980, to compensate for wood being burned as a fuel in tobacco curing. Due to the pressure on land for farming, farmers are at first reluctant to allocate land to trees, especially as they might not be able to harvest them for some years. British American Tobacco's solution was to plant fast-growing trees on canal banks, roadsides and railway embankments. To date, 710 kilometers of canal banks, 115 kilometers of roadsides, and 52 kilometers of railway embankments have been planted. Through commitment by dedicated company managers in the field, farmers' demand for saplings has increased to the point where over

3.5 million trees are planted annually. In 1993, British American Tobacco Bangladesh received the Prime Minister's Award for Afforestation. As a result of the company's afforestation activities, Bangladesh now has a wood fuel surplus of 80,000 metric tones.

British American Tobacco Bangladesh is distinctive in respect to their depth of commitment to be a development partner for Bangladesh. BAT contributes by doing business in the most responsible manner.

🌟 **Corporate Social Responsibility:** Success and responsibility is the philosophy that has driven British American Tobacco Bangladesh over the years. They are the number one taxpayer in the tobacco industry of Bangladesh. They have contributed over Tk 18 billion (in VAT and supplementary duty) in the year 2004. One of their core business philosophies is doing business in the most ethical and socially acceptable manner. They are taking forward their commitment for contributing in the development of the country through their endeavors in the various social, economic and environmental sectors of the country.

- ✦ **Dishari:** Dishari, a basic IT education centre initiated by BATB to contribute in the promising IT sector of the country which is a thrust sector of the Government. The education centre is aimed at providing basic computer education to those who cannot afford it.
- ✦ **Community Services initiative in leaf growing areas:** Thousands of Bangladeshi farmers are benefiting from British American Tobacco Bangladesh Community Services Project which has recently kicked off. It reaches out to support the 18,000 farmers (and their families) who are closely linked with BATB's way of life. The initiatives taken under this project are:
 - Educational Assistance
 - Primary Health Care Support
 - Malarial Prevention
 - Sanitation Support
 - Commercial Afforestation
 - Compost Pits
 - Green Manuring
 - Neem Decoction
 - Vegetables Growing
- ✦ **Biodiversity:** British American Tobacco Bangladesh is the first company in the country to embrace biodiversity in its way of work. BAT's objective is to raise awareness among company's internal and external stakeholders, promoting biodiversity and sustainable use principles in the operations of British American Tobacco Bangladesh.
- ✦ **Vegetable Export:** The vegetable export project of British American Tobacco Bangladesh is aimed primarily at helping the country to earn foreign exchange through export of high quality processed vegetable from Bangladesh thereby playing a dominant role of development partner of the country, This vegetable export project, taken up in collaboration with a third party, seeks to lend a hand to the economic development of farmers and earn foreign exchange for the country.

- ✦ **Leaf Tobacco Export:** Since the early 1980s British American Tobacco Bangladesh started exporting tobacco to other British American Tobacco companies in Europe like BATUKA, BAT Hungary, BAT Australia, Holland and others, as well as to international leaf dealers, i.e. Universal and Dimon.
- ✦ **Supporting Social Organizations:** British American Tobacco Bangladesh supports various social programs like Shandhani posthumous eye donation, polio vaccination institutes, blood donation organizations as well Centre for Rehabilitation of the Paralyzed (CRP) to contribute to the greater cause of social development of the country.
- ✦ **Eliminating Child labor:** The company works closely with business partners to ensure that children are not employed and BATB communicates with their business partners the importance that children should have the access to education.

HUMAN RESOURCE

HR Mission:

“Embedding winning culture where people always strive to excel”.

To develop the most vital element of the organization which is the human resource BATB has put in a lot of efforts in responding to various changes and problems through effective formulation and implementation of human resource strategies through the HR department.

- Bridging the gap between top level and lower level management:
- Improved performance through attractive reward system
- Strive for excellent management practice

From recruitment to selection and also from employee welfare to industrial relations, this department has to play an important role.

New HR Practices & Programs:

BATB now values its people as Human Capital. As a measure to that, BAT has taken extensive training programs, which include educational programs like English training, Computer literacy etc. In order to improve individual performance,

different skill development programs are also in place. Teams are being formed to implement flexible work practice.

Removal of barriers:

Barriers, both physical and mental, were hindering the progress of the company. Company started removing barriers from early 1999. All offices were brought into a single location and all offices were made open. Managers and employees started using the same dining facility and the same uniform. Managing Director initiated Skip Level meeting with all levels of employees where issues are discussed openly. A Family Day was arranged where all members of the organization participated along with their family members and enjoyed throughout the day.

Reward system

BATB has introduced new Reward and Recognition system throughout the company to motivate the employees. Any employee, doing something extraordinary, is being selected as Champion for a specific month. As a result, people are opening up and trying to grab the title. This has generated a positive competition among the employees.

Winning in Our World

BATB has very good corporate reputation for excellent management practices base on Trust, Commitment and Achievement, which is the main driver to develop *WOW* (Winning in Our World) culture throughout the organization. The WOW values are clearly defined and employees, management & Union all are continuously striving to achieve these values.

Achievement:

- a) **Vision:** We understand what each of us has to do.
- b) **Map:** We believe in our plan.
- c) **Consumer focus:** We live for our customers.

Commitment:

- a) **Confidence:** We expect to win.
- b) **Standards:** We keep raising our standards.
- c) **Drive:** We take personal responsibly.

Trust:

- a) **Teamwork: We have trust in each other.**
- b) **Support: We learn from Each other.**
- c) **Belonging: We are proud of who we are.**

There are certain guiding principles that center on the corporate principles of the company. The core asset of the company is a result of the four philosophies that the company adheres to in every management aspect of the organization:

Information Technology *mission:*

'The mission BATB IT is to enhance BATB's competitive position by increasing operational efficiency and timely decision making through measurably better and more compatible information system, and by harnessing the most appropriate technology and implementing new business practices to enhance BATB's business effectiveness.'

Information Technology department was mainly acting as a supporting service for all the other functions of BAT. As the emergence of super information highway and other technological advancement made the business world more competitive, BAT also made necessary adjustments towards the changes and in continuation with that process IT was made a separate department in February 2000. The head of IT is also a member of the executive committee and he is supported by the function support IT managers.

British American Tobacco Bangladesh IT department drives the demands of its business and processes. IT delivers comprehensive, timely, and relevant business information to decision makers wherever they are located. This will allow the organization the maximum ability and flexibility to identify new opportunities and quickly respond to competitive challenges.

Key Functions of IT

- **Establishing and maintaining information and infrastructure architecture to support knowledgeable business users who incorporates IT into their**

decision making and of doing business, supported by specialist team who manages and seeks continuous improvement, outsourcing where possible.

- Resilient communication infrastructures that are flexible and are able to take new technical innovation to keep the cost down.
- To adopt global application convergence strategy that meets the local business requirements, and develop local applications where appropriate, outsourcing data processing where possible.
- To support the changing organizational structure and requirements, IT continues to make available innovative services and training.
- To develop application and promote the use of the group working tools as first choice of communications and to become center of excellence for group working.
- To develop and retain IT professionals.

Finance Department

Finance department is responsible to evaluate the economic performance of the Organization. BAT strictly uses the budget as part of the strategic plan to go for operational activities. The company budget helps to measure its performance acting as a tool for feed forward and also for feed back. The company at the beginning of the year starts its operation with the budgeted sales, target, cost, investment and other financial activities. The company for control purpose evaluates its performance at the end of each month. It helps to give the actual information of cost, sales and other data and compares with the budget allocation or target. In this way it finds the variances, then find out the reasons and take necessary corrective action or review the budget. The overall responsibility of doing this goes to the Cost Accountant and Finance Director of BAT. The Finance department has its established strategic plan, normally the person involved are Finance director, company executive, Material Resource Planning Manager (MRP), Information Technology Manager (IT), Management Accountant and Financial accountant. Under Financial Accountant there are three accountant officers, Head Office accountant, Production accountant and Leaf Accountant. These three-accounts

managers individually have Deputy Head Office accountant, Deputy Production Accountant and Deputy Leaf Accountant. Under these three Deputy Accountants three Assistant account officers works. Finance Department audits the expenditure at a regular interval to ensure that rules and regulation are properly adheres the operation. External auditor also checks all the BAT Financial system and also prepares the annual financial report. If they find any deviation they report to the Chief executive for taking corrective action. The Auditors Inform the BAT Head Office and makes them visit the operating company to ensure the Management Control is directly administrated. Any new proposal is analyzed from the viewpoint of future prospects of the plan, Profitability, Capital Investment and Shareholders wealth. Here the Finance department gives special consideration on the Return on Investment of the proposal. Detailed month wise cost analysis is done in detailed to access the variances. At each financial point's corrective action are taken to remain with in the budgeted plan.

Budget

The Budget process is done at BAT in two steps. First the former year annual report is taken as the base of the budget. And in the second step, top management with the help of financial department tries to integrate proposal of the next year, which have been already established. The proposals have been considered from the viewpoint of inflation of the currency, cost of living, and exchange rate prevailing in the country. By integrating the proposals the concerned authority figure out the costs involved. After that they add these costs with the former year Annual Balance sheet and thus formulate coming years budget. There are various parties involved in making and executing the budget. Some of the parties are organization, Budget Committee, Negotiation, Issuance of guidelines, Initial Budget Proposal. As all the costing comes from various departments and units so the role of the organization as a whole is vital preparing Budget.

BAT always keeps a budget committee for each year and this committee is consisted of MD, National Sales Manager, Finance Director and Chief Accountant. This committee reviews the budget then either approves or adjust the same. BAT is not allowed to do any budgetary activities other than directed by the main Head Office.

Foreign Exchange Policy

Some tobacco is being exported to BATBs sister companies in overseas countries and there by it earns very limited amount of foreign exchange. For manufacturing its product BATB needs lot of Raw Material i.e. tobacco and packaging materials which are not available in the country and so the company have to import those items by purchasing Foreign Exchange from the secondary exchange market. To keep the cost down of the secondary rate, the company makes the forward booking of the required amount for the individual letter of credit. And the Treasury Manager of the company finds the best solution to Hedge the currency market and accordingly the company negotiates with the foreign exchange rate with the Financial Banks. As a policy, BAT Bangladesh will engage in foreign exchange transactions through usual banking channels only: to meet the requirements of its (a) Normal commercial trading activity, and to manage and provide for (b) currency cash flows relating to this activity on up to a rolling 12- month basis. It will include specifically the following means:

- **Imports through letters of credit (L/C) for working capital requirements and capital expenditure project.**
- **Remittances for payment of dividends, royalty and technical fees, expatriate staff allowances, constancy fees etc.**
- **Travel expenses.**
- **Training expenses**
- **Payment for institutional memberships and for publications.**
- **Payment of advertising, travel and other expenses which are permitted from the Export Retention Quota.**
- **Payments of principal, interest and financial charges in connection with any off-shore borrowing which may be in place from time to time.**
- **Exports.**
- **Forward cover for imports, remittance and exports are part of the policy guidelines.**

This policy is issued by the EXCO. The Managing Director and Finance Director are authorized to jointly take decisions on matters arising in the course of business not covered in this policy and report such decisions in the immediate next EXCO meeting.

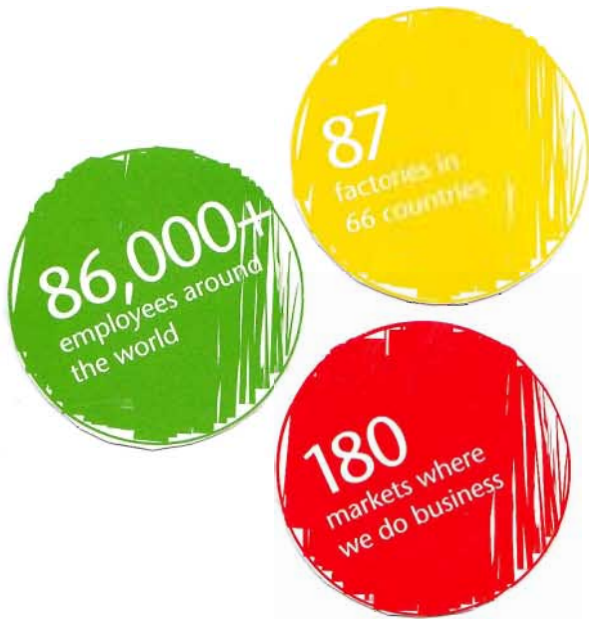
Brand Marketing:

Brand Marketing is managed by the Group Brand Manager. Marketing Research assists Brand Marketing.*Mission:*

- **Praise of future profit growth**
- **Grow quality share: ASU30**
- **Owning the medium and premium segment (90% share)**

The Brand Marketing department concentrates on satisfying consumers' needs. The brand marketing elements covers the adopting of products, logistics and brand marketing policies that best meet the needs of particular trade channels and strategic customers. The Brand Managers and Brand Executives are responsible for the allocated brand(s). They are responsible for all type of brand management activities. Market intelligence includes the market research teams that constantly monitor the market.

SCOPE AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF BATB



4.0 INDUSTRY ANALYSIS

4.1 Porters Five Forces

4.2 SWOT Analysis



For this part, five competitive forces model developed by Professor Michael Porter has been used.

Threat of Rivalry

Rivalry depends on mostly in terms of price and quality. International brand image, major competitors consists of domestic manufacturers are accounted for the rivalry. The industry is still growing opening the door of opportunity for augmented business as consumers are up coming from Biri to cigarette. Rivalry in this particular segment is very intensive in terms of price rather than quality

Market share of BATB and its competitors

Different brands of BATB and market share of its competitors are shown on the basis of price segment in table –2:

Price Segment	BAT	Competitors brand (Dhaka, Alpha and Transit & others)	Shares %	
			Competitors and Transit Segment share	BA segment share
Premium TK.3.00+	Benson & Hedges, 555	Marlboro, Rothmans	52%	48%
Medium TK.2.00+	Gold Leaf	London, The President	16%	84%
Low Tk.1.00+	Star, Capstan, Scissors,	Navy, Legend, Senor, Duke, Don, London, Top 10, Super Star	46%	54%
Very low Tk.0.25+	None	5 star, Red & White, Diamond, Surma,K-2, Cannon, Prince, Boss, Express, Wilson, Five Five, Nasir Gold, Good Leaf, Gold Star	100%	0%
BIRI	None	Akiz, Abul	100%	0%

(Source: Portfolio of BATB)

Beside BATB, a number of the companies are engaged in manufacturing and marking cigarettes. They are:

- Dhaka Tobacco Company
- Alpha Tobacco Company
- Nasir Tobacco Company
- Abul khair Tobacco Company
- Sonali Tobacco Company

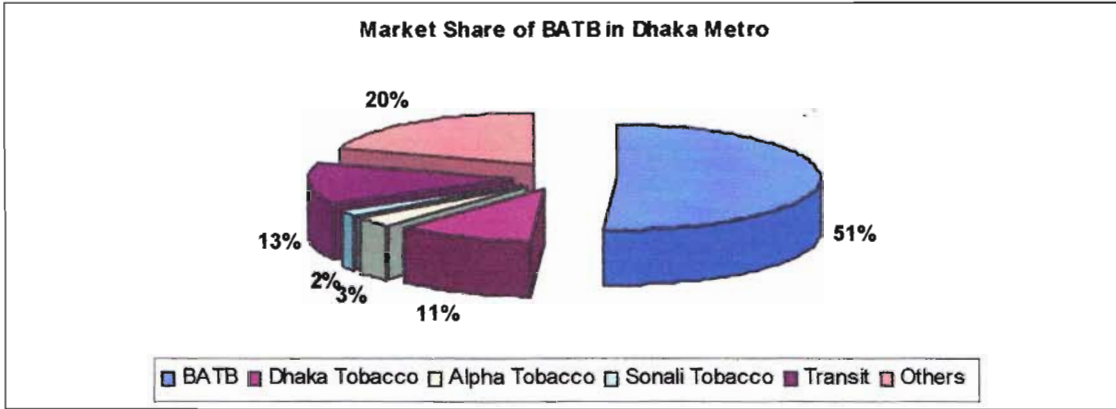
Moreover, there are also some foreign brands, which are either smuggled or imported illegally. Which have been termed as transit brands. The most important brands in this category are Dunhill, Benson & Hedges, Marlboro, London etc. It is notable that recently Marlboro has started operating seriously in Bangladesh.

The market share of BATB is around 51% in the Dhaka Metro. The share of all other companies in Dhaka Metro is shown in table-3 and pie chart.

<i>Name of the Company</i>	<i>Percentage of the Share</i>
BATB	51%
Dhaka Tobacco	11%
Alpha Tobacco	3%
Sonali Tobacco	2%
Transit	13%
Others	20%

Source: BATB Monthly Audit Report: October 1999.

Figure:9 : Market Share of BATB in Dhaka Metro



In the whole Country, the share of BATB is 41%, Followed by Dhaka Tobacco, which has a market share of 22%. The market share of BATB on a national basis is shown in the graph (Table 1: Appendix-I):

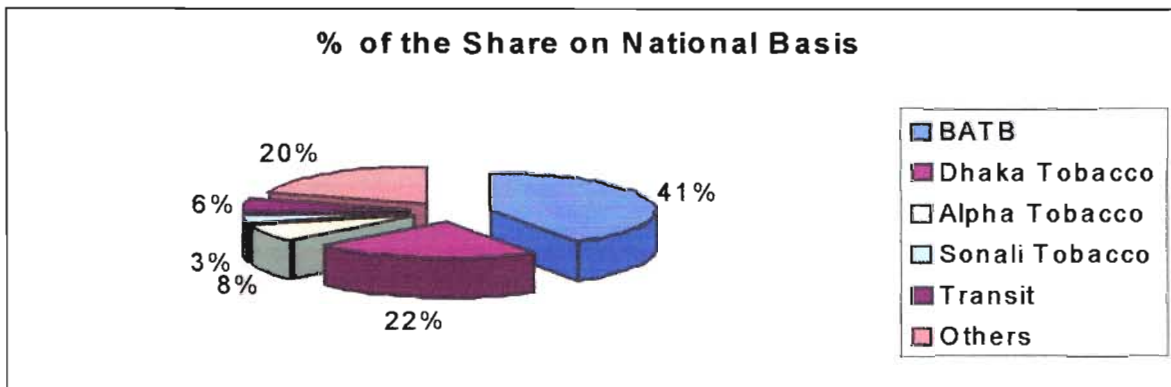


Figure 10: Percentage of Share on National Basis

The above chart shows that BATB is holding the major portion of the market share in the whole country amounting to 41% and the nearest rival is Dhaka Tobacco with market share of 22% followed by Alpha Tobacco with 8% market share.

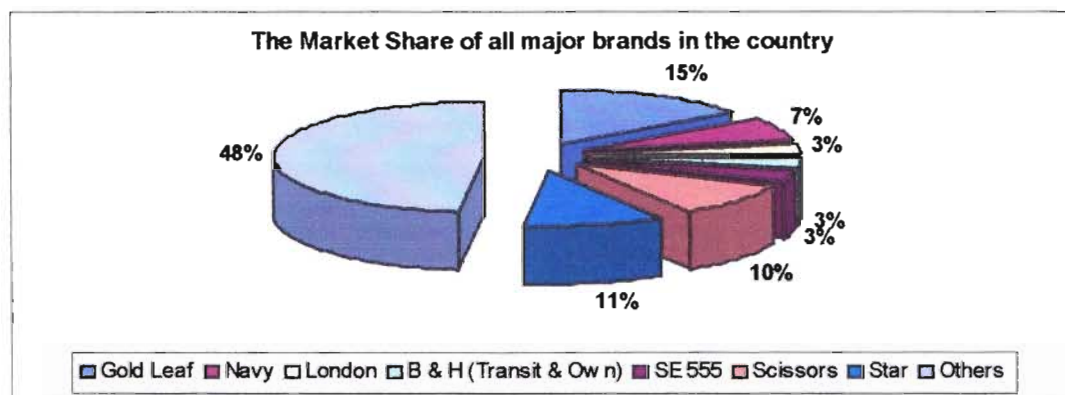
Though BATB is holding the major market share in the Dhaka City as well as whole country, there are also other companies that are operating in the market.

The main brands of the competitors are as follows:

Name of the Company	Name of the Brands
Dhaka Tobacco	Five Star, Legend, Navy
Alpha Tobacco	Senor Gold
Sonali Tobacco	Five Five
Azizuddin Industry	Wilso Classic
Abul Khair Tobacco	Sun- Moon
Nasir Tobacco	Nasir Gold, Top-10

Table 4: Main Brands of Competitors

Although none of these companies have become a major threat to BATB, except perhaps Dhaka Tobacco, yet the presence of these companies signals that other



companies can also join in this market. The market leader is Gold Leaf of BATB (15%), followed by Star of the same company, which accounts for 11% of the market share. Then comes Navy of Dhaka Tobacco, which accounts for 7% of the market share. The market shares of all main brands shown in the following graph.

Threats of Substitute

Price, quality, performance, perceived value of the product and brand image are the key factors for brand substitution. In the low price segment readily available and attractive priced substitute creates competitive pressure. But in the mid-price segment the key for the substitution is the cost as well as price. Product with more and new attributes can create product substitution in this segment. In the premium price segment quality and product image is key for the substitution. Customers in this segment are brand loyal. BATB has no threat for the substitute products as there is no substitutes in terms of cigarette with other product in the industry.

Threats of Potential New Entrants

Industry is safeguarded from the potential entrants due to government lawful barrier for setting up new tobacco industry, high capital investment, economies of scale, brand Image, and specialized know-how, existence of learning and experience curve effect, brand preference and customer loyalty. But the introduction of the operation of an international tobacco company like Marlboro in Bangladesh is really a big threat for BATB. This is an external threat over which BATB has no control. However, the company should take steps to increase its market share to combat Marlboro.

Bargaining Power of Suppliers

As the products are classified as Fast Moving Consumable Goods and produced in all over the world, all the firms have the leverage to choose the wrapping materials from any where in world. These materials are cigarette paper, aluminium foils, boards, filter papers, cellophane paper etc. Tobacco for medium and low price segment cigarette is grown in Bangladesh and is capable of fulfilling the entire industry demand. Tobacco for premium priced cigarette are also grown in Bangladesh and around 18 – 20% high quality tobacco is imported from different tobacco growing countries, where tobacco is surplus compared to its consumption. Therefore, suppliers tend to have less leverage to bargain over price and quality.

Bargaining Power of Buyers

Low substitutes and a very close pricing of the competitors in the industry leave very low bargaining power for the buyers, especially in the low priced segment. But in the medium priced segment, quality and price are factors key for substitution and therefore, different different brand preferences are available in the market and the market share of each competing rivals tend to shift in very significant margin. But it is not very relevant scenario for the premium segment, where most of the Customers are loyal to their brands.

4.2 SWOT Analysis

Strengths:

- 1. Wide recognition –** BATB is widely recognized as good corporate company for its corporate value and ethics. The good deeds are in terms of highest tax payment, community services, afforestation programs and helping some social organizations like *shandahni*
- 2. International brand Image –** BATB's manufactured premium and medium segment brands Benson & Hedges, State Express 555 and John Player Gold Leaf are internationally recognized & valued by its loyal customers. This is because these brands are manufactured in different BAT operating companies and dominating in the world market. Quality of these brands is legendary and consistent, when it is compared. In order to ensure the quality product BATB use global sourcing of all the raw material, this is common for all the operating companies in BAT.
- 3. Strong brand portfolio:** BATB offers product in all price segments in the market. All their products are the market leaders, having the majority of market share in term of value and volume.

4. Cigarette share in Bangladesh market

Price segment	BATB	Other Companies
Premium (Tk. 3 and above)	48%	52%
Medium (Tk. 2 and above)	84%	16%
Low (Tk. 1 and above)	54%	46%
Very low (Tk. .25 and above)	0%	100%

(Source: BATB’s portfolio, 2000)

Table-5: Share of Cigarette in Bangladesh Market

5. Talented workforce - People are BATB’s fundamental advantage-the sources of all their strength. This include management, workforces and all other business partners, who are directly involved in the value chain process. People are highly trained and motivated, productive and team-oriented.

Some important aspects are listed below:

Planning

- Long term orientation
- Many people involved in preparing and making decision
- Decision making takes long time but implementation is fast
- Employees share power and responsibility

Organizing

- Common organization culture
- Organizational change by changing goals

Staffing

- Rapid advancement highly desired and demanded
- Reward for individual achievements
- Training and development undertaken

Leading

- Directive style, strong, firm and determined
- Leaders are decision maker is heading the group

Controlling

- **Control by supervisor**
- **Control focus on individual performance**

6. Superior technology – Technology used in BATB is superior from the competition in Bangladesh. Their state of art manufacturing plant in Dhaka is not only sophisticated but also benchmark facility within the operating companies of BAT in their AMESCA (Africa, Middle East, and Sub-Continent & Asia) region. In this industry technology is the key for superior quality product. Technology revolutionizes the product and production process and BATB always uses latest technology which smoothing out the production process.

- **Process Technology:** It is used for tobacco processing and its conversion to cigarettes. It encompasses extrusion technology, aspects of packing and painting, cutting and dying technology, application of instrumentation, control system and process automation and separation of tobacco and non tobacco materials.
- **Material Technology:** The Company has been using latest material technology to the design and develops the cigarettes and packing. These area covers paper technology, combustible smoking material etc.
- **Information technology:** BATB's computer section is very much updated and well oriented. All the external and internal information is being controlled through a network.
- **MRP II:** BATB is the only company in Bangladesh who uses MRP II (Manufacturing Resource Planning II) in their production and operation. This is the latest technology and only a few companies in the world have the capability to implement MRP II. This is a very distinctive competitive advantage of BATB over other companies.

7. Better product quality relative to the rivals: As mentioned earlier BAT maintains its consistent quality with good blend of tobacco through superior technology, thus BATB is always in an advantages position compare to its competitor.

BAT grows tobacco for their own consumption in Bangladesh and they have completely separate function responsible for tobacco growing and processing, which their competitors do not have.

8. High financial strength: BATB has a huge financial back up. The company can devote a large fund to R&D, advertisements, quality control, and training and also in other areas, which its competitor can't match.

9. Absorbing economies of scale in producing BAT products: BAT product has a higher demand in Bangladesh. As the company produces in a large scale, it possesses economies of scale and hence per unit of cost is comparatively lower in Bangladesh. On the other hand production sources – land, labor and raw materials are also low in this country.

10. BATB is the largest tax payer in Bangladesh: BAT is the largest tax payer in our country. It paid more than Tk. 267 million taxes in the year 1998 (source: Annual Report 1998). As a result of this huge amount BATB enjoys a cordial relationship with the govt. of Bangladesh.

11. Low manufacturing cost: There are many reasons for low manufacturing costs of BATB. First, it can hire labor at a cheaper rate, which is not possible in developed countries. Secondly. The company has been using the latest technology in production by which it is able to minimize its production cost by producing bulk of cigarettes. Thirdly, transportation cost is also comparatively lower in our country.

Weakness:

1. Strong Trade Union: Trade union is one of the weaknesses for BATB. They are resistant to any changes. It takes lot of management effort and time to make the union leaders to motivate for any minor changes in the entire process. Management in BATB is working hard to change the culture and practice through different projects and program.

2. Missing a large number of consumers due to high price: BATB is loosing a large number of consumers in Bangladesh due to high price of its products. It does not have a product for very low income consumers and Biri consumers. Evidence shows that 74.5% of the total volume of market share of smokers (Cigarette and Biri combined) belongs to local company where BATB has no access. Hence we may

suggest that BATB may capture a large portion of the local smokers market, if it produces a low priced product for the low income consumers. Wholesalers and retailers are not getting enough attention: Distributors of BATB do not provide adequate attention to wholesalers and retailers. Enough merchandizing materials are also not provided to them. On the basis of the above in depth external analysis the following opportunities and threats have been identified for BATB that need to be considered with due care.

Opportunities:

1. **Recent Global Merger with Rothmans:** Recent global merger of BAT with Rothmans Industries and closer of all Rothmans facilities in South Asia gave BATB opportunity to become regional source of John Player Gold Leaf & Benson & Hedges for Middle-East market. BATB already sent samples of these two brands for physical & sensory test in R&D Center in the head quarter.
2. **The increased number of smokers in Bangladesh:** The number of professional smokers is gradually declining in the western countries where as the same is increasing in Bangladesh. BATB can grab this opportunity and can make a consumer forecast for the future. At present, the cigarette market in Bangladesh is growing at a rate of 10%. It is indeed a very good opportunity for BATB to grow.
3. **Augmenting GDP:** GDP of Bangladesh is increasing due to economic expansion, open market policy, industrialization and educational development. It's a great opportunity for BATB to expand its market and product line.

Year	1994-95	1995-96	1996-97	1997-98
GDP	4.4	5.3	5.9	5.7

Table 6: GDP Growth rate (Source: Statistical Year Book of 1998)

4. **Increasing number of population:** The number of population is increasing at a higher rate in Bangladesh. And at the same time the number of smokers is increasing. So it is an opportunity for the company.
5. **80% people smoke Biri:** In our country a large section of urban and rural people smoke Biri. This means that the market potential of BATB is very high. If the Biri consumers can be persuaded

to smoke cigarettes instead, the company will have a very big market for its products in this country.

Threats:

- 1. Anti smoking lobbies activities:** Anti-Smoking lobbies are now getting very strong in Bangladesh. Recent demonstration against Voyages of Discovery (VOD), a global campaign of John Player Gold Leaf and government legislation against ban in cigarette advertisement in all media reflects clear threat for cigarette industries.
- 2. High Excise rate:** Excise is another threat for BATB. In the recent past there was several increases in tax structure specific to BATB to get more revenue for the government. If this continue BATB's strategy for price leadership will be at stake.
- 3. Smuggled/ Transit cigarettes:** Smuggled cigarettes are available in Bangladesh. These are companies same brand or other international brands. These transit cigarettes are decreasing locally produced international brands. This is one of the greatest threats for BATB. BATB can not lower the price of its products, as the company has to pay a huge tax for those. But the same brands of smuggled cigarettes are sold in Bangladesh at a lower price. As a result consumers are purchasing the transit one.
- 4. Violation of patent:** It is very common in Bangladesh, even though the government is taking legal action against it. Many companies are copying the brand names of BATB products. For example: there is a cigarette called "Five Five" which resembles to the BATB's popular international brand SE 555.
- 5. Social pressure on the company is increasing:** At present people are becoming more and more health conscious and a strong social pressure is being created on the cigarette companies worldwide. BATB is not free from this pressure.
- 6. International competitors are coming to Bangladesh:** Phillip Morris Incorporation has already started its operation in Bangladesh. This is a significant threat for BAT Bangladesh.
- 7. Political instability and violation:** Political instability, hartal, public demonstration, anti social activities are the most common phenomenon in Bangladesh. These external forces hamper sound business environment. So these factors are big threats for the company.

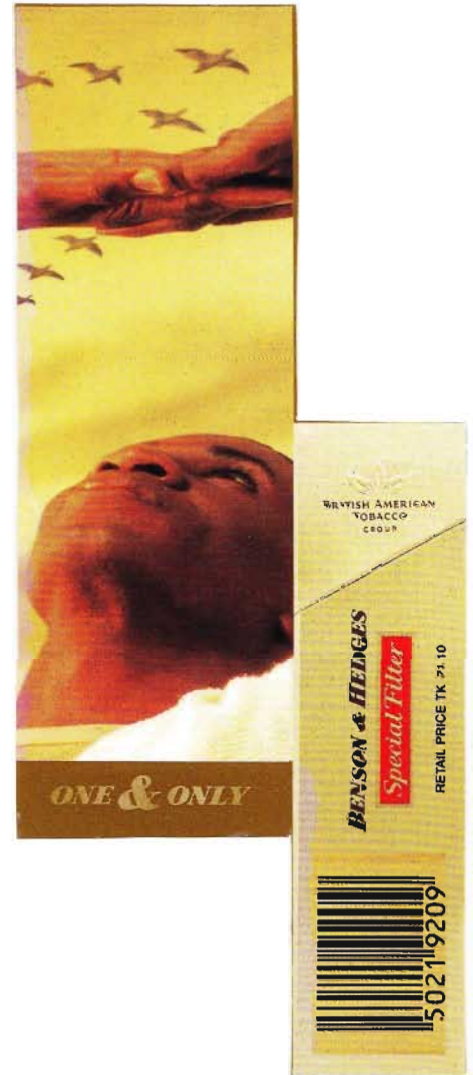
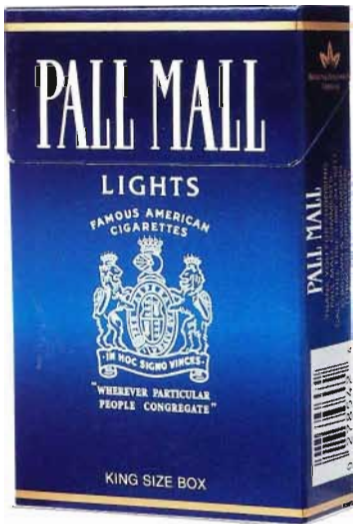
1. Natural disasters: Natural disasters like flood, cyclone, and tornadoes are very common in Bangladesh. These natural disasters cause a huge loss of crops, production and property, which directly reduces the purchasing power of the consumers. This in turn reduces demand for cigarettes including BATB products. As BAT cultivates a considerable amount of tobacco in the country to use them as raw materials in cigarette production, sometimes natural disaster greatly hampers leaf cultivation.

2. Implementation of Existing Laws:

If the following laws are implemented in will be great threat to tobacco industry.

- 1. Railway Act, 1890, section 110 prohibits smoking without the consent of the fellow passengers.**
- 2. Juvenile Smoking Act, 1919 prohibits smoking by a person under 16 years of age. Also, no tobacco products can be sold to such a person.**
- 3. Prohibition of Smoking in Show Houses Act, 1952 prohibits smoking in cinemas, theaters etc. During demonstration or show. Offenders are liable to be arrested without any warrant.**
- 4. Tobacco Board Ordinance of 1968 had set up the Tobacco Board to promote tobacco cultivation, manufacture and export of tobacco & tobacco products.**
- 5. Tobacco Cess Rules, 1968 allowed collection of cess on tobacco under the Tobacco Board Ordinance of 1968.**
- 6. Bidi manufacture (Prohibition) Ordinance of 1975. The law prohibits manufacture of hand made *biris* using '*Kumbi*' or '*Tendu*' leaf or any other plant.**
- 7. Tobacco Originated Goods Marketing (Control) Act, 1988. This Act introduced the statutory health warning on the packet of tobacco products.**

SCOPE AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF BATB



5.0 MAJOR BRANDS OF BATB

- 5.1 Global Drive Brands
- 5.2 Other Brands



BATB continues to be the leader in the local cigarette industry currently holding nearly 51% volume share and 70% value share of the Bangladesh cigarette market. BATB's total volume (18.9 billion in 2004) has grown by nearly 90% since 1999. BATB has also been able to grow the annual contribution to the Government revenue to nearly Taka 17 billion. This is an increase of 70% from 1999 level of Taka 10 billion (£126m). The company has been consistently growing its business through volume, growth and up-trading as well as careful cost management. BATB is the leading listed company in Bangladesh with one of the highest market capitalization of around £60m.

BATB's market presence in three prime segments is summarized as below:

- 👑 Super Premium: Dunhill" brand plans and preparations have launched a brand in this segment in the early part of 2005. Dunhill Cigars costing Tk 800 each is a major constituent of the super premium segment.**
- 👑 Premium: Launched in 1997, "B&H" maintains BATB's dominance in the premium segment and drives the growth of the premium segment in Bangladesh market. Within a short time Bangladesh became a leading B&H market across the BAT world. After the recent price revision, B&H still remains to be a successful and eventful strength in BAT's portfolio.**
- 👑 Medium: Launched in 1980, "John Player Gold Leaf" is one of the highest selling brands of BATB - maintaining its dominance in the medium segment of the Bangladesh market.**
- 👑 Low: "Star", launched 40 years ago is still a dominating brand in this segment. In the recent times a new pack of Star was launched and currently it is the highest volume generating brand for the company.**

PRODUCT STORY:

Heritage: BATB explains the legacy of the story: For e.g. from the formation of JPGL to its current pack change. This allows the consumers to link up easily with the brand

Expertise: BATB explains that it owns a State of the Art manufacturing process where any type of minor quality problem is rejected automatically by the machines.

It also communicates that it is the expert cigarette manufacturer that produces international brands like Gold Leaf, Benson & Hedges, and State Express 555 etc.

Additionally, BATB corresponds that its knowledge on blending and cigarette making is better than anyone else in the country and many other tobacco companies in the world. This portion is portrayed to give the consumers an assurance of high quality and reliance in BATB products.

Tobacco: The mails also disclose that BATB cigarettes are made from selected tobacco (“bachai kora tamak”). This tobacco is grown by BATB’s enlisted farmers in leaf growing areas. BATB takes care through the growing process starting from seed, fertilizer, expert opinion etc. Tobacco is graded very carefully to ensure the best possible blend. Tobacco bought by BATB has to go through a selection process where tobacco above a specific grade is bought. BATB enlisted farmers grow tobacco without using any sort of insecticide.

5.1 Global Drive Brands

With brands in over 180 markets, BAT does not believe that ‘one size fits all’. BAT has a diversified portfolio of over 300 brands across many tobacco categories to suit consumer suit preferences, led by their global drive brands – Dunhill, Lucky Strike, Pall Mall and Kent.

Dunhill

Dunhill is the key brand in the Premium/Super Premium segment and is present in most countries in the world, offering a range of products, including cigars, to satisfy the most discerning consumer choice.

Dunhill will celebrate its 100th birthday in 2007 and BAT is driving innovations with its strong traditional brand in ways that build on its heritage, to become a modern

classic icon. Dunhill's new range and pack design is bringing increased volumes and growth in the ASU 30 segment in all markets where it has been launched.

In 2004, Taiwan and Australia saw an increase in volumes and market share from the new pack design. In South Korea, two new menthol variants, Mist and Frost, were launched to good consumer feedback, and in spite of general price increases driven by excise, Dunhill's market share grew while the overall market declined. In South Africa, Dunhill is the leading premium brand and is still growing, with volumes up 36 percent in 2004 in the global travel retail category. Volumes are also growing in markets in Europe where the new pack design has been implemented, including the UK, Russia, Italy, Romania, the Netherlands and Germany.

Lucky Strike

Lucky Strike is one of the leading global brands in the Premium segment in more than 60 countries. 2004 saw several brand innovations and corresponding share increases in both existing and new markets. In France, the launch of limited editions of Lucky Strike wallet pack and the '1916' pack and product took market share to a record high of 2.4 percent. A record high of 5.3 percent market share was also achieved in Germany. In other countries, the roll-out of the blend inspired by the original Lucky Strike, the launch of the Raymond Loewy pack, the 'Original Smoke' campaign and a campaign based on Lucky Strike's unique brand heritage all contributed to volume and share gains.

Lucky Strike was also one of the brands chosen for test-marketing smokeless snus in Sweden and South Africa from May 2005 and further product innovations will be tested in selected markets later in 2005 for roll-out in 2006.

Pall Mall

Pall Mall aims to be recognized as 'the most imaginative tobacco brand' in the world, redefining consumers' expectations of the value for money segment through innovation and new developments.

In 2004, Pall Mall gained significant market share across all regions, making it a stronger global brand than ever before. Innovation played a key role, including new packaging with colored inner foils and the introduction of the 'Palm Pack', with its beveled edges and contemporary crest design.

Pall Mall has also been one of the first brands in our portfolio to extend its range beyond the cigarette category to other tobacco products. A key example is the introduction of Pall Mall Sticks in Germany, which achieved sales of 2.3 billion in 2004 and redefined the Make Your Own category. Further developments to build the House of Pall Mall are planned to offer consumers more choice, reinforcing the brand's commitment to continuing innovation.

Kent

Kent is the leading premium global drive brand based on global sales volume. Kent has achieved continued organic growth since its relaunch in 1999 and has delivered double-digit growth for the last two years. In 2004, successful introductions of the new technologies 3-TEK (three part filter) and Mintek (Menthol sensation) helped Kent achieve the status of top national brand in Russia and, more recently, it has become the number one premium brand in Romania, outgrowing Marlboro.

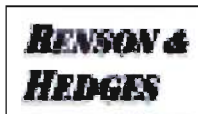
Kent is very well positioned, through its technological and innovation platform, to be perceived by consumers as the brands that offers the modern way to smoke. The Kent team intends to continue evolving the brand with the latest consumer-relevant smoking innovations, reflected in the new campaign and tag line 'Driven by Possibility'.



BENSON & HEDGES

This brand was launched in early 1997 in order to give consumers the choice to purchase a fresh, duty paid legal alternative to the widely available smuggled version. To generate product awareness, international image campaign was introduced in key outlets in Dhaka and Chittagong. Distribution was later extended to Sylhet and Khulna. The objective behind introducing the brand was to gain price leadership, not profit. Later its distribution base was expanded and brand imagery was changed from father's brand to modern, more appealing; towards ASU 30 (adult smokers under 30). The company arranged successive music events staged under "Golden Tones", "Star Search", "Live and Explosive" etc. banner. The demand of this product is largely high all over the world. Very recently BATB has

set up plants to produce it in Bangladesh. BATB has started producing B&H in a large scale after the head office approves the quality standard of the B&H cigarettes produced in Bangladesh. It is mainly the processing part of 'cut rag', which is done locally. The copy line of the brand is '*Be Gold*'.



BENSON & HEDGES LIGHTS

The Benson & Hedges Lights is a new member of B&H family. It is a new variant of the existing Benson & Hedges. It was first introduced in 1998 in Dhaka and Chittagong. The objective was to give the smokers more options within the same brand and to keep pace with the modern trend of smoking light cigarettes throughout the world.



STATE EXPRESS 555

It is the profitable brand of the company. The 555 centenary celebrations took off in the spirit of 100 years on 5-5-1995 when five planets were aligned. Bangladesh, like many other countries, celebrated the introduction of the new centenary pack with birthday parties special promotional events, and integrated advertising & promotion activities. The copy line of the brand is '*Smoothness Above All Else*'.



JOHN PLAYER GOLD LEAF

It is the leading international brand of the world. It is the cash cow and the key-driving brand for BATB with the highest spending in brand support. 1995 was an important year for John Player Gold Leaf as the brand was re-launched in the new international pack. Given the importance of the brand for the company and the risk associated with such change, the management of change process included four phases to properly condition the consumer and the trade to the new pack. Specific materials were use ahead of the re-launched to announce the change to the consumers and to the trade. JPGL recorded strong growth in 1996. Investment in

in-store and on-store permanent merchandising ensured brand availability, quality image and showed company's favorable commitment towards the retail trade partners. JPGL launched its first ever international sponsorship in 1996, with John Player Gold Leaf Formula 1 powerboat team competed in the UIM world championships in more than ten races. The final race was attended by a delegation of Bangladesh sports journalists. Another famous international promotional activity was 'Voyage of Discovery', which was a long journey of a JPGL yacht that stopped at 12 international ports, lastly bringing an end at Chittagong port. In June 14, 1998, the price of JPGL was increased from Taka 2 to Taka 2.5 and volume share reduced substantially with the invasion of transit brand London. In December 16, 1999, the price was re-fixed at Taka the ultimate objective of the brand is to upgrade the low segment consumers into medium segment. The copy line of the brand is '*John Player Gold Leaf – Follow The World Adventure*'.

JOHN PLAYER GOLD LEAF LIGHTS

To keep pace with the global trend of lights and to support British American Tobacco Bangladesh's corporate objectives of establishing leadership in lights segment in Bangladesh, the management of BAT launched JPGL Lights in 1997 in some selected outlets in Sylhet as a part of test marketing. JPGL's association with the worldwide F-I powerboat racing was also successfully exploited in 1997 through a consumer promotional event under the banner of 'JPGL Carnival', which took place in five key cities. The company launched the brand in 1998, with the unique product feature of 'white tipping paper'.

STAR FILTER

A new image for a promising future 1995 was an excellent year for Star Filter as the brand demonstrated an outstanding volume and growth of share. This performance was the result of a major blend improvement, supported through an appropriate communication campaign, as well as the launch of a new advertising campaign with the theme of *The Flavor of tradition and modernity*.

SCISSORS FILTER

Scissors filter has been helping BAT to regain segment leadership in the medium price segment till 1995, as the brand has experienced dramatic increase in volume and market share. The brand distribution was gradually extended to different parts of the country with the help of focused brand support, emphasizing on POS materials and consumer promotions. The company currently offers the following products to the cigarette market:

Different Products of BATB and Their Prices

Price (Tk./pack)	Current Portfolio
71	B & H, SE 555, B & H Lights
52	Rothmans
36	JPGL
26	Capstan
16	Star, Scissors

Source: BATB

BATB has strategic implications for different brands:

- **Destination/Strategic Brand: B&H, JPGL and Star.**
- **Supporting/Profit Opportunity Brand: SE 555, Star Classic, Capstan and Scissors.**

SCOPE AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF BATB



6.0 LEGAL ISSUES OF BATB BRANDS

After the inaction of the most recent tobacco rules and regulations, the business for BATB, in the already controversial arena has become more hard-hitting.

BATB had always been considered as an organization performing in a contentious arena, because it sells products that are harmful to human health. Thus, logically the marketing activities of this organization are fundamentally different from other companies selling non-controversial consumer items.

BATB in the advertisements of its products has had to always communicate to the citizens, the harmful aspects of tobacco. BATB's initiative lies in their belief that only matured adults who are well acknowledged about the side effects of tobacco will choose to purchase BATB products, on their personal decision, because these people have their freedom to "choose". Previously the tobacco rules and regulations restricted BATB from making any TV advertisements, nevertheless billboard advisements, publicity marketing, direct marketing etc were allowed.

However, the recent tobacco laws taken into effect from March 2005 even limited the above mentioned activities. BATB is no longer allowed to execute any billboard advertisements; even one to one direct marketing require a written acceptance or permission of the individual being contacted. Additionally personnel employed directly or indirectly by BATB to handle consumer engagement must be over 21 years of age and all consumer engagement must be done in places other than those defined in the definition of public places within the Tobacco Act of 2005. Furthermore, the laws corresponded that anybody found smoking on the streets can be fined up to Tk 500. These and other regulations have made the marketing activities of BATB more complex and difficult.

The definition of public places as mentioned by The Tobacco Act 2005 is as follows:- "Public Place" includes educational institutions, government, semi-government and autonomous offices, libraries, lifts, hospital and clinics building, court buildings, airports building, port building, river port building, railway stations building bus terminal building, ferry, cinema halls, covered exhibition centre, theatre hall, shopping centre, public toilets, children park administered by government and non-government body, any or all other places as may be declared by the Government, by gazette notification.

Consumer communication in a dark market scenario basically verbalizes on the subject of consumer engagement in a restricted market scenario, in this project I shall be talking about the marketing activities conducted by BATB after the inaction of the recent tobacco laws and its subsequent effects.

The total marketing activities are varied and wide for BATB and thus, I will concentrate over BATB's marketing activities in the fields of HORECA, i.e. Hotels Restaurants and Café's. These places have not been included in the list of public places where smoking is prohibited. Consequently, in my project I would focus on the marketing activities conducted in these arenas under the light of the recent Tobacco Act. Before making any advancement on the marketing activities of BATB, the recent tobacco laws need to be made comprehensible. The tobacco laws in their straightforward translation would be as follows:-

Prohibition Against Tobacco Product Advertisement

No person should:-

- Display tobacco related advertisement, conduct photo exhibitions or even allow audible tobacco product advertisements in cinema halls, govt., and private, radio and television channels.
- Sell or permit the sale of, any film or videotape or any item produced and distributed which contains a tobacco product advertisement;
- Print or publish tobacco product advertisement in any printed publication, book, magazine, leaflet, handbill, billboard, newspaper or printed matter published in Bangladesh.
- Distribute, or supply to the public any leaflet, handbill or document which contain brand name, color, logo, design, sign or any sort of advertisement of tobacco product.
- Encourage or promote the sale of any tobacco product offerings, or give to the public free sample of any such tobacco product.
- Promote tobacco product in exchange of any gift, reward, scholarship or tournament or any benefit comparable in exchange of showing interest in tobacco product.

- Give any permission for installation of automatic vending machine in the road for movement of public, public place or public vehicle for selling tobacco products.

Note: -

Under this section Advertisement means any print and electronic media, email, internet, telecast, or any type of advertisement through writing, printing or uttering. And automatic vending machine means any automatic machine in which, on the insertion of a coin or token or any other device, tobacco or tobacco products are served automatically, or with the assistance of the purchaser.

If any person contravenes the provisions mentioned s/he shall be liable to either imprisonment for a term which may extend to three months or pay a fine which may extend to taka one thousand or both. According to the Tobacco Act of 2005 “Person” means any individual, company, society or corporation/ organization or group of people.

Provisions For The Smoking Zone

The owner, caretaker, controller, or manager of a public place and public vehicle must identify and designate a Smoking Zone. The area, specification, design, equipment and safety arrangements of the Smoking Zone in a public place or a public vehicle should be according to the prescription of the Rules.

Display Of Warnings

In the exterior of any identified and designated smoking area the owner, caretaker, controller or manager of a public place and public vehicle should manage to exhibit at that place and public vehicle a notice in Bangla as well as in English stating the following, “Smoking is prohibited and is a punishable offence.”

Powers Of Authorized Officer

Any authorized officer may enter into any public place or any public vehicle and inspect the public place or the public vehicle, with a view to ensure that the provisions of the Act are complied with. Any authorized officer may expel from a public place or a public vehicle any person who contravenes the provisions of the

Act. Any authorized officer may seize and destroy any tobacco product sold or offered for sale in contravention of the provisions of the Act

Health Related Warning On Packets, etc.

Each tobacco related product manufacturer shall print in large letters, easily visible and in big size any one from the following warning (at least 30 % of the whole size) on packet of cigarette and tobacco related product, for example:-

- Smoking causes death;**
- Smoking causes stroke;**
- Smoking causes heart diseases;**
- Smoking causes lung cancer;**
- Smoking causes respiration problem; or**
- Smoking is injurious to health**

Note: -

(In the case of BATB, print f is effectual currently)

If any person contravenes the provisions mentioned s/he shall be liable to either imprisonment for a term which may extend to three months or pay a fine which may extend to taka one thousand or both.

The definition of a public place as mentioned by the Tobacco Act has been mentioned previously, and the definition of a public vehicle as mentioned by the recent Tobacco.

Act is as follows:-

“Public Vehicle” means motor vehicles, trains, trams, ships, launches, all kind of mechanical public transport, air crafts and any such other vehicle as may be declared by the Government, by notification in the official Gazette.

Information Disclosure On Ingredients Of Imported Tobacco Related Products

In case of importation of tobacco or tobacco products, the importer shall have to report to the government on all ingredients used in such imported tobacco related products. Any person who does not file such report the imported tobacco product shall be confiscated.

Encouragement Production Of Alternative Cash Crop

Government shall discourage the cultivation of tobacco products and restrict loan allowance on easy terms to tobacco farmers encouraging them to grow alternative crop instead of tobacco, this benefit shall remain in force for 5 (five) years from the execution of this law. The Govt shall formulate policy which will reflect gradual discouragement of production and use of tobacco related products and installation of tobacco related industry.

Offences By Company

Should any offence under the Act be committed by a company, in that the owner, director, manager, secretary or any other officer or agent shall be deemed to be guilty of such offence unless s/he can prove that such offence has been committed without his knowledge or s/he has done his/her best in not occurring such offence.

Note:-

Under this section, "Company" means any statutory body, commercial establishment, partnership firm, society or organization. In case of commercial establishment "director" means any partner or member of the board of directors

BATB Code Of Conduct Regarding Tobacco Marketing:

In a competitive market, BAT wants adult smokers to choose its brands over those of its competitors. Advertising has two purposes – to maintain brand loyalty and to encourage smokers to switch brands. Advertising provides consumers with information to make choices. BAT believes that the use of tobacco products should be an adult choice. Advertising programs, including promotional activities for tobacco products should be carried out in a responsible manner.

The guiding principles for the company's advertising are stated below and for the purpose of these principles, and adult is defined as anyone who is 18 years of age or more.

- 1. Advertising is intended for, and will be directed at adult smokers.**
- 2. Advertising will not be false or misleading.**
- 3. Advertising will not make health claims about tobacco products or smoking.**
- 4. Advertising will not depict the use of tobacco products as being important to sexual success.**
- 5. Any person appearing in advertising will not be younger, nor appear to be younger than 25 years of age.**
- 6. Where television and/or radio advertising is permitted, it will only be broadcast in those hours when programming is primarily directed at adults.**
- 7. Print advertising will not be placed in publications primarily directed to persons under adult age.**
- 8. Cinema advertising will not be shown during films directed primarily at persons under adult age or at times when the audience is likely to comprise primarily of persons under adult age.**
- 9. No payment shall be made for the placement of advertising or tobacco product in any film produced for viewing by the general public.**
- 10. Advertising will not be displayed on billboards directed at or in close physical proximity to schools or other facilities used mainly by persons under adult age.**
- 11. Direct marketing, market research and sampling of tobacco products will only be carried out with, or in relation to adult smokers.**
- 12. Promotional items and premiums bearing tobacco trademarks will only be directed at adults.**

TOBACCO TAXATION AND CIGARETTE PRICING

Cigarettes are already heavily taxed with as much as 70% of the retail selling price going to the government. Cigarettes are one of the highest taxed consumer product in Bangladesh. British American Tobacco Bangladesh supports government initiatives to establish reasonable and practical tax rates. We believe high taxes on tobacco products encourage smuggling and counterfeit trade. When prices are too high compared to disposable income, the opportunity and incentive for illegal trade increase. Thus, although an overall higher price could reduce consumption of legal products, it would encourage illegal products. Illegitimate operators will invariably explore alternative ways to service demand and the actual impact on consumption may be minimal.

Position On Smuggling

British American Tobacco Bangladesh does not smuggle and condone smuggling. All cigarettes sold by us are legal sales. Our exports to different markets are registered with the authorities and systematically accounted for. Smuggling does happen. However no business operating through distributors can control every subsequent link in diverse and myriad supply chains. We work actively with governments and customs & excise authorities to help them eliminate smuggling and ensure we can compete fairly and openly. If there was no smuggling at all, that would be an ideal scenario for everybody, including us.

Framework Convention on Tobacco control and Sensible Regulation

We support and wish to help deliver sensible/ practical tobacco regulation that can help to reduce the impact of tobacco on public health, while ensuring that adult consumer can continue making informed choices about consumption of a legal product. The world health organization has adopted an international framework on tobacco control (FCTC). We believe it is possible to improve on the WHO's blanket solutions an 'one-size-fits-all' approach to tobacco control and government should play a role in formulating laws which are relevant for our country and takes into account the national priorities.

We have always recognised the right of governments to regulate tobacco products at a national level. Because of this, we believe the need for an international response in the form of a detailed and binding multilateral convention is much more limited than the Preamble of the FCTC suggests. As producers of a legal product, we assert our right to communicate with adult consumers and to participate in international trade. We take issue with the idea that the world in the 21st century is faced with a tobacco “epidemic” that is “spreading across national borders.” We recognize the negative health impact of tobacco use and the role of the WHO in supporting governments with health policy advice based on sound science. But it is not appropriate for the WHO to advise on tobacco control measures outside its remit. We have the right to participate in the regulatory process, and we are concerned about efforts to exclude us from it. We offer an open mind, knowledge of the product and its science, and long experience in diverse cultures, as well as providing support to governments in the development of national regulatory solutions.

Position on Tobacco control ACT

We support any regulation that is practical, enforceable, and implemental, while ensuring that adult consumer can continue making informed choices about consumption of a legal product. We believe every product requires regulation and tobacco is not an exception. We seek to engage with governments, other regulatory bodies and other tobacco companies to achieve sensible solutions to tobacco control. We also believe that it is part of a good regulatory practice, to include the all parties concerned in the process of regulation formulation. British American Tobacco Bangladesh is in support of provisions like prohibition against, smoking in public places and vehicles, restrictions on advertisement. A law will only be successful if it is practical, enforceable and can be effectively implemented. British American Tobacco Bangladesh would like to support the government’s initiative on regulations providing realistic solutions to relevant tobacco issues. If you are asked about the impact of the new law in our business. We do not have the law in detail, we can only comment on the impact after we do a detail impact analysis of the law in our business.

SCOPE AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS OF BATB



7.0 INTERNATIONAL TOBACCO PRODUCTS

MARKETING STANDARDS

7.1 PRODUCT AWARENESS AND TRAINING

Meeting Standards



**BRITISH AMERICAN
TOBACCO**

11 September 2001

INTERNATIONAL TOBACCO PRODUCTS MARKETING STANDARDS

- The parties subscribing to these Standards (the "Participants") wish to record their belief that tobacco products should be marketed in a responsible manner and that reasonable measures should be taken to ensure that the promotion and distribution of tobacco products is:
 - directed at adult smokers and not at youth, and
 - consistent with the principle of informed adult choice.
- These Standards should be observed in both their letter and intent.
- In subscribing to these Standards, the Participants wish to encourage:
 - all others who manufacture or market tobacco products to join them as Participants; and
 - all others who are associated with the manufacture, sale, distribution or marketing of tobacco products to embrace the principles of these Standards.
- The practices of the Participants should not be less restrictive than these Standards unless required by law, but any more restrictive legal requirement or voluntary undertaking shall take precedence over these Standards.
- The Participants should incorporate these Standards into their own internal codes.
- The Participants intend to support the comprehensive incorporation of these Standards into national laws.
- These Standards do not apply to the relationship between Participants and their suppliers, distributors or other trade partners, although those parties are encouraged to comply with the Standards in any dealings they have with consumers.
- The Participants shall take reasonable measures to prevent third parties from using their tobacco product brand names or logos in a manner which violates these Standards.
- These Standards are not intended to prohibit the use of any trademarks as brand names or on packaging.
- A Participant shall comply with these Standards as quickly as possible, and in any event no later than 12 months from the date that it subscribes to the Standards or, where existing contractual provisions prevent earlier compliance, in any event by December 31, 2002, provided in all cases compliance is not in breach of relevant laws. The timetable for compliance with the Sponsorship Standards is set out in paragraphs 17 and 19.

Definitions

The following definitions are provided to assist in the interpretation of these Standards.

Term used in these Standards	Explanation
adult	A person who is at least 18 years old, except where legal requirements or voluntary undertakings entered into by the Participants specify a higher minimum age for the lawful sale, purchase, possession or consumption of tobacco products, in which case the term “adult” means a person of at least that minimum age.
advertisement	Any communication by or on behalf of a Participant to consumers which has the aim of encouraging them to select one brand of tobacco products over another.
promotional event	An event or activity organised by or on behalf of a Participant with the aim of promoting a brand of tobacco product, which event or activity would not occur but for the support given to it by or on behalf of the Participant.
sponsorship	Any public or private contribution to a third party in relation to an event, team or activity made with the aim of promoting a brand of tobacco product, which event, team or activity would still exist or occur without such contribution.
tobacco products	Manufactured cigarettes, cigars, cigarillos, pipe tobacco, fine cut tobacco, and pre-formed tobacco rolls.
youth	Any person who is not an adult. The term also includes the plural.

Content Standards

1. The following Content Standards are intended to cover all communications by or on behalf of a Participant to consumers which have the aim of encouraging them to select one brand of tobacco products over another. Certain communications associated with sponsorship activities are subject to separate requirements set out in paragraph 19.
2. No advertisement shall:
 - be aimed at or particularly appeal to youth
 - feature a celebrity or contain an endorsement, implied or express, by a celebrity
 - depict any person under or appearing to be under 25 years of age
 - suggest that any of the following is enhanced by smoking:
 - sporting or athletic success,

- popularity,
 - professional success, or
 - sexual success, or
 - suggest that most people are smokers.
3. All new advertisements published or disseminated after subscription to these Standards, including renewals and replacements of existing advertisements, shall contain a clearly visible health warning except those which:
- appear on point of sale material the advertising display area of which is smaller than 250 square centimetres,
 - are, either individually or in deliberate combination with other advertisements, smaller than 25 square centimetres and are placed on promotional merchandise, or
 - until December 1, 2006 are used at and connected with sponsored activities

Media Usage Standards

4. ***Print:***

- 4.1 No advertisement shall be placed in any printed publication unless there is a reasonable basis upon which to believe that
- (a) at least 75% of the readers of such publication are adults, and
 - (b) the number of youth who read it constitute less than 10% of all youth in the country of circulation.
- 4.2 No advertisement shall be placed on the packaging or outside cover of a magazine, newspaper or similar printed publication intended to be read by consumers.
- 4.3 Reasonable measures shall be taken to ensure that no advertisement is placed in printed publications adjacent to material that particularly appeals to youth.

5. ***Outdoor and Billboard:***

- 5.1 No advertisements shall be placed on any billboard, wall mural or transport stop or station which:
- is located closer than 100 metres from any point of the perimeter of a school attended predominantly by youth, or
 - either individually, or in deliberate combination with other such advertisements, exceeds 35 square metres in total size.

6. ***Cinema:*** No advertisement shall be displayed in a cinema unless there is a reasonable basis upon which to believe that at least 75% of the audience are adults.

7. ***Television or Radio:*** No advertisement shall be placed on television or radio unless and until:

- (a) each person seeking access to the channel or programme on which such advertisement is placed provides verification that he or she is an adult, and

(b) the broadcast is restricted to countries where such advertisements are not prohibited by law.

8. **Internet:** No advertisement shall be placed on the Internet unless and until:

(a) each person seeking access to the Internet site on which such advertisement is placed provides verification that he or she is an adult, and

(b) access is restricted to those countries where such advertisements are not prohibited by law.

9. **Video, Audio and Computer:** No electronic advertisement shall be incorporated within any video or audio cassette, compact disk, digital video disk or similar medium unless reasonable measures have been taken to ensure that the intended recipients of the item are adults.

For the avoidance of doubt, Participants may distribute video or audio cassettes, compact disks, digital video disks and similar media provided that the contents, cover, packaging and means of distribution comply with these Standards.

10. **Product Placement:** There shall be no direct or indirect payment or contribution for the placement of tobacco products, advertisements or items bearing tobacco brand names, within the body of any:

- motion picture,
 - television programme,
 - theatrical production or other live performance,
 - live or recorded performance of music,
 - commercial film or video,
 - video game, or
 - any similar medium
- where such medium is intended for the general public.

Promotion and Event Standards

11. All activities and communications concerned with

- promotional offers
- promotional events
- promotional items, or
- sampling

shall comply with the Content Standards.

12. **Promotional Offers**

12.1 Promotional offers and programs for specific brands which appear on the package, at the point of retail sale, by mail or through other communications shall be directed only to adults and, unless prohibited by law, only to smokers.

- 12.2 Reasonable measures shall be taken to ensure that youth and (unless prohibited by law) non-smokers are excluded from direct mailing lists.
- 12.3 Participation in promotional offers by the general public will be conditional upon evidence of age eligibility and (unless prohibited by law) confirmation of smoker status.
- 12.4 Where promotional offers permit an adult smoker to be accompanied by other persons at a third party event or in an activity, such other persons shall be adults.
13. **Promotional Events:** Each Participant shall ensure that only adults are allowed access to promotional events.
14. **Promotional Items:**
- 14.1 No advertisements shall be placed on:
- items where those particular items are marketed to, or intended to be used predominantly by, youth, or
 - shopping bags.
- 14.2 No advertisement larger than 25 square centimetres - either on its own or in deliberate combination with other advertisements - shall be placed on any items (other than on items with a smoking-related function) which are to be sold, distributed or offered to the general public.
- 14.3 Any item of clothing which is offered for sale or distribution by or on behalf of a Participant shall only be offered in adult sizes.
15. **Sampling:** Reasonable measures shall be taken to ensure that:
- (a) sample tobacco products are not offered to youth or to non-smokers
 - (b) samples are only offered in a segregated area access to which is restricted to adults
 - (c) personnel employed directly or indirectly by Participants to offer sample tobacco products or to conduct promotional activities
 - (i) are at least 21 years of age, and
 - (ii) verify the age and (unless prohibited by law) smoker status of those to whom the samples and promotions are offered, and
 - (d) unsolicited tobacco product samples are not distributed, either directly or through a third party, by mail.

Sponsorship Standards

Sponsored Events

16. No sponsorship shall be provided for:
- an event or activity which bears a tobacco product brand name, unless there is a reasonable basis upon which to believe that all persons who compete, or who otherwise take an active part, in the sponsored events or activities are adults, or
 - a team or an individual which bears a tobacco product brand name, unless all persons sponsored by Participants are adults.

17. As from December 1, 2006, no sponsorship shall be provided unless:
- (a) there is a reasonable basis upon which to believe that attendance at the sponsored event or activity will comprise no less than 75% adults, and
 - (b) there is a reasonable basis upon which to believe that the sponsored event or activity will not be of particular appeal to youth, and
 - (c) the Participant does not anticipate that the sponsored event or activity will receive exposure, other than as a news item, on television or radio or the Internet, unless such exposure complies with these Standards, and
 - (d) success in the principal activity associated with the sponsorship does not require above-average physical fitness for someone of the age group of those taking part.

Sponsorship Advertising

18. All individuals authorised to bear tobacco product advertisements, logos or brand names at sponsored events or activities shall be adults.
19. All forms of advertising associated with or ancillary to sponsorship shall comply with the provisions of these Standards. The following are excluded from these Standards until December 1, 2006:
- on-site signage at sponsored events
 - incidental television and radio broadcasts of sponsored events
 - applications of trade marks or logos to people or equipment participating in sponsored events.

Packaging, Sales and Distribution Standards

20. Cigarettes shall not be sold or distributed to consumers in packages containing fewer than ten sticks.
21. Fine cut tobacco shall not be sold or distributed to consumers in pouches smaller than 10 grams.
22. No incentive or materials shall be provided to support the sale of cigarettes in single sticks.
23. All cigarette packs and all primary packaging for other tobacco products shall carry a clearly visible health warning.
24. All cartons and bundles offered for sale duty-free shall carry a clearly visible health warning.
25. Reasonable measures shall be taken to prevent youth having access to cigarettes in vending machines.

Youth access and minimum age restrictions

26. *Youth Access:* The Participants shall make sustained efforts, in co-operation with governments and other regulatory agencies, customers and others to prevent youth having access to tobacco products. They shall also seek ways in which to reinforce and give effect to measures that will prevent youth having access to tobacco products.
27. *Minimum Age Restrictions:* The Participants are committed to the enactment and enforcement of minimum age restrictions for the lawful sale or purchase of tobacco products in every country in which their tobacco products are sold. The Participants support efforts by appropriate authorities, manufacturers of tobacco products, distributors and retailers to ensure the effective enforcement of such restrictions.

Product Awareness

The Product Awareness section of the Product Interact site is devoted to increasing the level of knowledge of Product issues within the BAT Group.

There are 4 main sections:

1. Snus: smokeless tobacco. Information on the test market launches in May 2005 and general product detail on the Snus proposition.
2. Product Awareness & Training. This provides globally consistent Product Knowledge information, which forms part of the globally available induction programme for new BAT employees.

In addition, the updated "Seed to Smoke" videos, which also form part of the induction programme and which are relevant to all BAT staff at regional and end market locations, can be found.

3. Product Differentiators for the centrally managed brands.
4. A "Basic Guide" area for different Product related topics, from Potentially Reduced Exposure Products to Environmental Tobacco Smoke.

This area will continue to be added to on a regular basis so add this to your list of favourites

Product Awareness & Training

The Product Knowledge programme is the result of a collaboration between Product experts in the end markets, the regions and the centre with the key deliverable being to develop a flexible programme suitable for all BAT staff regardless of their level of knowledge about Product.

The Product Knowledge programme is divided into the following activities:

Induction Programme.

Designed to be included as part of an induction programme for all new employees as well as employees wishing to refresh their Product knowledge. The Product Awareness Induction Programme and the separate sections of the "Seed to Smoke" video are included in the Product Interact site for ease of reference. A copy will also be held by HR Managers in all Operating companies.

Product Awareness Training pack

A database of material is under development from which all functional and regional programmes will be aligned.

Additional Activities

- Senior Managers Product Programme: This is a Bi-Annual programme exploring the Product Strategy with the intention of developing clear end market action plans.
- PIMMS workshops: This is designed for marketing and R&D with the objectives to increase mutual understanding and ultimately drive more innovation into the product.

PRODUCT STRATEGIC IMPERATIVE AND STRATEGY MISSION

Strategic Imperative

Provide an industry leading product portfolio designed to address consumer needs and societal expectations.

Strategy Mission

- It is fundamental to the sustained growth of our business that we develop competitively superior products, that enhance the unique consumer positioning of our differentiated Brand Portfolio.
- We are committed to meeting consumer needs, addressing societal expectations and seeking to reduce the risks of smoking through the development and use in the market of innovative technologies.
- We aspire to be the first to launch successfully a new generation of tobacco products with critical mass appeal that will, over time, be recognised by scientific and regulatory authorities as posing substantially reduced risks to health. In setting ourselves this challenge, we do not underestimate the scientific and regulatory difficulties but this will not detract from our commitment to pursuing this aim.

Strategic Objectives to achieve the mission

- Competitively superior products that enhance our differentiated brand world positionings.
- Products that address regulatory and societal expectations.
- New generation products with mass appeal that have the potential to substantially reduce risks to health.
- Third party endorsement of reduced risk products and technologies by scientific and regulatory bodies.
- A co-ordinated set of processes and capabilities that will rapidly and effectively drive consumer-focussed innovation and quality.
- An organisational awareness and ownership of our Products and Strategy which is aligned across our Functions and Markets.

Relevant Provisions Of The Marketing Standards

- i) The Marketing Standards provide that all "**advertisements**" shall contain a clearly visible health warning, except:-
 - those which appear on Point Of Sale material, the advertising display area of which is smaller than **250cm²**
 - those which, either individually or in deliberate combination with other advertisements, are smaller than **25cm²** and are placed on promotional merchandise
 - until December 2006, on-site signage at sponsored events or applications of trademarks or logos to people or equipment participating in sponsored events
- ii) "**Advertisements**" are defined as "all materials which have the aim of encouraging consumers to select one particular brand of tobacco products over another".
- iii) In practice, the Marketing Standards will therefore require the following, (subject to the exceptions referred to above):-
 - Brand communications will require a health warning - whether featuring full branding, cropped branding,

brand identifiers or other communications intended to support the brand.

- Point Of Sale materials (such as shelf strips, counter top displays, mobiles etc.) will all require health warnings unless they are less than **250cm²**. In assessing whether something meets the 250cm² threshold one should take account of the size of the whole item of POS material rather than simply the size of the tobacco trademark.
- Promotional merchandise which is distributed **to the trade** (e.g. ashtrays, umbrellas etc.) will require health warnings if the communication element is more than **25cm²**.
- Promotional items to be given or sold **to consumers** (e.g. T-Shirts bags, caps etc.) will not require health warnings since, under different provisions of the Marketing Standards, all such items are prohibited from having communication elements which exceed the 25cm² threshold

Guidelines

i) **Placement**

- The principle, as set out in the Marketing Standards, is that all health warnings should be "**clearly visible**".
- Due to the extremely diverse nature of our communication materials in terms of size, layout, shapes, forms etc., it is not possible to provide universally applicable guidelines as to the size and placement of health warnings.
- As a rule of thumb, where the advertisement covers a flat surface it is suggested that the area set aside for the health warning should cover approximately 10% of the relevant advertisement/item.
- For the certain items such as ashtrays; retail media; three dimensional POS materials and branded Horeca items etc, it may be either impossible or impractical to work with a 10% guideline. In this situation it will be necessary to take a common sense view as to what constitutes a "clearly visible" warning always bearing in mind the spirit and intent of the

Standards i.e. that smoking should be an **informed** adult choice.

- In accordance with the spirit of the Marketing Standards the final decision as to what constitutes "clearly visible" will rest with the relevant end market concerned, taking into account the necessity of defending any such decision both locally and internationally.

ii) **Content**

- For ATL materials, the health warning area should comprise a white background with black text.
- For BTL materials, the warning should ideally be black on white, however in certain circumstances the health warning area could be the same colour as the relevant item/advertisement **provided** the lettering is in a colour which provides the maximum contrast with the background colour so as to ensure clear visibility.

iii) The relevant text should be as follows:-

- For all Travel Retail items:
 - **"TOBACCO SERIOUSLY DAMAGES HEALTH"**
 - This text should always be in English.
- For domestic (non-Travel Retail) items:
 - End markets should choose a **local language health warning** (the content of which we believe to be scientifically sound) from one of those mandated for packs or other types of advertising in their market.
- For markets where there is no legislation requiring health warnings on packs or advertising:
 - The **EU health warning** (as set out in (c) above) **translated into local language.**
- Unless the use of an attribution is required by law in a particular market, the voluntary health warnings referred to in this note should not be accompanied by an attribution since the content and placement of the warning is something which we are applying voluntarily to items which have not previously had a health warning.
- The size of the relevant font should be such as to fill the maximum practical amount of the health warning area.

BAT Group View

Smoky environments can be unpleasant, annoying and of real concern to some people. It is therefore not reasonable for people to think they should be free to smoke wherever they like and, in many countries steps have been taken to restrict smoking in public places in various ways. However, it is important to recognise that in every country a sizeable proportion of the adult population smokes, and that any regulation of smoking in public should balance the interests of smokers and non-smokers.

In our view we think that both groups can be accommodated. In recent years many public health groups have concluded that exposure to environmental tobacco smoke is a cause of certain diseases in non-smokers, and these views have been widely publicised. Opinion surveys show that many people now believe that environmental tobacco smoke (ETS) is a cause of diseases such as lung cancer. However, when you examine the facts, the scientific evidence which has developed over the past twenty years, it is by no means clear on whether exposure to ETS does increase non-smokers risks for chronic diseases.

Most research does not report any meaningful increases in risk and overall the studies show that, if there is a risk at all, it is too small to measure with any degree of certainty. People who claim that public smoking results in large numbers of deaths are doing so without sound scientific evidence.

There are some health conditions where the research allows somewhat stronger conclusions to be drawn. For example, some studies show that people with asthma can have their symptoms exacerbated by smoky environments, while other data is more consistent in relation to the respiratory effects on young children whose parents smoke.

In our view, the formation of public policy should take account of scientific evidence. For example, based on current research findings, public health bodies should perhaps focus more attention on the provision of public health advice to parents about their smoking habits at home as opposed to proposing bans on smoking in public places. We do recognise that the debate around smoking in public places is driven by socio-political concerns rather than scientific facts and that advocates of restrictive tobacco control measures will continue to exaggerate the public health impact of environmental tobacco smoke. However, in our view it is possible to provide both sensible regulatory and sensible practical solutions that address these concerns.

We do not wish adult smokers to be alienated but we equally recognise the need to accommodate the wishes of non-smokers. We advocate an approach based on courtesy and choice. There are numerous reasonable solutions from better ventilation to separate areas for smokers.

A proportionate regulatory approach in most cases would be to encourage such solutions, by for example requiring building owners to have a smoking policy, rather than to proscribe regulations that provide little or no choice to business owners or the people who occupy their buildings. In practice how this is achieved will vary from country to country to reflect different cultures, climates and societal expectations.

HORECA SOLUTION:

1. Why public smoking is important to Horeca

Smokers have always been good at going out and enjoying themselves, which is why they are such a major part of the Horeca industry. In many markets around 25-35% of adults smoke but Horeca operators, and especially those operating bars and night-clubs, will often tell you that they are much more important to them than that.

They may say that smokers:

- Make up most of their consumers, and this is often true especially in outlets with a local 'community' trade such as bars and taverns.
- Are their most loyal and therefore important consumers. Many Horeca outlets rely on their most frequent 'regular' consumers for a very high proportion of their income – again these are often smokers.

Spend more when they visit – restaurant operators often say that they stay on after the meal for a smoke and buy expensive drinks and/or cigars from them

ATUU30s tend to go out more frequently to Horeca than older people and so Horeca represents an important communication channel for us to reach:

- Our own brands' consumers
- Consumers of competitive brands

Brand Communication

Brand Switching

Adult tobacco users are much more open to try our products in Horeca outlets than elsewhere. If they run out of their usual brand whilst in the outlet and cannot buy it, they are likely to try a similar high quality product from our range than to leave the outlet to visit another retailer. Trying our product may encourage them to stay with their new brand rather than switching back to their previous favourite.

Reputation

Tobacco is a legal product in every market in the world. Bans on smoking in public prevent consumers from enjoying our product in these sociable surroundings and make them feel like second-class citizens. Many of our consumers feel strongly that we should work on their behalf to ensure that they can continue to enjoy our products when a3.

How smoking bans impact Horeca

To gain full Horeca co-operation it is vital that they understand the serious impacts that a smoking ban could have on their businesses and so why they should take action now. These include:

Loss of sales revenue from food and drink

It is clear from the markets which are already subject to strict controls or bans that different parts of the Horeca market are affected in different ways by bans.

The greatest impact is on outlets that rely most on the business of smokers and/or would find it most difficult to provide for them in the event of a ban on indoor smoking. These are especially:

- ‘Landlocked’ outlets, with no space to create an external smoking area in the event of an indoor smoking ban
- Smaller, more traditional outlets
- Nightclubs
- Those relying on ‘regulars’ for a high proportion of their trade

Overall the clubs and bars appear to be the hardest hit, according to evidence from New York and Dublin. In these cities sales slumped by around 15% after a ban was imposed. ‘Landlocked’ outlets in both cities suffered even more.

Outlets in New York also report a loss of income when consumers buy drinks on account, and then leave without paying having gone outside for a smoke.

Increased costs (capital and revenue)

Smoking bans or severe controls are not ‘zero cost’ options. Rooms where smoking is allowed often require ventilation equipment and may have to be taken out of another space with the cost of new walls or partitions. Even external smoking areas must be equipped with tables, roofs, awnings or heaters depending on the regulation and the local climate.

‘Policing’ these areas also carries a cost as operators lose the flexibility to move staff to areas where demand is greatest. In some markets, it is impossible to force staff to work in a smoking area or room.

Increased controls/loss of freedom

Legislation impacts on the freedom of the operator to run his outlet as he thinks best. His facilities will be subject to further controls and inspections by local councils, health groups, government inspectors or even new ‘tobacco police’. This means extra work for the Horeca operator and the sort of control that he may have set up in business to avoid.

Loss of atmosphere

Many consumers (smokers and non-smokers) would rather stand outside a bar with a smoking ban rather than inside it. This greatly reduces the liveliness of the outlet, and makes it seem less busy and popular. Many operators trade on the fun that their consumers have in their busy and popular venue – so an empty outlet will make them much less attractive to potential consumers.

The ‘domino’ effect on other regulations

Anti-tobacco campaigners are often closely allied with, or are themselves also, anti-alcohol campaigners. Increasingly a Government or regulator response to Horeca groups that say that a smoking ban will harm their business is that this is a good thing as it will make people drink less. By giving up on the public smoking issue it is likely that the efforts of health activist groups will be channelled into anti-alcohol activity. This would have further negative impacts on the Horeca industry.

Problems with neighbours/planning

A side-effect of a ban is to force smokers and some of their friends outside. This increases the amount of noise pollution in the neighbourhood and can lead to problems with neighbours especially late at night. Neighbour problems, such as crime and litter (cigarette butts), have a direct effect on operators, with refusals of new licenses or license extensions costing them heavily in lost revenue.

Restricted market examples

The evidence is still building about the impacts of the smoking bans in Ireland and New York.

Media Placement Policy

The Background

The print media in Bangladesh plays an important role in shaping public opinion and communicating attributes of brands and products. Side by side the company values relationship with the media since positive presence in the media is crucial for image. The media can play a major role in portraying a balanced view on various tobacco and industry related issues. Therefore it is essential to have a clearly defined media advertisement policy so as to have a consistent & non controversial positioning among media. This will assist in enhancing the image of the company.

Objectives

1. A consistent message on the advertising policy to the media - more transparent relationship.
2. Clear understanding among Cora & Brand on media spend – better working relation
3. Pro-active media engagement – better media management

Policy

1. All brand advisements will be placed as per brand's target audiences
2. Brand to follow IMS as guideline for all press placements.
3. All media plan should be shared & agreed with Cora media team prior to scheduling
4. Media plans must be signed jointly by respective Sr. Brand Manager & Cora Marketing Manager.
5. Brand spend in the newspapers should not be used to derive corporate or brand PR benefits. This will be clearly communicated periodically to all our agencies who shall not mention prior investment levels as a means to negotiate free PR.

Rational

1. This will help the brand to meet the campaign / brand objectives.
2. The information on individual newspapers /media meeting IMS guidelines will be gathered from independent 3rd party – not a research initiated or funded by BAT
3. To help the media team prepare and agree with Brand Marketing the company's position and rational behind media spend.
4. To have official documents from compliance point of view – IMS audit compliant
5. This will help the company to drive PR for any campaign like Star Search and other media support

Requirement

At present brand team does not have additional budget for any special request coming out of media management or for PR ads. This can be addressed in two ways:

1. Brand to have additional pot of money to address such issues – to be spent during any campaign based on requests emanating from media. This will be owned by the brand team. The amount would be Tk 1 million

Or

2. Media team to have this pot of money to address such issues – which would be spent during any campaign as request comes from media. This is to be owned by Cora. The amount would be Tk 1 Million.

THE PROJECT
SCOPE AND CHALLENGES OF INTELLECTUAL
PROPERTY RIGHTS OF BATB

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CONTENTS IN DISCUSSION

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- 2. What are in the laws: Summary of the laws.**
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- 4. The dilemma of unawareness of laws.**
- 5. Why not the Intellectual Property Rights are well protected:
Insufficient laws or improper implementation**
- 6. Recommendations.**
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Introduction:

All objects which can be owned by an individual under a legal system are termed as property. The objects to which the right to ownership so extends are either corporeal, i.e. having some tangible existence or incorporeal, i. e. having intangible existence. This incorporeal property having intangible existence is the creation of developed system of law. Those are termed as intellectual property. Those properties are the creation of the human mind, the human intellect. In general, the most important feature of such property is that the proprietor or owner may use his property as he wishes and nobody else can lawfully use his property for commercial purposes without his authorization. A strong and were functioning intellectual property system is a ' SINE QUA NON' for social, cultural, economic and technological development of a country. The intellectual property law, a product of the industrial civilization, has assumed equal importance both at national and international level. The laws relating to Copyright, Patent, Design, Trade Mark etc, are known as the intellectual property laws.

Intellectual property laws of Bangladesh had its origin in British India. In India, there was no statutory law on copyright until 1914. The English Copyright Act, 1911 was extended to India in 1912. In 1914 the Indian Legislature passed the Copyright Act, 1914 The Indian Copyright Act, 1914 was the law on copyright until 1962 when the Copyright Ordinance, 1962, was promulgated in the then Pakistan of which Bangladesh was part. The provisions of the Ordinance were the law in force in Bangladesh by virtue of Article 149 of the Constitution of the Peoples Republic of Bangladesh. The said Ordinance was promulgated to bring the laws in conformity with the International Convention for the Protection of Literary and Artistic Works, 1886, known as the Berne Convention. The Berne Convention was amended from time to time, the latest being in Paris in 1971. There have been several other International conventions for protection of copyright among the states-parties to the Conventions such as, the Universal, Copyright Convention signed in Geneva in 1952, the Universal Copyright Convention-Paris Revision, 1971, signed in Paris and

the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organization, 1961, known as the Rome Convention. In addition, there is the Agreement on Trade Related Aspects of Intellectual Property, 1994, known as the TRIPS Agreement. Bangladesh is a party to the TRIPS Agreement.

The word 'intellectual' means possessing or showing intellect or mental capacity especially to a high degree of an intellectual person; guided or developed by or relying on the intellect rather than upon emotions or feeling; characterized by or suggesting a predominance of intellect. 'Property' means that which a person owns, the possession of a particular owner; ownership right of possession; enjoyment of any 'Rights' means that which is due to anyone by just claim, legal guarantees, moral principles. Therefore, Intellectual Property Rights of any Patents or Process must have some ingenuity and fall within the category of 'inventions' where the 'intellect' must have played a predominant role. 'Discoveries' which already have existed in nature but only have been retrieved by someone and put to benefit of people should not be equalized with inventions. Biotechnology involves use of scientific and engineering principles for processing of materials (organic or inorganic) using biological agents to provide goods and services.

Intellectual Property Rights were first raised as a multilateral trade issue in 1986 under the General Agreement on Tariffs and Trade (GATT) to crack down on counterfeit goods. But with many industrial countries interested in negotiations on trade liberalization to tighten control over technology, this narrow focus was soon extended to include many other areas. Although each country implements the Intellectual Property Rights law at the national level, the TRIPS Agreement imposes minimum standards on patents, copyright, trade marks and trade secrets. These standards are derived from the legislation of industrial companies, applying the form and level of protection of the industrial world to all WTO members. This is far tighter than existing legislation in most developing countries and often conflicts with their national interest and needs.

What are in the laws: Summary of the laws:

The Intellectual Property rights in Bangladesh are primarily governed by the following laws, namely:-

1. Copyright Act, 2000 (Act No.28 of 2000)
2. Trade Marks Act, 1940 (Act No. V of 1940)
3. Merchandise Marks Act, 1889 (Act No. IV of 1889)
4. Patents and Designs Act, 1911 (Act No. II OF 1911)

The Main Features of the governing laws

The Main Features of the governing laws are stated below:-

The Copyright Act, 2000 (Act no.28 of 2000)

The Copyright Act, 2000 consisting of 17 chapters having 105 sections. The main features of the Copyright Act, 2000 which is now in force in Bangladesh are as follows:

1. Sections 2 to 8 and 13 to 16 give definition of various categories of works in which copyright subsists and the scope of the rights conferred on the author under this Act;
2. Sections 9 to 12 deals with creation of a copyright Office and a Copyright Board in order to facilitate registration of copyright and to settle certain kinds of dispute arising under the Act, and for compulsory licensing of copyright;
3. Sections 17 to 23 related with the provisions to determine the first ownership of copyright in various categories of works;
4. Sections 24 to 32 deals with term of Copyright for different categories of works;
5. Sections 33 to 40 deals with Broadcasting rights ;
6. Sections 41 to 47 deals with the provisions relating to performing rights societies;

7. Sections 48 to 54 enunciated the provisions relating to assignment of ownership and licensing of copyright including compulsory licensing in certain circumstances;
8. Section 55 to 67 deals with the provision of Copyright registration, supply of books and periodicals to Public Library, penalty for non-compliance of chapter 11; etc
9. Sections 68 to 70 enumerated the provisions relating to international Copyright;
10. Sections 71 to 74 deals with infringement of Copyright;
11. Section 75 to 81 deals with the civil relief of Copyright infringement;
12. Section 82 to 98 deals with the general provisions of infringement of Copyrights, penalty and appeals.
13. Sections 99 to 105 enunciated the provisions relating to Miscellaneous, including rule making power, indemnity, repeals, savings and transitional provisions.

Other salient features of the new Copyright Act 2000:

- (1) In this law computer program and computer data base is included in the definition of literary work and thereby providing adequate protection to those works.

In this Act, the meaning of the word "adaptation" has been extended to include "rearrangement-or alteration" of the work.

- (2) In the this Act, definition of Bangladeshi work has be broadened by incorporating "works first published in Bangladesh"
- (3) The provision of Copyright Society has been provided in the Act and thereby widened the scope of protection of rights of Copyright holders including the performers.
- (4) With regard to appointment of Chairman of the Copyright Board it has been provided that the appointment be made from among the senior District Judges or an officer of the Government not below the rank of an

Additional Secretary or an Advocate who is eligible to be appointed a Judge of the High Court.

- (5) Specific provision regarding first ownership in respect of an "address delivered in public" and "work of a local authority" has been made in this Act.**
- (6) In this Act a new provision has been provided to the effect that if the contract of assignment is silent regarding its term it shall be deemed to be for 5 years, Specific provision has been provided for specification of the rights assigned, duration and territorial extent of assignment, and amount of royalty payable. It also further provides provisions regarding settlement of disputes arising out of assignments of copyright. According to this Act, Copyright Board has been vested with this authority to settle disputes arising out of assignment of copyright.**
- (7) Term of copyright in published literary, dramatic, musical, artistic works, cinematograph film, sound recording, government works, international organizations works, works of the local authorities and posthumous works have been determined up to sixty years.**
- (8) In this Act specific provision has been made regarding performer's right in the light of the relevant provision of the TRIPS Agreement.**
- (10) According to this Act, provision has been made to grant such license only after the expiry of a period of 5 years from the first publication of the work and the right has been opened to any person, whether he is a citizen of Bangladesh or not.**
- (11) In this Act, a specific provision has been made for issue of compulsory license in unpublished Bangladeshi works.**
- (12) In this Act, a specific provision has been provided for such compulsory license after expiry of seven years, three years and five years, for works of (1) fiction, poetry, drama, music or art, (2) natural science, physical science, mathematics or technology and (3) literary, scientific or artistic works, respectively.**

- (13) In this Act, a provision has been incorporated to the effect that an applicant for registration of Copyright of an artistic work which is capable of being used as a trade mark must attach a certificate from the Registrar to Trade Marks to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered or applied for registration in the name of another person.**
- (14) In this Act, provision has been made for publication of the entries in the Copyright Register in the Official Gazette.**
- (15) In this Act, a provision has been embodied to the effect that in a sound-recording the name and address of the owner of copyright and the year of its first publication must be given and in a video film it must be displayed, if the video is in respect of a cinematograph film, that the film was duly certified to be fit for exhibition under the Censorship of Films Act. 1963, and the name and address of the person who has made the video film along with a declaration that necessary license from or written consent of the owner of copyright has been obtained for making such video film must also be displayed.**
- (16) Provision has been incorporated for allowing owner of the copyright of an original work of art or a manuscript of a literary or musical work of share resale price during subsistence of copyright in the Act.**
- (17) In this Act both term of imprisonment and amount of fine for infringement of copyright has been enhanced and provision has been made for inflicting minimum punishment.**

Thus imprisonment for a period which may extend to 3 (three) years but shall not be less than 6 months and fine which may extend to Tk. 2,00,000 (two) lakhs but shall not less than Tk. 50,000/- or with both has been provided.

For second and subsequent infringement imprisonment for a term which may extend to 3,00,000 (three) lakhs but not less than Tk. 1,00,000 (one) lakh has been provided.

At the same time, court has been empowered to inflict a lesser penalty if it comes to a conclusion that the infringement was not done for commercial purpose.

- (18) Use of an infringed copy of computer program has been made an offence in the Act and imprisonment for a term which may extend to 3 (three) years but shall not less than three month or fine, which may extend to Tk. 2,00,000 (two) lakhs but not less than Tk. 50,000/- has been provided for such offence.**
- (19) In this Act, unauthorized publication of an audio-record or a video film has been made an offence and 2 years imprisonment or fine of Tk. 25.000/- or both has been provided for such offence.**
- (20) According to this Act, any police officer, not below the rank of sub-inspector, be authorized to seize, without warrant, all infringed copies of the works and plates used for making such copies, wherever found.**

MAIN FEATURES OF THE TRADE MARKS ACT, 1940 (ACT NO. V OF 1940)

The Trade Marks Act, 1940 consisting of XI chapters having 86 sections. The main features of the Trade Marks Act, 1940 which is now in force in Bangladesh are as follows:

1. CHAPTER I deals with Preliminary having following sections (Sections 1 to 3):-

- 1. Short title, extent and commencement**
- 2. Definitions.**
- 3. Application of other laws not barred.**

2. CHAPTER II deals with register and conditions for registration having following sections (Sections 4 to 13):-

- 4. The register of trade marks.**

5. **Registration to be in respect of particular goods.**
6. **Distinctiveness requisite for registration.**
7. **Limitation as to color.**
8. **Prohibition of registration of certain matter.**
9. **Use of names of chemical elements barred.**
10. **Prohibition of registration of identical or similar trade mark.**
11. **Registration of parts of trade marks and of trade marks as a series.**
12. **Associated trade marks.**
13. **Registration subject to disclaimer.**

3. CHAPTER III deals with the Procedure for, and Duration of, Registration having following sections (Sections 1 to 19):-

14. **Application for registration.**
15. **Opposition to registration.**
16. **Registration.**
17. **Jointly owned trade marks.**
18. **Duration and renewal of registration.**
19. **Effect of removal from register for failure to pay fee for renewal.**

4. CHAPTER IV deals with Effect of Registration having following sections (Sections 20 to 27):-

20. **No action for infringement of unregistered trade mark.**
21. **Right conferred by registration Right conferred by registration.**
22. **No infringement in certain circumstances.**
23. **Registration to be prima facie evidence of validity.**
24. **Registration to be conclusive as to validity after seven years.**
25. **Saving for vested rights.**
26. **Saving for use of name, address, or description of goods.**
27. **Words used as name or description of an article or substance.**

5. CHAPTER V deals with Assignment and Transmission having following sections (Sections 28 to 35):-

- 28. Power of registered proprietor to assign and give receipts**
- 29. Assign ability of registered trade marks.**
- 30. Assign ability of unregistered trade marks.**
- 31. Restrictions on assignment or transmission where multiple exclusive rights would be created.**
- 32. Restrictions on assignment or transmission when exclusive rights would be created in different parts of Bangladesh**
- 33. Conditions for assignment otherwise than in connection with the good will of a business.**
- 34. Conditions for assignment and transmission of certification trade marks and associated trade marks.**
- 35. Registration of assignments and transmissions.**

6. CHAPTER VI deals with Use of Trade Marks and Registered Users having following sections (Sections 36 to 45):-

- 36. Proposed use of trade mark by company to be formed.**
- 37. Removal from register and imposition of limitations on ground of non-use.**
- 38. Defensive registration of well-known trade marks.**
- 39. Registered users.**
- 40. Power of registered user to take proceedings against infringement.**
- 41. Application for registration as registered user.**
- 42. Power to Registrar to vary or cancel registration as registered user.**
- 43. Registered user not to have right of assignment or transmission.**
- 44. Use of one of associated or substantially identical trade marks equivalent to use of another.**
- 45. Use of trade mark for export trade, and use when form of trade connection changes.**

7. CHAPTER VII deals with Rectification and Correction of the Register having following sections (Sections 46 to 49):-

- 46. Power to cancel or vary registration and to rectify the register.**
- 47. Correction of register.**
- 48. Alteration of registered trade mark.**
- 49. Adaptation of entries in register to amended or substituted classification goods.**

8. CHAPTER VIII deals with Certification Trade Marks having following sections (Sections 50 to 61):-

- 50. Provisions of this Act applicable to certification trade marks.**
- 51. Certification trade mark not to be registered in name of person trading in goods certified thereby.**
- 52. Determination whether a mark is a certification trade mark.**
- 53. Application for registration.**
- 54. Consideration of application for registration by Government.**
- 55. Opposition to registration.**
- 56. Deposit of regulations governing the use of a certification trade mark.**
- 57. Right conferred by registration.**
- 58. No infringement in certain circumstances.**
- 59. Cancellation or varying of registration.**
- 60. Costs not to be awarded in certain cases.**
- 61. Decisions of Government to be final.**

9. CHAPTER IX deals with Special Provisions for Textile Goods having following sections (Sections 62 to 66):-

- 62. Textile goods.**
- 63. [Omitted.]**
- 64. Restrictions on registration of textile goods.**
- 65. Refused Textile Marks List.**
- 66. Advisory Committees.**

10. CHAPTER X deals with Offences and Restraint of use Royal Arms and State Emblems having following sections (Sections 67 to 69):-

- 67. Penalty for falsification of entries in register.**
- 68. Penalty for falsely representing a trade mark as registered.**
- 69. Restraint of use of Royal Arms and State Emblems.**

11. CHAPTER XI deals with Miscellaneous having following sections (Sections 70 to 86):-

- 70. Procedure before the Registrar**
- 71. Procedure before Government**
- 72. Procedure in certain cases of option to apply to the High Court Division or the Registrar.**
- 73. Suits for infringement to be instituted before District Court.**
- 74. Appearance of Registrar in proceedings involving rectification of register.**
- 74A. Costs of Registrar in proceedings before High Court.**
- 75. Evidence of entries in register and things done by Registrar.**
- 76. Appeals.**
- 77. Power to High Court to make rules.**
- 78. Certificate of validity.**
- 79. Trade usage, etc, to be taken into consideration.**
- 80. Agents.**
- 81. Fees.**
- 82. Government to be bound.**
- 82A. [Omitted]**
- 83. Power to make reciprocal arrangements with other Government.**
- 84. Power of Government to make rules.**
- 85. Power to Government to make provision for applications for registration before the coming into force of the remaining provisions of Act.**

86. [Omitted.]

**MAIN FEATURES OF THE MERCHANDISE MARKS ACT, 1889 (ACT NO. IV
OF 1889)**

The Merchandise Marks Act, 1889 consisting of 22 sections. The main features of the Merchandise Marks Act, 1889 which is now in force in Bangladesh are as follows:

CONTENTS

1. Sections 1 to 2 deal with Title, extent and commencement and Definitions having following sections:-

1. Title, extent and commencement.
2. Definitions.

2. Sections 4 to 7 deal with Trade Descriptions, having following sections:-

4. Provisions supplemental to the definition of false trade description.
5. Application of trade descriptions.
6. Penalty for applying a false trade description.
7. Penalty for selling goods to which a false trade description is applied.

3. Section 8 deals with Unintentional contravention of the law relating to marks and description.

4. Section 9 deals with Forfeiture of goods.

5. Section 12 deals with Stamping of length of piece-goods manufactured in Bangladesh

6. Sections 13 to 22 deal with Supplemental Provisions, having following sections:-

13. Evidence of origin of goods imported by sea.
14. Costs of defence or prosecution.
15. Limitation of prosecution.

16. Authority of the Government to issue instructions as to administration of this Act.
17. Implied warranty on sale of marked goods.
18. Savings.
19. Definition of piece-goods.
20. Determination of character of goods by sampling.
21. Information as to commission of offence.
22. Punishment of abetment in Bangladesh of acts done out of Bangladesh.

MAIN FEATURES OF THE PATENTS AND DESIGNS ACT, 1911 (ACT NO II OF 1911)

The Patents and Designs Act, 1911 consisting of III Parts having 81 sections. The main features of the Patents and Designs Act, 1911 which is now in force in Bangladesh are as follows:

CONTENTS

1. Sections 1 to 2 deal with Preliminary having following sections:-

1. Short title, extent and commencement.
2. Definitions. Registrar / Departments of Patents, Designs and Trademarks

PART II DEALS WITH PATENT HAVING SECTIONS 3 TO 42

2. Sections 3 to 13A deal with Application for and grant of Patent having following sections:-

- 3. Application.**
- 4. Specifications.**
- 4A. Time for leaving complete specifications.**
- 4B. Provisional protection.**
- 5. Proceedings upon application.**
- 6. Advertisement on acceptance of application.**
- 7. Effect of acceptance of application.**
- 8. [Repealed.]**
- 9. Opposition to grant of patent.**
- 10. Grant and sealing of patent.**
- 11. Date of patent.**
- 12. Effect, extent and form of patent.**
- 13. Fraudulent applications for patents.**
- 13A. Single patent for cognate inventions.**

3. Sections 14 to 16 deal with Term of Patent having following sections:-

- 14. Term of patent.**
- 15. Extension of term of patent.**
- 15A. Patents of addition.**
- 16. Restoration of lapsed patent.**

4. Section 17 to 19 deal with Amendment of Application or Specification having following sections:-

- 17. Amendment of application or specification by Registrar.**
- 18. Amendment of specification by the Court.**
- 19. Restriction on recover of damages.**

4. Section 20 deals with Register of Patents.

5. Sections 21 to 21A deal with Government having following sections:-

- 21. Patent to bind Government.**
- 21A. Assignment of patent to the Government.**

6. Sections 22 to 25 deal with Compulsory Licenses and Revocation having following sections:-

- 22. Compulsory licenses and revocation.**
- 23. Revocation of patents worked outside Bangladesh.**
- 23A. Operation of order under section 22 or section 23.**
- 24. Power of Registrar to revoke surrendered patent.**
- 25. Revocation of patent on public grounds.**

7. Sections 26 to 36 deal with Legal Proceedings having following sections:-

- 26. Petition for revocation of patent.**
- 27. Notice of proceedings to persons interested.**
- 28. Framing issue for trial before other Courts.**
- 29. Suits for infringement of patents.**
- 30. Exemption of innocent infringer from liability for damages.**
- 31. Order for inspection, etc, in suit.**
- 32. Certificate of validity questioned and costs thereon.**
- 33. Transmission of decrees and orders to the Registrar.**
- 34. [Omitted.]**
- 35. Hearing with assessor.**
- 35A. Grant of relief in respect of particular claims.**
- 36. Remedy in case of groundless threats of legal proceedings.**

8. Sections 37 to 42 deal with Miscellaneous having following sections:-

- 37. Grant of patent to two or more persons.**
- 38. Public use or knowledge of invention.**
- 38A. Disconformity's.**

39. **Loss or destruction of patent.**
40. **Provisions as to exhibitions and readings before learned societies.**
41. **Models to be furnished to the National Museum of Bangladesh.**
42. **Foreign vessels in Bangladesh waters.**

PART 2 DEALS WITH DESIGNS HAVING SECTIONS 43 TO 54

9. Sections 43 to 46 deal with Registration of Designs having following sections:-

43. **Application of registration of designs.**
44. **Registration of designs is new classes.**
45. **Certificate of registration.**
46. **Register of Designs.**

10. Sections 47 to 51B deal with Copyright in Registered Designs having following sections:-

47. **Copyright on registration.**
48. **Requirements before delivery on sale.**
49. **Effect of disclosure on copyright.**
50. **Inspection of registered designs.**
51. **Information as to existence of copyright.**
- 51A. **Cancellation of registration.**
- 51B. **Registration of designs to bind the Government.**

11. Section 52 deals with Industrial and International Exhibitions having following sections:-

52. **Provisions as to exhibitions.**

12. Sections 53 to 54 deal with Legal Proceedings having following sections:-

53. **Piracy of registered design.**
54. **Application of certain provision of the Act as to Patents and Designs.**

PART III DEALS WITH GENERAL HAVING SECTIONS 55 TO 81

13. Sections 55 to 56 deal with Departments of Patents, Designs and Trademarks and Proceeding thereat having following sections:-

- 55. Appointment of Registrar, etc.**
- 56. (Repealed).**

14. Sections 57 deals with Fees.

15. Sections 58 to 64 deal with Provisions as to Registers and other Documents in the Departments of Patents, Designs and Trademarks having following sections:-

- 58. Notice of trust not to be entered in registers.**
- 59. Inspection of and extracts from registers.**
- 59A. Information relating to patents.**
- 60. Privilege of reports of Registrar.**
- 61. Prohibition of publication of specification, drawings etc, where application abandoned, etc.**
- 62. Power for Registrar to correct clerical errors.**
- 63. Entry of assignments and transmissions in registers.**
- 64. Rectification of register.**

16. Sections 65 to 70 deal with Powers and Duties of Registrar having following sections:-

- 65. Powers of Registrar in proceedings under Act.**
- 66. Publication of patented inventions.**
- 67. Exercise of discretionary power by Registrar.**
- 68. Power of Registrar to take direction of the Government.**
- 69. Refusal to grant patent, etc, in certain cases**
- 70. Appeals to the Government.**

17. Sections 65 to 70 deal with Evidence, etc having following sections:-

- 70A. Evidence before the Registrar.
- 71. Certificate of Registrar to be evidence.
- 71A. Evidence of documents in Departments of Patents, Designs and Trademarks.
- 72. Transmission of copies of specifications, etc, and inspection thereof.
- 73. Applications and notices by post.
- 74. Declaration by infant, lunatic, etc
- 74A. Security for costs.

18. Sections 75 to 76 deal with Agency having following sections:-

- 75. Subscription and verification of certain documents.
- 76. Agency.

19. Sections 77 deals with Power for Government to make rules.

20. Sections 78 deals with Offences having following sections:-

- 78. Wrongful use of words "Patent Office".

21. Section 78A deal with Reciprocal arrangements with the United Kingdom and other parts of His Majesty's dominions.

22. Sections 79 to 81 deal with Savings and Repeal having following sections:-

- 79. Savings for prerogative.
- 80-81. (Repealed).

Existing practice and procedure:

▪ **Applications and Registration of Trademarks:** Since liberation of Bangladesh the Trademarks Registry in Dhaka including its branch at Chittagong has received about 78,000 applications for registration of trademark, out of which over 23600 marks have been registered till November 2000. About 25,000 applications have either been refused or abandoned or withdrawn by the applicants

as per provisions of the Trademarks Law. Approximately 31,000 applications are now pending at various stages in the Registry. The trade marks application every year are steadily increasing.

- Under the existing law, an application has to be disposed of within 12 months of filing. But in reality currently it is taking about 48 months. Shortage of Examiners, staffs and also to some extent present work practices have contributed to the backlog situation. Lack of any effective automation support has also aggravated the problem. Considering the magnitude of the problem, the Government has recently sanctioned 32 additional posts of officers and staff for this Registry which includes 8 additional posts of Examiners.

- Staff Strength and Revenue: The total staff strength (current) is 42 which include one Registrar, one Deputy Registrar, one Assistant registrar, four Examiners and other supporting staff. Annual revenue of the Trademarks Registry on account of registration and renewal fees is approximately Tk 50,00,000/-.

- Trademarks Examination, Search & Information Facilities: The trademarks Registry do not have any effective Trade Marks Examination, Search and information facilities. Measures are underway to establish an automated database of National Trade Marks Registrations and computer based public search service. World Intellectual Property Organization has already approved a project under which limited automation support is be provided to the Trade Marks Registry.

How to have A Patent: The Practical Know-How

- What is Patent: A patent is a document, issued upon application by a Govt. Office which describes an invention and creates a legal situation in which the patented invention can normally be exploited (manufactured, used, sold, imported)

with the authorization of the owner of the patent. The protection conferred by the patent is limited in time (generally 15-20 years, in our country it is 16 years).

- **Who may apply for a Patent:** An application for a patent may be made by any person whether he is a citizen of Bangladesh or not and whether alone or jointly with any of the person (s).

- **Patents and Technological Development:** The patent system contributes to technological development in five main ways:

- (i) as an incentive to the creation of new technology;
- (ii) by providing an environment which facilitates the successful industrial application of new technology;
- (iii) by facilitating the transfer of technology;
- (iv) as an instrument of technological planning and strategy; and
- (v) through the provision of an institutional framework which encourage flows of foreign investment.

- **Patentable Invention:** In order to be patentable an invention should have the following characteristics:

- (i) it should relate to manner of manufacture;
- (ii) the manner of manufacture should be novel;
- (iii) it should be the outcome of inventive ingenuity;
- (iv) it should have utility;
- (v) it should not be contrary to law or morality.

- **Different Kinds of Patents:** Before making an application for a patent the applicant should decide as to which at the following four kinds of patents s/he desires to obtain:

- (i) An ordinary patent;
- (ii) A patent claiming priority of date;
- (iii) A secret patent;
- (iv) A patent of addition.

▪ **Procedure for Obtaining a Patent:** The following are the successive steps of the procedure for obtaining a patent:

- (i) filing the application accompanied by either a provisional or a complete specification;
- (ii) filing the complete specification if the specification filed with the application was a provisional specification;
- (iii) examination and acceptance;
- (iv) overcoming opposition, if any, to the grant of patent;
- (v) sealing the patent.

▪ **Time Limit:** The aforesaid steps should be completed within the prescribed time limits given below. The time limits should be reckoned from the official date accorded to the application unless otherwise indicated:

Proceedings	Normal Time Limits	Extendable time limits
(i) Leaving Complete Specification after Provisional Specification	9 months from the date of the earliest of the Provisional Specification	1 month beyond the normal 9 months.
(ii) Filing Reciprocity Application	12 months from the date of the First Application on which the claim to Priority is based
(iii) Leaving Priority Documents in respect of Reciprocity Applications	With the Application	3 months from the official date of Application.
(iv) Acceptance	18 months	3 months from the official date of Application.
(v) Sealing a. When application was accepted within normal 18	24 months	3 months from expiration of normal 24 months.

months.		
b. When extension of time was allowed for acceptance	24 months	3 months from expiration of normal 24 months.
c. When applicant dies before expiration of the time otherwise allowable for Sealing and the Patent is granted to his legal representatives.	Within one year after Applicant's death or at such later time as directed by Registrar.

▪ **The Application for Patent:** The application should be drawn up on one or other of the prescribed forms suited to the particular status of the application and to the particular kind of patent which he wishes to apply for. Every application should contain the full name and address of each of the applicants his address, his nationality and the title of the invention. The application should also be dated and signed by each of the applicants.

▪ **The Specification:** The Specification, which should accompany an application (other than one for a patent claiming "priority"), may be either a Provisional Specification or a Complete Specification. A Provisional Specification cannot be filed in respect of an application claiming Priority.

▪ **Advantage of Filing Provisional Specification:** The filing of a Provisional Specification affords the following facilities to the inventor:

- (i) As a Provisional Specification can be filed as soon as the inventive idea is conceived by the inventor, he may be apply for a patent without waiting for working out the best mode of carrying out the invention in practice. He would thereby be able to record priority for his invention.

- (ii) **After filing the Provisional Specification the inventor would be at liberty to develop the invention and ascertain the best method of carrying out the invention openly, without any risk or priority of his invention being lost.**

- (iii) **Improvements or modifications devised in the course of development of the invention may be made the subject-matter of separate application accompanied by Provisional Specification and if all such improvements or modifications collectively constitute one Invention, the applicant may combine them under a single Complete Specification and obtain a single patent for them. Thus he would be able to avoid a multiplicity of patents for protecting the various improvements or modifications individually.**

- (iv) **The inventor would be able to disclose the invention to interested persons and canvass financial support if necessary for the prosecution of his application without prejudicing his application for patent.**

- (v) **The inventor may test the commercial possibilities of the invention and in case it is found that the invention has no commercial possibilities, the inventor may abandon his application and thus avoid incurring of further expenses for filing the complete Specification.**

▪ **Provisional Specification: A Provisional Specification should be drawn up on the prescribed form-3. A Provisional Specification is not a rough draft or a skeleton of the complete Specification. The complete specification, which follows a Provisional Specification, does not replace the latter. Both are permanent, independent documents.**

A Provisional Specification should contain (a) the title of the invention, (b) The name, the address and the nationality of the each of the applicants for the

patent, (c) A description of the nature of the invention preceded by the Prescribed Preamble, and (d) Date and Signature.

▪ **Time for Leaving Complete Specification :** If the applicant does not leave a Complete Specification with his application he may leave it at any subsequent time within nine months from the date of the application ; provided that the said nine months shall be extended to such period not exceeding ten months from the date of the application as may be specified in a request made by the applicant to the Registrar, if the request is made and the prescribed fee is paid within the period so specified.

If the Complete Specification is not left within the period allowable, the application shall be deemed to be abandoned at the expiration of ten months from the date thereof.

▪ **Complete Specification after Provisional Specification:** A Complete Specification along with duplicate filed after a Provisional Specification should not differ from the latter as to the nature of the invention. The invention described in the Complete Specification should be substantially the same as that which is described in the Provisional Specification; otherwise the Complete Specification would be liable to an objection of the ground of disconformities with the Provisional Specification.

▪ **Complete Specification:** A Complete Specification Should be drawn up on form-3A. It should contain:

- (a) the title of the invention and the statement of the name, the nationality and the address of each of the applicants.
- (b) the prescribed preamble to the described of the invention.

- (c) description of the invention and the manner of carrying it out in practice.**
- (d) the statement of claims. and**
- (e) date and signature of the applicant.**

The description in the Complete Specification should satisfy the following requirements:

- (i) the complete Specification must be framed with the utmost good faith and must not contain any false representation or misdescription of the invention of the invention or any material part of it or otherwise misleads the public;**
- (ii) the Complete Specification must not be framed in ambiguous language, but must be as clear and concise as the nature of the subject will admit;**
- (iii) the complete Specification must be intelligible to an ordinary workman, possessing the ordinary skill and knowledge of that branch of the useful arts to which the invention relates. It is not required to describe the invention and the manner in which it is to be performed so fully as to instruct persons wholly ignorant of the subject matter;**
- (iv) the Complete Specification must describe the best method known to the patentee of performing the invention and all his knowledge relating these to, including that which he may have acquired during the period of provisional protection period to the date of filing the complete specification;**
- (v) if the Complete Specification describes anything which is not new, it must clearly distinguish that which is old form and which is new and**

claim only the latter. A brief statement of the advantages of the invention may be incorporated if so desired. If the inventor does not disclose all the relevant information, or misleads the public or gives a false description of the invention the patent would be held invalid and liable to be revoked.

▪ **The Drawings:** The detailed description should be supplemented by drawings in all cases in which the inventions are capable of being illustrated. Reference to the drawings should be specific and preferable in the following form:

The drawings, which illustrated the invention, should be filed in duplicate along with the application for patent or at such other time as the Registrar may direct. The sheets may be of a size, either 13 "x8", or 13 "x16", the 13" side being the top to bottom side when the drawing is placed in the erected position. At least one copy of the drawing shall be suitable for reproduction and for that purpose, shall be prepared on tracing cloth or on smooth white paper (tracing paper) which is not opaque and executed in absolutely black ink.

▪ **The Claims:** The description in the Complete Specification should be followed by a clear and succinct statement of claims preceded by the prescribed preamble, I claim or we claim as the case may be. The claims should form in brief a clear statement of that which constitutes the invention. The statement of claims should not be regarded as part or summary of the description.

▪ **The object of the statement of claim:**

- (i) to show with conciseness, precision and accuracy as to what the invention is;
- (ii) to point out how much of what is described in the Specification constitutes the invention; and
- (iii) to show what is not claimed and therefore open to public use.

It should be noted that a patentee who describes an invention in the body of the Specification obtains no monopoly unless it is claimed in the claims.

▪ **Drafting Claims: The following are the Chief features to be observed in drafting claims:**

- (i) the claim must not be too extensive so as to embrace more than what the patentee has invented;**
- (ii) the claim must be specific and not of a vague, ambiguous, speculative or hypothetical nature;**
- (iii) if the invention comprises one or more subordinate parts, the patentee will not be entitled to protection in respect of those subordinate parts unless s/he claims them specifically.**

▪ **Proceedings upon Application: The Registrar shall refer to an Examiner every application in respect of which a Complete Specification has been filed and if satisfied on the report of the Examiner that:**

- (i) the nature of the invention of the manner in which it is to be performed is not particularly described and ascertained in the Complete Specification; or**
- (ii) the Application, Specification and Drawings have not been prepared in the prescribed manner; or**
- (iii) the title of the Specification does not sufficiently indicate the subject matter of the invention; or**
- (iv) the statement of claim does not sufficiently define the invention; or**
- (v) where a Complete Specification has been left after a Provisional Specification, the invention particularly described in the Complete Specification is not substantially the same as that which is described in the Provisional Specification; or**

- (vi) the invention as described and claimed is prima facie not a manner of new manufacture or improvement; or**
- (vii) the Specification relates to more than one invention; or**
- (viii) in the case of an application (reciprocity application) claiming priority under section 78A/ Paris Convention the Specification describes and claims an invention substantially larger than or substantially different from the invention disclosed in the Specification filed with the application made outside Bangladesh by virtue of which Priority is claimed; or**
- (ix) in the case of an application for a Patent of Addition (under section 15 of the P & D Act, 1911), the invention described and claimed in the Specification is not an improvement or modification of that described and claimed in the Original Specification. Unless an application is accepted within eighteen months from the date of filing, the application shall (except where an appeal has been lodged) be deemed to have been refused. Provided that where, before or within three months after the expiration of the said period of eighteen months, a request is made to the Registrar for an extension of time, the application, shall, on payment of the prescribed fees be continued for any period so requested not exceeding in all three months from the expiration of the said period of eighteen months.**

▪ **Advertisement on Acceptance of Application: On the acceptance of an application the Registrar shall give notice thereof to the applicant and shall advertise the acceptance in the Bangladesh Gazette and the Application and Specification with the Drawings (if any) shall be open to public inspection.**

▪ **Opposition to the Grant of Patent: Any person may, on payment of the prescribed fee at any time within four months from date of the advertisement of the acceptance of an application, give notice at the Patent office to opposition to the grant of the Patent on any of the following grounds namely:**

- (i) that the applicant obtain the invention from him or form person of whom he is the legal representative or assign; or**
- (ii) that the invention has been claimed in any Specification which is or will be of prior date of the Patent, the grant of which is opposed; or**
- (iii) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the Specification; or**
- (iv) that the invention has been public used in Bangladesh; or**
- (v) that the Complete Specification describes or claims an invention other than that described in the Provisional Specification and that such other invention either forms the subject of an application made by the opponent for a Patent which if granted would bear a date in the interval between the date of the application and the leaving of the Complete Specification or has been made available to the public by publication in any document published in Bangladesh in that interval; but on no other ground.**

Where such notice is given, the Registrar shall give notice of the opposition to the applicant, and shall on the expiration of those four months after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

Notice of opposition to the grant or to the amendment etc. of a Patent shall be given in duplicate. One copy of the notice shall be sent by the Registrar to the applicant or his agent.

▪ Filing of Statements and Evidence :

- (i) Within 14 days of giving notice of opposition, the opponent shall leave at the office a full written statement in duplicate, setting out fully the**

nature of the opponent's interest the facts upon which s/he bases his/her case and the relief, which s/he seeks;

- (ii) The Registrar shall furnish the applicant with a copy of the statement filed by opponent, and the applicant may leave at the office a reply statement dealing in full with the statement of the opposition and on so leaving shall deliver to the opponent a copy thereof;
 - (iii) The opponent may, after delivery of him of the copy of the applicant's reply leave at the office evidence by way of affidavits in support of his case and on so leaving shall deliver to the applicant a copy thereof;
 - (iv) The opponent may, after delivery of him of the opponent's evidence, leave at the office evidence by way of affidavits, in support of his case and on so leaving shall deliver to the opponent a copy thereof. The opponent may, after delivery to him of such copy, leave at the office affidavits in reply and on so leaving shall deliver to the applicant a copy thereof such last mentioned affidavits shall be confined to matters strictly in reply;
 - (v) No further evidence shall be delivered by either party except by leave, or on requisition, of the Registrar;
 - (vi) Where a document in language other than English is referred to in any statement or affidavit filed in connection with an opposition, an attested translation in duplicate shall be furnished;
 - (vii) The time allowed for filing a reply statement or for producing evidence by way of affidavits shall ordinarily be one month.
- **Hearing :**
- (i) on completion of these Proceedings or at such other time as he may see fit, the Registrar shall appoint a time for the hearing of the case and shall give the parties not less than ten days' notice of such hearing;
 - (ii) if either party desires to be heard, he shall leave Form-7 at the office;

- (iii) the Registrar may refuse to hear any party who has not left Form 7 prior to the date of hearing;**
 - (iv) if either party intends to refer at the hearing to any publication other than a Specification already mentioned in the Proceedings, he shall give to the other party and to the Registrar not less than 5 days notice of his intention, together with details of each publication to which he intends to refer;**
 - (v) after hearing the party or parties desirous of being heard, or if neither party desires to be heard, then without a hearing, the Registrar shall decide the case and notify his decision to the parties.**
- **Appeal :**

The decision of the Registrar shall be subject to the appeal to the Govt. of Bangladesh.

- (i) where an appeal is declared under section 70 of the Patents and Designs Act, 1911 to lie from the Registrar to the Govt. of Bangladesh, the appeal shall be made within 3 months of the date of the order passed by the Registrar, and shall be in writing, and accompanied by the prescribed fee;**
- (ii) in calculating the said period of three months the time (if any) occupied in granting a copy of the order appealed against shall be excluded;**
- (iii) the Government of Bangladesh may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Govt, shall be final.**

How to Appeal :

- (i) an appeal to the Govt. under any Provision of the Act. from a decision of the Registrar shall be lodged with the Registrar in duplicate and shall state fully the reasons for appealing;**
- (ii) the Registrar shall forward one copy of the appeal to the Govt. who shall notify the appellant of its receipt;**
- (iii) (a) In appeals Under Section 9, 10(IA), 16 and 17 of the Patents and Designs Act 1911 the appellant shall, on lodging the appeal in the manner, send a copy of the appeal to the respondent (or each of the respondents where there are two or more respondents appearing separately), and shall also intimate to the Registrar the date of sending of the copy.**
 - (b) Each of the respondents shall acknowledge in writing one month from the date on which the copy of the appeal. Any respondent may, within one month from the date on which the copy of the appeal is sent to him by the appellant, or within such further time as may be allowed by the Govt, leave at the office a memorandum of objection and on so leaving send a copy thereof to the appellant.**
 - (c) The memorandum of objection shall be strictly confined to matters raised in the appeal memorandum, and shall not deal with any cross objection attacking any portion of the Registrar's decision passed against the respondent such as could have been taken by filing a separate appeal by the respondent.**
 - (d) The memorandum of objection shall be filed in duplicate and the Registrar shall forward one copy to the Govt. who shall notify the respondent of its receipt.**
- (iv) On completion of these proceedings, if any, or at such other time as the Govt. may see fit, shall consider the appeal together with the memorandum of objection, if any and pass an order determining the case finally, or reminding it for further inquiry and reconsideration**

by the Registrar, or allowing the appeal in part, as it may deem fit. the decision of the Govt, shall be communicated to the Registrar and to the parties.

- ii) Nothing in these rules shall be deemed to affect the discretionary powers of the Govt. to call for explanatory or supplementary statements from the appellant or the respondent, if at any time the Govt. is of opinion that such statements are necessary for a fair consideration of the case.

▪ **Grant and Sealing of Patent:** If there is no opposition or, in case of opposition, if the determination is in favour of the grant of a Patent shall, on payment of the prescribed fee, be granted subject to such conditions (if any) as the Govt of Bangladesh thinks expedient, to the applicant, or in the case of a joint application to the applicants jointly, and the Registrar shall cause the Patent to be sealed with the seal of the Patent office.

▪ **Patents of Addition:**

- (i) Where a Patent for an invention has been applied for or granted, and the applicant or the Patentee, as the case may be applies for a further Patent in respect of any improvement in or modification of the invention, he may in his application for the further Patent request that the term limited in that Patent for the duration thereof be the same as that of the original Patent or so much of that term as is unexpired, and, if he does so, a Patent (hereinafter referred to as a Patent of addition) may be granted for such term as a foresaid.
- (ii) Save as otherwise expressly provided by this Act, a Patent of addition shall remain in force as long as the Patent for the original invention remains in force, but no longer, and in respect of a Patent of addition no fees shall be payable for renewal.

(iii) The grant of a Patent of addition shall be conclusive evidence that the invention is a proper subject for a Patent of addition, and the validity of the Patent shall not be questioned on the ground that the invention ought to have been the subject of an independent Patent.

▪ **Restoration of Lapsed Patent:**

(i) Where any Patent has ceased owing to the failure of the Patentee to pay any prescribed fee within the prescribed time the Patentee may apply to the Registrar in the prescribed manner for an order for the restoration of the Patent.

(ii) Every such application shall contain a statement of the circumstances which have led to the omission of the Payment of the prescribed fee.

(iii) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Registrar shall advertise the application in the prescribed manner and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(iv) Where such notice is given the Registrar shall notify the applicant thereof.

(v) After the expiration of the prescribed period the Registrar shall hear the case and, subject to an appeal to the Government of Bangladesh, issue an order either restoring the Patent subject to any conditions and restrictions deemed to be advisable or dismissing the application. Provided that in every order under this Section restoring a Patent such Provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the Patent after the Patent had ceased.

▪ **Compulsory Licenses and Revocation:**

- (i) Any person interested may present a petition to the Govt. of the peoples Republic of Bangladesh which shall be left at the Bangladesh Patent Office, together with the prescribed fee, alleging that the demand for a Patented article in Bangladesh is not being met to an adequate extent and on reasonable terms and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the Patent.
- (ii) The Government of Bangladesh shall consider the petition, and if the parties do not come to an arrangement between themselves the Government may, as it thinks fit, either dispose of the petition itself or refer to the High Court for decision.

The dilemma of unawareness of laws:

Being highly classified and technical in nature intellectual property laws are unfamiliar even to the specialized professionals, business executives and industrial management in Bangladesh. Writers, Performers, Singers, Poets and Artists in particular and general people of Bangladesh in general are not fully aware as to their rights and obligations under intellectual property laws. Ignorance of IP laws led many of them not to take up adequate measures to protect their intellectual property right. Such lack of familiarity with the law is a serious impediment to the effective enforcement of IPR Laws in Bangladesh. The new copyright law did not make provision for compulsory registration of Copyright due to this extreme lack of awareness. Creation of public awareness is a precondition for effective enforcement of IPR Laws in Bangladesh.

Why not the Intellectual Property Rights are well protected: Insufficient laws or improper implementation:

Fact is that, in Bangladesh there is a lack of coordination among the main three branches of intellectual property law administration agencies. The copyright law is administered by the Copyright Office which is under the Ministry of Cultural

Affairs. Trade Mark law is administered by Registrar of Trade Marks and Patent and Design law is administered by Registrar of Patent and Design. Although later two Offices are under the administrative control of the Ministry of Industries. So, there is also a serious lack of coordination between those two Offices. Existing administrative set-ups of intellectual property laws, administrative agencies are not conducive to proper administration of those laws. All those Offices work manually. All records and registers are maintained in a traditional way. Administrative reforms, automation and computerization of those Offices are urgently needed to ensure proper functioning of those Offices and thereby providing effective administration of intellectual property laws in Bangladesh.

Absence of specialized enforcement units to report and investigate alleged infringement of rights provided by the intellectual property laws is another deficiency in our existing system. Investigation in cases of alleged infringement is done by the police. The police of Bangladesh is overburdened with the investigation of criminal cases of serious nature and maintenance of law and order. Moreover there is a serious lack of adequate knowledge and expertise of the police in the field of investigation into offences relating to infringement of copyright. To over come these deficiencies either specialized enforcement units has to be set up under the Intellectual Property Office or concerned police personnel has to be trained up properly. Providing adequate training to the judicial officers and custom personnel is also necessary.

The Government of Bangladesh is aware as to the above mentioned deficiencies and inadequacies in the enforcement of intellectual property rights in Bangladesh and the government has also intention to remove all these problem. But those administrative reforms and modernization, creation of specialized enforcement unit requires investment of substantial amount of money and technical know-how which a country like Bangladesh is unable to bear at the moment. Adequate technical and financial assistance from the developed countries or any other competent Agency like WIPO is required to:-

- (a) create public awareness regarding intellectual property rights,**
- (b) materialize above mentioned administrative reforms and modernization program,**
- (c) provide adequate training for judicial, police and customs personnel and to set up specialized enforcement units to report and investigate alleged infringement of intellectual property rights.**

Recommendations:

1. **The PDA does not provide any provision of injunction against import of infringing goods. Relevant provision should be incorporated in the law.**
2. **Provision for the protection of service marks to be included in the relevant laws.**
3. **Patent Cooperation Treaty, 1970 (PCT) should be signed immediately, which would enable Bangladesh to extend patent protection of local inventions all over the world.**
4. **Organizational capacity of the Patent Office should be enhanced.**
5. **Copyright law should consider the points like protection of software, interlocutory remedy, and mechanism to present infringement.**
6. **Technically qualified judges should be appointed, disputes should be resolved quickly.**
7. **Implementation of the TRIPs in its totality is indispensable for creating and augmenting foreign investments and accessing the global market.**
8. **Appropriate legal provision and rules/regulations may be formulated and implemented to protect all concerned from abuse of IT, including filtering of inappropriate information (i.e. pornography), unauthorized use of computer software and hardware, protection of information and other computer crimes.**
9. **The protection of bio-diversity and locally evolved varieties of crops/seeds should be ensured through a judicious mixture of provision of UPOV and sue generis system.**
10. **A high standard of protection of IPRs in Bangladesh should be set to attract foreign investment.**
11. **Some provisions of Article 27.3 (b) of the TRIPs Agreements especially, those related to patent protection of pharmaceutical, chemical or agricultural plant varieties that in the long run could become counter productive, should be suitably amended. The UPOV or bio-diversity convention may be used as the basis for such amendments.**

12. **The draft Patent law should be finalized after obtaining opinion of all types of stakeholders.**
13. **Appropriate rules with matching institutional arrangements should be made to help implementing various provisions of the IPR law. The penalty clauses should be adequate to prevent infringement of IP rights.**
14. **Plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes should be excluded from patentability.**
15. **Transfer of patents and conclusion of manufacturing contracts should be adequately covered by legal provisions.**
16. **Patent advisory Committee is to be formed for takes stock of the activities and to consider major activities such as patent filing abroad.**
17. **The Indian experience in IPR implementation should be considered in developing an institutional framework as for facilitating implementation of IPR.**
18. **The Indian model of Patent Facilitating Centre (PEC) may be considered in developing an enabling mechanism for implementing TRIPs.**
19. **Mechanism for filing Patents abroad may be developed.**
20. **Data base on Patent should be developed.**
21. **Delays in issuing Patents should be eliminated and the new Law and Rules to be framed under it should have provisions that would help to minimize delays.**
22. **The institutional arrangements should enable efficient management of the patent office.**
23. **The Impact of the amended law on copyright would be evident after it is in practice for some time. The experience thus acquired would help identifying needs for future amendments.**
24. **Appropriate rules are to be framed to facilitate implementation of the provisions of the law.**
25. **International implications of the law, especially with relation to trade and commerce should be properly reflected in the rules.**

26. **Copyright Societies should be give more power to help to implementing the law, Rights privileges and powers of such societies should be covered by the Rules.**
27. **The concerned agencies, individuals as well as the private sector should be consulted in framing the rules under the Copyright Act.**
28. **Ways and means to eliminate copyright infringement should be identified. To this end, the society in general, and the legal practitioners in particular should be sensitized to create awareness on the scope and implementation of copyright.**
29. **Moral issues of copyright with respect to soft wares are to be taken into consideration. This may be ensured through awareness programs.**
30. **The Private Sector should be involved in framing rules on Copyright.**
31. **A pragmatic mechanism and a matching institutional framework should be developed to ensure protection of rights of the software developers.**
32. **A mechanism for the determination of individual rights of the employee and the employer in case of software's should be established by giving appropriate emphasis in terms of their respective contribution.**
33. **Layout designs of integrated circuits are not normally patentable inventions and requires a special kind of protection. But at present, there is no such law for protection of layout design of integrated circuit in Bangladesh. So in provision should be made for protecting the layout design of the relevant laws.**
34. **For the proper implementation of the law in case of protection for industrial design, the concerned authority (IP offices) should be mechanized with modern technology and the manpower should be properly trained for satisfying the need.**
35. **To implement, IPR effectively, it is obvious to understand and implement IPR at national institutional level. This will require several departments in the government and other industries government interactive bodies to work together in national interest keeping in mind the commitments to international agreements.**

36. **National IPR Literacy mission should be established which will literate people about IPR from the root level.**
37. **Constitution of an integrated single window National IPR Commission is required.**
38. **To prepare technically qualified attorneys, IPR training institutes should be established.**
39. **The IPR Administrative Set-up should be modernized urgently.**
40. **It is necessary to restructure the judiciary & enforcement machinery for professional and speedy response to IPR issues.**
41. **The draft Trade Mark Law should be finalized as soon as possible to implement TRIPs agreement.**
42. **The facilities of the Trade Mark Office should be enhanced more for an early disposition of an application.**
Trained and skilled people in this field should be provided for facilitating the registration process.
43. **National legislation should incorporate measures that would protect and promote Farmers' Rights.**
44. **Transfer of technology should aim at building the capacity of farming communities.**
45. **Since in future the access to plant generic resources for the purpose of research, breeding and training would be facilitated through a multilateral system, arrangements for sharing of benefits in a fair and equitable way would feature prominently at coming negotiations and discussion. Utmost care should be taken to defend legitimate and rightful share of the country.**
46. **The biodiversity rich third world countries should build their S & T capability to inventories, document and characterize and value their biodiversity particularly their endemic species so that they can have a better bargaining position with countries who intend to have access to their biodiversity.**

47. **Developing countries should play a proactive role in getting standards for equitable partnership in order to share benefits from the utilization of their biological resources**
48. **The major IPR issues in the convention on Bio- diversity are:**
- (a) Access to genetic resources and sharing of benefits.**
 - (b) Conservation and sustainability of Bio-diversity.**
 - (c) Traditional knowledge and practical access to technology and information related to bio-diversity.**

These three issues should be kept in mind before implementing the TRIPS Agreement in our country.

Intellectual Property Owners Association of Bangladesh

The Intellectual Property Owners Association of Bangladesh proposed (IPOAB), is a non profit public company limited by guarantee, established to speak for the interests of all intellectual property owners in Bangladesh.

Individuals from large and small businesses, universities, inventors, designers, corporate Lawyers, counsels, executives, writers, trade mark attorneys, patent attorneys, lawyers, and almost everyone else interested in intellectual property are invited to join this association.

Executive Committee members are from Multinational, Local Companies and include expert intellectual property law and accounting professionals.

Objects of the Association

The Association's objects set out in its Constitution include:

- To enroll Intellectual property owners into a cohesive, strong and rational voice for dealing IP rights from the perspective of IP owners.
- To share knowledge and experience among members of the association regarding IP rights issues.
- To detect counterfeit and look alike product selling in the market and take necessary action against the originator of fake product.
- To ensure legal action on behalf of members to protect IP owners' interest.
- To pursue for reforming existing and old laws regarding Intellectual Property so that they are worthy enough to apply.
- To keep members up to date regarding IP rights issues.
- To provide referral services in response to the queries of members.
- To keep members in a safe side in case of taking action against retailer level so that vendors do not misunderstand member companies.
- To provide advice, assistance and networking opportunities for members
- To persuade Government for taking prompt and counteractive actions in respect of IP Owners' rights.
- To promote reducing costs and improving intellectual property protection in Bangladesh.
- To conduct an active government relations program in representing members on legislation in Parliament and on issues with IP Bangladesh.
- To facilitate forums for members to network with their peers with a focus on knowledge, skill enhancement and special events.
- To build and sustain liaison with organization of other industries who have the object similar to association.
- To encourage invention, innovation, business investment and economic strength of Bangladesh through support and assistance of the association.
- To reinforce the protection of knowledge and ideas so that owners can be benefited.

- To initiate greater Public awareness of the benefits and the essential role of Intellectual property rights of business and person who own it or work with it.
- To render the wide range of interest of IP owners by highlighting protection rights of ownership of property.
- To ensure Consumer rights protection to get rid of deception while buying established brands.

History

The first move of IPOAB was taken by British American Tobacco Bangladesh in the year of 2005. Counterfeit product is a common scenario of Bangladeshi market. The market is in-un-date with look-alike and fake product. As a result, consumers become the prey of counterfeiters and lost the trust towards certain Brands. Delinquent parties make the huge earnings from counterfeit products. Subsequently All the original Companies united together to form an Association to protect IP rights for covering enormous loss in terms of monetary and fidelity. This Association aims to create a greater public awareness of the benefits and essential role of intellectual property rights of the corporations and persons who own or work with intellectual property.

Any violation of a trademark, patent, or copyright could constitute the grounds for an intellectual property lawsuit. If someone feel that they have been victimized, and that they have a legitimate intellectual property lawsuit claim, it would be wise to create a platform where they can raise their voice by pointing out several issues they have suffered. This urge unites many companies claim to establish an association named "Intellectual Owners Association of Bangladesh" for their legitimate.

Awards

There are four categories of Awards in IP Owners Association to recognize outstanding contributions by individuals and organizations to the aims of the Association. These are:

- IP Owners Inventor of the Year Award;
- IP Owners Intellectual Property Manager of the Year Award;
- IP Owners Award for Research; and
- The Founder's Medallion.

There are also motivational program for the best execution of Governmental chain and individuals who are not allied with the association. these are:

- IP Medal for NBR
- IP Medal for Police
- IP Medal for BDR
- IP medal for Journalist

Membership Eligibility:

Membership eligibility is determined by few criterions. Under the Constitution, a person who is interested to become the member of the Association and the person is:

- An owner of intellectual property; or
- Actively interested in the objects of the Association; or

- Allied with the protection or use of intellectual property; or
- Engrossed in exercising intellectual property ownership rights; or

Individuals from large and small businesses, universities, inventors, corporate lawyers, counsels, executives, writers, trade mark attorneys, patent attorneys, lawyers, and almost any one who are interested in intellectual property can join.

Membership categories and Fees

There are three categories of Executive Committee.

1. Corporate
2. Law firm
3. Individual

Membership fee varies for different categories. Taka 10000 (Ten thousand) only for Corporate member, taka 3000 (Three thousand) only for Law firm and taka 1000 (One thousand) only for individual member.

Benefits of Membership

Members of this association enjoy the benefits of membership, including networking and leadership opportunities, being heard where it matters, newsletters, referral services, and eligibility to participate in committee work, election and other activities.

- **Networking Opportunities:** Membership in IP Owners allows members the opportunity to network by accessing, sharing and exchanging information with owners, professionals, and others interested in patents, trade marks, copyright, designs and other forms of intellectual property. Sharing information among the members regarding counterfeit product, distribution network and operations for taking necessary legal actions. Members can assist develop legal education programs, publish newsletters and get together with other members at regular functions.
- **Cohesive voice:** IP Owners is the first and only organization which denotes the interests of all owners of intellectual property in Bangladesh. Members can advocate their particular initiatives in the structure of IP Owners, so that their voice is heard. Through policy formed by Divisions and Committees that are made of members, intend to be the interface point between Bangladeshi intellectual property owners, professionals, government, IP Bangladesh, and other intellectual property agencies and organizations in Bangladesh or overseas.
- **Newsletters:** Members will receive a newsletter quarterly to be updated with intellectual property issues and association activities manifested solely the interests of intellectual property owners. As an extra benefit, the newsletter provides members with an opportunity to advertise or publish their own articles, columns, and opinions.
- **Membership Directory:** A list of members and their areas of expertise will be published from time to time. Name of all the members' will be available in the directory.
- **Arbitration of Disputes:** The Association stores a referral database of those members who are competent to draft appropriate dispute resolution clauses or arbitrate disputes whether the dispute is between member & member, or member and non-member. The objective is to assist owners of intellectual property to avoid or

Executive Committees Responsibilities

The President is the Chairman of the Executive Committees and is responsible for:

- Chairing meetings of the Committee and the general overall direction of the organization; and
- Ensuring records of all meetings, significant decisions and events are kept up to date.

Each member of the Board of Directors is responsible for:

- Ensuring the affairs of the Association is conducted in accordance with its Constitution and By-Laws.
- Ensuring that the process, procedures and policies adopted and used by the Association will withstand public scrutiny and that all decisions and activities are auditable and defensible
- At all times maintaining high ethical standards;
- Advising of any conflict of interest as soon as it arises, and then on making such a disclosure must not:
- Take any further part in considering or discussing the matter; or
- Take part in any voting on that matter; or
- Be counted for the purpose of a quorum.
- Maintaining written records of any significant communications with those outside the Association

Formation of the Executive Committee

Following the initial arrangements of the founding Directors the Board will comprise seven voting directors appointed as follows:

- A president (elected by members);
- A vice-president/president elect (elected by members);
- General Secretary (elected by members);
- Treasurer (elected by members).

All voting individuals are required to be personal members of the Association and represent the interests of the organization as a whole rather than those of a particular constituency.

Governance and probity

The integrity of the Association and confidence of our Members is paramount. The Executive Committee is devoted to ensuring high standards of corporate governance, probity and adherence to the principles of natural justice across the Association.

settle their disputes without having the help of legal proceedings.

- **Referral Service:** The association will keep a database of few advocates who are well-known with issued industry or desired service and who are expert to assist, support and provide advice. The referral service will respond specific inquiries of members.
- **Leadership Opportunities:** The association offers a comprehensive variety of leadership opportunities at local, state, and national level. Members are warmly invited to form and participate as a leader in a Division or Committee of the Association. Participation in such a national association will enhance their membership experience to update their knowledge and develop leadership skills.
- **Full Voting Rights:** Each member has full voting right to elect the Executive committee members.
- **Professional Development program:** Professional development program will be provided to the management, Junior Lawyers, Para Legal and students. IP Owners intends to make available a Forum for the exchange of ideas and information, in addition to more formal educational seminars and programs.

Executive Committee:

There shall be a committee of the Association containing "Office-Bearers" includes the President, Vice President, General Secretary, Treasurer and six members.

The Executive Committee of the Association will ensure that:

- Its affairs are conducted fairly, consistently and with impartiality;
- Its affairs are conducted in accordance with its Constitution, By-Laws;
- Its affairs are conducted in the interests of Members as a whole;
- Procedures are documented;
- All stakeholders are treated equitably;
- Any conflicts of interest are identified and resolved;
- Decisions and policies are understandable and can be justified via transparency of the decision and policy making process;
- Obligations of security and confidentiality are observed;
- Information available across the organization is shared equally as between Members;
- All Members have equal access to be heard without bias.

Teams of the Association

There are three teams for the overall supervision of the Association. Members are invited to join in any team. A member can join two or more teams.

- Platform formulation Team
- Government and Stakeholders Relation Committee
- Membership and Registration Committee
- Publication and Research Committee
- Training and Workshop Committee
- Fund Management Committee and
- Market surveillance and Disciplinary Committee

Conclusion:

The Least Developed Countries (LDCs like Bangladesh) are allowed a transition period of 11 years (Art. 66.1) for compliance with the TRIPS Agreement. The period will be over by December 31, 2005 and the TRIPS Agreement thereafter will have to be fully implemented by all LDCs. The radical change of the TRIPS Agreement in respect of Intellectual property for participating the multilateral trading system. In other words non-compliance with the protection of Intellectual Property in accordance with the TRIPS Agreement could entail "trade retaliation" by aggrieved partners across the whole range of TRIPS Agreement on Goods and services concluded as a "single undertaking". We know that realising the importance to TRIPS Agreement, many developing and Least Developed Countries have already started the process of re-organizing their entire Intellectual Property regime. The objective is not only to comply with the provisions of the TRIPS Agreement but also to be in a position to minimize its negative effects and maximize the possible benefits which may accrue from the agreement.

Bangladesh is a member of WIPO since 1985. It is a signatory to the Universal Copyright Convention (UCC) since 1975. Recently, Bangladesh has become a member of Berne convention, which became effective from May 4, 1999. The country is now proceeding for membership of Rome Convention.

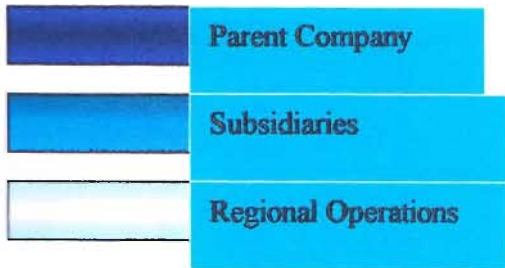
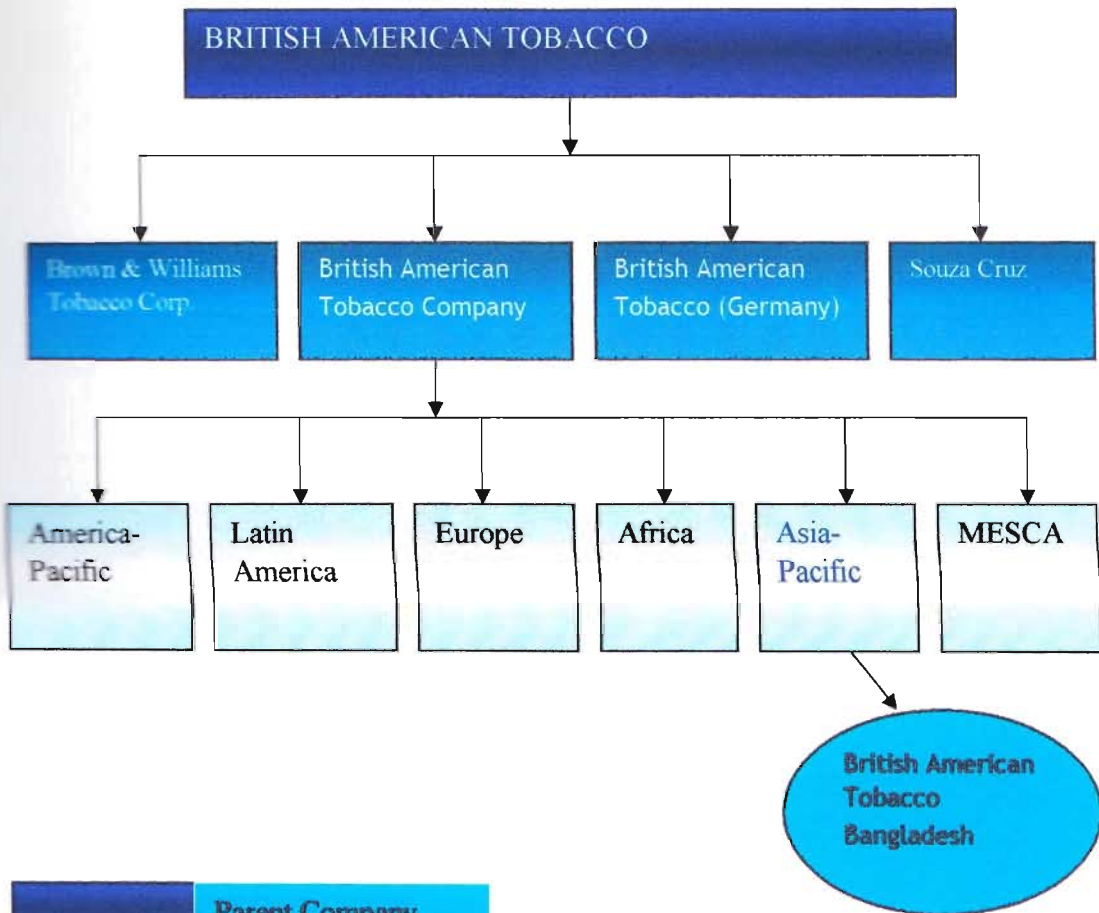
We must not deny that Bangladesh needs to make significant changes in laws and reorganize its institutional set up in order to bring them in conformity with the provisions of those Agreements. Changes in laws should include provision of protection of pharmaceutical products, provisions of protection of plants and plant varieties, provision of protection of geographical indication, extension of protection of computer program, provision for layout design of integrated circuits. In addition, Bangladesh needs to improve efficiency of the offices to process application and to improve enforcement mechanisms. Our country also needs to improve and enlarge the judicial, administrative and enforcement framework, including setting up necessary customs and border control machinery and mobilize and develop the requisite of human resources.

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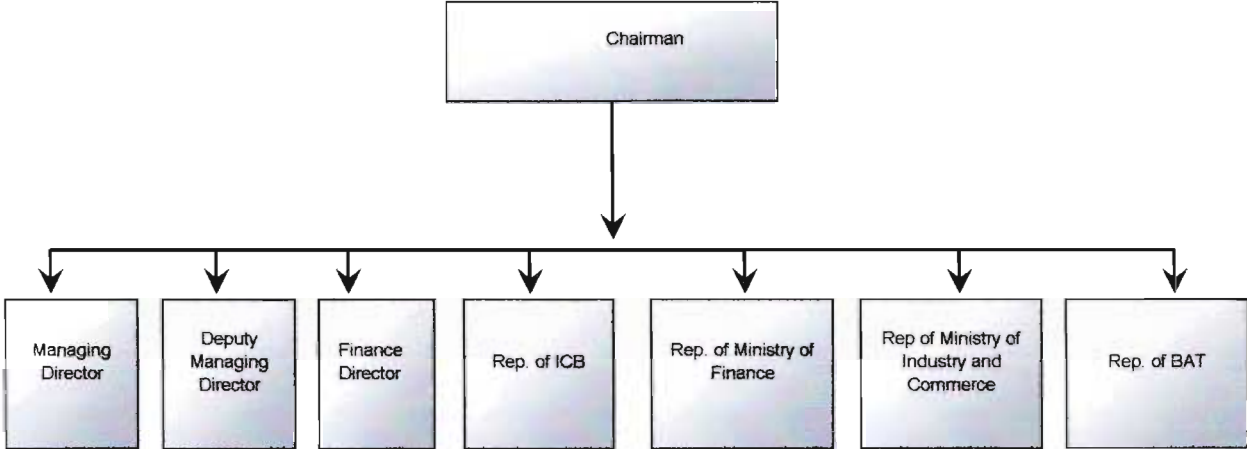
1. *About Us 2005/06, British American Tobacco*
2. *About Us 2004/05, British American Tobacco*
3. *Interact, the Intranet of British American Tobacco Bangladesh*
4. <http://www.bat.com>
5. *Roll Out Corporate Brand Identity and Visual Guidelines, Internship Report, Tasnim Shafiq, Ex-Intern, BATB*
6. *Promotional Activities remaining in the Dark Market, Internship Report, Mehrin Afroz Chowdhury, Intern, BATB*
7. *Report on Intellectual Property Rights.*
Kazi Habibul Awal, Additional Secretary, Ministry Of Law
8. *Social Report 2005*
9. *Illicit Trade Report*
MD. Azizur Rahman, Deputy Company Secretary. BATB

Appendix -1

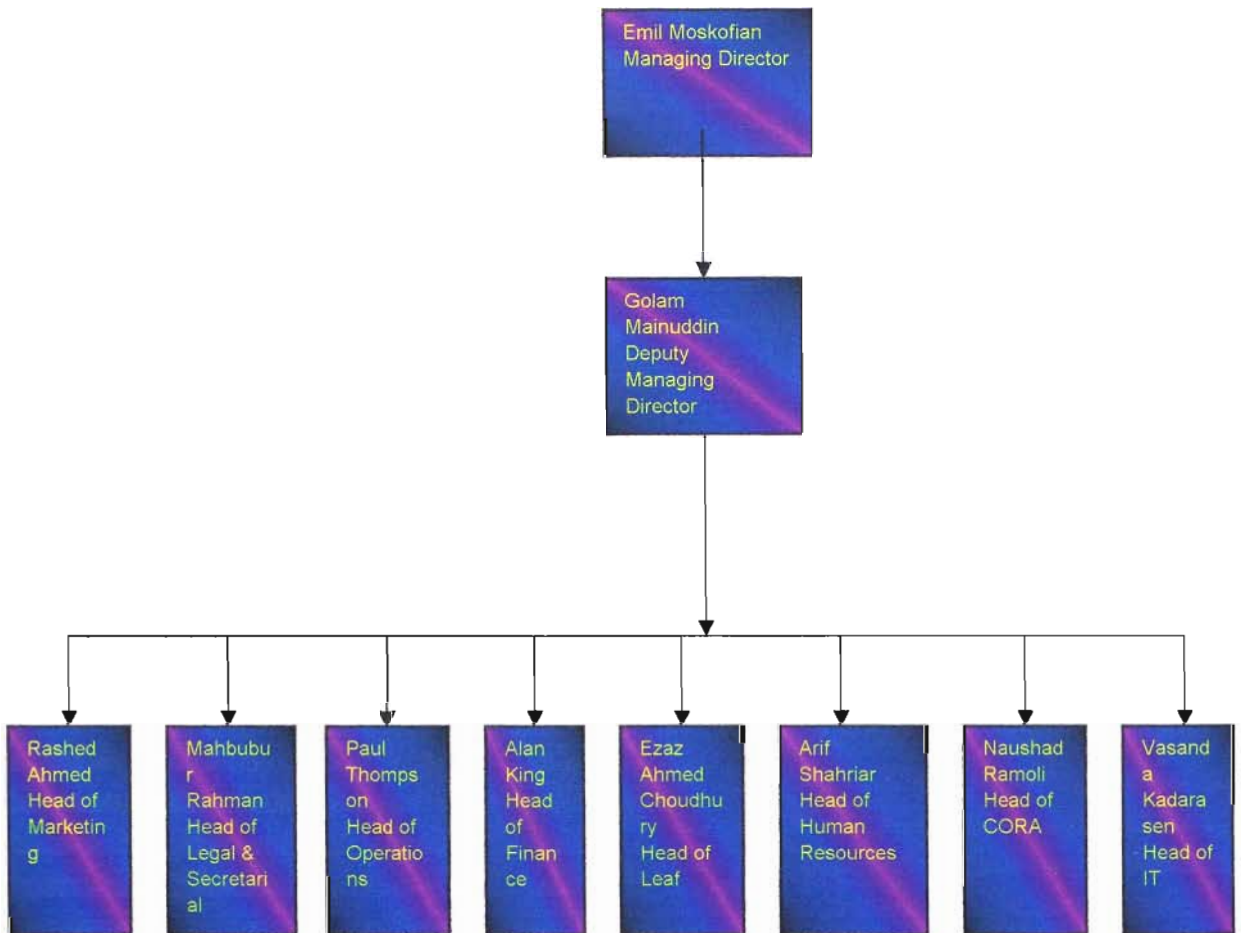
BAT OPERATION WORLD WIDE.



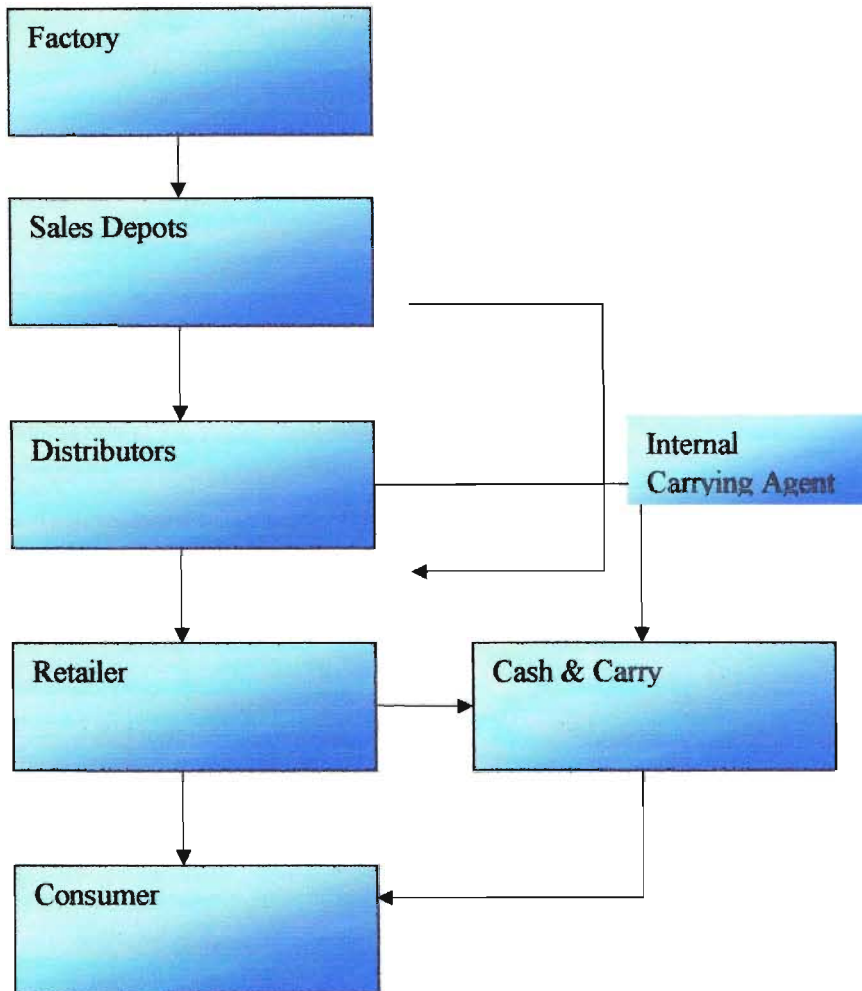
BOARD OF DIRECTORS OF BATB



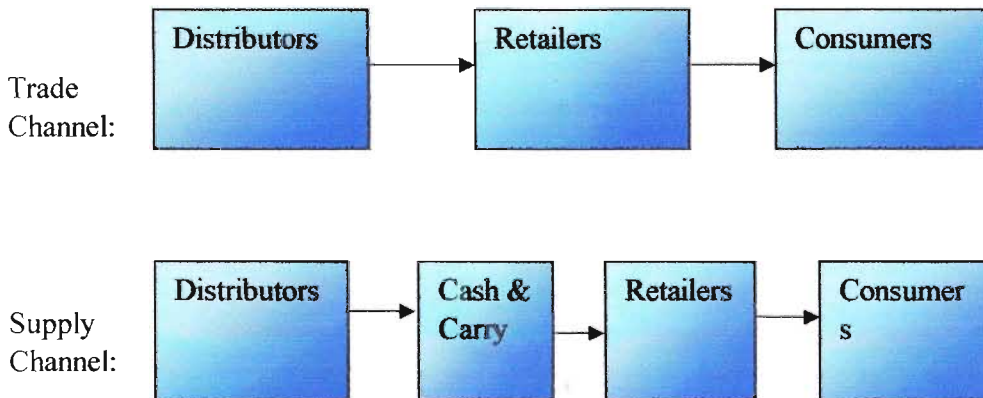
BATB EXECUTIVE COMMITTEE



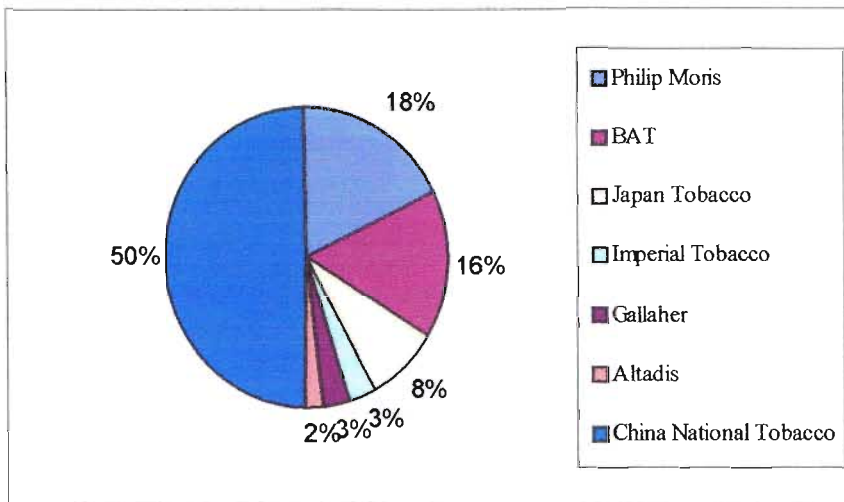
CHANNEL OF DISTRIBUTION:



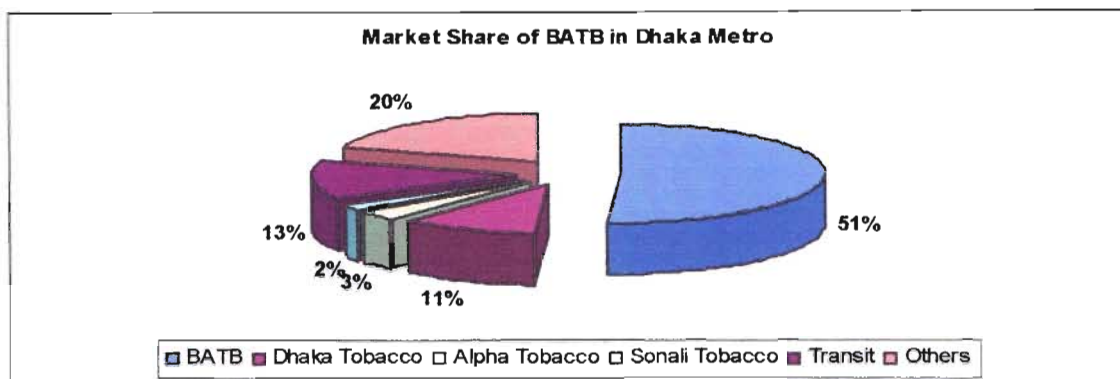
TWO DISTRIBUTION CHANNELS ARE NEMAED AS :



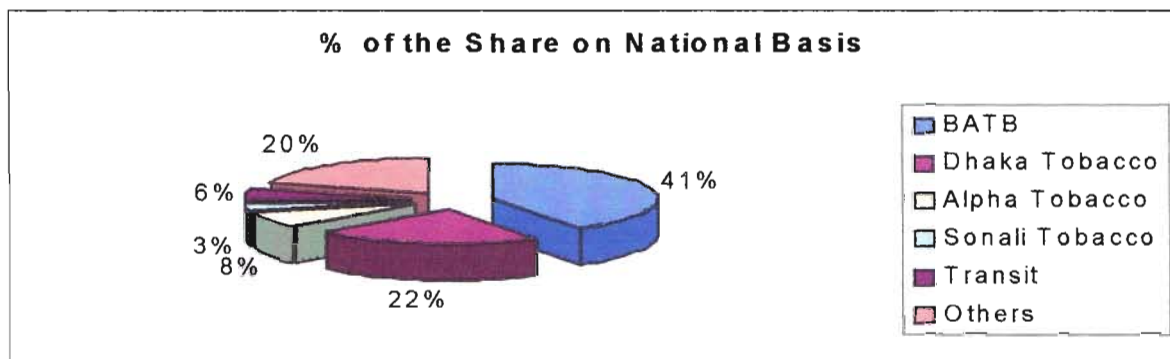
MARKET SHARE OF TOBACCO INDUSTRY



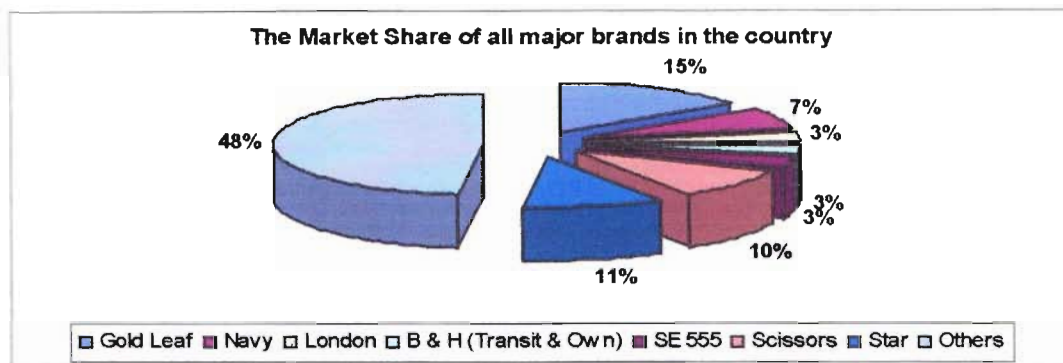
MARKET SHARE OF BATB IN DHAKA METRO



PERCENTAGE OF SHARE ON NATIONAL BASIS



MARKET SHARE OF ALL MAJOR BRANDS IN COUNTRY



Price Segment	BAT	Competitors brand (Dhaka, Alpha and Transit & others)	Shares %	
			Competitors and Transit Segment share	BA segment share
Premium TK.3.00+	Benson & Hedges, 555	Marlboro, Rothmans	52%	48%
Medium TK.2.00+	Gold Leaf	London, The President	16%	84%
Low Tk.1.00+	Star, Capstan, Scissors,	Navy, Legend, Senor, Duke, Don, London, Top 10, Super Star	46%	54%
Very low Tk.0.25+	None	5 star, Red & White, Diamond, Surma, K-2, Cannon, Prince, Boss, Express, Wilson, Five Five, Nasir Gold, Good Leaf, Gold Star	100%	0%
BIRI	None	Akiz, Abul	100%	0%

(Source: Portfolio of BATB)

Appendix -2

CARAVAN 2004



Caravan 2004 – Signature Campaign

WAY FORWARD AFTER TOBACCO LAW

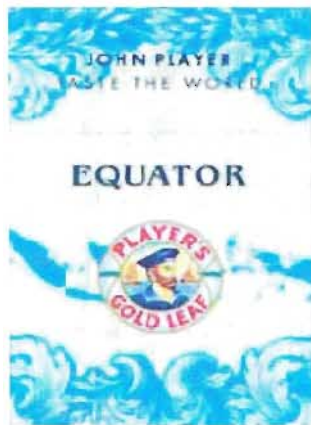


Outside of Caravan 2005 after Tobacco Law

The interior of the caravan remained unchanged even with the alteration of the tobacco law:-



EQUATOR

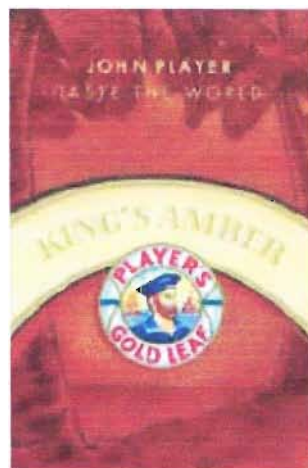


PACKAGING DESIGN

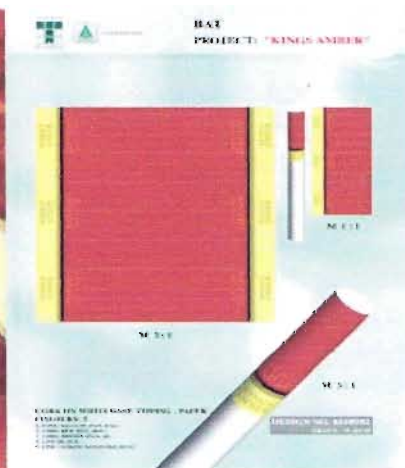


TIPPING DESIGN

KING'S AMBER






PACKAGING DESIGN



TIPPING DESIGN

BANGLADESH CIGARETTE MARKET

PRICE SEGMENT	STICK PRICE	COMPANY					SHARE%	
		BAT	DHAKA	ALPHA	OTHER LOCAL	OTHER IBs	SEGMENT SHARE Q3/2005	BAT SHARE
PREMIUM	4.00						5.7	99.6
MEDIUM	2.00						18.4	96.4
	1.5							
LOW	1.00						53.8	52.3
VERY LOW	<1.00						22.1	0.0

BIRI:70% OF TOTAL MARKET (CIGARETTE + BIRI COMBINED)

ART & LITERATURE



THE GOLDI BRANDS & AGENCY



THE GOLDI BRANDS & AGENCY

Appendix - 3

This Overview gives a brief summary of Intellectual Property – A Power Tool for Economic Growth by Kamill Idris, Director General of the World Intellectual Property Organization (WIPO).

The full text of the publication can be obtained in hard backed paper copy or on CD-ROM from WIPO at the address below or can be ordered through the Organization's electronic bookshop (www.wipo.int/ebookshop/).

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June 2003, Second edition

DESIGN BY THE BUREAU OF CREATION, BRUXELLES



INTELLECTUAL PROPERTY

A POWER TOOL FOR ECONOMIC GROWTH

Kamill Idris

OVERVIEW

WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION



INTELLECTUAL PROPERTY

A POWER TOOL FOR ECONOMIC GROWTH

INTRODUCTION

Intellectual property is a term increasingly in use today, but still little understood. To many people it remains an obscure legal concept of little relevance to everyday life.

Intellectual Property – A Power Tool for Economic Growth seeks to demystify intellectual property (IP) and to explain the *why* and the *how* of the subject – unlike many other IP texts that concentrate on the *what*. Its message is that **intellectual property is a “power tool” for economic development and wealth creation that is not yet being used to optimal effect in all countries, particularly in the developing world.**

It is a practical guide to using those intangible assets – such as knowledge, information, creativity and inventiveness – that are rapidly replacing traditional and tangible assets – such as land, labor and capital – as the driving forces of economic health and social well-being.

CREATIVITY AND INNOVATION – UNIVERSAL NATURAL RESOURCES

“Imagination is more important than knowledge” Albert Einstein



Albert Einstein's preference for imagination over knowledge is a starting point, because IP is based on the power of imagination. Einstein understood that it is the ability to stand on an existing foundation of accepted knowledge, and see beyond to the next frontier of discovery that is the source of personal, cultural and economic advancement.



The World Intellectual Property Organization (WIPO) believes that IP is native to all nations and relevant in all cultures, and that it has contributed to the progress of societies.

The great African-American chemist and inventor, George Washington Carver – born in the 1860s – recognized the truth of that message.

Carver invented crop-rotation methods for conserving nutrients in soil and discovered hundreds of new uses for crops such as the peanut, which created new markets for farmers in the United States of America. He understood that the power of creativity and innovation applied to artistic expression or the solving of practical problems is not the exclusive province of any country or people, but is **a resource of limitless potential available to everyone.**

Harnessed in the form of IP, it is a force that can be used to enrich the lives of individuals and the future of nations – materially, culturally and socially.



THE EVOLUTION OF IP

Copyright: Gutenberg Museum, Mainz



Renaissance northern Italy is thought to be the cradle of the IP system – so the concept is not a new one. A Venetian law of 1474 made the first systematic attempt to protect inventions by a form of patent, which granted an exclusive right to an individual. In the same century, the invention of movable type and the printing press by Johannes Gutenberg around 1440 contributed to the birth of the first copyright system in the world.

Towards the end of the 19th century, inventive new ways of manufacture helped trigger large-scale industrialization accompanied by such phenomena as rapid city growth, expanding railway networks, the investment of capital, and growing transoceanic trade. New ideals of industrialism, the emergence of stronger centralized governments, and stronger nationalism **led many countries to establish their first modern IP laws.**

The international IP system also started to take root at that time with two fundamental intellectual property treaties, the Paris Convention for the Protection of Industrial Property in 1883, and the Berne Convention for the Protection of Literary and Artistic Works in 1886.

The premise underlying IP throughout its history has been that the recognition and rewards associated with ownership of inventions and creative works stimulate further inventive and creative activity that, in turn, stimulates economic growth. The continuum from problem → knowledge → imagination → innovation → intellectual property → the solution, in the form of improved products and new technologies, continues to be a powerful driver for economic development.



ECONOMICS AND IP

For many years, economists have tried to provide an explanation as to why some economies grow fast while others do not; in other words, why some countries are rich and others are not. It is generally agreed that knowledge and innovation have played an important role in recent economic growth. The renowned economist Paul Romer suggests that the accumulation of knowledge is the driving force behind economic growth. For countries to promote growth, his theory goes, their economic policies should encourage investment in new research and development (R&D) and subsidize programs that develop human capital.

This can be seen in the economic growth achieved by some countries in the 1990s. Rapid knowledge creation, including the emergence of new technologies, resulted in **policy changes regarding intellectual property and the adoption of new knowledge asset management practices.**

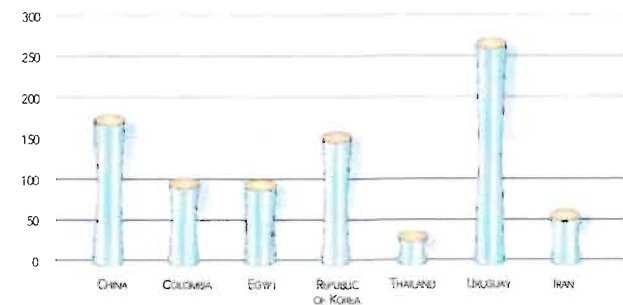
One of the consequences of the emerging importance of IP and the new pattern of global trade that started at the beginning of the 1990s was the forging of a deliberate connection between the two. Some developed countries began to use trade measures to curb piracy of intellectual property abroad. Among other things, this led to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), one of the World Trade Organization (WTO) agreements resulting from the multilateral trade negotiations under the Uruguay Round.


In the 1990s, an increasing number of policy-makers in emerging economic powers recognized the important role of the IP system in encouraging private investment in R&D, especially in the industrial and scientific fields. Many studies suggest a healthy IP system is a key element in encouraging foreign direct investment (FDI). A steady

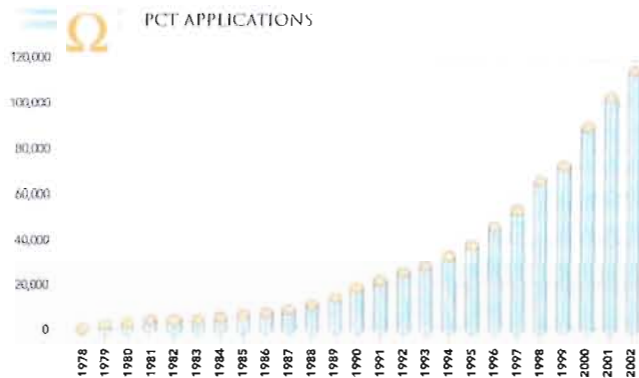
increase in the level of FDI in India, for example, has been evident ever since patent and trademark reform was introduced in the early 1990s. An even more dramatic development took place in Brazil with spectacular growth in FDI following the introduction of a new industrial property law in 1996 (US\$4.4 billion in 1995 to US\$32.8 billion in 2000).

The tendency of firms to patent their inventions has similarly increased worldwide and is particularly noticeable in Japan, the United States of America, and Europe. In Japan, it took 95 years to grant the first million patents, whereas it took only 15 years to grant the next million. Applications for patents are also increasing in developing countries (see **5** showing applications filed in national offices of selected developing countries).

5 TOTAL PATENT APPLICATIONS IN SELECTED DEVELOPING COUNTRIES (PERCENTAGE INCREASE FROM 1994 TO 2000)



A similar trend is evident in total international patent applications filed under the WIPO-administered Patent Cooperation Treaty (PCT) – it took 18 years to reach 250,000 applications but only 4 years to double that figure (see  below).



The PCT simplifies, and reduces the cost of, obtaining international patent protection and facilitates public access to a wealth of technical information relating to inventions. An applicant filing one international patent application under this Treaty can simultaneously seek protection for an invention in all or any of its 121 Member States (as of June 2003) throughout the world.

INTELLECTUAL ASSETS AND ENTERPRISE VALUE


Intellectual assets are gaining ground as a measure of corporate viability and future performance. In 1982, some 62 percent of corporate assets in the United States of America were physical assets, but by 2000, that figure had shrunk to a mere 30 percent. In Europe, at the beginning of the 1990s, intangible assets accounted for more than a third of total assets and as early as 1992, in the Netherlands, they accounted for more than 35 percent of total public and private investments.

A recent study shows that,  on average, 40 percent of the value of a company – that tied up in its intangible assets – is not shown in any way on its balance sheet.



For this reason, IP is sometimes referred to as “hidden value”; but whether hidden or expressly valued, it is now clear that patents, copyright and related rights, trademarks, geographical indications and trade secrets are significant contributors to enterprise value.

USING IP ASSETS IN BUSINESS TRANSACTIONS

It is being increasingly realized that  IP is now one of the most valuable, or often the most valuable, asset in commercial transactions.

whether licensing agreements, manufacturing, purchase or distribution agreements, or mergers and acquisitions. Licenses to use patents, copyrighted material and trademarks are often combined with transfer of know-how in the form of training, and are an increasingly important element of such transactions. The notion that the IP system confers exclusive rights that are exercised by blocking competitors is increasingly being disproven – in practice, IP is used as often to license products and technologies as to prohibit others from using them. These licenses provide royalty revenues to the owners of the IP, and distribute products and technologies to licensees who might not otherwise have had access to them. In such transactions, the licensees may also gain rights to create improvements or derivative works and to develop their own IP assets, which can then be cross-licensed or licensed to others. This creates a very productive cycle of invention and business transaction.

A report issued by PricewaterhouseCoopers in 1999 found that the global IP licensing market totalled more than US\$100 billion, giving an idea of how economically important IP assets are today.

MODERN IP MANAGEMENT AND THE NEW ECONOMY

Because of increasing recognition of its economic value, IP is becoming a major element in corporate business management. Intellectual property managers are helping to accumulate hefty corporate IP asset portfolios, for use in mergers and acquisitions, joint ventures, cooperative R&D agreements, and licensing agreements, in much the same way as product managers help to build up product portfolios. These IP asset portfolios are developed strategically, targeting cluster areas based on product and technology markets and cross-licensing opportunities.



Companies are forging alliances with each other in order to heighten the value of their IP assets and to obtain mutually beneficial competitive advantages through cross-licensing.

Such alliances can give the companies involved substantially increased weight in their area of technology, or enable them to set technological standards in their particular field.



PATENTS



The patent, which protects a new and useful idea, gives the inventor a temporary shelter from the forces of market competition. The shelter is limited to the precise terms of the claims of the patent, but it is sturdy and durable for many years. The premise of the patent system is that this shelter and the resulting competitive advantage encourage invention because inventors know that they can reap a financial reward from their ingenuity.

The patent system also promotes technological and business competition because patent holders must disclose the details of their inventions in exchange for the specified period during which they have exclusive rights over their exploitation. As a result, both they and their competitors race to improve those inventions and to use the technology to create new ones (see 9).



9 TOYOTA'S ATTEMPT

Presented by Toyota Motor Corporation



In 1896, Sakichi Toyota obtained a patent for a version of a power loom which resembled machines previously used in Europe. Thirteen years later, Sakichi succeeded in inventing an automatic loom and a number of additional patents were obtained to complement and fine-tune the invention. In 1924, the Toyota Type G Automatic Loom reached the market and Kiichiro Toyota, Sakichi's son, reached an important agreement with Platt Brothers & Co. for its commercialization. Platt Brothers paid Toyota £100,000 (equivalent to US\$25 million today) for the exclusive right to manufacture and sell the automatic loom in any country other than Japan, China, and the United States of America. Toyota decided to use the £100,000 as initial capital to set up an automobile company and fund the necessary R&D.



Source: Tadaashi Ishii, "Industrial Innovation in Japan and the Role of the Patent System: Case Study of Toyota" (presented at a conference, Washington University, St. Louis, Missouri, October 2000).



PATENTS CAN PROMOTE ECONOMIC DEVELOPMENT

The ways in which patents stimulate economic development could be the subject of several volumes, however the following sections attempt to distill the essence of how this process works – and provide some facts and examples. Patents can be used to stimulate economic development in four main ways:

- patent information facilitates technology transfer and investment;
- patents encourage R&D at universities and research centers;
- patents are catalysts of new technologies and businesses; and
- businesses accumulate and use patents in licensing, joint ventures, and other revenue-generating transactions.

PATENT INFORMATION FACILITATES TECHNOLOGY TRANSFER AND INVESTMENT

The *quid pro quo* for issuance of a patent is full disclosure of the invention. For this reason, patent databases, which are public and searchable on the Internet, are a rich source of technical information that can be used, provided that the patent is not infringed. Patent databases can also be used to find potential licensors and business partners. It has been reported that 67 percent of US companies own technology assets that they fail to exploit (assessed at between US\$115 billion to US\$1 trillion). About US\$100 billion is tied up in such idle innovation within the IP portfolios of big companies. Rather than let the invention accumulate the expense of its maintenance, the company may put it up for sale or license (see T).



T AZITHROMYCIN – ONE OF THE WORLD'S BEST-SELLING ANTIBIOTICS. FROM CROATIA

Pliva, one of the most profitable companies in Croatia and one of the largest pharmaceutical companies in Central Europe, is widely considered to be Central Europe's first home-grown multinational. Once struggling to stay alive, this company witnessed a dramatic turnaround in its fortunes, following its discovery of azithromycin – today, one of the world's best-selling antibiotics. Patented by Pliva in 1980, the drug was subsequently licensed to Pfizer, which markets it as Zithromax™. Sales of Zithromax™ were US\$1.5 billion in 2001. The phenomenal revenues derived from the licensing agreement have facilitated Pliva's rapid expansion across Croatia, Poland, and Russia. Remarkably enough, all this came about because Pfizer's scientists happened to stumble upon Pliva's patent in 1981, while searching through patent documents at the United States Patent and Trademark Office (USPTO).

Source: Wall Street Journal (Brussels), March 2, 1999, 14.

• PATENTS ENCOURAGE R&D AT UNIVERSITIES AND RESEARCH CENTERS

The relationship between publicly-funded and university-based research and intellectual property can be a dynamic one. The R&D carried out by these bodies can result in inventions that can then be used to generate revenue for them through licensing. A university, enriched by licensing revenues, in turn can fund further R&D, as well as strengthen its primary educational mission. The research center/university becomes the hub of a cycle of dynamic innovative activity. This environment has beneficial macro-economic effects, including reducing "brain drain", generating financial support for education, and promoting state-of-the-art research.



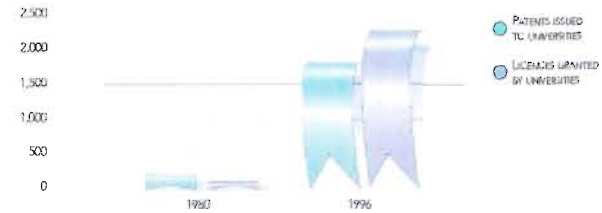


In developing countries, research programs are mainly funded by the public sector or universities (most of them are public), but this funding is often inadequate. The percentage of global R&D expenditure in developing countries continues to decline. A promising approach to enhance inward investment is through foreign direct investment and partnerships between local research centers/universities and the private sector. Such investment and licensing ventures are encouraged through, *inter alia*, strengthening IP laws and also modifying laws and policies to facilitate the licensing of technology from universities and research centers to the private sector.

Such laws and policies allow universities and public institutes to obtain patents, grant exclusive or non-exclusive licenses to private firms, and retain royalty revenues.

For example, in the United States of America, the Bayh-Dole Act of 1980 permitted universities and small businesses to elect ownership of inventions made under federal funding and to become directly involved in the commercialization process. This new policy also permitted the licensing of new inventions from universities to the businesses that would, then, manufacture them. The Act promoted a substantial increase in technology transfer between universities and industry (see 11).

TECHNOLOGY TRANSFER FROM US UNIVERSITIES TO INDUSTRY – THE IMPACT OF THE BAYH-DOLE ACT OF 1980



PATENTS ARE CATALYSTS OF NEW TECHNOLOGIES AND BUSINESSES

Patents are a powerful tool for stimulating the creation of new technologies and industries. Biotechnology, for example, could not have developed as it has done without the patent system (see 14).

π DR REDDY'S SUCCESS IN INDIA

Dr. K. Anji Reddy founded a pharmaceutical company in India that has rapidly expanded to provide high-quality, low-cost pharmaceutical products to markets worldwide. Dr. Reddy's Research Foundation (DRF) was established in 1993 with the purpose of discovering new drug therapies. It attributes much of its success to patent protection, through which it is able to market and license its new drugs internationally. The Foundation has filed patent applications in several countries for all its inventions, including 31 product patent applications in the United States of America, of which 17 have already been granted. In India, 110 product and process patent applications have also been filed. Because patent protection is central to its activities, DRF has established an in-house intellectual property management group to oversee all international patent filings and matters relating to patent strategy.

Source: Dr. Reddy's Research Foundation


The global nature of pharmaceutical and biotechnological research has resulted in the formation of partnerships between companies from all over the world, including the new economic powerhouses of Brazil, India, China, Cuba, the Republic of Korea, and Singapore (see 11).

BIOBRÁS – BIOTECH JV AND UNIVERSITY RESEARCH IN BRAZIL

Biobrás was a small, independent laboratory within the Federal University of Minas Gerais, Brazil, when it began its activities producing enzymes under a licensing agreement with the US-based New England Enzyme Center. In 1977, with the assistance of the Brazilian Ministry of Health, Biobrás negotiated a joint-venture agreement with patent holders and pharmaceutical multinational Eli Lilly for the production of animal insulin and its commercialization in Brazil. As part of the cooperation agreement, Biobrás personnel were trained by Eli Lilly in various aspects of R&D as well as in administration and marketing. By the time the agreement with Eli Lilly ended, six years later, Biobrás had become an important insulin manufacturer utilizing state-of-the-art technology. Since then, Biobrás has also engaged in research, leading to an important breakthrough in the field. The company is now one of only four pharmaceutical companies – and the only non-multinational – to have the capacity and the technology to produce human recombinant insulin. The technology was developed by Biobrás in collaboration with the University of Brasília and was subsequently patented in Brazil, Canada, Europe, and the United States of America.

Sources: Biobrás (www.uol.com.br/), USPTO, and pharmaceuticaling.com

• BUSINESSES ACCUMULATE AND USE PATENTS IN LICENSING, JOINT VENTURES, AND OTHER REVENUE-GENERATING TRANSACTIONS

Businesses, from multinationals to small and medium-sized enterprises (SMEs),  can benefit from accumulating IP assets and engaging in IP licensing transactions.

This activity can promote competition and create profitable business opportunities that provide jobs, job training, and human resource development; supply needed goods and services; and increase business and individual income.

Today, licensing – the sharing and distribution of IP assets – rather than litigation, is increasingly the *raison d'être* of patents. Such licensing can be tremendously profitable. IBM realized US\$1.7 billion in revenues from patent licensing in 2000 alone. Texas Instruments realized US\$500 million. Total worldwide revenues from patent licensing increased from US\$10 billion in 1990 to US\$110 billion in 2000. These impressive figures should not convey the idea that technology licensing is only for the major multinational companies or the superstar research institutes. An SME with patent assets can also participate in such patent-enhanced business relationships. However, an SME without patent assets must rely on time-to-market advantage, superior service, and other factors. This is equally true in developed and developing countries.

THE RELEVANCE OF PATENTS TO DEVELOPING COUNTRIES

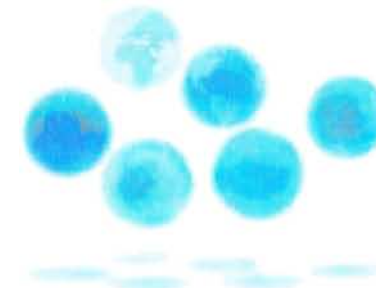
It is important to address the opinion, which is occasionally voiced, that patents, as opposed to other forms of IP, are not relevant to developing countries because of their relatively low state of technological development. The argument is sometimes made that copyright, trademarks, and geographical indications may be useful and appropriate for those countries, but not patents, except insofar as developing nations should offer patent protection in order to attract foreign direct investment. Some critics of the patent system claim that patents may even be harmful to developing countries because of the power over markets and price that patents confer on their owners.

These ideas – that patents are not relevant to developing nations, or are incompatible with their economic objectives – are inaccurate, giving the impression that it is possible to simply opt out of the international patent system, and yet still achieve economic development. This is an error as patents are an essential component of economic strategy for all countries, regardless of their state of economic development.

Indeed, developing countries today, some to a greater extent than others, are adroitly wielding the patent system for optimum leverage on economic development. The role of their governments and policy-makers is crucial in determining how effectively such countries use the power of the patent system for economic development by implementing a pro-active patent policy.

PRO-ACTIVE PATENT POLICY

Using patents for economic development requires a pro-active patent policy (PPP) intrinsically related to economic development. The experiences of Singapore and the Republic of Korea with patent policy confirm the importance of a pro-active approach. National policies and the PPP should be designed to promote patent licensing, joint ventures and strategic alliances, as these can encourage invention at the national level as well as FDI. In parallel with FDI and technology transfer through the PPP, stimulating R&D in universities and research centers is another way to jump start domestic knowledge development and can provide the “fuel” to keep the national innovation cycle running. Handled properly, patents are efficient drivers of national innovation, R&D, product creation and business transactions that have beneficial macro and micro economic effects.



TRADEMARKS

Trademarks perform a valuable macro-economic function in terms of identifying the origin of products and technologies and thereby fostering accountability to the consumer. They also play a strategic marketing role in individual enterprises. The most common use of trademarks is in consumer advertising to promote product sales, but trademark use has become increasingly sophisticated and varied.

Trademarks help to cement customer loyalty. Studies show that customer retention is as effective in generating revenues as the attraction of new customers: "Reducing defections by just 5 percent generated 85 percent more profit in one bank's branch system, 50 percent more in an insurance brokerage, and 30 percent more in an auto-service chain". In addition to promotion of product sales and cementing customer loyalty, trademarks help their owners increase profitability, respond to unfair competition, expand and maintain market share, differentiate products, introduce new product lines, gain royalties through licensing programs, support strategic partnerships and marketing alliances, and justify corporate valuation in financial transactions.

Trademarks are also one of the basic elements of franchising. The International Franchise Association estimates that franchising accounts for one-third of all retail sales in the United States of America, including the sales of firms such as McDonald's, Coca-Cola, General Motors, and Re-Max. The strategic use of a trademark with franchising is an effective business model in many countries (see 18).



Courtesy of Nando's

8 NANDO'S, A SOUTH AFRICAN SUCCESS STORY IN BRANDING



In the heart of the local Portuguese community in Johannesburg, chicken was prepared according to a well-kept secret recipe. In 1987, Fernando Duarte and his friend Robert Brozin became partners to set up Nando's, which is today a fast-growing restaurant chain with over 200 outlets across Africa and Australia as well as in Canada, Egypt, Israel, Malaysia, Saudi Arabia, and the United Kingdom. The company has developed considerable international reputation and goodwill in its Nando's name, which is readily and distinctively associated with its fast-food chicken outlets around the world, so much so that it now owns an extensive international portfolio of registered trademarks surrounding the word "Nando's". The strength of the "Nando's" brand has also allowed the company to diversify into other sectors which include Nando-branded retail products and merchandise. "We're probably one of the biggest non-American global brands in quick-service restaurants. A lot of South African companies have bought global brands, but no one has taken a South African brand and gone out to trade in the high street. That's what we're trying to do," said Mr. Brozin.

In March 2000, Nando's filed a cybersquatting case with the WIPO Arbitration and Mediation Center under the Uniform Dispute Resolution Policy (UDRP) applicable to generic top-level domains adopted by the Internet Corporation for Assigned Names and Numbers (ICANN). The respondent, a California resident, had registered the domain names nandos.com and nandoschicken.com and offered to license or sell them back to Nando's. The administrative panel found the case in favor of Nando's and ordered the respondent to transfer the domain names to the company.

Sources: Nando's International Limited and the Financial Times (London)

The growing complexity of trademark use in marketing is illustrated in the licensing of the Harry Potter character from the popular children's book series by J.K. Rowling. Warner Brothers, which acquired worldwide merchandizing rights to the work, was amazed to see one of the biggest movie openings of all time, as "Harry Potter and the Sorcerer's Stone" earned an estimated US\$93.5 million in its first three days. Warner Brothers had divided up the license rights among various of its business partners/licensees: Hasbro gained the rights to distribute trading cards and youth electronic games; competitor Mattel to make toys; another company has the rights to make interactive candy; Electronic Arts, the California software entertainment company, is licensed to make Harry Potter computer and video games; and Coca-Cola secured still other rights relating to marketing of the film. Seen in the context of this complex network of agreements, the trademark license becomes a way of "extending the brand" and co-marketing, so that each product helps sell the other products by reinforcing the popularity of the character.

As technology has become an increasingly important component of business, uses of trademarks have changed and become more complex, such as signaling compliance with safety requirements, the fulfillment of technical specifications, or the interoperability of complex technical systems. In another technology-driven trend, the rise of the Internet has raised a number of difficult issues relating to the interplay between domain names and trademarks.

Some trademarks have become global "cultural icons" as their use has expanded beyond business branding to individuals, charitable organizations, and nations seeking to communicate a message about their special characteristics. For example, the star from Reykjavik, Bjork, projects a fresh and unconventional image that has been said to represent Iceland. Similarly, the Chinese Olympic committee has sought to redesign the Olympic logo to represent the movement inherent in Tai Chi; while Spain promotes tourism with the sunny España logo.

Trademarks are effective business tools that can communicate a strong, focused message about products, technologies, cultures, and individuals. Unlike patents and copyright, trademarks can be renewed indefinitely, which makes them a very powerful IP asset. They are most effective when integrated into a total business and marketing strategy – which can include licensing and sales transactions involving strong products and other forms of IP – but can be damaged when the products and technologies they identify do not live up to customer expectations.

GEOGRAPHICAL INDICATIONS

A geographical indication, like a trademark, communicates a message. It tells potential buyers that a product is produced in a particular place and has certain desirable characteristics that are only found in that place. **Geographical indications may be used strategically to promote regional or national enterprises.**

Regional specialities may have their stature enhanced in the eyes of the consumer when a regional collective and its members enjoy the exclusive right to use a particular geographical indication. Like trademarks, geographical indications may add dynamic marketing power to a product and, because they are inherently collectively owned, they are an excellent tool for regional or community-based economic development.

The story of Tequila in Mexico illustrates the success that can come from the strategic use of geographical indications (see 21).



Courtesy: La S.A. de las Caves y Producciones Huertos de Roquefort

TEQUILA: ONLY WHERE THE AGAVE GROWS

Tequila is a Mexican drink that has acquired a distinct identity, often enhanced by bottle designs featuring some of Mexico's characteristic symbols. What few people know, however, is that Tequila is only produced within a specific area in Mexico where its primary raw material, the cactus-like agave plant, grows and that the name "Tequila" is protected as a geographical indication in Mexico under a 1977 Presidential Decree. Under this special legislation, "Tequila" can only be used for beverages originating in five Mexican states which have the exclusive right to produce it. Today, Tequila has earned a worldwide reputation. Because this term is a protected geographical indication in many countries, competitors can be prevented from using it for spirit drinks not from the distinct Mexican area of production, or not made in compliance with the applicable Mexican legislation. For example, the term "Tequila" is protected as an appellation of origin in accordance with the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (an international agreement administered by WIPO). The sale of Tequila has been further enhanced because producers are able to guarantee the quality of the product and can avoid the name being used for products made with different ingredients which could taint the reputation of the original Mexican product and mislead customers.



Source: Tequila Regulatory Council

COPYRIGHT AND CULTURAL INDUSTRIES

Copyright is the area of law that provides protection to original works of authorship such as books, paintings, architecture, musical compositions, and computer software. **The legal protection afforded such works permits the development and flourishing of cultural industries, as well as technology-oriented businesses based on computer software and other technologies.**

To get an idea of the size of the copyright industries, a few statistics are presented below (see [Σ](#)). Looking at the United States of America, for 2001, the total copyright-based industries contributed an estimated US\$791.2 billion to the economy, representing approximately 7.75 percent of GDP.

Σ CONTRIBUTION OF TOTAL COPYRIGHT-BASED INDUSTRIES TO GDP (PERCENT)





The following brief description about musical composition will illustrate how copyright and related rights contribute to the culture industry. The entire process underlying the business model of the music industry starts with a song or, more accurately, a musical composition. The songwriter or the composer are the owner(s) of all copyright in the musical composition at the point of fixation, that is, when it is physically "fixed", either in musical notes, or by using analog or digital recording capacities. Upon creation or fixation, depending on the national legislation, copyright protection automatically comes into force without further formality. The creative uses to which it can be put can be seen quite clearly in the example below (see 11).

11 BOWIE BONDS

The famous British musician David Bowie, over the course of his 30-year plus career, has written hundreds of musical compositions, as well as performing and recording them. From his recordings of those compositions, and from cover versions by other artists, an income stream has been produced; and is likely to continue on into the future. A creative brokerage organization, the Pullman Group, saw an opportunity to "securitize" the musical compositions as an income-producing asset. It licensed Bowie's rights to his musical compositions for US\$55 million, which it paid to him. It then sold bonds to investors on the basis of a repayment and profit model using the income from the musical compositions as both the security for the investment, and the source of the repayment. This is, thus far, a win-win-win situation, in that Bowie received present income based on many years of projected royalties. The Pullman Group received fees and will receive profits from its creative business model. The investors will receive a return on their investment at much higher rates than normal. The whole transaction is securitized by proven IP assets in a most creative way.

Source: <http://www.pullmanco.com>; Global Finance, November 1999.

COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

For individual creators, trying to monitor the use of their works – on radio or television, for example – can be extremely difficult. As a result, some countries have special bodies (collective management societies) to carry out that task and ensure that creators are paid for the use of their works. These societies can help promote the development of local culture, for example, by giving local artists a return on their intellectual property when their music is played at home and abroad. The income generated in this way can be considerable, making a significant contribution to GDP.



COPYRIGHT AND TECHNOLOGICAL CHANGE

The introduction and enhancement of new media, information, and telecommunications technology – such as the videocassette recorder (VCR) in the late 1970s, the digital revolution in the 1980s, and the Internet in the 1990s – has consistently challenged both copyright laws and the cultural industries and communities that live and prosper under them.

When the CD swept away vinyl records and music cassettes, it gave the music industry an opportunity to resell its existing catalogues in CD format. Today, a similar process is taking place with audiovisual productions in digital format. The new DVDs offer high-quality resolution fairly cheaply and a whole new generation of consumers is now repurchasing audiovisual productions in this format, including many previously thought to be not commercially viable. However, the content of DVDs is easy to copy and to post on the Internet and millions of unauthorized copies could, potentially, be pirated in this way.



Courtesy: EMI Group

Courtesy: Sony (Imetelid SA)



Strong efforts are underway by the audiovisual industry to prevent such activity, and where it does occur, to stop it in its tracks and seek civil or criminal penalties against those responsible. Technological measures, such as encryption, are essential tools to stop digital piracy. It is for this reason that the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), the most recent international treaties in the copyright and related rights fields, contain special provisions which prohibit circumvention of such measures of technological protection for copyright works.

In the area of music, MP-3 technology has made it easy to compress music files, so that they take up considerably less space, are easy to upload and download over the Internet, and can be neatly stored in mobile devices. Because of the ease of use of such technologies, they can be used to download and copy without the knowledge or consent of the holders of the rights to the music, in violation of the spirit and express provisions of copyright law (see 7).

λ THE NAPSTER CASE: PIRACY ON THE INTERNET

On February 12, 2001, the United States Court of Appeals for the Ninth Circuit rendered its landmark decision in an important legal case, *A&M Records, Inc., et al. vs. Napster, Inc.*, ruling that Napster's "fair use" defense was without merit. Napster was a hugely successful music file-sharing website and program (up to 10,000 downloads per second), using musical copyrighted works without the authorization of the rightholders. It was a business built on illegal transactions, but which, interestingly, has contributed to the development of new business models within the recording industry.

TRADITIONAL KNOWLEDGE

Traditional knowledge – used here broadly to refer to tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields – had been largely over-looked in the IP community until quite recently. It is now increasingly recognized that the economic value of traditional knowledge assets could be further enhanced by the use of IP.

Holders of traditional knowledge are exploring how best to commercialize its practical applications, utilizing various intellectual property approaches including patent, trademark, and copyright laws (see 8, for one example). Just because a product, technology, or work has been collectively held or has been in existence for some time, does not preclude its treatment as IP. All IP is linked to prior invention, knowledge, and creativity. Often the enhancement of an old technology generates valuable new inventions, or the adaptation of an old artistic tradition results in new creative works. These questions are the subject of focussed discussion in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, which is making substantial progress in addressing both policy and practical linkages between the IP system and the concerns and needs of holders of traditional knowledge and custodians of traditional cultures.

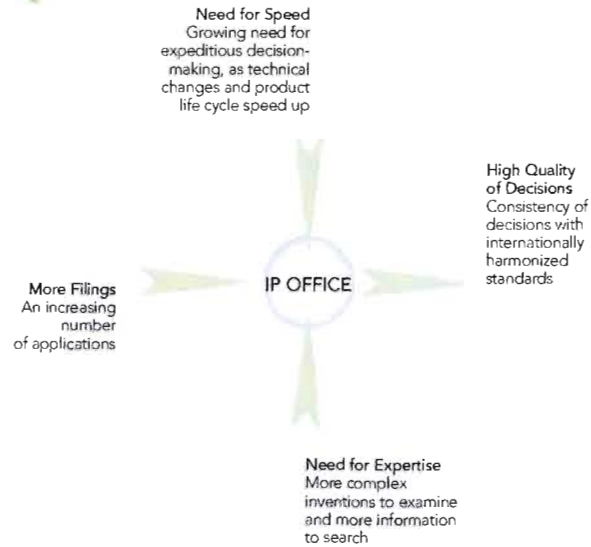
χ INDIGENOUS LABEL OF AUTHENTICITY

The registration of collective and certification trademarks to protect tradition-based innovations and creations is being actively explored in Australia where an Indigenous Label of Authenticity was launched in late 1999. It was developed by the National Indigenous Arts Advocacy Association with the backing of the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Australia Council for the Arts. The use of such marks of authentication is seen as an effective way of maintaining the cultural integrity of Aboriginal and Torres Strait Islander art, to ensure a fair and equitable return for these communities, and to promote an understanding both nationally and internationally of their cultural heritage and art.

SYSTEMS FOR ACQUISITION OF IP RIGHTS

The intellectual property office (IPO) is the main administrative unit within a government that is in charge of administering the system of IP rights acquisition and maintenance. The economic and social costs of establishing and maintaining an IPO have recently been the focus of special attention, as users of the IP system have requested a reduction of the fees for filing an application, and obtaining and maintaining IP rights (see 28).

28 GROWING DEMAND FOR IPO SERVICES



However, almost all IPOs suffer from financial constraints and difficulties in recruiting and retaining qualified staff members for their operation. The problem of limited resources is particularly acute in the developing world and means that IPOs are often not able to provide the services they would wish to users of the IP systems in those countries (see 29).

29 STAFF AND BUDGET OF SELECTED PATENT OFFICES

Country (Patent Office)	Staff numbers: total	Patent applications (including PCT designations)	IP Office Annual Budget (in mill. US\$)
United States of America	4,700	262,787	863
European Patent Office (20 States)	4,400	121,750	513
Russian Federation	2,700	58,532	14.3
Japan	2,500	437,375	844
Republic of Korea	1,002	121,750	120
Sweden	1,000	149,493	69
Australia	830	57,706	42
Mexico	611	44,721	25.5
Brazil	610	50,866	42
Spain	600	147,889	45.3
Egypt	146	1,682	1
Singapore	85	44,948	4.9



GLOBAL AND REGIONAL SOLUTIONS

The establishment of an international patent system was already being considered as a long-term solution when WIPO Member States adopted the Patent Cooperation Treaty (PCT) in June 1970. Today, countries have more reasons than ever to look to global and regional solutions in order to leverage resources, decrease costs, and increase user value. They also wish to take advantage of the digital revolution, which gives them the possibility to enhance cooperation and share data and information in a rapid, paperless, and inexpensive manner.

In October 2001, WIPO launched worldwide consultations on the development of a **strategic blueprint for the future evolution of the international patent system**.

The initiative, known as the "WIPO Patent Agenda", seeks solutions to long-term problems as well as to more immediate difficulties, most notably those facing a number of patent offices in managing excessive workloads. The project will complement and strengthen on-going work such as that on PCT reform and the harmonization of substantive patent law.

ENFORCEMENT OF IP RIGHTS

Enforcement of IP rights is needed because people do not respect the rights of others. The reasons underlying such disrespect are many and varied, and range from greed, perceived necessity, lack of awareness, and ruthless criminal intent, all the way to innocent mistake. The scale of such disrespect also varies considerably, from illegal copying of protected works at home for personal use to large-scale commercial criminal enterprises, which produce hundreds of thousands of illegal copies.

When illegal products take market share (or even kill a potential market), and pose risks to health and safety; and when recouping an investment is prevented by intervening criminal activity, enforcement mechanisms are called into play to protect vital interests, not only of the holders of the rights involved, but also of the public. Intergovernmental and non-governmental organizations and industry bodies whose mandates involve dealing with various aspects of counterfeiting and piracy and their effects have estimated that **the market in illegal, counterfeit products is between 5 and 7 percent of total world trade** (see [31](#)).

ESTIMATED PROPORTION OF COUNTERFEIT AND PIRATED PRODUCTS

Organization	Estimate
World Customs Organization	Around 5% of all world trade
European Commission	Between 5% and 7% of world trade, representing EUR 200 to 300 billion a year in lost revenue, and the loss of 200,000 jobs worldwide
Organisation for Economic Co-operation and Development	More than 5% of world trade

Source: <http://www.wipo.int>; Commission of the European Communities, "Green Paper: Combating Counterfeiting and Piracy in the Single Market" (Brussels, 1998); 2, see http://europa.eu.int/comm/internal_market/en/intprop/indprop/9822.htm; OECD, ICC Counterfeiting Intelligence Bureau, "The Economic Impact of Counterfeiting" #DST/IND(97)6/REV1 (Paris, 1998) 5.

NEGATIVE IMPACT ON LOCAL INDUSTRIES

Countries in which counterfeiting and piracy take place with little or no focused government effort to prevent such activities, suffer **losses on several levels, both tangible and intangible.**

For example, manufacturers of legitimate goods will establish their facilities in other countries which do enforce IP rights. This results in a loss of FDI, as well as the technology transfer and foreign know-how that may accompany it. Loss of FDI also manifests itself in a loss of foreign income, which ultimately affects a country's balance of payments.

The cycle continues in ways that hurt a country's long-term prospects. Local creators, inventors, and SMEs are discouraged by the risk that their products will be illegally copied and sold, denying them a return on investment and restricting future growth, as well as dampening the very spirit and energy that are an integral part of the creativity process. That spirit, so important to a country's well-being, is notable when it thrives. Just look at the "silicon valleys" of California in the United States of America and Bangalore in India.

SOCIAL CONSEQUENCES OF COUNTERFEITING AND PIRACY

The social consequences of counterfeiting and piracy are felt most personally by artists, creators, and entrepreneurs.

The counterfeiting of medicines and airplane and auto parts has a detrimental effect on the health and safety of the public. The World Health Organization (WHO) estimates that **approximately 61 percent of pharmaceutical products sold worldwide are counterfeit.**

Developing countries account for the largest portion of such sales, with up to 70 percent of medicine sold in some African countries being counterfeit.

TOWARDS THE CREATION OF AN IP CULTURE

WIPO is working to raise awareness – at all levels – of the value of IP and of the potential positive impact that it can bring to society.

Awareness of the potency of IP as a source of economic, social, and cultural dynamism will ensure that:

- government officials and agencies formulate their policies and administrative and management programs with a view to optimizing the use of, and respect for, IP rights;
- the private sector, from SMEs to multinationals, leverages the value of its IP assets and recognizes the value of upholding IP rights in increasingly knowledge-based industries and economies;
- the public understands the benefits of purchasing legitimate goods and services, thereby boosting local industries and increasing the tax base.

The absence of such an IP culture results in a stagnant or receding economy, a reduction in creativity and inventiveness, and a business climate bereft of FDI, consistency, or reliability. The creation of an IP culture in developing countries that do not yet have developed IP assets will require **pro-active policies.**

These could start with:

- an IP audit to assess the current status of IP assets;
- the preparation of a national IP strategy, integrated with scientific, cultural, trade, economic, and educational policies;
- incentives and awards for inventors and authors, as well as for societies and collective organizations that develop and use IP assets.

Attention must be paid to all the elements needed to create a rich soil to sustain the growth of an IP culture – human resource development, education, marketing, up-to-date IP offices and administrations, involvement of civil society organizations, promotion of innovation, culture, and IP at universities and research centers, programs to develop practical skills such as licensing, well-drafted laws, and effective enforcement of rights (see [1](#)).

B CREATING AN IP CULTURE IN SINGAPORE USING PRO-ACTIVE POLICIES

Singapore recognizes the importance to its economy of intellectual property, both as a national resource and in attracting foreign investment. To develop intellectual property as a strategic and competitive asset, Singapore adopts an essentially pro-active IP rights policy for the development of high value-added and creative-content industries. In 2000, the Intellectual Property Office of Singapore (IPOS) was converted into a semi-autonomous statutory board charged, inter alia, with administering the IP system in Singapore. One of the recent IPOS initiatives is the provision of IP information via the recently launched SurfIP (<http://www.surfip.gov.sg>), an IP portal for searches across multiple patent databases in various jurisdictions, as well as the provision of other technical and business resources. On the IPR enforcement front, the agency primarily responsible for domestic enforcement is the Intellectual Property Rights Branch, a specialized Crime Division of the Criminal Investigation Department, while border enforcement is undertaken by the Customs and Excise Department. In the field of education, Singapore has public education campaigns led by IPOS and the National Science & Technology Board aimed at promoting greater public awareness of IP rights. Today, Singapore is one of the leading nations in terms of patent filings and the creation of other IP assets.



Source: Dr. Ng Sew Kuan, National University of Singapore

INTELLECTUAL PROPERTY EMPOWERMENT

IP is the commercial application of innovation and creativity to improving and enriching our lives – at both the practical and cultural levels. It is empowering because it supports and rewards creators and innovators, stimulates economic growth, and promotes human resource development.

IP is a resource that is available to all peoples. One of WIPO's major challenges is to assist its Member States in developing and using the tools to mine that resource and to use IP for the benefit of their nations.

IP can only thrive in a culture in which its importance is fully understood and accepted and in which it is protected by laws that are vigorously enforced. WIPO's mission will continue to be to work for robust IP protection and enforcement to ensure its continuing vitality.

