

# Combating counterfeiting of telecommunication/ICT devices – WTO rules and perspectives

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# The WTO Information Technology Agreement covers about 97% of world trade in IT products

## Box 1.5. What products are covered by the ITA? Main product categories and examples



### Computers

- PCs
- Laptops
- Input / Output units



### Semiconductors

- Transistors
- Integrated circuits
- Microprocessors
- Electronic microassemblies



### Semiconductors manufacturing equipment

- Encapsulation machines
- Inspection apparatuses



### Telecom. apparatus

- Telephones
- Pagers
- Mobile phones
- Switching equipment



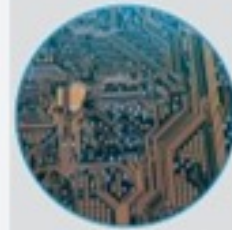
### Instruments & apparatus

- Cash registers
- Postage-franking machines
- Electronic calculators



### Data storage media & software

- Floppy disks
- CDs
- Software in physical support



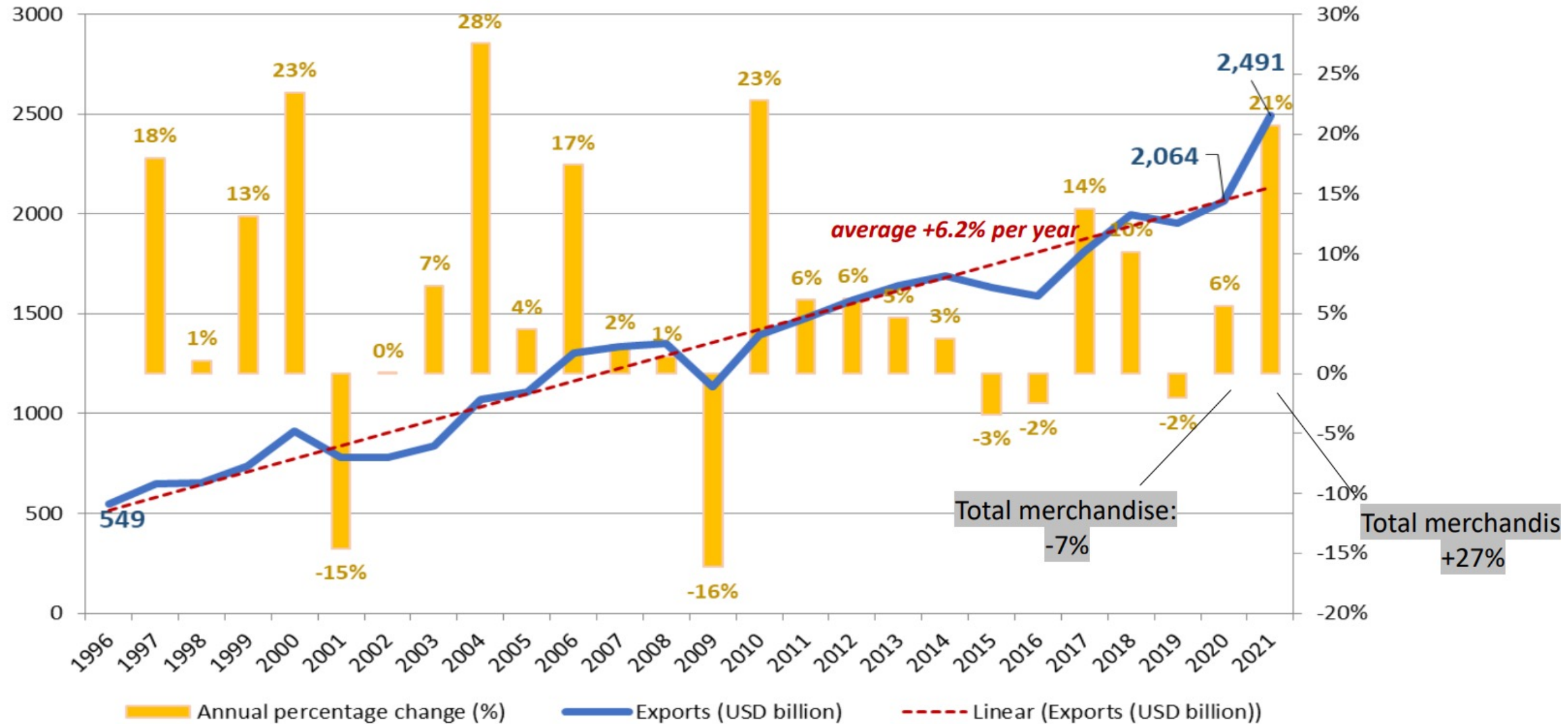
### Parts & accessories

- Parts and accessories to the other six main categories

Source: Ministerial Declaration on Trade in Information Technology Products. See also Appendix 1.

# Evolution of world\* exports of ITA I products, 1996-2021

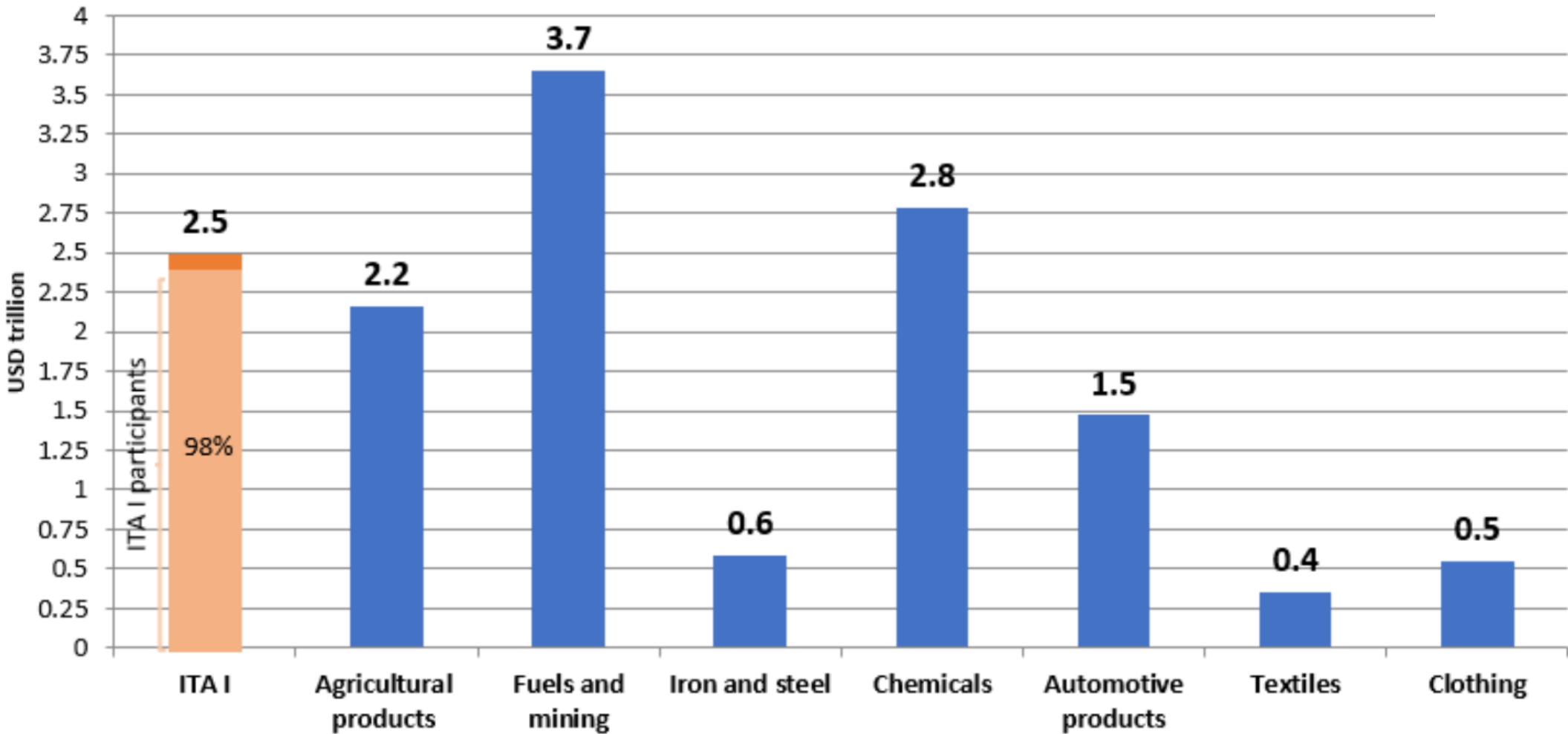
(Annual percentage change and USD billion)



\* Including intra-EU trade, excluding re-exports of Hong Kong, China.

Source: WTO Secretariat, based on UN Comtrade and WTO estimates

# World\* exports of ITA I products in comparison to other major product groups 2021 (USD trillion)



\* Including intra-EU trade, excluding re-exports of Hong Kong, China.

Source: WTO Secretariat, based on UN Comtrade and WTO estimates

# The Technical Barriers to Trade Committee



examines Members' notifications of technical regulations and related strategic trade concerns as to their impact on trade.

Examples of notifications relating to ICT/telecoms devices include:

- **Nigeria** - conformity assessment to prevent marketing of unsafe and substandard products, including all electrical and electronic products (G/TBT/N/NGA/1 - 2005).
- **European Union** – mandatory market access requirements for internet-connected radio equipment and wearable radio equipment to protect against fraud (G/TBT/N/EU/823 - 2021).

# The Technical Barriers to Trade Committee



Examples of strategic trade concerns relating to ICT/telecoms devices include:

- **Indonesia** – regulation on IMIE labelling on imported ICT devices to protect against stolen or lost phones and prevent deceptive practices (ID 388 - 2014).
- **Vietnam** – conformity assessment procedures for alcohol, cosmetics and mobile phones to protect against smuggling and counterfeiting (ID 316 - 2011).
- **China** - network access management measure introduced to protect user information security and personal privacy (ID358 - 2013).

# The TRIPS Agreement

requires special measures against counterfeiting



TRIPS sets minimum standards for the availability, protection and enforcement of intellectual property rights in WTO Members.

It requires Members to provide enforcement procedures that permit effective action against any act of IP infringement, including through the availability of provisional measures, and

It requires Members to provide border measures and criminal procedures with respect trademark counterfeiting and copyright piracy.

# The TRIPS Agreement provides a definition of “counterfeiting”

## Footnote 14 to Article 51:

For the purposes of this Agreement:

(a) “**counterfeit trademark goods**” shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;





# The TRIPS Agreement

requires border measures and criminal procedures



- **Border measures (Art. 51-60)**

- Members must provide the possibility of suspending the release by customs authorities of imported counterfeit trademark and pirated copyright goods,
- under certain conditions and with safeguards against abuse.
- Authorities must be able to order destruction or disposal outside the channels of commerce of IP-infringing goods (Art. 59 and 46)

- **Criminal procedures and penalties (Art. 61)**

- Members must apply criminal procedures and penalties in cases of wilful trademark counterfeiting and copyright piracy on a commercial scale.
- Commercial scale means the “magnitude or extent of typical or usual commercial activity with respect to a given product in a given market” (DS362 – China IPRs)
- Remedies must include imprisonment and/or monetary fines sufficient to provide a deterrent.



# The TRIPS Agreement

facilitates co-operation on trade in IP-infringing goods



- Members agree to cooperate with a view to eliminating international trade in goods infringing IPRs (Art. 69)
- Measures to be taken by Members:
  - establishment and notification of contact points
  - exchange of information on trade in infringing goods
  - promotion of exchange of information and cooperation between customs authorities
- Updated list of contact points is available through <http://e-trips.wto.org>

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