

# Professional Ethics: Unit 2 - Part 3 of 3

## Trade-Related Aspects of Intellectual Property Rights

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# World Trade Organisation (WTO)

## Trade

The activity of buying and selling or of exchanging goods or services between people or countries.

## Balance of Trade

The difference in value between a country's imports and export

- **Trade surplus:** A country exports a greater value than it imports
- **Trade deficit:** A country imports a greater value than it exports



# World Trade Organisation (WTO)

## Economic liberalism

Economic liberalism is associated with free markets and private ownership of capital assets. It advocates the theory of comparative advantage.

## Mercantilism

Mercantilism is a national economic policy that is designed to maximize the exports, and minimize the imports, of a nation. If international trade is against national interest, the country should better not participate. It supports the policy of protectionism (policy of protecting domestic industries from competition).



# World Trade Organisation (WTO)

Protectionism uses many tools such as:

## Tariffs Barriers

**Tariffs:** A tax on imports is called tariff. It is an important tool of raising revenue; however, at times, countries also use the system of tariffs for protectionism.

## Non-Tariffs Barriers

- **Import Quotas:** limiting the quantity of imports
- **Subsidies:** Monetary help provided to the domestic producers to make their product cheap so that it can compete with foreign goods.
- **Domestic Regulations:** Government can fix restrictions on the imports of foreign goods on the basis of environmental and health regulations.



## History of WTO

- Economic depression of 1929
- Smooth Hawley Tariff Act 1930 (USA)
- Tariff War
- World War II



## History of WTO

- Bretton Woods Conference 1944
- Proposed for three international organisations:
  - IMF (International Monetary Fund)
  - IBRD (International Bank for Reconstruction and Development)
  - ITO (International Trade Organisation)
- IMF and IBRD came into existence by 1947
- For ITO: Draft agreement Havana Charter 1948 (not ratified by USA)



## History of WTO

- Geneva Conference 1947: Temporary multilateral trade agreement was made
- General Agreement on Tariff and Trade (GATT) came into effect in January 1948 and was signed by 23 countries
- In 1950, USA made clear that it will not ratify ITO.
- GATT regulated international trade till 1995 (47 years) when it was finally succeeded by WTO



## GATT

- It was not an organisation but an agreement
- Participating countries were not called members but “contracting parties”
- Limited to removal to tariff in trade of goods
- Trade in agriculture and textile was excluded from GATT
- It has protocol for provisional application that countries were free to implement only those provisions of the agreement which did not violate any existing law of the land. This special privilege was called “Grandfather’s Right”.





# World Trade Organisation (WTO)

## WTO

- WTO was proposed with the conclusion of Marrakesh Agreement in the Uruguay round of multilateral trade negotiations in 1994
- WTO came into existence on 1 January 1995

## Reasons Behind the Formation of WTO

- Increase in non-tariff barriers from 1970
- Shift in comparative advantage of developed countries from manufactured goods to service
- Demand by developing countries to include trade in agriculture and textile within international trade regime



## Grand Bargain

- Developed countries agreed to include trade in agriculture and textile under WTO with some exception
- Developing countries allowed inclusion of service and intellectual property rights under WTO



## Fundamental Principles of WTO

- **Reciprocity:** Mutual lowering of trade barriers thus countries that lowered their tariff could expect their trading partners to do the same
- **Most Favored Nation (MFN):** The MFN principle holds that the tariff preference granted to one state must be granted to all others; in other words, there could be no “favored nation” among members
- **National Treatment:** National treatment means that foreign goods are treated equally with domestic goods, and that countries are not able to enact such policies that give their domestic product any advantage over foreign product



## WTO

- **Organisational structure**
- **Decision making process**
- **Dispute settlement mechanism**



## WTO: Organisational structure

- **Ministrial conference**
- **General council** (dispute settlement body, trade policy review body)
- **General council:**
  - Council for trade in goods
  - Council for trade related aspects of intellectual property rights
  - Council for trade in services



## WTO: Organisational structure

- WTO is member driven institution
- Negotiating agreements and implementing them all done by members themselves
- No executive body and very small secretariat (just 600 staff)
- Secretariat is headed by director general
- Ministerial conference is top most decision making body. It comprises of trade and commerce ministers of member countries.



## WTO: Decision Making Process

In theory:

- voting procedure
- one country one vote
- decision by simple majority

In practice:

- GATT style consensus method
- principal supplier principle
- green room meeting



## WTO: Decision Making Process

- Informal decision making process hurt the interest of developing countries
- There is a lack of transparency in the whole process
- Many times developing countries are not consulted in the consensus building process
- Developing countries are also not invited in many of the Green Room Meetings.





## WTO: Dispute Settlement Mechanism

- Consultation (60 days)
- Establishment of Panel (45 days)
- Panel examination and final panel report to parties ( 6 months)
- Panel report submitted to Dispute Settlement Body (DSB) (6 months)
- Appeal report (60 to 90 days)
- DSB adopts report (60 days)
  - Implementation of recommendation
  - Non-Implementation of recommendation — > Retaliation



# General Agreement on Tariffs and Trade - GATT 1994

## GATT 1994

Included provisions of GATT 1947 but expanded its scope to no-tariff barriers. Asked all member states to submit individual tariff schedule.

## GATT 1994

- Agreement on Agriculture (AoA)
- Agreement on the Sanitary and Phytosanitary (SPS) Measures
- Agreement on Textiles and Clothing (ATC)



## Agreement on Agriculture (AoA)

Liberalize agricultural trade in three significant respects:

- Market Access
- Domestic Support Mechanism
- Export Subsidies



## Agreement on Agriculture (AoA): Market Access

- Conversion of all non-tariff import restrictions into tariff: tariffication
- All agricultural tariffs required to be bound
- After binding the tariffs it should be gradually reduced over a period of several years



## Agreement on Agriculture (AoA): Domestic Support Mechanism

- Direct Support: directly stimulate production and trade of agriculture product (Subsidy - Highly restricted)
- Indirect Support: Don't affect production and trade direction (Subsidy - non restricted)



## GATS

- By 1981, for instance, services had come to comprise about 66% of the GDP of developed countries and 67 % of their employment.
- The idea of including trade in services within the GATT was first proposed by the US at GATT's ministerial conference in 1982
- Has a built in agenda for successive negotiations



## TRIPS

- Intellectual Property
- Ideas, Inventions, Discovery
- Research and Development
- Cost not shared by all
- Public good problem
- To solve public good problem
- Patents, Trademarks, Copyrights



## TRIPS

- To regulate the transfer of intellectual property from one country to another country, WIPO (World Intellectual Property Organisation) is created in 1967. But this organisation was not effective enough to stop the use of counterfeit or piracy.
- TRIPS was included in the final WTO agreement signed at Marrakesh 1994 as a part of grand bargain.





# Trade-Related Aspects of Intellectual Property Rights

TRIPS has 73 articles and 7 major parts

- Copyrights
- Trademarks
- Geographical Indication
- Patents
- Lay-out Designs of Integrated Circuits
- Undisclosed Information Including Trade Secrets



## TRIPS

- TRIPS required governments to modify their national legislation on Patents, Copyrights, and Trademarks to bring them in line with the new agreement.
- The agreement applied to such basic and everyday necessities as medicines, and its application would affect the access of national populations to life-saving drugs and technologies.
- A few safeguards have been built into the TRIPS such as article 8 on the right of governments to protect public health and even override patents if need be.



# World Trade Organisation (WTO)

## Development Agenda

### Developed Countries

- Industrial product
- Services
- Technological goods
- Intelectual property

### Developing Countries

- Agricultural product
- Textile
- Raw material



## First WTO Ministerial Conference

- Held at Singapore 1996
- Four issues were included called Singapore issues
  - Transparency in Government Procurement
  - Trade Facilitation
  - Trade and Investment
  - Trade and Competition



## Seattle Ministerial Conference

- Held at Seattle 1999
- Huge stand-off between developed and developing countries
- Developed countries tried to negotiate on singapore issues
- Developing countries tried to negotiate for liberalisation on agricultural and textile goods
- It was failed badly



## Doha Ministerial Conference

- Held at Doha, November 2001
- A new trade round initiated called Doha Trade Round or Doha Development Agenda
- It reconcile the conflicting interest of developed and developing countries
- Declaration on TRIPS and public health: developed countries allowed developing country to produce generic medicine under compulsory licencing during public health emergency



## Doha Trade Round after 2001

- Doha Trade Round was to be completed by 2005
- Cancun Ministerial conference held in 2003 also failed badly
- After the failure of Cancun Ministerial conference, a trade talk was held at Geneva in July 2004 and resulted in July package.



## July Package 2004

- Singapore issues except “Trade Facilitation” were abandoned
- Issue of cotton was included within agenda
- Date of completion of Doha round was postponed indefinitely





## Geneva Talks 2008

- Talk conducted for nine days
- Talk failed because India, USA, and China could not agree on the issues of the agriculture



## WIPO

- WIPO is the global forum for intellectual property (IP) services, policy, information and cooperation.
- A self-funding agency of the United Nations, with 192 member states.
- Mission is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all.
- Mandate, governing bodies and procedures are set out in the WIPO Convention, which established WIPO in 1967.



## WIPO

- Promotes the protection of intellectual property rights in patents, invention, trademark, book, music, photographs, etc.
- Enforcement of IPR related treaties, the most important one being “Patent Cooperation Treaty” (PCT).
- A patent registered under PCT, has legal validity in all the countries that have signed PCT treaty.
- Coordinates with WTO for enforcement of TRIPS- Trade related intellectual property rights and GI (Geographical indicator) tags.
- Coordinates with national agencies to combat piracy- in medicine, music, movies, software and other copyrighted products.



# Patent Cooperation Treaty (PCT)

## PCT

- The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970.
- It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states.
- A patent application filed under the PCT is called an international application, or PCT application.
- A PCT application does not itself result in the grant of a patent, since there is no such thing as an "international patent", and the grant of patent is a prerogative of each national or regional authority.
- The PCT procedure essentially leads to a standard national or regional patent application, which may be granted or rejected according to applicable law, in each jurisdiction in which a patent is desired.

