

That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be 'transparent' and predictable.

Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

- **WIPO** : It was the first major international treaty formed to help the inventors of one country to obtain protection in other countries for their creation or invention. The roots of this organization can be traced back to 1833 with the birth of Paris Convention for the protection of industrial property. It is responsible for the administration of various multilateral treaties dealing with the legal and administrative aspects of intellectual property. WIPO is a specialized agency of the United Nations which is dedicated to ensuring that the rights of creators and owners of intellectual property are protected worldwide. However, the main objective of the convention is to give Protection against false indication and unfair competition. WIPO undertakes development cooperation for developing countries through advice, training and furnishing of documents. WIPO was established by the convention in 14 July 1967, which entered into force in 1970. Resolve the private disputes on intellectual property and harmonizes the Intellectual Property (IP) laws and procedures. Provide legal and technical assistance to develop other countries. Exchange intellectual property information among member countries. Provide services for international application for industrial property rights. WIPO has promoted the interaction among different stakeholders at the national level to include, for example- agriculture, health, science and technology, etc.

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- The agreement between WIPO and WTO was concluded in December 1995. Implementation of procedures for the protection of national emblems. Translation of national laws, Notification of and access to national laws and regulation, Technical knowledge, The agreement provides cooperation in the following areas : A similar agreement on cooperation between WIPO and WTO came into force on 1 January 1996.

## **1.8 TRIPS**

### **1.8.1 Introduction**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO). It sets down minimum standards for the regulation by national governments of many forms of Intellectual Property (IP) as applied to nationals of other WTO member nations. TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) between 1989 and 1990 and is administered by the WTO.

The TRIPS agreement introduced intellectual property law into the multilateral trading system for the first time and remains the most comprehensive multilateral agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all."

Specifically, TRIPS requires WTO members to provide copyright rights, covering authors and other copyright holders, as well as holders of related rights, namely performers, sound recording producers and broadcasting organisations ; geographical indications ; industrial designs ; integrated circuit layout-designs ; patents; new plant varieties ; trademarks ; trade names and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

### **1.8.2 History**

# TRIPs AGREEMENT

## About TRIPs.....

- *The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization*
- *TRIPS is the most important and comprehensive international agreement on Intellectual Property rights*
- *It was formed at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.*
- *The TRIPS agreement introduced intellectual property law into the international trading system for the first time*

## Contd...

- *After the Uruguay round, the GATT became the basis for the establishment of the World Trade Organization (WTO) in 1995*
- *WTO was established to supervise and liberalize trade*
- *Adoption of TRIPS is a compulsory requirement of World Trade Organization membership*
- *Any country seeking to obtain easy access to the numerous international markets opened by the World Trade Organization must enact the strict intellectual property laws mandated by TRIPS*
- *There are now 153 WTO member nations and 29 observer nations*



Furthermore, unlike other agreements on intellectual property, TRIPS has a powerful enforcement mechanism. States can be disciplined through the WTO's dispute settlement mechanism.

### 1.8.3 The Requirements of TRIPS

TRIPS requires member states to provide strong protection for intellectual property rights. For example, under TRIPS :

- Copyright terms must extend at least 50 years, unless based on the life of the author. (Art. 12 and 14)
- Copyright must be granted automatically, and not based upon any "formality," such as registrations, as specified in the Berne Convention. (Art. 9)
- Computer programs must be regarded as "literary works" under copyright law and receive the same terms of protection.
- National exceptions to copyright (such as "fair use" in the United States) are constrained by the Berne three-step test.
- Patents must be granted for "inventions" in all "fields of technology" provided they meet all other patentability requirements (although exceptions for certain public interests are allowed (Art. 27.2 and 27.3) and must be enforceable for at least 20 years (Art 33).
- Exceptions to exclusive rights must be limited, provided that a normal exploitation of the work (Art. 13) and normal exploitation of the patent (Art 30) is not in conflict.

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- No unreasonable prejudice to the legitimate interests of the right holders of computer programs and patents is allowed.
- Legitimate interests of third parties have to be taken into account by patent rights (Art 30).
- In each state, intellectual property laws may not offer any benefits to local citizens which are not available to citizens of other TRIPS signatories under the principle of national treatment (with certain limited exceptions, Art. 3 and 5). TRIPS also has a most favored nation clause.

The TRIPS Agreement incorporates by reference the provisions on copyright from the Berne Convention for the Protection of Literary and Artistic Works (Art 9), with the exception of moral rights. It also incorporated by reference the substantive provisions of the Paris Convention for the Protection of Industrial Property (Art 2.1). The TRIPS Agreement specifically mentions that software and databases are protected by copyright, subject to originality requirement (Art 10).

Article 10 of the Agreement stipulates : "1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971). 2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself."

### 1.8.4 Controversial Cases which led to a Revision of TRIPS

- **Access to essential medicines** : The most visible conflict has been over AIDS drugs in Africa. Despite the role that patents have played in maintaining higher drug costs for public health programs across Africa, this controversy has not led to a revision of TRIPS. Instead, an interpretive statement, the Doha Declaration, was issued in November 2001, which indicated that TRIPS should not prevent states from dealing with public health crises. After Doha, PhRMA, the United States and to a lesser extent other developed nations began working to minimize the effect of the declaration. A 2003 agreement loosened the domestic market requirement, and allows developing countries to export to other countries where there is a national health problem as long as drugs exported are not part of a commercial or industrial policy. Drugs exported under such a regime may be packaged or colored differently in order to prevent them from prejudicing markets in the developed world.

In 2003, the Bush administration also changed its position, concluding that generic treatments might in fact be a component of an effective strategy to combat HIV. Bush created the PEPFAR program, which received \$15 billion from 2003–2007, and was reauthorized in 2008 for \$48 billion over the next five years. Despite wavering on the issue of [compulsory licensing], PEPFAR began to distribute generic drugs in 2004-5.

- **Software patents under TRIPS Agreement :** Another controversy has been over the TRIPS Article 27 requirements for patentability "in all fields of technology", and whether or not this necessitates the granting of software and business method patents. According to article 10 of the TRIPS Agreement the appropriate instrument to protect software protection is copyright. The importance of this instrument has recently been confirmed by the US Supreme Court (Oracle America, Inc. v. Google, Inc.).
- **Implementation in developing countries :** The obligations under TRIPS apply equally to all member states, however developing countries were allowed extra time to implement the applicable changes to their national laws, in two tiers of transition according to their level of development. The transition period for developing countries expired in 2005. The transition period for least developed countries to implement TRIPS was extended to 2013, and until 1 January 2016 for pharmaceutical patents, with the possibility of further extension. It has therefore been argued that the TRIPS standard of requiring all countries to create strict intellectual property systems will be detrimental to poorer countries' development. It has been argued that it is, *prima facie*, in the strategic interest of most if not all underdeveloped nations to use the flexibility available in TRIPS to legislate the weakest IP laws possible.

This has not happened in most cases. A 2005 report by the WHO found that many developing countries have not incorporated TRIPS flexibilities (compulsory licensing, parallel importation, limits on data protection, use of broad research and other exceptions to patentability, etc.) into their legislation to the extent authorized under Doha.

This is likely caused by the lack of legal and technical expertise needed to draft legislation that implements flexibilities, which has often led to developing countries directly copying developed country IP legislation, or relying on technical assistance from the World Intellectual Property Organization (WIPO), which, according to critics such as Cory Doctorow, encourages them to implement stronger intellectual property monopolies.

Banerjee and Nayak shows that TRIPS has a positive effect on R&D expenditure of Indian pharmaceutical firms.

### 1.8.5 Post-TRIPS Expansion

In addition to the baseline intellectual property standards created by the TRIPS agreement, many nations have engaged in bilateral agreements to adopt a higher standard of protection. These collection of standards, known as TRIPS+ or TRIPS-Plus, can take many forms. General objectives of these agreements include :

- The creation of anti-circumvention laws to protect Digital Rights Management systems. This was achieved through the 1996 World Intellectual Property Organization Copyright Treaty (WIPO Treaty) and the WIPO Performances and Phonograms Treaty.
- More stringent restrictions on compulsory licenses for patents.
- More aggressive patent enforcement. This effort has been observed more broadly in proposals for WIPO and European Union rules on intellectual property enforcement. The 2001 EU Copyright Directive was to implement the 1996 WIPO Copyright Treaty.
- The campaign for the creation of a WIPO Broadcasting Treaty that would give broadcasters (and possibly webcasters) exclusive rights over the copies of works they have distributed.

### 1.9 Nature of Intellectual Property

IPR are largely territorial or geographical based rights (that is it may differ from nation to nation) except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention. These rights are awarded by the State and are monopoly rights meaning there by that no one can use these rights without the consent of the right holder. Except the copy rights and trade secrets, all the other intellectual property rights need to be



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### **1.10 Industrial Property**

Industrial property is one of two subsets of intellectual property (the other being copyright), it takes a range of forms, including patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, geographical indications and protection against unfair competition. The object of industrial property consists of signs conveying information, in particular to consumers, regarding products and services offered on the market. Protection is directed against unauthorized use of such signs that could mislead consumers, and against misleading practices in general. Industrial property is Intangible property such as inventions, industrial designs, trademarks and geographical indications, which is afforded protection under national and international intellectual property laws.

The broad application of the term “industrial property” is set out in the Paris Convention, Industrial property legislation is part of the wider body of law known as Intellectual Property (IP) which refers broadly to the creations of the human mind. IP rights protect the interests of innovators and creators by giving them rights over their creations. The Convention Establishing the World Intellectual Property Organization (1967) does not seek to define intellectual property, but

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lists the following as protected by IP rights : literary, artistic and scientific works ; performances of performing artists, phonograms and broadcasts ; inventions in all fields of human endeavor; scientific discoveries ; industrial designs; trademarks, service marks, and commercial names and designations ; protection against unfair competition ; “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.

Countries generally have laws to protect IP for two main reasons :

- To give statutory expression to the rights of creators and innovators in their creations and innovations, balanced against the public interest in accessing creations and innovations ;
- To promote creativity and innovation, so contributing to economic and social development.

Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications ;

#### **1.10.1 Patent**

A **patent** is an exclusive right granted for an invention, a product or process that provides a new way of doing something, or that offers a new technical solution to a problem.

#### **1.10.2 Trademark**

A Trademark is a sign (logo) that serves to distinguish the goods or services of one organisation or individual from those of another.

- A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. The sign may consist of : Words (including personal names) ; Figurative elements ; Letters ; Numerals, shapes, signs, slogans or logos of the good or its packaging.
- For a trademark to be accepted, it has to be ; Original, Distinctive and Non-descriptive.
- Exclusive right over a trademark is valid for 10 years, however it is possible to renew the trademark indefinitely.

The origin of trademarks dates back to ancient times when craftsmen reproduced their