

TRIPS Agreement

“TRIPS” redirects here. For the microprocessor, see [TRIPS architecture](#). For the German racing driver, see [Wolfgang von Trips](#). For other uses, see [Trip](#).

The **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** is an [international agreement](#) administered by the [World Trade Organization \(WTO\)](#) that sets down minimum standards for many forms of [intellectual property \(IP\)](#) regulation as applied to nationals of other WTO Members.^[3] It was negotiated 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 and remains the most comprehensive international 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 content producers including performers, producers of sound recordings and broadcasting organizations; [geographical indications](#), including appellations of origin; [industrial designs](#); [integrated circuit layout-designs](#); [patents](#); [new plant varieties](#); [trademarks](#); [trade dress](#); 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 Background and history

TRIPS was negotiated at the end of the Uruguay Round of the [General Agreement on Tariffs and Trade \(GATT\)](#) in 1994. Its inclusion was the culmination of a program of intense [lobbying](#) by the [United States](#), supported by the [European Union](#), [Japan](#) and other developed nations.

Campaigns of unilateral economic encouragement under the [Generalized System of Preferences](#) and [coercion](#) under [Section 301](#) of the Trade Act played an important role in defeating competing policy positions that were favored by developing countries, most notably [Korea](#) and [Brazil](#), but also including Thailand, India and Caribbean Basin states. In turn, the United States strategy of linking trade policy to intellectual property standards can be traced back to the entrepreneurship of senior management at [Pfizer](#) in the early 1980s, who mobilized corporations in the United States and made maximizing intellectual property privileges the number one priority of trade policy in the United States (Braithwaite and Drahos, 2000, Chapter 7).

After the Uruguay round, the GATT became the basis for the establishment of the World Trade Organization. Because ratification of TRIPS is a compulsory requirement of World Trade Organization membership, any country seeking to obtain hard access to the numerous international markets opened by the World Trade Organization must enact the strict intellectual property laws mandated by TRIPS. For this reason, TRIPS is the most important multilateral instrument for the globalization of intellectual property laws. States like Russia and [China](#) ^[4] that were very unlikely to join the [Berne Convention](#) have found the prospect of WTO membership a powerful enticement.

Furthermore, unlike other agreements on intellectual property, TRIPS has a powerful enforcement mechanism. States can be disciplined through the WTO’s [dispute settlement mechanism](#).

2 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)^[5]
- 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)^[6] 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.
- 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).^[7] TRIPS also has a most favored nation clause.

Many of the TRIPS provisions on copyright were copied from the Berne Convention for the Protection of Literary and Artistic Works and many of its trademark and patent provisions were modeled on the Paris Convention for the Protection of Industrial Property. It is the case of the protection of software and database.

Article 10 of the treaty 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."

2.1 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.^[8]

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.^[9] 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.

2.2 Software and business method patents

Main article: [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 author right. The importance of this instrument has recently been confirmed by the US Supreme Court (Oracle America, Inc. v. Google, Inc.).

3 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.^[10]

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.^[11] Many argue 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.^[12]

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.^[13]

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,^[14] 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^[15] shows that TRIPS has a positive effect on R&D expenditure of Indian pharmaceutical firms.

4 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.^[16] 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.

5 Panel reports

According to *WTO 10th Anniversary, Highlights of the first decade, Annual Report 2005* page 142,^[17] in the first ten years, 25 complaints have been lodged leading to the panel reports and appellate body reports on TRIPS listed below.

The WTO website has a gateway to all TRIPS disputes (including those that did not lead to panel reports) here .

- *2005 Panel Report*:^[18]
 - **European Communities** - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs.
- *2000 Panel Report*:^[19] Part 2^[20] and 2000 Appellate Body Report^[21]
 - **Canada** - Term of Patent Protection.
- *2000 Panel Report*, Part 1:^[22] and Part 2^[23]
 - **United States** - Section 110(5) of the **US Copyright Act**.
- *2000 Panel Report*:^[24]
 - **Canada** - Patent Protection of Pharmaceutical Products.
- *2001 Panel Report*:^[25] and 2002 Appellate Body Report^[26]
 - **United States** - Section 211 **Omnibus Appropriations Act of 1998**.
- *1998 Panel Report*:^[27]
 - **India** - Patent Protection for Pharmaceutical and Agricultural Chemical Products.
- *1998 Panel Report*:^[28]
 - **Indonesia** - Certain Measures Affecting the Automobile Industry.

6 Criticism

Since TRIPS came into force, it has been subject to criticism from **developing countries**, **academics**, and **non-governmental organizations**. Though some of this criticism is against the WTO generally, many advocates of trade liberalisation also regard TRIPS as poor policy. TRIPS's wealth concentration effects (moving money from people in developing countries to copyright and patent owners in developed countries) and its imposition of **artificial scarcity** on the citizens of countries that would otherwise have had weaker intellectual property laws, are common bases for such criticisms. Other criticism has focused on the failure of TRIPS to accelerate investment and technology flows to low-income countries, a benefit advanced by WTO members in the lead-up to the agreement's formation. Statements by the World Bank indicate that TRIPS has not led to a demonstrable acceleration of investment to low-income countries, though it may have done so for middle-income countries.^[29] Lengthy patent periods under TRIPs have been scrutinised for unduly slowing the entry of generic substitutes and competition to the market. In particular, the illegality of pre-clinical trials or submission of samples for approval until a patent

expires have been blamed for driving the growth of a few multinationals, rather than developing country producers.

Daniele Archibugi and Andrea Filippetti^[30] argue that the importance of TRIPS in the process of generation and diffusion of knowledge and innovation has been overestimated by its supporters. This point has been supported by United Nations findings indicating many countries with weak protection routinely benefit from strong levels of foreign direct investment (FDI).^[31] Analysis of OECD countries in the 1980s and 1990s (during which the patent life of drugs was extended by 6 years) showed that while total number of products registered increased slightly, the mean innovation index remained unchanged.^[32]

The 2002 Doha Declaration affirmed that the TRIPS agreement should not prevent members from taking measures necessary to protect public health. Despite this recognition, less-developed countries have argued that TRIPS's flexible provisions, such as compulsory licensing, are near-on impossible to exercise. In particular, less developed countries have cited their infant domestic manufacturing and technology industries as evidence of the policy's bluntness.

TRIPS-plus conditions mandating standards beyond TRIPS have also been the subject of scrutiny. These FTA agreements contain conditions that limit the ability of governments to introduce competition for generic producers. In particular, the United States has been criticised for advancing protection well beyond the standards mandated by TRIPS. The United States Free Trade Agreements with Australia, Morocco and Bahrain have extended patentability by requiring patents be available for new uses of known products.^[33] The TRIPS agreement allows the grant of compulsory licenses at a nation's discretion. TRIPS-plus conditions in the United States FTA's with Australia, Jordan, Singapore and Vietnam have restricted the application of compulsory licenses to emergency situations, antitrust remedies, and cases of public non-commercial use.^[33]

7 See also

- List of parties to the TRIPS Agreement

7.1 Related treaties and laws

- Anti-Counterfeiting Trade Agreement (ACTA)
- EU Directive on the enforcement of intellectual property rights (IPRED)
- Patent Law Treaty (PLT)
- Substantive Patent Law Treaty (SPLT)
- Uruguay Round Agreement Act of the United States (URAA)

7.2 Related organizations

- Intellectual Property Committee
- World Trade Organization

7.3 Other

- Confusing similarity
- Geographical Indication
- Intellectual property in the People's Republic of China
- List of international trade topics
- List of parties to international copyright agreements
- World Trade Organization Dispute 160
- Japanese Sound Recording Trade Disputes

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- [7] World Trade Organization, "Part I — General Provisions and Basic Principles", *Agreement on Trade-Related Aspects of Intellectual Property Rights*
- [8] cf. Timmermann, Cristian, and Henk van den Belt. 2013. Intellectual property and global health: from corporate social responsibility to the access to knowledge movement. *Liverpool Law Review* 34 (1):47-73. also available at <http://edepot.wur.nl/252885>
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10 External links

- TRIPS agreement (PDF version)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (html version)
- World Trade Organization links
 - World Trade Organization - Official Text
 - World Trade Organization - TRIPs gateway
- Audio presentation by Professor Susan Sell, George Washington University, on intellectual property rights in the global context.
- WTO TRIPS Agreement profile on database of Market Governance Mechanisms

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