

Define trips? highlight the relationship between trips and ipr?

Trips TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

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. [1] It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.

Specifically, TRIPS contains requirements that nations' laws must meet for: copyright rights, including the rights of performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; monopolies for the developers of 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. 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."

TRIPS has been criticized by the alter-globalization movement. Members of the movement object, for example, to its consequences with regards to the AIDS pandemic in Africa.

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.

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 easy 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 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.

Objectives of TRIPS

The protection and enforcement of intellectual property rights should 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.

Principles:

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Discuss the provisions of TRIPS

Nature and Scope of Obligations TRIPS:

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term “intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.

(1) In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.

(2) Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

[caption id="attachment_5549" align="aligncenter" width="727"]

TRIPS

Trade **Related** **Intellectual** Property **Rights**

Define TRIPS? Relationship b/w TRIPS & IPR #Regulatory Affairs M
Pharmacy Notes PDF PPT[/caption]

**Define TRIPS? Relationship b/w TRIPS & IPR #Regulatory Affairs
M Pharmacy Notes PDF PPT**

Provision requirements of TRIPS:

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

- Copyright terms must extend to 50 years after the death of the author, although films and photographs are only required to have fixed 50 and to be at least 25 year terms, respectively.(Art. 7(2),(4))

- Copyright must be granted automatically, and not based upon any "formality", such as registrations or systems of renewal.
- 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 in all "fields of technology," although exceptions for certain public interests are allowed (Art. 27.2 and 27.3)[2] and must be enforceable for at least 20 years (Art 33).
- Exceptions to the 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 by the principles of national treatment (with certain limited exceptions, Art. 3 and 5)[3]. TRIPs also has a most favored nation clause. Many of the TRIPs provisions on copyright were imported from the Berne Convention for the Protection of Literary and Artistic Works and many of its trademark and patent provisions were imported from the Paris Convention for the Protection of Industrial Property.

Access to essential medicines:

The most visible conflict has been over AIDS drugs in Africa. Despite the role which 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.

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.^[4] Drugs exported under such a regime may be packaged or colored differently 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 2007 for \$30 billion over the next five years. Despite wavering on the issue of compulsory licensing, PEPFAR began to distribute generic drugs in 2004-5.

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 was extended to 2016, and could be extended beyond that.

Developed countries are massive net-exporters of copyright-, patent- and trademark-related royalties. 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.^[5] Many argue^[who?] that it is, *prima facie*, in the strategic interest of most if not all underdeveloped nations to use any flexibility available in TRIPs to write 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,[7] 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.