

# **Agreement on 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. 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.

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: 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 criticised by the alter-globalization movement, regarding for example its consequences with regards to the AIDS pandemic in Africa.

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## **1. Background and history**

TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty 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 favoured 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 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 treaties 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 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) must be tightly constrained.

Patents must be granted in all "fields of technology," although exceptions for certain public interests are allowed (Art. 27.2 and 27.3 [1]) and must be enforceable for at least 20 years (Art 33).

Exceptions to patent law must be limited almost as strictly as those to copyright law.

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 [2]). TRIPS also has a most favoured 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.

### **3. Controversy**

Since TRIPS came into force it has received a growing level of criticism from developing countries, academics, and Non-governmental organizations. Some of this criticism is against the WTO as a whole, but many advocates<sup>[attribution needed]</sup> of trade liberalization also regard TRIPS as bad policy. TRIPS' wealth redistribution 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 a common basis for such criticisms.

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. 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 [3]. Drugs exported under such a regime may be packaged or colored differently to prevent them from prejudicing markets in the developed world.

### **3.1 Access to essential medicines**

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.

### **3.1 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.

## **4. 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.

Developing 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.[4] Many argue<sup>[attribution needed]</sup> 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.<sup>[attribution needed]</sup>

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. [5]

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 [6], or relying on technical assistance from the World Intellectual Property Organization (WIPO), which, some say<sup>[attribution needed]</sup>, encourages them to implement stronger intellectual property monopolies.

## **5. Post-TRIPs expansionism**

The requirements of TRIPS are, from a policy perspective, extremely stringent. Despite this, lobbyists for the industries that benefit from various intellectual property laws have continued since 1994 to campaign to strengthen existing forms of intellectual property and to create new kinds:

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.

The desire to further restrict the possibility of compulsory licenses for patents has led to provisions in recent bilateral US trade agreements.

It is one thing for states to have intellectual property laws on their statutes, and another for governments to enforce them aggressively. This distinction has led to provisions in bilateral agreements, as well as 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 wording of Trips 27 of non-discrimination is used to justify an extension of the patent system.

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.

## **6. Panel reports**

According to *WTO 10th Anniversary, Highlights of the first decade, Annual Report 2005* page 142 [7], 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 [8].

*2005 Panel Report* [9]:

European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs .

*2000 Panel Report* [10], Part 2 [11] and 2000 Appellate Body Report [12]:

Canada - Term of Patent Protection.

*2000 Panel Report*, Part 1 [13] and Part 2 [14]:

United States - Section 110(5) of the US Copyright Act.

*2000 Panel Report* [15]:

Canada - Patent Protection of Pharmaceutical Products.

*2001 Panel Report* [16] and 2002 Appellate Body Report [17]:

United States - Section 211 Omnibus Appropriations Act of 1998.

*1998 Panel Report* [18]:

India - Patent Protection for Pharmaceutical and Agricultural Chemical Products.

*1998 Panel Report* [19]:

Indonesia - Certain Measures Affecting the Automobile Industry.

## **7. References**

Braithwaite and Drahos, *Global Business Regulation*, Cambridge University Press, 2000

## **8. External links**

World Trade Organization links

[World Trade Organization - Official Text](#)

[World Trade Organization - TRIPs gateway](#)