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**TRIPS IMPLEMENTATION AND THE GLOBAL POLITICS OF INTELLECTUAL PROPERTY REFORMS  
IN DEVELOPING COUNTRIES**
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**ABSTRACT**

The World Intellectual Property Organization (WIPO) primarily oversees the regulation of intellectual property (IP) on a global scale. Treaties such as the Paris Convention initially governed one of the earliest areas of international trade to be subject to multilateral regulation, IP for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). A major development in international IP law came with the adoption of the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) under the World Trade Organization (WTO). TRIPS set minimum standards for IP protection that member states must adhere to, covering a wide range of IP rights, including patents, copyrights, and trademarks. Its impact on developing countries has been mixed, largely depending on the level of IP protection already in place before these countries joined the WTO. Those with limited IP systems faced significant challenges in adapting to TRIPS standards.

**Keywords:** WIPO, Treaties, Trade, Protection, Patent, Copy Rights, Law.

GATT was established in 1947, limited attention was paid to 'intellectual property'. This is explained by the evolution of an international system for the regulation of intellectual property (IP) World Intellectual Property Organization (WIPO). The first element of world trade subject to multilateral discipline with the Paris Convention for the Protection of Industrial Property of 1883 and the Berne Convention for the Protection of Literary and Artistic Work of 1886. Some common types of intellectual property rights (IPR) are copyright, patents, and industrial design rights; and the rights that protect trademarks, trade dress, and in some jurisdictions trade secrets. Intellectual property rights are themselves a form of property, called intangible property. The Paris Convention is still in force as of 2014. The Convention fall into three main categories: national treatment, priority right and independence of patent. The Paris Convention perceived as having a weak dispute settlement mechanism (which provides for recourse to the International Court of Justice). The United States used a 'carrot and stick' approach to achieving its objectives on TRIPS. On the one side, it reduce textile quotas and other side, it used to impose trade sanctions on countries.

The TRIPS agreement introduced intellectual property law into the international trading system for the first time. The TRIPS Agreement consists of seven (7) parts. The TRIPS Agreement identifies certain intellectual property subject matter as being subject to its rules. Effects of the TRIPS Agreement on developing countries vary in part with the degree. These countries had established IPRs protection prior to becoming WTO members. Developing countries made various concessions to facilitate the transition from weak. During the TRIPS negotiations, industry lobbyists persuaded the worlds to a protracted campaign against developing countries. Developing countries protested that the Agreement would consolidate corporate north-south technology gap, and perversely speed the transfer of capital from developing to developed countries. Developing countries struggled to complete reforms of IP laws, administration and enforcement. A surprising number of developing country WTO member's implemented higher IP standards. Some developing countries took advantage of range of TRIPS flexibilities, but their approaches varied according to the type of IP (e.g. copyright or industrial property). The degree to which there was variation in the IP reforms undertaken by developing countries does, however, warrant explanation. A third element of variation in TRIPS implementation among developing countries relates to how laws were subsequently put into practice through. In general, IP laws require regulatory or administrative acts by the executive branch of government to give them practical effect.

Technology has always played a significant role in economic development nations. GATT was established in 1947, limited attention was paid to 'intellectual property'. This is explained by the evolution of an international system for the regulation of intellectual property (IP) World Intellectual Property Organization (WIPO). The first element of world trade subject to multilateral discipline with the Paris Convention for the Protection of Industrial Property of 1883 and the Berne Convention for the Protection of Literary and Artistic Work of 1886. IP is regulated at the multilateral, regional, bilateral, national and subnational level. Intellectual property is a defined set of the intangible products. It is mainly protected by sets of enforceable legal rights granted to 'owners' or 'holders. These legal rights are intended to solve the economic problem described by Kenneth Arrow as the 'incomplete of knowledge. Intellectual property is a legal term that refers to creations of the mind. Examples of intellectual property include music, literature, and other artistic works; discoveries and inventions; and words, phrases, symbols, and designs.

### **Multilateral regulation of IP**

The Paris Convention established rules with respect to patents, trademarks and unfair competition. During negotiation of the Paris Convention, proposals were made to create international patent law. The Paris Convention is still in force as of 2014. The Convention fall into three main categories: national treatment, priority right and independence of patent. National treatment, the Convention provides that, as regards the protection of industrial property, each Contracting State must grant the same protection to nationals of other Contracting States that it grants to its own nationals. Nationals of non-Contracting States are also entitled to national treatment under the Convention if they are domiciled or have a real and effective industrial or commercial establishment in a Contracting State. The Convention priority right also called Paris Convention priority right, was also established. It provides that an applicant from one contracting State shall be able to use its first filing date (in one of

the contracting State) as the effective filing date in another contracting State, provided that the applicant files a subsequent application within 6 months.

The principle of 'independence of patents is that acts taken by authorities with respect to a patent or trademark in one Paris Convention country will not affect the status of equivalent patents or trademarks in other Paris Convention countries. The Paris Convention was notable for what it does not do. This Convention does not define a patent. It does not prescribe subject matter coverage, it does not set a minimum (or maximum) term of a patent, it does not define the rights of patent holders, and it was perceived as having a weak dispute settlement mechanism (which provides for recourse to the International Court of Justice). The Berne Convention is a complete legal instrument. It defines the subject matter scope of copyright protection, it sets a minimum term of copyright and it prescribes rights that are accorded to copyright holders. In addition, it provides that copyright is established automatically precludes countries from making registration or notice a condition to copyright protection.

### **Intellectual Property rights under WTO**

In 1970 developed countries had concerned with consider in adequate attention to the protection of intellectual property in developing countries. Film studios and companies were worried about copyright piracy. Pharmaceutical and agricultural chemical producers were not satisfied with the protection given to their innovations. Developing countries their own resources and demanded transfer of technology from North to South to remedy imbalances in development. The NIEO sought at WIPO to relax protection of IP, such as by providing more flexible rules for the compulsory licensing. In the mid-1980s WIPO was affected by a fundamental clash of interests. In negotiations for revision in Paris Convention, the United States and other developed countries demanded protection of intellectual property rights (IPRs). Developing countries demanded more flexible rules. The negotiations failed. And developed countries shifted their focus to GATT. In result the GATT Uruguay Round negotiations on the subject of 'Trade-Related Aspects of Intellectual Property Rights' or 'TRIPS'.

The TRIPS negotiations were controversial aspects of the Uruguay Round. Developing countries that were Argentina, Brazil and India, agreeing IPRs protection .at the GATT. They were not persuaded that such protection would provide them with 'dynamic' innovation benefits that would offset increased rent outflows. Developing countries with an interest in adopting higher standards of IP protection could, of course, choose to do this outside the GATT.

The United States used a 'carrot and stick' approach to achieving its objectives on TRIPS. On the one side, it reduces textile quotas and to help obtain concessions from the EC on agricultural export subsidies, each of which was of considerable interest to developing countries. On the other side, it used to impose trade sanctions on countries that failed to meet US standards of IPRs protection, making clear that it would not be satisfied to continue with the status quota the GATT. Developing countries unwillingly agreed to the Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPS Agreement. The entry into force of the TRIPS Agreement on January 1, 1995 as part of the new WTO created a situation in which two multilateral institutions share.

### **TRIPS Agreement**

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. 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." The TRIPS Agreement consists of seven (7) parts. The first part relationship between the TRIPS Agreement and national law, and between the TRIPS Agreement and certain WIPO Conventions and MFN rule. The second part incorporates the substantive rules. The third part sets out enforcement obligations of WTO members. The fourth part the acquisition and maintenance of protection. The fifth part concerns dispute settlement, the sixth part transitional arrangements, and the seventh part institutional matters.

### **Principles**

The national treatment provision of the TRIPS Agreement obligates each member to treat nationals of other Members on at least as favorable a basis as its own nationals with respect to the protection of IP. Granted to nationals of one Member to nationals of all other Members. This agreement left each Member to decide on its own policy with respect to the exhaustion of rights. Exhaustion occurs at the moment when the intellectual property rights (IPR) holder's control over the use and disposition of goods and services embodying IPR ceases in order to permit the free transfer of goods and services within and across national borders. This generally occurs when goods and services are first sold or placed on the market.

Parallel trade of goods protected by intellectual property rights is an important. Parallel trade (sometimes called "grey market" trade) involves the shipment of bona fide goods (i.e. not illegal counterfeits) across international borders. For example, the sale of a UK patented anti-ulcer drug by a UK company to distributors in the Greek market, who then decide that it would be more profitable to re-sell the product into the UK market. The parallel imports debate has another dimension with respect to 'differential' or 'equity' pricing strategies. That pharmaceutical companies should be able to sell their products to poorer developing countries at low prices while charging higher prices in developed countries, and further argue that rules allowing parallel importation will prevent them from using such strategies.

### **Categories**

The categories of IP Agreement are copyright, trademark, geographical indication, industrial design, patent, and layout design of integrated circuit and protection of undisclosed information. The TRIPS Agreement does not apply to all subject matter that might come within the concept of IP as broadly defined, but rather it applies to subject matter that is addressed by the Agreement. The TRIPS Agreement identifies certain intellectual property subject matter as being subject to its rules.

### **Copyright**

TRIPS Agreement relies on the substantive rules of the Berne Convention, which are incorporated by reference. The Berne Convention flexible scope of copyright subject matter. The term of protection prescribed by the Berne Convention. The TRIPS Agreement was consistent with that of most developed countries. The TRIPS Agreement clarifying that computer software and compilations of data are copyrightable subject matter. The TRIPS Agreement also extends copyright to certain rights.

### **Trademark**

The TRIPS Agreement define trademark subject matter.<sup>12</sup>It also makes service marks subject to an equivalent with trademarks on goods. Trademark protection extends with respect to renewal of registration. A minimum trademark renewal term of seven years is established.<sup>13</sup> The TRIPS Agreement extends rights with regard to so-called 'well known' marks, clarifying that the well-known Character. The Agreement limits conditions that can be attached to the use of marks. The rules also include exceptions for fair use of marks.

### **Geographical indication**

A geographical indication is that associates a product with a place based on the quality or characteristics of the product. However, the TRIPS Agreement provides additional specificity on the subject of wines and spirits, including a provision calling for negotiations to establish a register of geographical indications for wines for countries participating in the system.

### **Industrial design**

The TRIPS Agreement Members provide at least 10 years of protection to industrial designs. Designs that are functional may be excluded from protection.<sup>15</sup> Textile designs that producers seek to protect the life cycle of it. Intellectual property is rights in world trade.

### **Patent**

The significant changes to the IP regulatory system brought about by the TRIPS Agreement were in the field of patents. The Paris Convention provides rules patents are granted, and prescribes national treatment. This Agreement provides that patents rights shall be available and without discrimination based on place of invention, field of technology.<sup>17</sup> It permits Members to refuse patenting of animals and plants, but requires that some form of plant variety protection be provided. The TRIPS Agreement the compulsory licensing rules found in the Paris Convention, prescribing substantive and procedural conditions for the granting of such licenses.

### **Layout-Designs**

Members must provide a ten-year term of protection counted from the date of filing of an application for registration or from the first commercial exploitation wherever in the world it occurs. Innocent infringers may continue using a layout-design, with respect to stock on hand or ordered before being notified that there was an unlawful reproduction of a protected layout-design, but they must pay a reasonable royalty to the owner of rights in the layout-design. Protection is to be provided against 'unfair commercial use', and the data are to be protected against disclosure.

### **TRIPS Agreement and the Global Politics in Developing Countries.**

The effects of the TRIPS Agreement on developing countries vary in part with the degree. These countries had established IPRs protection prior to becoming WTO members. For example, many developing countries such as Hong Kong, Indonesia, Singapore, and Guatemala were parties to neither the Paris nor the Berne Convention prior to becoming WTO members. Others, like India, Bangladesh, and Uganda had ratified either the Paris or the Berne Convention but not both. Developing countries made various concessions to facilitate the transition from weak. Generally, developing countries received far fewer preferences TRIPS Agreement. In the TRIPS Agreement separate regime for pharmaceutical and agricultural chemical products was established.

Additional measures to support both developing countries and LDCs that requires industrialized countries to assist developing countries and LDCs in their efforts to reform. Specifically for LDCs, Article 66(2) of the TRIPS Agreement compels developed country provide Incentives to enterprises for the promotion and encouragement of technology. So that they may be able to create a "sound and viable technological base." In TRIPS Agreement the key issue that emerge included technology transfer provisions, compulsory licensing. Most proposals prepared by the group of developing countries were the focus on re-balancing rights. It also called for WTO members to refrain from threatening or imposing sanctions on developing countries.

The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the global system of rules, institutions, and practices governing the ownership and flow of knowledge, technology, and other intellectual assets. TRIPS emerged from the Uruguay Round. During the TRIPS negotiations, industry lobbyists persuaded the worlds to a protracted campaign against developing countries. Developing countries protested that the Agreement would consolidate corporate north-south technology gap, and perversely speed the transfer of capital from developing to developed countries. Developing countries struggled to complete reforms of IP laws, administration and enforcement. Debates on globalization and inequality, TRIPS became a symbol of the vulnerability of developing countries to coercive pressures from the most powerful developed countries. While IP protection could serve as a 'power tool for development'. A surprising number of developing country WTO member's implemented higher IP standards.

A surprising number of developing country WTO member's implemented higher IP standards. Some developing countries took advantage of range of TRIPS flexibilities, but their approaches varied according to the type of IP (e.g. copyright or industrial property). Variation in TRIPS implementation defies parsimonious explanation. The first challenge that contributed to variation in TRIPS implementation. The second is to balance a search for general recognition of the complexity of global IP politics, the broad scope of TRIPS. In this political context TRIPS implementation demands attention to: (a) the interplay between evolving global debates on IP and national reforms to implement TRIPS and (b) the interaction between international pressures on developing countries and the political dynamics within them.

First demands a consideration of the international pressures on developing countries, one that IP protection global political landscape for TRIPS implementation. Second, economic circumstances and political dynamics at the national level made a significant contribution to variation in TRIPS implementation. The developing countries took most advantage of TRIPS flexibilities were ministries, stakeholders, and expertise.

Despite dissatisfaction of TRIPS, the Agreement spurred IP reforms across most developing country WTO members. In the end of 2007, the IP standards in developing country laws were higher than ever before. Most countries increased the term of patent protection to twenty years. The degree to which there was variation in the IP reforms undertaken by developing countries does, however, warrant explanation. In practice, there was a spectrum of approaches to TRIPS implementation. To implement laws 'consistent' with TRIPS, some countries adopted a 'minimum' approach, and they took advantage of TRIPS flexibilities to tailor implementation to

national priorities. Where countries did not conform to the minimum TRIPS requirements.

Some countries also coupled a TRIPS minus or TRIPS-plus approach in others. In respect of the timing of reforms, the use of TRIPS flexibilities. The first element concerns the timing of legislative reforms to implement TRIPS. The transition periods in TRIPS themselves anticipated of IP reforms by stipulating distinct deadlines for developing countries and LDCs. The majority of developing country combined a mix of TRIPS-plus, -minimum, and -minus standards, and the use of TRIPS flexibilities varied according to the type of IP. Brazil incorporated a broad set of grounds for compulsory licensing in its patent law but provided a longer term of copyright protection than required by TRIPS.

Over half of the countries in this TRIPS- adopt the lowest levels of IP protection.

A third element of variation in TRIPS implementation among developing countries relates to how laws were subsequently put into practice through. In general, IP laws require regulatory or administrative acts by the executive branch of government to give them practical effect. Every country also had different regulations and guidelines what constitutes an 'inventive step' in their examination of patent applications. Most developing countries incorporated TRIPS safeguards compulsory licensing in their national laws, end of 2007 less than fifteen governments had actually issued such a license. Moreover, TRIPS allows countries to implement enforcement their own legal traditions. While attention to IP enforcement increased after TRIPS came into force. TRIPS implementation efforts by both developed and developing countries to 'remake' the original TRIPS deal. Developed countries and multinational companies pushed for stronger IP protection. Developing countries defended TRIPS flexibilities and call for global IP reform. Post agreement bargaining on the terms global IP regulation <sup>28</sup>. With the engagement of (including NGOs, industry, IOs, and academic experts), global IP debates intensified. Tensions rose over the use of TRIPS flexibilities.

Developed countries and multinational corporations, favor narrow and swift approach to the implementation of TRIPS and agenda for IP reforms more generally. This included pushing developing countries to go beyond minimum TRIPS implementation, to sacrifice the use of TRIPS flexibilities, and to add new stronger IP standards to their domestic laws. In addition, stronger global IP regulation and more stringent enforcement and worked to influence the positions developing countries took in ongoing international IP negotiations and global IP debates. Economic power was used were players deliberately countries, to push them, or to compel them to desist from a particular action. Developed countries worked, to link economic rewards with the positions that developing countries took in international IP negotiations and their progress on TRIPS reforms. Coercive, economic pressures had a clear and decisive interest on some countries. Tools used monitoring of IP reforms and building sympathetic knowledge communities of analysts, critics, and experts. In addition, ideational power and economic power were combined in the provision. Developing countries were doubt that positive talk and performance on TRIPS implementation shaped global reputation, and with it their ability to secure foreign aid and trade deals, and to maintain broader political alliances. The pro development team used ideational power to counter TRIPS-plus pressures and to battle the 'hegemony' of pro-IP discourse in global IP debates.

## Conclusion

The role of IPRs in a globalizing economy remains contested. “The difficulty stems concepts of property and ownership. Different legal principles exist from country to country. In TRIPS Agreement, IPRs protection ranged from totally open regimes. In views both for and against IPRs protection, as evidenced by the TRIPS Agreement, are strong, there is little concrete evidence that it is the only incentive for innovation.

TRIPS Agreement is the global protection of IPRs that developed countries have been seeking. “However, the TRIPS Agreement simultaneously narrows the developing countries’ access to technology, discouraging the rapid diffusion of new technology needed for economic growth. Some headway was made at Doha on addressing issues faced by developing countries and LDCs in relation to the TRIPS Agreement, but the balance between creating private incentives and fostering technology transfers and development for the public benefit has not yet been achieved. After Doha, it is clear that the TRIPS Agreement should not prevent developing countries from addressing public health needs. There is more work to be done, however, on the issue of technology acquisition and creation by developing countries, which remains largely unsupported by the TRIPS Agreement and the recent Ministerial Declaration.

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