

TRIPS: Trade Related Intellectual Property Rights (services)

Presented by,

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What is TRIPS ?

- **TRIPS** is
- The Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods.
- TRIPS is one of the 14 multilateral trade agreements within the World Trade Organization and one result of the Uruguay Round within GATT.

Why TRIPS ?

- Reason 1: Intellectual property had become important in international trade relations
- Reason 2: Existing conventions in the IP field lacked efficient enforcement provisions against counterfeiting and piracy.

TRIPS: General

- 1. Standards for the substantive protection of all essential IP rights
- 2. Provisions on basic principles (national treatment and Most-Favoured-Nation t.)
- 3. Standards on enforcement
- 4. Provisions on dispute settlement
- 5. Transitional/institutional arrangements

Trade Related Intellectual Property Services

- TRIPS was incorporated in Uruguay round and it covers
- copyright and related rights
- trademarks including service marks; geographical indications including appellations of origin;
- industrial designs;
- patents including the protection of new varieties of plants;
- the layout-designs of integrated circuits;
- undisclosed information including trade secrets and test data

TRIPS- How it works?

- ***Standards***
- The Agreement sets out the minimum standards of protection to be provided by each Member. Each of the main elements of protection is defined, namely the subject-matter to be protected, the rights to be conferred and permissible exceptions to those rights, and the minimum duration of protection.
- ***Enforcement***
- The second main set of provisions deals with domestic procedures and remedies for the enforcement of intellectual property rights.
- lays down certain general principles applicable to all IPR enforcement procedures.
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- provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, for the right holders to enforce their rights.
- ***Dispute Settlement***
- The Agreement makes, disputes between WTO Members about the respect of the TRIPS obligations subject to the **WTO's dispute settlement procedures**

Main Provisions on *Patents*

- Section 5, Part II contains the following standards:
- 1) Patents shall be granted for any inventions, whether products or processes, provided they are *new*, involve an *inventive* step, & are capable of *industrial application*.
- 2) Patents shall be granted in all fields of technology. No discrimination is allowed with respect to the place of invention, or based on whether the products are locally-produced or imported.
- 3) Members can exclude from patentability diagnostic, therapeutic, & surgical methods of treatment for humans or animals, as well as plants & animals & biological process for the production thereof.
- 4) Plant varieties shall be protected by patents, an effective sui generis regime, or a combination of both.

- 5) Exclusive rights conferred in the case of product and process patents are defined, subject in the case of imports, to the principle of exhaustion.
- 6) Inventions shall be disclosed in a manner which is sufficiently clear & complete for a skilled person in the art to carry out the invention. Indication of the best mode of carrying out the invention, as well as information concerning corresponding patent applications & grants, may be required.
- 7) Limited exceptions to the exclusive rights can be defined by national laws (TRIPS Art. 30)
- 8) Conditions for granting other uses without authorisation of the patent-holder (compulsory licenses) are set forth – Members can determine the grounds to allow such uses.
- 9) Revocation/forfeiture of a patent is subject to judicial review.
- 10) The term of protection shall be at least 20 years from the date of application

Main Provisions on *Copyright*

- 1) Protection of works covered by the *Berne Convention*, excluding moral rights to the *expression* but not the ideas, procedures, methods of operation, or mathematical concepts as such.
- 2) Protection of computer programs as literary works & of compilations of data.
- 3) Recognition of rental rights, at least for phonograms, computer programs, & for cinematographic works (except if rental has not led to widespread copying that impairs the reproduction rights).
- 4) Exceptions to exclusive rights must be limited to special cases which do not conflict with normal exploitation of the work & do not unreasonably prejudice the legitimate interests of the rights-holder.
- 5) Recognition of the 50 year minimum exclusivity term for works (other than photographic or applied artworks) owned by juridical persons & for performers & phonogram producers.
- 6) Recognition of rights of performers, producers of phonograms, & broadcasting organizations.

Provisions on Trademarks

- 1) Definition of protected signs, e.g., those capable of distinguishing the goods or services of one undertaking from those of other undertakings. Service marks receive protection equivalent to that for marks for goods.
- 2) Registrability, but not filing of an application, can be dependent on use.
- 3) Protection of well-known TMs for goods & services, including if knowledge thereon is acquired through their promotion.
- 4) Exceptions to exclusivity must be limited & take into account the legitimate interests of the TM owner & of third parties.
- 5) The minimum term of protection is 7 years, *indefinitely* renewable.
- 6) Requirements for use are to be limited in terms of both the minimum period of non-use & the admissibility of reasons therefor.
- 7) A TM may be assigned without transfer of the business.
- 8) Measures to combat trade in counter-feiting products should be available at the border.

Provisions on *Industrial Designs*

- 1) Protection should be conferred on designs which are *new or original*.
- 2) Requirements for protection of *textile* designs should not impair the opportunity to obtain such protection.
- 3) Exclusive rights can be exercised against acts for commercial purposes, including importation.
- 4) The minimum term of protection is 10 years.

Provisions for
Layout Designs for Integrated Circuits:

- 1) The layout designs (topographies) of integrated circuits shall be protected according to the provisions of the Washington Treaty of 1989, except those specifically excluded by that Agreement, e.g., provisions on compulsory licenses.
- 2) Protection shall extend to layout designs as such & to the industrial articles that incorporate them.
- 3) Bona fide purchasers of products involving infringing layout designs shall be liable to pay a compensation to the rights-holder after notification.
- 4) The term of protection is a minimum of 10 years.

Provisions for *Trade Secrets*

- 1) Undisclosed information is to be protected against
- unfair commercial practices, if the information is *secret*,
- has *commercial* value, & is subject to steps to *keep* it
- secret.
- 2) Secret data submitted for the approval of new
- chemical entities for pharmaceutical & agrochemical
- products should be protected against unfair commercial
- use & disclosure by governments.

Provisions for Geographical Indications

- 1) WTO Members are obligated under TRIPS Art. 22.2 to provide legal means for interested parties to prevent:
 - * use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area *other* than the *true* place of origin in a manner that misleads the public as to its true origin; or
 - * any use that constitutes an act of unfair competition within the meaning of Paris Convention of 1967.
- 2) Members are also required to refuse or invalidate registration of a TM that contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if it would mislead the public as to the true place of origin.

TRIPS: Dispute settlement.

- Why provisions on dispute settlement ?
- Reason: when states were in breach international IP conventions the only remedy was referral to the International Court of Justice in the Hague. Never used.
- Consequently, only diplomatic pressure was available.
- TRIPS system:
- prevention of disputes through provisions on transparency
- settlement of disputes through panel procedures and decisions and trade sanctions in case decisions are not adhered to.
- Dispute prevention:
- transparency, e.g. notification of IP laws to the TRIPS Council.

TRIPS: Dispute settlement..

- **Steps:**
 - 1) Consultations
 - 2) Panel and Panel Reports
 - 3) Possibly recourse to Standing Appellate Body
 - 4) DSB decision on Panel Report
 - 5) Suspension of concessions (trade sanctions).
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- **Least-Developed Countries:**
 - Particular consideration to be given to LDC situation; due restraint in raising matters and in requesting concessions/trade sanctions.

TRIPS: Application in time.

- 1) General application of TRIPS: by January 1, 1996
- 2) Developed Countries and Countries in Transition: by January 1, 2000
- Least-Developed Countries:
- Upon request the TRIPS Council to postpone application to January 1, 2006
- Doha Ministerial Declaration: patent protection for pharmaceuticals only from January 1, 2016
- Provisions on incentives to promote technology transfer.
- Provisions on technical cooperation

Thank you

