

TRIPS AGREEMENT

Asim Ahmad
Department of Law
Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

ABSTRACT: *Beyond merely transporting goods around through borders the notion of commerce and trade, and what tends to make trade worthwhile to societies, has developed. Innovation, creative thinking and brand recognition represent a great deal of the significance of today's international trade that is changing hands. In development and trade policy, how to significantly improve this worth and how to manage the understanding of knowledge-rich products and services along all borders are becoming integral factors to consider. The TRIPS Agreement discharges a significant function in promoting trade in information and innovation, in settling intellectual property trade conflicts and in providing WTO members states with the ability to pursue their domestic goals. A significant link between trade and intellectual property is this agreement that holds legal recognition as well. This paper aims to elaborate the meaning of TRIPS as well as its emergence in world of trade and commerce.*

KEYWORDS: *TRIPs, Intellectual Property Rights, Trade, Patent, Copyright, Industrial Design, Trademarks.*

Introduction

The WTO which is an Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') has resulted in a very substantial improvement in worldwide intellectual property rights requirements. The WTO which is an Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') has resulted in a very substantial improvement in worldwide intellectual property rights requirements. This instrument has become one of the most contentious elements of the WTO framework as it has far-reaching consequences, especially with reference to countries that are in process to develop. At the time of the Uruguay Round negotiations, strong differences arose between both developed and developing countries, as well as between developed countries itself, on the nature and substance of the agreement. With regard to several issues, the application of the agreement and its examination under the "built-in agenda" has also been controversial.¹

In the Uruguay Round, developed countries (notably the United States) centered on the negotiation and implementation of intellectual property rights standards ('IPRs') on the basis of the claim that improved IPR security would encourage innovation and also foreign direct investment ('FDI') and technological transfer to countries which are developing. Even though the TRIPS Agreement only got enforced on 1 January 2000 in early developing countries, implying that there was not much time to evaluate its effects, it seems that most developing countries find it difficult to believe of the benefits they would reap from adopting the new IPR regimes.

In addition, many of them were worried that, particularly in sensitive fields such as social health, the expenses to be charged could be too high. In essence, many developing nations believe that,

¹ https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm

considering the compromise sought by some clauses, the agreement primarily benefits countries which are rich in technological domain. There are several explanations for these issues.

First, higher standards safeguarding of IPR do not tend to contribute to tangible improvements in FDI or the transfer of technology to developing nations. The proof of the collaboration between the security of IPRs on the one side and the transition of FDI and technologies on the other remains unsatisfactory.² Second, IPRs tend to act as a significant obstacle to entry to technology and innovation in some industries, notably among the poor. In regards to pharmaceuticals, this is particularly the case. Patents allow medicinal manufacturers, in their very nature, to raise prices higher than would have prevailed in a global marketplace. Thirdly, the acceptance of the TRIPS Agreement as a portion of the WTO scheme implies that any disagreement pertaining to conformity with the minimum requirements laid down in the Agreement must be addressed within the context of the WTO multilateral procedures. The acceptance of unilateral trade restrictions by another Member will be consistent with multilateral regulations. Fourthly, Article 66.2 of the TRIPS Agreement sets forward a strong commitment for developing countries to 'offer opportunities for undertakings and organizations' to move technologies to least developed countries in their jurisdictions. Although Article 66.2 gives developed countries a significant share of leeway to decide what kind of incentives to offer, it needs the implementation of a framework to promote the transition to least developed countries of technologies (involving technology that is covered within intellectual property rights).³

DISCUSSION

Meaning of TRIPS

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights is usually referred to as the TRIPS Agreement, or literally denoted as the TRIPS. "TRIPS" is considered a major agreement that make up the Agreement of the World Trade Organization (WTO). This Agreement was signed underneath the General Agreement on Tariffs and Trade (GATT), usually alluded to as the Uruguay Round, which lasted from 1986 to 1994, as chunk of the 8th round of multilateral negotiations for trade purposes for the duration 1986-94. Annex 1 C to the Marrakesh Agreement is symbolized as TRIPS name which is the key WTO Agreement, occurs here.⁴ The Uruguay Round, via a series of systematic disciplines, incorporated intellectual property rights within the multilateral commercializing structure for the very first time.

The TRIPS Agreement appertains to the 'solitary framework' arising from the agreements in the Uruguay Round. This ensures that the TRIPS Agreement extends on a mandatory basis to all WTO Members-states. In addition, it implies that the terms of the Agreement are covered by the WTO dispute resolution process found in the Understanding on Dispute Settlement ('the Understanding on Rules and Procedures for the Settlement of Disputes'). The TRIPS Agreement, out of other existing one WTO's agreements, it is most significant one.

² Keith Maskus, *Intellectual Property Rights In The Global Economy*

³ https://www.researchgate.net/publication/227107105_The_TRIPS_agreement_and_developing_countries

⁴ <http://wtocentre.iift.ac.in/FAQ/english/TRIPS.pdf>

TRIPs Directions to Member-States

In accordance with the requirements of the TRIPs, Member States are expected to formulate the appropriate legislative mechanism detailing the scope and criteria of security for intellectual property rights. In other sense, in their regional intellectual property regulations, member countries have to follow TRIP requirements such as the Patent Act, the Copyright Act, etc.⁵

The WTO supports required improvements to national IPR legislation to comply with the terms of the TRIPs. The agreement on TRIPs is an attempt to put individual nation's laws into line with established international standards. A crucial component of TRIPs is that the most significant type of intellectual property, 'patents', is more complex and difficult. Member state will implement a sui-generis (own-designed) IPR structure in the case of plant rights, geographical indications, etc.

Copyright and related rights, trade names, security of confidential knowledge (trade secrets), geographical indications, industrial designs, integrated circuits, patents, and enforcement of anti-competitive practices in exclusive licenses are granted by the WTO in the following sectors of intellectual property. In compliance with the terms of the TRIPs, signing TRIPs means that countries are required to amend their Patent Act, Copy Right Act, Trade Mark Act, etc. In India, to satisfy the provisions of TRIPs, the state enforced significant amendments to the 1970 Patent Act in 2005. The Copyright Act was revised and introduced in 2010, starting in 2012. Other laws have also been made about registration of industrial designs.⁶

Key Provisions of TRIPS

1. Protection of Patents

The TRIPS Agreement allows WTO members to establish protection concerning any invention which also involves a pharmaceutical product as well as process, for a definite duration of 20 years from the date of filing of respective patent application. The period for patent for inventions in many nations was considerably very shorter before enforcement of TRIPS Agreement. The TRIPS Agreement also makes compulsion upon countries, in all sectors of emerging technologies to establish patent protection for both processes and products.⁷

2. Security of Data Submitted for Pharmaceuticals to be Registered

Drug regulatory regulators mandate pharmaceutical companies to send data illustrating the safety, consistency and effectiveness of a product as a prerequisite for authorizing the selling or marketing of a pharmaceutical product. The TRIPS Agreement allows WTO representatives to secure confidential research data presented to drug regulatory bodies from improper industrial use for the benefit of gaining marketing recognition. It is now claimed, however, that exclusivity of data is a condition of the TRIPS Agreement. The approach to information exclusivity gives the original

⁵ tojo jose, *What is Trade Related Intellectual Property Rights (TRIPs)?* on April 30, 2017

⁶ <https://www.indianeconomy.net/splclassroom/what-is-trade-related-intellectual-property-rights-trips/>

⁷ https://www.who.int/medicines/areas/policy/wto_trips/en/

creator complete rights regarding their testing data and prohibits the regulatory agencies from registering generic alternatives by depending on the testing data. Prior to the entry into force of the TRIPS Agreement, most nations enabled generic goods to be licenced by relying on founder test results. Once the founder company had presented the test data, the regulatory bodies were able to concentrate on the data to authorize subsequent applications for similar products or to focus on evidence of prior authorization in another country of a similar item. Generic producers can to demonstrate that their commodity is chemically similar to that of the branded product, the actual product, and that it is bioequivalent in certain nations. This methodology allowed the rapid implementation of generic drugs into the marketplace without cost-related registration data.

3. Time Span for Transition

For transitional times, the TRIPS Agreement gives developed countries more time to bring national laws and policies into line with the terms of the TRIPS Agreement. Three key phases of transformation exist. The first was the 1995-2000 transition phase, at the conclusion of which the adoption of the TRIPS Agreement was expected by countries. The transition period 2000-2005 authorized some states to postpone the provision of product patent rights in fields of technologies which were not already covered at the moment of the entry into action of the TRIPS Agreement within its nation.⁸

CONCLUSION

In the region of the TRIPS Agreement, the WTO dispute resolution mechanism faces a very complicated and sensitive challenge, perhaps more difficult even than reference to many prevailing WTO agreements. The high degree of complexity of the problems concerned, both for developing and developed countries, indicates that views on the matter would be exposed to very heightened scrutiny and could have a direct effect on potential developments in the field.

The preface to the TRIPS Agreement advocates for a partnership between both the WTO and WIPO as well as includes other related international organizations to be highly compatible. Communications of legislation, technical cooperation and the enforcement of TRIPS obligations under Article 6ter of the Paris Convention for the Protection of Industrial Property shall be protected by collaboration between the WTO and WIPO.

⁸ https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm