

# Introduction to Trade Related Aspects of Intellectual Property rights (TRIPs)

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# Outline

- ▶ Defining intellectual property rights
- ▶ TRIPs agreement
  - Nature and scope
  - General obligations and principles
- ▶ TRIPs and private sector

# Extending multilateral rules

## In a nutshell

The basic structure of the WTO Agreements

	Goods	Services	Intellectual property	Disputes
<i>Basic principles</i>	<b>GATT</b>	<b>GATS</b>	<b>TRIPS</b>	<b>Dispute settlement</b>
<i>Additional details</i>	Other goods agreements and annexes	Services annexes		
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)		

# Defining intellectual property

Intellectual property is ‘a category of **intangible rights** protecting **commercially valuable** products of the **human intellect**.’

Black Law Dictionary

Intellectual property rights (IPRs) confers on individuals, enterprises or other entities the right to exclude others from the use of specific intangible creations.

- ▶ IPRs relate to pieces of information that can be incorporated in tangible objects;

# Defining intellectual property

- ▶ Protection is given to ideas, technical solutions or other information that have been expressed in a legally admissible form;
- ▶ IPRs are private rights;
- ▶ IPRs are exercised generally as exclusive rights in the use of the creation (e.g. a musical work) and the commercialization of the product (e.g. compact disk).

# Agreement on Trade Related Aspects of Intellectual Property rights (TRIPs)

TRIPs covers five broad issues:

- ▶ Application of basic **principles of the trading system** and other international intellectual property agreements
- ▶ the provision of **adequate standards** and principles concerning the availability, scope and use of trade-related intellectual property rights - minimum standard
- ▶ the provision of effective and appropriate means for the **enforcement** of trade-related intellectual property rights, taking into account differences in national legal systems - civil and administrative procedures
- ▶ the provision of effective and expeditious procedures for the multilateral prevention and **settlement of disputes** between governments
- ▶ **special transitional arrangements during** the period when the new system is being introduced.

# Nature and Scope of Obligations

‘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.’

Article 1.1

‘...the term "intellectual property" refers to all categories of intellectual property that are the subject of **Sections 1 through 7** of Part II.’

Article 1.2

# Categories of IP

Area	Description	Term of protection
Patent	<p>Providing exclusive rights to make, use or sell an invention to the holder of scientific and technological invention provided the “invention” is found to be: a) noble (previously not known to public); b) non-obvious (containing sufficient innovativeness to merit protection) ; and c) capable of industrial application (usefulness)</p> <p>Patent is provided for product and process.</p>	20 years from the date of first filing of application
Copyright and related rights	<p>Protecting rights of the author/creator of expressions whether in the written (e.g., book), digital (e.g., computer programme) or other forms (e.g., photograph)</p> <p>Also covers “neighbouring rights”, that is, rights which are related to copyright, are accorded to phonogram producers, performers and broadcasting organizations.</p> <p>Owners of copyright can generally prevent the unauthorized reproduction, distribution</p>	25 years from the date of making of work to 50 years after the death of the author/creator depending on the nature of work



# Categories of IP (contd.)

Area	Description	Term of protection
<b>Geographical indication</b>	Protecting identity of product as originating in a particular place to which its quality, reputation or other characteristics are attributable (e.g., Scotch whisky, Champagne)	10 years but may be renewed from time to time for an unlimited period by payment of the renewal fees
<b>Layout design of integrated circuits</b>	Protection of original layout-designs, which are the result of creators' own intellectual effort and are not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of their creation	10 years
<b>Undisclosed information</b>	Protection to information that is secret, that has commercial value because it is secret and that has been subject to reasonable steps to keep it secret	Protected as long as the information is kept secret

# General obligations/ basic principles

- ▶ **National treatment (NT)** : Members are required to treat nationals of other countries no less favourably than their own nationals on all matters concerning IPRs, subject to certain exceptions already provided in conventions/treaties related to IPRs.
- ▶ **Most favoured nation (MFN) treatment** : Any advantages, privileges granted by a Member to the nationals of any other country should be extended unconditionally to the nationals of all other Members.
- ▶ **Exhaustion of intellectual property rights**: provided there is compliance with NT and MFN, IPRs is exhausted, i.e., the first sale of a patented good can exhaust the rights of a patentee – parallel imports

# General obligations/ basic principles (contd.)

- ▶ **Transitional period:** initially 1, 5 and 10 years for developed, developing and LDCs, Nepal's new transition period: is 30 June 2013
- ▶ **Technological innovation and transfer :** ' 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.**'

*Article 7*

- ▶ **Promotion of public interest :** '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.'

*Article 8*

# Doha Round

- ▶ Essential medicines
- ▶ Traditional knowledge, life form and biodiversity
- ▶ Geographical indication

# Implications for private sector

- ▶ Affect the conditions for access to and use of technology
- ▶ Reverse engineering and other legitimate methods of imitative innovation will be restricted,
- ▶ Increase royalty payments required by technology-holders,

# Implications for private sector (contd...)

Types of IPRs	Subject matter	Main fields
Patents	New, non-obvious, indigenous applicable inventions	Chemicals, Medicinal and aromatic plants, drugs, plastics, engines, turbines, electronics, industrial and scientific equipments
Trademarks	Signs or symbols to identify goods and services	All industries, including Medicinal and aromatic plants and handicrafts
Copyrights and related rights	Original works of authorship, artistic performance , broadcasting and phonogram production	Printing, entertainment (audio, video, motion pictures) software , broadcasting and handicrafts
Integrated circuits	Original layout design	Microelectronics industry
Breeders rights	New, stable, homogeneous, distinguishable varieties	Agriculture and food industry as well as Medicinal and aromatic plants
Trade secrets	Secret business information	All industries including Medicinal and aromatic plants and handicrafts
Industrial design	Ornamental design	Clothing, automobiles, electronics, handicrafts etc.
Geographical indications	Geographical origin of goods and services	Wine, spirits and other food products and Medicinal and aromatic plants
Utility models	Functional models/designs	Machinery products

Thank you

