

TRIPS Agreement

Nepal's Commitment and Current Status


Presented by

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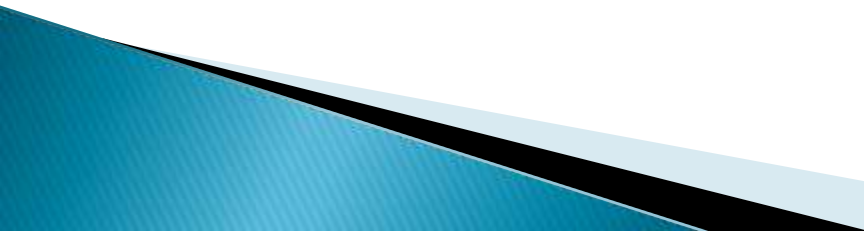
at

Public-Private Dialogue on Nepal's WTO commitments
and roles of stakeholders, Pokhara, 2-3 December 2011

Outline

- ▶ Glossary of technical terms
 - ▶ TRIPS Agreement
 - ▶ Contentious issues
 - ▶ Nepal's commitment and current status
 - ▶ Conclusion
 - ▶ Way forward
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Glossary of technical terms - I

- ▶ **Intellectual property rights (IPR):** Monopoly rights conferred upon and legal protection provided to creator over the use of his/her/its creation for a limited duration.
 - ▶ **World Intellectual Property Organization (WIPO):** A specialized United Nations Agency, established in 1961 to deal with matters relating to IPR at the global level.
 - ▶ **Parallel import:** Import of the IPR-protected product manufactured in another jurisdiction.
 - ▶ **Compulsory license:** Providing license to the interested manufacturer other than the creator to promote competition in the market.
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Glossary of technical terms – II

- ▶ **Convention on Biological Diversity:** A historic global accord to dealing with access to as well as benefit sharing resulting from sustainable use of biological resources, signed in 1992 at the Rio Summit.
- ▶ *Sui generis*: Of its own kind (home grown); applicable in the case of plant variety protection.
- ▶ **International Union for the Protection of New Varieties of Plants (UPOV):** A convention agreed among the developed countries in 1961 to protect the rights of plant breeders.

TRIPS Agreement

Background

- ▶ Introduced during the Uruguay Round at the behest of the developed countries because WIPO was considered largely “ineffectual” to enforce IPR protection
- ▶ Broad objectives:
 - Promotion of technological innovation;
 - Transfer and dissemination of technology;
 - Contribution to the mutual advantage of producers and users of technological knowledge conducive to social and economic welfare; and
 - Contribution to the balance of rights and obligations
- ▶ Provides minimum standard of IP protection in seven areas and aims to ensure a globally harmonized system of such protection (See tables in the next two slides)

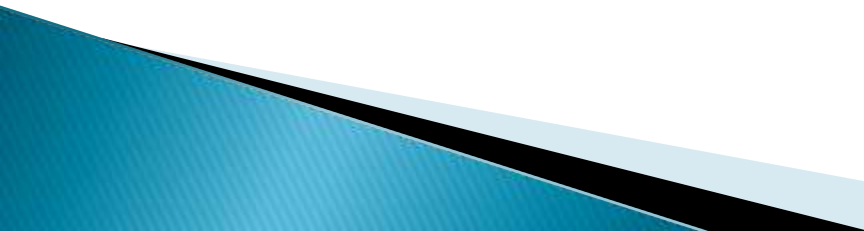
Areas of protection

Area	Description	Term of protection
Patent	Providing exclusive rights to the holder of scientific and technological invention provided the “invention” is found to be: a) noble; b) non-obvious; and c) capable of industrial application	20 years from the date of first filing of application
Copyright and related rights	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)	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
Trademark	Protecting any sign that distinguishes goods, services, image and reputation of one undertaking from those of others	Initially for seven years, but term can be renewed indefinitely for the same period
Industrial design	Protecting look of an article (e.g., shape, ornamentation, pattern, configuration), but different from the designs related to the functional utility of products (e.g., an improvement in machinery) which are protected in some jurisdiction as “utility models” (which are minor innovations)	At least 10 years. Term can be divided into, for example, two periods of five years

Areas of protection (contd....)

Area	Description	Term of protection
Geographical indication	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
Layout design of integrated circuits	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
Undisclosed information	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

Main features of the Agreement

- ▶ **Standards:** Ratchets up IP standards where previous agreements were silent and is sometimes referred to as Bern and Paris-plus agreement in relation to the protection IP.
 - ▶ **Enforcement:** Outlines domestic procedure for the enforcement and remedies for the violation of the provisions of the Agreement.
 - ▶ **Dispute settlement:** Contains provisions to make use of the Dispute Settlement System of the WTO in case of disputes between the WTO Members in relation to the (presumed) violation of the provision of the Agreement.
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Special and differential treatment

- ▶ For LDCs like Nepal, three provisions stand out:
 - *Transition period*: Article 66.1 provides higher transition period for LDCs to comply with the Agreement; Nepal's new transition period: is 30 June 2013
 - *Technology transfer*: Article 66.2 requires developed countries to provide incentive to their enterprises to facilitate transfer of technology to the LDCs.
 - *Technical cooperation*: Article 67 requires developed country Members to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of LDC, to help the latter implement the Agreement.


Note: The later two provisions have not moved beyond rhetoric.

Contentious issues

Biodiversity and farmers' rights – I

- ▶ Article 27. 3 (b) requires WTO members to provide protection to “life form” and protect plant variety either through patent, or an effective *sui generis* system or any combination thereof
- ▶ This provision, is in direct conflict with the CBD, because it:
 - provides legitimacy to ‘bio-piracy’
 - subordinates public goods to private property rights
 - neglects the sovereign rights of the nation states to regulate access to genetic resources
 - undermines the principles of prior informed consent and benefit sharing

Biodiversity and farmers' rights – II

- ▶ By virtue of this provision some countries have been pressuring developing countries to become a member of UPOV, which in its current form does not allow farmers to save, replant, exchange, sell protected varieties of seeds
 - ▶ Seed and agro-chemical companies are using their clout to pressure developing countries to change their seed laws to establish monopoly in the market by displacing farmers
 - ▶ Doha Development Agenda talks about establishing mutual compatibility between TRIPS and CBD, but work has not progressed much
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Public health

- ▶ Monopoly power resulting from patents on pharmaceutical products has led to reduced access to medicine for critical diseases such as HIV/AIDS, Tuberculosis and Malaria
- ▶ Companies have prevented the use of pro-competitive provisions such as parallel import (e.g., South Africa) and compulsory licensing (Brazil)
- ▶ Due to public outcry and advocacy campaign from civil society, TRIPS and Public Health Declaration was issued at Doha Ministerial Conference, which among others:
 - Reaffirms the rights of countries to make use of pro-competitive provisions
 - Allows LDCs to defer providing product patents on pharmaceutical products till 2016

Nepal's commitment and current status



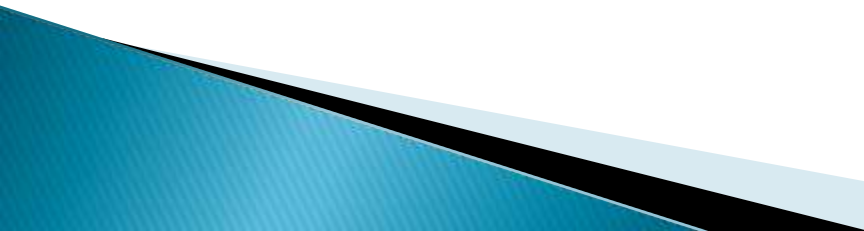
Commitments and current status of implementation

Action	Implementation date proposed at accession	Status as of December 2010
Approve copyright and other procedural legislation Participation in: WIPO (since 1997) and Paris Convention (since 2001)	Completed	N/A
Establish MFN and national treatment in all areas covered by TRIPS, in particular in the following areas: - extension in the Copyright Act, 2002 of protection to foreign works on a full national treatment basis; and - the elimination of discrimination in fees charged foreign vs. domestic applicants.	Upon accession	Provided
Establishment and Strengthening Nepal Copyright Registrar Office	No later than 1 January 2005	Established and operational since 19 April 2004
Establishment of Trademark Information Centre; Industrial Design Information Centre; Industrial Patent Information Centre and Layout-Designs Information Centre	No later than 1 July 2005	Status not known

Commitments and current status of implementation

Action	Implementation date proposed at accession	Status as of July 2011
Approval of Industrial Property (Protection) Act and Plant Variety Protection Act	No later than 1 January 2006	Draft prepared (in process)
Participation in Berne and Rome Convention and Integrated Circuits Treaty (Washington Treaty on Intellectual Property in Respect of Integrated Circuits)	No later than 1 January 2006	Berne (11 Jan. 2006); Rome (Study going on) InCT (not yet)
Training of personnel involved in copyrights protection, trademarks protection, protection of industrial design, protection of patents, protection of undisclosed information, customs officials and police: Orientation of judges and lawyers/Computerization and networking of Patent Office/Computerization of Intellectual Property Office/ Reorganization and establishment of Intellectual Property Offices/Developing rules, regulations and work manuals/Enhancing public awareness on the protection of intellectual property rights Full Implementation of the Agreement on Trade-related Intellectual Property Rights	No later than 1 January 2007	Partially completed

Conclusion

- ▶ IPR in general is beneficial for the technological advancement of the society
 - ▶ TRIPS Agreement was created to strengthen the enforcement of IPR globally, which was fairly weak in the past
 - ▶ Developed countries stand to gain from the TRIPS agreement as they advance their monopoly positions in sectors as varied as seed, agro-chemical and pharmaceutical
 - ▶ Nepal has lagged behind its implementation commitments, partly due to shifting of the deadline at the multilateral level and partly due to unavailability of technical assistance as committed in the accession document
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Way forward

- ▶ In order to take advantage and mitigate the negative impacts of the TRIPS Agreement Nepal needs to take the actions, inter alia, in the following areas:
 - Enacting legislation on access and benefit sharing and geographical indications
 - Redoubling efforts to obtain technical assistance, as provided for in the accession document, to build institutional capacity for the implementation of the Agreement
 - Providing incentives to industries, public sector research institutions and research consortia for increased research and development activities