

All you need to know about the TRIPS Agreement

By **Shoronya Banerjee** - February 5, 2022

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This article has been written by [Ayush Tiwari](#), a student of Symbiosis Law School, NOIDA. In this article, the author has covered everything one needs to know about the TRIPS Agreement.

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Introduction

Various intellectual inventions and creativity have a significant impact on the world today. As these innovations and concepts grow more popular and successful, the inventor's efforts to promote and defend them become increasingly crucial. Beyond just shipping goods across borders, the concept of commerce and what makes trade useful for nations have developed. In today's international trade, innovation, creativity, and branding account for a significant portion of the value exchanged. How to increase this value and make it easier for the innovation-rich commodities and services to flow across borders have become important factors in development and trade policy.

The [Trade-Related Aspects of Intellectual Property Rights \(TRIPS\) Agreement](#) is crucial for promoting trade in knowledge and innovation, resolving intellectual property trade disputes, and ensuring [World Trade Organization](#) (WTO) members' freedom to pursue their domestic goals. The agreement is a formal acknowledgment of the importance of intellectual property and trade relations. Before studying the TRIPS agreement in detail, one should have a brief knowledge about Intellectual Property Rights (IPR).

What are intellectual property rights

"Intellectual Property shall include rights relating to literary, artistic, and scientific works, discoveries throughout all areas of human endeavor, scientific advances, industrial design rights, trademarks, service marks, and commercial names and designations, protection against unfair competition," states [Article 2](#) of the [WIPO](#) (World Intellectual Property Organization) – Central Organization for the Protection of Intellectual Property laws and the UN expert organization.

Intellectual property rights are the rights granted to individuals over the creation of their minds. For a set period of time, they usually grant the creator exclusive rights to use his or her creation. Intellectual property (IP) is a non-tangible asset developed by the human mind. Business organizations may use IP to gain a competitive advantage and drive their growth. Intellectual property ownership interests, like any other property, can be assigned, licenced, or otherwise passed to third parties.

Internationally, intellectual property rights (IPR) are valued and exchanged. The WTO's TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement recognises the importance of IP in international trade. The TRIPS Agreement establishes basic requirements for member governments' IPR protection.

The TRIPS Agreement in detail

How it all started?

As intellectual property grew more significant in commerce, the level of protection and enforcement of these rights varied greatly throughout the world, and these variations became a source of stress in international economic relations. New globally agreed-upon trade standards for intellectual property rights were considered as a method to bring greater order and predictability to the market, as well as a more systematic approach to resolving disputes.

[The General Agreement on Tariffs and Trade \(GATT\)](#) was the only multilateral mechanism overseeing international commerce until the World Trade Organization (WTO) was established in 1995. Under GATT, there were eight rounds of negotiations, the first five of which were solely focused on tariffs, while the sixth round included discussions on anti-dumping measures, which included provisions for member nations to control the dumping of goods into their territory by other nations that could harm their economies.

The Uruguay Round was the last GATT round (1986-1994). It was in this session that the first discussions on trade linked to agriculture, services, and intellectual property rights were conducted. All 123 countries that took part in the Uruguay Round, including India, became members of the WTO. WTO now has 164 members, accounting for about 90% of the world's countries. The World Trade Organization (WTO) is in charge of negotiating and implementing new international trade agreements. It is also responsible for ensuring that the majority of the world's trading nations comply with the trade agreements they have signed. The WTO is the legal and administrative framework for managing and growing international connections between its 157 members on a multilateral basis. Its goal is to establish fair and secure international trading arrangements in order to stimulate trade and investment and raise global living standards.

The TRIPS Agreement is one of the most significant WTO accords. The Agreement went into effect on January 1, 1995.

What is the TRIPS Agreement about?

The TRIPS Agreement protects intellectual property in trade-related regions to a large extent and is regarded as a comprehensive new framework for intellectual property standards protection. The TRIPs Agreement also has the distinction of being the first legal agreement to address all areas of intellectual property with a number of specific clauses.

The three main issues governed by the agreement are:

- **Standard**– All member states are required to provide a minimum set of criteria for the protection of IPRs in each of the IP categories covered by the Agreement. Each area of IP is addressed in such a way that the major aspects of protection, such as the subject matter sought to be protected, the rights to be granted, and possible exceptions to such rights, as well as the minimum period of protection, are all explicitly stated.
- **Enforcement**– The second set of clauses focuses on domestic processes and remedies for intellectual property rights enforcement. The Agreement establishes a set of broad rules that apply to all IPR enforcement actions. It also includes rules on civil and administrative processes and remedies, provisional measures, particular border requirements, and criminal proceedings, all of which outline the procedures and remedies that must be provided so that the right holders can successfully exercise their rights.
- **Dispute settlement**– Disputes occurring between WTO members over responsibilities emanating from the TRIPS Agreement are subject to the WTO's dispute resolution processes.

The whole TRIPS Agreement is further divided into seven parts which contain the complex provisions regarding intellectual property:

Part I- General Provisions and Basic Principles (Article 1 to Article 8)

Part II- This part covers the requirements for the availability, scope, and application of intellectual property rights. (Article 9 to Article 40)

Part III- The enforcement of IPRs is the focus of this part. (Article 41 to Article 61)

Part IV: This part covers the procedures for obtaining and maintaining intellectual property rights. (Article 62)

Part V: This part deals with the prevention and resolution of conflicts resulting from the provisions of the Agreement. (Article 63 to Article 64)

Part VI: This part is about transitional agreements. (Article 65 to Article 67)

Part VII: This part of the Agreement deals with a variety of institutional arrangements. (Article 68 to Article 73)

General provisions and basic principles

The essential principles on the national and most-favored-nation treatment of foreign persons are found in Articles 3, 4, and 5, and they apply to all kinds of intellectual property covered by the Agreement. These obligations apply not only to substantive standards of protection, but also to issues relating to the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as issues relating to the use of intellectual property rights that are specifically addressed in the Agreement. While the national treatment provision prohibits discrimination between a member's own nationals and those of other members, the 'most-favored-nation' treatment clause prohibits discrimination between other members' nationals. The exclusions authorised under the pre-existing WIPO intellectual property treaties are likewise available under TRIPS in terms of the national treatment commitment. Furthermore, governments have the authority to enact legislation to prohibit right holders from abusing IPR or to challenge practises that unfairly restrict commerce or impede the international transfer of technology, all in accordance with the Agreement's provisions.

Types of intellectual properties

Copyrights and related rights

The Agreement states that copyright protection only applies to phrases, ideas, techniques, operating methods, or mathematical concepts. Literary, musical, dramatic, photographic, sculptural, architectural, choreography, graphic, motion picture, sound recording, multimedia work, computer programs, and other works are all given copyright. For a certain amount of time, the owner of a copyright has the right to prevent others from duplicating, distributing, making derivative works, performing, exhibiting, or utilising the work covered by the copyright. The essence of copyright is originality, which means that the work was created by the copyright owner or claimant. A work of originality, on the other hand, does not have to be innovative. In copyright law, originality does not entail innovation.

The [Berne Convention](#) protects computer programs in both source and object code, and compilations of data in machine-readable or other formats constitute creative works due to the selection or arrangement of their contents and are thus protected by the Agreement. In the case of computer programs and cinematographic works, authors are granted the right to approve or restrict commercial renting of originals or copies of protected works to the public. However, if giving rental rights leads to widespread copying of such works, jeopardising the work's uniqueness, member governments can revoke such rights. The term of protection extends up to not less than 50 years as per Article 12 of the Agreement.

Trademarks

Article 15 states that any sign, or set of signs, able to distinguish one undertaking's products and services from other undertakings', shall be eligible for trademark registration, provided that it is clearly detectable. Such signs, in particular words, characters, digits, figurative components, and colour combinations, as well as any combination of these signs, must be acceptable for trademark registration. According to Article 16, the trademark owner has the exclusive right to restrict third parties from using similar or identical signs for products or services that are similar to those for which the trademark is registered.

Geographical indications

As per Article 22, geographical indications designate a good as coming from a member's territory, or an area or place within that territory, where the good's quality, reputation, or other attribute is largely due to its geographical origin. Traditionally, some commercial items have been manufactured in a geographically defined territory. In commercial relations, the geographical indicator becomes the dependable "carrier" of qualifying product features when these items are accredited to certain criteria fundamentally due to their geographical provenance. The purpose and value of geographical indications are subsequently given to trademarks, and they are entitled to legal protection.

Industrial designs

Articles 25 and 26 of the agreement says members must ensure that fresh or unique industrial designs generated independently are protected. The Agreement, which is based on the [Paris Convention](#) but goes much beyond it, promises to preserve industrial designs for a minimum of 10 years. When such activities are conducted for commercial objectives, the right holder can ban third parties who do not have the holder's agreement from producing, importing or selling items that incorporate the protected design.

Patents

According to Article 27 of the agreement, a patent is an intellectual property right (IPR) awarded to inventors. The inventor, as the patent owner, has the right to prevent anybody else from creating, using, selling, or importing the patent-protected invention in a specified region for a set length of time.

The basic criterion of patentability is subject to three exceptions. One is for innovations that are against the public good or morals- this includes inventions that are harmful to

human, animal, or plant life or health, or that are substantially harmful to the environment.

Members may also exclude diagnostic, medicinal, and surgical procedures for the treatment of people and animals from patentability.

The length of protection is normally 20 years from the date of filing of the patent application. Member nations could provide specific exemptions to exclusive rights conferred by a patent under Article 21 of the Agreement, given that such exclusions do not unreasonably conflict with a normal exploitation of the patent and therefore do not unreasonably bias the patent owner's legitimate interests, taking into consideration the legitimate interests of third parties. Furthermore, Article 29 mandates that the patent filing discloses the innovation in a manner that is explicitly clear and complete for a person knowledgeable in the art to carry out the invention. Article 31 of the Agreement contains provisions that allow the government of a member nation to award a compulsory licence for medicines without the patentee's approval, subject to specific circumstances.

Layout-Designs (Topographies) of Integrated Circuits

Importing, selling, or distributing (for commercial reasons) a secured layout design, an integrated circuit where a secured layout design is implemented, or an article including such a circuit is prohibited under Article 36 of the Agreement. From the date of filing an application for layout designs, the protection offered in this sector of IP is at least ten years. According to Article 37, member countries may limit the length of protection to fifteen years from the date of development of the layout design.

Protection of undisclosed information

The information which is undisclosed is referred to as a trade secret. Article 39 of the Agreement requires member states to provide trade secret protection in accordance with the Agreement's provisions. TRIPS mandates that member countries should create national legislation to prevent such information from being revealed to, obtained by, or used by third parties without the agreement of the person who is lawfully in possession of it, in a manner that is inconsistent with fair trade practises. Such information must be confidential, have commercial value as a result of its confidentiality, and have been subjected to reasonable efforts to keep it hidden in order to be granted protection.

Control of anti-competitive practises in contractual licences

Members of the Agreement believe that some licensing arrangements or restrictions relating to IPR that restrict competition may have a negative impact on trade and impede technological transfer and dissemination. The clause allows for government discussions in cases where there is an infringement of intellectual property rights that has a negative impact on competition. On some occasions, the TRIPS Agreement waives some of the requirements necessary for a compulsory licence of a patent, such as when the government gives the compulsory licence to correct an anti-competitive activity.

Enforcement

Governments must guarantee that IPR can be implemented to prevent or discourage infringement, according to the Agreement. The methods must be just and equal, as well as not overly cumbersome or expensive. They shall not impose unreasonable deadlines or unjustified delays. People concerned must be allowed to request a court review, an administrative decision or appeal a lower court's judgement. The TRIPS agreement goes into great detail about how to defend intellectual property rights, including requirements for gathering evidence, interim measures, injunctions, damages, and other penalties. It states that courts must have the authority to compel the disposal or destruction of objects that infringe on intellectual property rights under specified situations. On a commercial scale, wilful trademark counterfeiting or copyright infringement must be prosecuted as a crime. Governments must also ensure that holders of intellectual property rights can get assistance from customs authorities to prevent the import of counterfeit and pirated goods.

Prevention and resolution of conflicts resulting from the provision of the TRIPS Agreement

The TRIPS Council is in charge of the provisions relating to dispute resolution and prevention. The common register, which contains a compilation of laws and regulations, final judicial decisions, and other information pertaining to the Agreement, should be established, Article 63 establishes an obligation to notify laws and regulations to the TRIPS Council or the WIPO. Article 64 of the Agreement outlines processes for preventing and resolving disputes. For this aim, the WTO Agreement's integrated dispute settlement procedure will apply to TRIPS issues.

Transitional agreements

The TRIPS agreement allowed countries to delay the implementation of its terms for various lengths of time. These timeframes specify the period between when the agreement entered into force (on January 1, 1995) and when it got implemented in member countries. The following are the major transition periods:

1. Developed countries were given a one-year transition period following the WTO Agreement's entry into force, i.e. until January 1, 1996.
2. Developing nations were given an extra four years (until January 1, 2000) to implement the agreement's provisions, with the exception of Articles 3, 4, and 5, which deal with broad principles like non-discrimination.
3. Transition economies, i.e. countries in the process of transitioning from centrally planned to market economies, could also benefit from the same postponement (until January 1, 2000) if they fulfilled specific additional criteria.
4. Least-developed nations were given an additional eleven-year transition time (until January 1, 2006), with the option of an extension. The transition period has been prolonged three times, and now continues until July 1, 2034, or until a member no longer qualifies as a Least Developed Country (LDC), whichever comes first.

Institutional arrangements

Article 68 of the TRIPS Agreement establishes The TRIPS Council. The TRIPS Council oversees the administration of this Agreement, including members' compliance with their duties under it, and provides members with the opportunity to consult on trade-related aspects of intellectual property rights. It carries out any other obligations that the members delegate to it, including providing any help sought by them in the context of

dispute resolution procedures. The TRIPS Council may consult with and obtain information from any source it finds relevant in carrying out its tasks.

Need for the TRIPS Agreement

IP protection was supposed to help not only promote technical innovation but also the transfer and spread of new technology in a way that benefits both its producers and users while maintaining a balance of rights and duties, all with the purpose of increasing social and economic wellbeing. As a result, the TRIPS Agreement's primary objectives included reducing trade distortions and obstructions by supporting effective and appropriate protection of IPRs, as well as ensuring that measures and processes for enforcing IPRs do not become hurdles to legitimate trade.

Currently, the rise in IP legislative activity, as well as the quick adoption of TRIPS-covered IP rights, demonstrated the TRIPS Agreement's centrality in the global trade system. The TRIPS Agreement continues to play a key role in facilitating international trade in knowledge, resolving trade issues over IP, and guaranteeing WTO members the latitude to achieve their domestic objectives, while IP is at the core of attempts to obtain benefits from innovation and creativity in today's global economy.

Advantages and disadvantages of the TRIPS Agreement

Advantages of the TRIPS Agreement

- Transparency in IP policy was brought to the world's attention.
- WIPO's existing international legal system, which was designed and controlled by them, was greatly enhanced by this agreement.
- Trade conflicts over intellectual property concerns were reduced by establishing a clear, rules-based framework for resolving disputes.
- It has aided in the acquisition and exercise of intellectual property rights, as well as providing a solid platform for the trade in knowledge products.
- In developing countries, the number of patent applications is increased

Disadvantages of the TRIPS Agreement

- TRIPS mandates high levels of patent protection.
- Fertilisers, insecticides, pharmaceutical items, and procedures were not protected by patents, resulting in low-cost food and drugs.
- Education and technology transfer were fostered by the lack of copyright protection for informational products.
- Jobs in the local imitative industries were lost.
- In general, increased prices resulted in significant deadweight losses, with minimal stimulation of local innovation.
- Traditional knowledge is not protected in any way.

TRIPS Agreement : a boon or bane for developing countries

The agreement imposes essential and obligatory requirements on signatory member nations to implement basic levels of intellectual property right protection in all of its elements. However, this Agreement has far-reaching implications for developing nations, as rigid intellectual property restrictions stifle the growth of indigenous enterprises in these areas. Intellectual property rights, although vital, must be implemented with caution in developing nations since they can harm the economy, public health, and so on. The principal consequences of the patent protection regime have a deterring effect on the expansion of local sectors, such as pharmaceuticals.

Intellectual property should not be used to thwart the interests of developing nations, such as public health, which is already being harmed. As a result, a re-evaluation is necessary. In addition, when the situation demands them, the exceptions to the intellectual property rights shall be implemented effectively and strictly.

The TRIPS Agreement has had a considerable impact on IPR protection in poor nations but has had a little discernible impact on IPR protection in developed countries. This outcome is consistent with the TRIPS Agreements' requirements being established to be as near as possible to IPR protection systems already in existence in many developed nations. To comply with the TRIPS Agreement, developed nations did not need to make significant changes to their policies. And also the Nations that rely heavily on exports to countries that advocated for the TRIPS Agreement's inclusion in the WTO (i.e. developed countries) may take the possibility of retaliatory trade penalties seriously since they stand to lose a lot of money in lost exports. This demonstrates the TRIPS Agreement's effectiveness as a coercive threat in international economic negotiations.

Numerous objections have been leveled against the TRIPS Agreement's validity and efficacy, particularly in relation to poor nations. Even famous free-trade proponents like Martin Wolf have [criticised](#) TRIPS for its "hypocrisy" viewing it as a rent-seeking device from many poor nations, with potentially disastrous consequences for education, public health, and economic growth. Even among nations that appear to benefit the most from the agreement, gains may only go to certain segments of society, implying that the actual beneficiaries from TRIPS are not developed nations, but rather the major businesses that pushed for its adoption. TRIPS has also failed to address policymakers' concerns, since trade balances have continued to deteriorate, and the current emphasis on private rights may, in the long run, contribute to stifling innovation and knowledge dissemination in developed nations. While Archibugi & Filippetti [warned](#) against misrepresenting TRIPS' impact, it is clear that the agreement does not work as intended. It would have been better to establish a tiered structure that provided more meaningful special and differential treatment based on nations' developmental requirements. Given that TRIPS is already firmly established inside the WTO system, it is unclear if major revision of the agreement is possible for the sake of developing nations.

Conclusion

This article might be concluded by stating that, despite the importance of the TRIPS Agreement, the developing countries have highlighted a number of concerns and flaws in the treaty. Despite these issues, the TRIPS Agreement is often regarded as the most comprehensive mechanism for protecting intellectual property rights. It enhances and manifests the previous IPR conventions, the most important of which were first drafted at the end of the nineteenth century. Certainly, these agreements were revised on a regular basis, to permit a gradual international control of intellectual property and copyrights. However, in comparison to the results of previous revision exercises, the TRIPS Agreement constitutes a tremendous conceptual leap that profoundly transforms not only how IPRs are seen internally, but also how they are implemented and disputes are resolved.

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