



RESEARCH NOTE

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Trade-Related Intellectual Property Rights (TRIPs) under the World Trade Organization (WTO).

The Agreement Establishing the WTO, to which Australia is party, applied GATT / WTO rules and principles to trade-related aspects of intellectual property rights (TRIPs).

What Are TRIPs?

Intellectual property is defined in various ways from 'legal rights in new ideas'¹ to 'information with a commercial value'.² Stern explains that:

an intellectual property right is a state-granted power to a private person to secure the aid of the state, for a limited number of years to prevent unauthorised persons from commercially exploiting a new idea, which the person 'owns'.³

Trade-related intellectual property, as defined by the WTO Agreement, encompasses:

- copy rights and related rights;
- trade marks;
- geographical indications;
- industrial designs;
- patents;
- layout-designs (topographies) of integrated circuits; and
- undisclosed information (trade secrets).

TRIPs and the WTO Agenda

TRIPs were placed on the Uruguay Round negotiating agenda at the insistence of developed nation

Members led by the US. Developed countries justified the inclusion of TRIPs based on substantial losses suffered by domestic industries from ineffective international copyright protection. A report by the International Intellectual Property Alliance estimated that its members in the movie industry lost over \$US130 million, the computer software industry over \$US125 million, the publishing industry \$US400 million and the music industries over \$US600 million annually.⁴

Objections to extending WTO jurisdiction to cover TRIPs came from developing and less-developed countries who argued that intellectual property was outside the jurisdiction of the WTO. Ideologically, developing countries perceived intellectual property not as a private right but rather a public good that was vital for the development of their economies. An UNCTAD paper asserted that in order to:

understand the political economy of TRIPs, it is first necessary to recognise the simple fact that patents are government sanctioned monopolies for intellectual property owners. Patents are intended to introduce excludability into the otherwise public good of information, in order to prevent the diffusion of this property through imitation.⁵

The eventual inclusion of IPRs on the Uruguay Round agenda represents the dominance of developed country's interests in GATT / WTO negotiations. The main concessions allowed developing and least-developed members

were extended implementation periods of five and ten years respectively.

Opinions differ as to the necessity for strengthening IPRs. Those supporting increased protection argue that inadequate remuneration for producers of intellectual property discourages costly research and development projects, which in turn restricts growth of the global economy.

Several studies have assessed the effects of protected IPRs on foreign investment, trade flows, technology transfer, rent transfer and displacement of 'pirates'. Some of these have found that strengthened TRIPs would increase the transfer of income from developing countries to developed countries where the majority of IPRs holders are located. By 1982, 87.5 percent of patents awarded by developing countries went to foreign patentees.⁶ Alternatively, it is argued, industries might increase their investment of technology and research and development projects in developing countries if those investments were better protected by strengthened TRIPs laws.

TRIPs Agreement Outcomes

Four major outcomes emerged from the TRIPs negotiations.

1. Under the WTO, the principle of most-favoured-nation has been extended to TRIPs, that being any advantage or benefit a Member gives to the nationals of another Member must be extended immediately

and unconditionally to the nationals of all other Members, even if this treatment is more favourable than that which it gives its own nationals.

2. The TRIPs agreement directly ties intellectual property rights (IPRs) issues with other WTO regulated trade areas by enabling Members to negotiate concessions in one trade area, such as agriculture, in return for concessions in TRIPs, or vice versa.
3. Standards established by the four principal agreements⁷ which regulated IPRs previously, and are overseen by the World Intellectual Property Organisation, have been largely incorporated into the TRIPs Agreement. Yet the TRIPs applies these standards on a much wider, multilateral base. Prior to the Uruguay Round, for example, Australia was party to the Paris, Berne and Rome Conventions only, yet is now required to abide by some provisions contained in the Washington Treaty.
4. In addition, disputes related to TRIPs can now be resolved through WTO dispute settlement procedures. The fact that economic penalties exist for failure to abide by a dispute resolution will make the

TRIPs Agreement far more enforceable than any that has preceded it.

While initial stages of the TRIPs negotiations were polarised around developing and developed member issues, the outcomes are more representative of technical issues that arose between developed countries.

The US, for example, protested against the French Video Levy on sales of blank video cassettes and recorders. The levy was divided into four portions and distributed equally between the arts community in France, and video movie authors, performers and producers. Foreign video movie productions can only collect from the author's fund. Under the TRIPs Agreement, other than the exceptions provided in the Paris, Berne, and Rome conventions, Members must give national treatment to foreign holders of IPRs. Equally as contentious was the Japanese compact disc (CD) rental industry. US negotiators argued CD rental rights facilitated production of unauthorised copies. The final TRIPs Agreement caters to the Japanese CD rental industry by providing authors and their successors in title the right either to authorise or prohibit commercial rental to the public of originals or copies of their copyright works.

While the end of the Uruguay Round was marked in part by French protests over the TRIPs Agreement, these could be more closely related to developments in agricultural negotiations. Nevertheless, much debate continues to surround the inclusion of IPRs under WTO auspices, both for its repercussions for developing and least developed countries and the precedent it establishes for expanding the jurisdiction of trade regulation.

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¹ Stern quoted in T. P. Stewart (ed), *The GATT Uruguay Round: A Negotiating History (1986-1992)*, Vol. II, The Netherlands: Kluwer, 1993, p. 2247.

² C. Braga, 'Trade-Related Intellectual Property Issues: The Uruguay Round Agreement and Economic Implications', A paper presented at *The Uruguay Round and Developing Economies*, A World Bank Conference, January 26-27, 1995, p. 2.

³ Stewart, op. cit., p. 2246.

⁴ International Intellectual Property Alliance, *Piracy of U.S. Counterfeited Works in Ten Selected Countries*, 1985.

⁵ UNCTAD, 'Trade-Related Intellectual Property Rights: United States Trade Policy, Developing Countries and the Uruguay Round', *Uruguay Round: Further Papers on Selected Issues*, New York: UN, 1990, p.80.

⁶ Braga, op. cit., p. 37.

⁷ These agreements were: the *Paris Convention for the Protection of Industrial Property*; the *Berne Convention for the Protection of Literary and Artistic Works*; the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)*; and the *Treaty on Intellectual Property in Respect of Integrated Circuits (Washington Treaty)*.