



WORLD TRADE ORGANIZATION

Intellectual Property Rights

By Alexandra Courtis

Introduction

The World Trade Organization (WTO) defines intellectual property rights as “the rights given to people over the creations of their minds.” These rights usually give the creator the exclusive use of his or her creation for a certain period of time. Some forms of intellectual property rights, such as copyright laws, allow the inventor of a product to be acknowledged as its creator even though it might be produced on a massive scale. A patent, by contrast, relates more to the industrial applications of a product. This right essentially makes it illegal for other individuals to create the same product without crediting or paying a **royalty fee** to the original inventor.

Intellectual property rights are becoming increasingly relevant in a wide variety of contexts, ranging from Internet piracy and the trade of agricultural goods to the use of **infrastructure**-related inventions, such as irrigation systems. Typically, each country has its own series of intellectual property regulations and agencies that oversee these particular activities at the national level. At the international level, however, intellectual property rights are inconsistent at best and are extremely difficult to fully enforce.

At the same time, global trade between countries can hinder an inventor’s claim or access to his intellectual property rights that might have already been guaranteed by his own state. With the absence of an international regulatory agency, trade can occur without any credit or royalties paid to the original inventor. Further, without an international standard for intellectual property rights, it is very probable that most inventors, on an individual and industrial level, would not receive the full credit and financial benefit for many of their creations.

Royalty fee—a share of the profit, typically given to the original creator.

Infrastructure—the system of public works in a city, state, or country that enables it to function; includes personnel and equipment.

Explanation of the Problem

The TRIPS Agreement

The single most important piece of international legislature on intellectual property rights is known as the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS). The TRIPS document was established by an initiative under the **General Agreement on Tariffs and Trade (GATT)** in 1994. TRIPS essentially protects intellectual property rights in the international economy, and it also establishes and strongly supports a **protocol** for international licenses in such abstract

GATT—an international trade treaty that led to the development of the WTO.

trade areas as copyrights, patents, and trademarks. Perhaps most significantly, the TRIPS agreement lays out a specific framework that explains the remedying process for settling disagreements regarding intellectual property rights.

Although the TRIPS agreement has stood firm as an internationally recognized and respected trade agreement, it has encountered new challenges since the turn of the century. Since ratification of the TRIPS agreement, the number of inventions protected by intellectual property rights has exploded. Currently, intellectual property rights extend far beyond the realm of the media, books, and the arts. In fact, the most highly debated inventions now mostly concern intangibles such as research in drug development, strips of genetically altered genomes, and even methods for water purification. The TRIPS agreement has remained unflinching in protecting the creators of these new discoveries in the trading sector.

Still, the greatest issue with TRIPS is the effect it has had on the **developing world**. That is, by remaining so strict regarding the protection of intellectual property rights, it has become nearly impossible for countries with fledgling economies to take advantage of the new technological advances that are more visibly prevalent in the **developed world**.

Agriculture and Medicine

To properly understand the impact that TRIPS and its strict intellectual property rights regulations have had on the global economy, it is important to consider the effect such litigation has had on the trade of agricultural and medical products. Medicine is perhaps the primary sector that has led to the harshest criticisms of the TRIPS agreement. In the agricultural sector, while there are many differing viewpoints, the predominant sentiment has been rather negative.

In the medical sector, intellectual property rights are primarily relevant with regard to drug development and the distribution of medicines and antibiotics. Specifically, in the case of AIDS, the prices of antiretroviral drugs, which are the primary form of treatment for the disease, have soared. The prices have risen since many countries are simply not able to afford the desperately needed drugs; with such high demand for and such scarcity of these drugs, their prices are constantly getting pushed higher. The issue is that the best quality antiretroviral drugs are produced mostly in countries that have advanced research capacity and the ability to produce the drugs on a global scale. The drug companies that produce the medications subsequently apply for protection of their intellectual property rights for these discoveries. Once recognized under the TRIPS agreement, they become the only company that can produce the product. Moreover, if the company chooses to actually share any production information, they are entitled to very high royalty fees.

Developing world—*countries which have not yet reached certain standards of industrialization, democratization, human rights protection, and economic development.*

Developed world—*countries that have reached certain levels of economic, social, industrial, and political development.*

The second problem with this policy relates to health insurance and the cost of the drugs. Without health insurance, as is usually the case in most highly-infected areas, these patented AIDS medications are too costly for most individuals. Furthermore, due to the strict property rights established under TRIPS, no other country is allowed to cheaply produce the same medication unless they pay high royalty fees, making the cost of generic drugs effectively as expensive. In impoverished countries, there usually aren't pharmaceutical agencies that can afford to pay these fees. This situation may be acceptable for something less life-threatening, such as a weight-loss pill, but in the eyes of many experts, this is unethical in the case of global pandemics like AIDS.

The agricultural industry highlights a completely different component of the connection between intellectual property rights and trade. In the agriculture sector, intellectual property rights mostly concern specific breeds of livestock and genetically engineered agricultural products. That is, companies and farms usually petition for recognition of property rights under the TRIPS agreement so that they have exclusive right to use certain breeds of livestock and agricultural products. Similar to the pharmaceutical industry, the more technologically advanced crops and products are most prevalent in developed economies. These developed countries utilize **bioengineering** to make crops and agricultural products more stable and productive. Developing countries, on the other hand, mostly opt for traditional crops and breeds of livestock, which tend to be inferior in terms of production. While these developing nations have an interest in pursuing the more advanced technologies in the agricultural sector, they cannot afford to do so due to the strict protection of property rights under TRIPS.

Bioengineering—the application of biological and engineering techniques to modify certain traits within an organism.

Recent Developments

The Doha Development Agenda

The WTO continually attempts to respond to changes in the global economy by redrawing international trade regulations. These regulations typically deal with the sharing of technology, agricultural trade, tariff rates, and quotas; however, they have recently expanded to deal with intellectual property rights as well. It is important to note that the trade policies within the WTO are primarily driven by the more developed countries. This imbalance within the organization has created distortions in policy formulation and, thus, in free trade. In order to address the power imbalance between the developing and developed nations, the Doha Development Agenda (DDA) was initiated. The DDA began as a particular meeting, or round, of the WTO Ministerial Conference. The Ministerial Conference is the highest decision-making body in the WTO, meeting at least once every two years and providing political direction for the organization.

At the 2001 conference, the members of the WTO agreed to the following provisions regarding **extenuating** circumstances and the TRIPS agreement. The following excerpts are taken from paragraphs four through six in the Doha Declaration:

Extenuating—*to represent as less serious.*

4. The TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.
5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:
 - (a) In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.
 - (b) Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.
 - (c) Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
 - (d) The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each Member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.
6. We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory li-

censing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.

Despite initial strides made during the first round of negotiations on the Doha agenda in 2001, these negotiations soon reached a complete standstill, giving rise to subsequent rounds in an attempt to settle the many issues still in dispute. These negotiating roadblocks have revealed some fundamental conflicts of interest that divide the developing and developed countries. Although there have been a total of eight rounds of negotiations thus far, to date they have all failed to arrive at a comprehensive agreement or resolution.

Connections to Development and Globalization

Unsurprisingly, the TRIPS agreement has not been well received by developing countries. In fact, the provisions of the agreement are largely viewed as an inhibitor to various forms of development, in particular to infrastructure development. The frustration among the developing nations is compounded as a result of a global push toward **globalization**, which requires a strong infrastructure to facilitate business growth. Moreover, most of the developing world is bound under agreements initiated by the United Nations (UN) and other agencies to reach certain developmental standards within the next ten years. These requirements are usually extremely difficult to meet due to the fact that developing countries have weak economies and a lack of technology. Specifically, the nations are required to improve levels of health, decrease the prevalence of infectious diseases, and promote new infrastructure. Thus, from the perspective of developing countries, they need help from other nations' research and technologies to reach these goals. However, due to the strict property rights as established under the TRIPS agreement, they are instead left to utilize outdated technology while attempting to keep up with the rapid globalization of today's economy. In this sense, the TRIPS agreement has negatively impacted industrial development in less technologically-advanced countries by preventing **unfettered** access to new technologies that have been created in industrialized countries.

Of course, from the perspective of developed countries, these accusations are unwarranted and ill-founded, as they argue that they have the rights to their own creations. While they enjoy protection of their intellectual property right now, certain portions of the TRIPS agreement are actually set to expire in 2016. Therefore, developed countries argue that they are already agreeing to have exclusive rights over their property for a only short amount of time rather than indefinitely. In addition, some developed nations have gone out of their way to volunteer their free services to help countries reach development

Globalization—*the development of an increasingly integrated global economy and world system.*

Unfettered—*unlimited.*

goals.

WTO Dynamics

Overall, the debate on this issue has created an unfortunate rift within the WTO between the developed and the developing world. Most **non-governmental organizations (NGOs)** and advocacy groups, however, are completely against the TRIPS agreement because they believe that intellectual property rights fees and royalties only serve to stall development. For similar reasons, the media has portrayed TRIPS and the motivation behind the agreement in an extremely negative light. These combined pressures have brought the issue of intellectual property rights to the fore during recent meetings of the WTO on Doha Development Agenda negotiations.

As is true with most WTO negotiations, developed countries usually hold more of an authoritative vote in the development of policy due to their more advanced economies and levels of development. On the other hand, developing countries tend to doubt all suggestions, however valid, from the more advanced countries. This level of suspicion and resentment of advanced countries has generated a political climate of distrust during past Doha Round debates on the TRIPS agreement. Even though the developing countries in the WTO may be justified in requesting the suspension and/or revision of the TRIPS agreement, their arguments have thus far failed. TRIPS still remains the active policy of the WTO and is **slated** for expansion under the Doha Development Agenda.

Non-governmental organization (NGO)—*an entity composed of private individuals and organizations that is not officially affiliated with any government.*

Slated—*scheduled.*

Focus of the Debate

Perhaps the greatest question you will encounter during debate on this subject is its relevance to the current Doha Development Agenda. In particular, you will have to consider whether or not the TRIPS agreement should remain as an active component of WTO policy or be completely scrapped in favor of a new agreement. It is within the power of your committee to call for an investigation or report to assess the current situation with the TRIPS agreement and recommend any potential amendments.

Furthermore, the TRIPS agreement also gives the WTO the power to act as a mediating body between two countries in dispute over intellectual property law. As you will be simulating an official gathering of the WTO, you should be prepared to act as a mediating body for a dispute presented during committee session.

In general, the debate in our Doha subcommittee on TRIPS will not delve into the specificities of intellectual property law. Instead, you will focus on present-day examples of the impact that intellectual prop-

erty rights law has on the global economy and your particular nation. At current meetings regarding the Doha Development Agenda, the status of a country's economy is the main indicator of that country's stance on this issue. Moreover, country policy is very heavily impacted by a variety of lobbying or special interest groups in various industries. It will be up to you to consider the strongest industries and lobbying groups in your nation and how the TRIPS agreement affects their business. The lobbying groups, interests, positions, and pertinent economic factors will all be crucial in the committee's debate on the TRIPS agreement.

NGO Perspectives

Greenpeace

As an environmental organization, Greenpeace has not developed a strong stance on TRIPS, but it does feel that TRIPS needs to be amended to allow for a better exchange of genetic information used in agriculture. Greenpeace is also concerned with limits that TRIPS puts on technologies that can be used by developing nations to generate green power and lower their carbon emission. As such, Greenpeace is indeed interested in intellectual property rights law on a global scale in terms of how it can assist what they term the “**energy revolution.**”

Energy revolution—
transition to an economy that is completely fueled by green energy.

Oxfam

Oxfam International is extremely concerned with the way that trade policy interacts with human development and, more generally, poverty and governmental infrastructure. For these reasons, Oxfam has historically been critical of the place that the World Trade Organization should hold in the international sector and its potential effect on the developing world. In short, Oxfam views the TRIPS agreement in a very negative way. While it is noble that TRIPS seeks to protect the rights of both consumers and producers, Oxfam views TRIPS as yet another policy initiated by the developed world to maintain its economic advantage over regions struggling with poverty.

Amnesty International

As a human rights organization concerned with individual liberties, Amnesty International's perspective on TRIPS is primarily relevant when an individual's intellectual property rights are infringed upon. In recent history, Amnesty has not dealt with any cases that address intellectual property rights or any component of the TRIPS doctrine. This is not to say that Amnesty has not taken a position on the Doha Development Round negotiations or any other component of WTO policy; in fact, Amnesty has been continuously vocal when it comes to the development or alteration of existing trade agreements. Most notably, Amnesty has advocated that the WTO phrase trade policy in terms that re-

spect human rights obligations established in international doctrine such as the United Nations Declaration of Human Rights.

Possible Solutions

Any potential solutions on this topic should primarily be driven by the course of the debate in committee and what particular sub-topics you choose to present during debate. As it is a **multifaceted** topic, there is a number of ways in which you may choose to direct the debate. That being said, it is important to be mindful of current solutions or new plans being considered to address the content of the TRIPS agreement.

Multifaceted—to be composed of many parts.

Repeal TRIPS

It is no secret that a wide number of developing countries do not feel that TRIPS is a legitimate component of current trade policy. As such, it is to be expected that, in terms of potential solutions, a complete revocation of TRIPS has been discussed. This nullification of the TRIPS doctrine would not indicate a lack of concern for intellectual property rights but rather a reformulation of the agreement. The new agreement that would take the place of TRIPS would be more inclusive and would ideally address, or at least consider, the concerns of the developing world.

TRIPS Policy in the UN

Another secondary solution to several of the conflicts surrounding the TRIPS doctrine has been potentially instituting TRIPS as a component of UN policy. While the WTO would still be involved in disputes on intellectual property rights, patents, agreement, and trade, the actual document would be developed through the more inclusive forum of the United Nations. This would not be an easy task as it would entail a large amount of negotiation and cohesion both within the WTO and in discussions with the UN.

Conclusion

Again, for our discussion on this topic, we will not be considering intellectual property rights and the TRIPS agreement in a purely legal context. Instead, we will be focusing on particular instances in which intellectual property rights have come into play during global trade. In addition, you as delegates will have a chance to be involved in a simulation of a trade dispute involving the issue of intellectual property rights. Some potential solutions have been presented throughout this briefing, but it is up to you as your nations' representatives to the World Trade Organization to consider an agreeable, innovative, and mu-

tually beneficial solution to this issue.

Guide to Further Research

Below are several pertinent questions relating to the TRIPS agreement and WTO policy. Thoroughly consider these issues before the start of the conference, and use them to help direct your individual research.

1. Should TRIPS be completely revoked or merely edited as a component of the new Doha Development Agenda?
2. Should developing and developed countries change their stance on the TRIPS Agreement in light of pressing issues of the 21st century? If so, how?
3. How should issues with intellectual property rights be addressed in the case of disease, deployment of humanitarian aid, and global issues like climate change?
4. If TRIPS were to be **revoked**, what impact would this have on entrepreneurs, inventors, and technological companies?
5. In what ways are some countries' independent copyright and patent-related legislation in direct violation of the TRIPS agreement?
6. Is it an appropriate responsibility for the WTO to develop international intellectual property rights law, or is this an issue better suited for a different international agency?

Revoke—to cancel or annul by calling back.

In terms of specific sources of research, it would be extremely helpful for you to spend your time researching the WTO website and the links it provides to other sources. Because we will not be going into the legal components of the TRIPS agreement, it will be the most helpful for you to investigate the WTO's historical stance and current debates regarding the regulation of intellectual property rights issues. Pay particular attention to the position that your nation takes in this debate. More information on the Doha Development agreement can also be found on the WTO website. If you should have any questions while researching this issue, please feel free to contact your HMCE WTO chair, Alexandra Courtis (acourtis@fas.harvard.edu).

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