

Class 4 TRIPS
Revision

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TRIPS Agreement

- IPR Norm Creation
- Domestic Implementation
- TRIPS Flexibilities
- TRIPS Revision
- Dispute Resolution Machinery

IPR Norm Creation

- Establishment of minimum standards in relation to: patents, copyright, trade marks, industrial designs, integrated circuits, confidential information and IP licence conditions.

TRIPS Art.1.1

- 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,...
- Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

TRIPS Implementation Schedule

- Industrialised countries by end of 1995 (Art. 65.1)
- Developing country by end of 1999 (Art. 65.2)
- Countries in transition from centrally-planned economy by end of 1999 (Art 65.3)
- Least developed countries (LDCs) by end of 2005, but extended by agreement (Art.66.1)

A number of developing countries (eg Cuba, Dominican Republic, Egypt, Honduras) indicated that the transitional implementation period of five years, granted under Art. 65.2 has been insufficient to undertake the complex and costly administrative tasks required under the TRIPs Agreement, such as the modernization of their administrative infrastructure (intellectual property offices and institutions, the judicial and customs system), as well as the promulgation of new intellectual property laws. They have, therefore, sought an extension of the transition period for developing countries

Domestic implementation considerations

- infrastructure needs
- resource limitations
- trade and development priorities
- industrial profile
- legal tradition
- regional developments
- international cooperation
- common technical standards

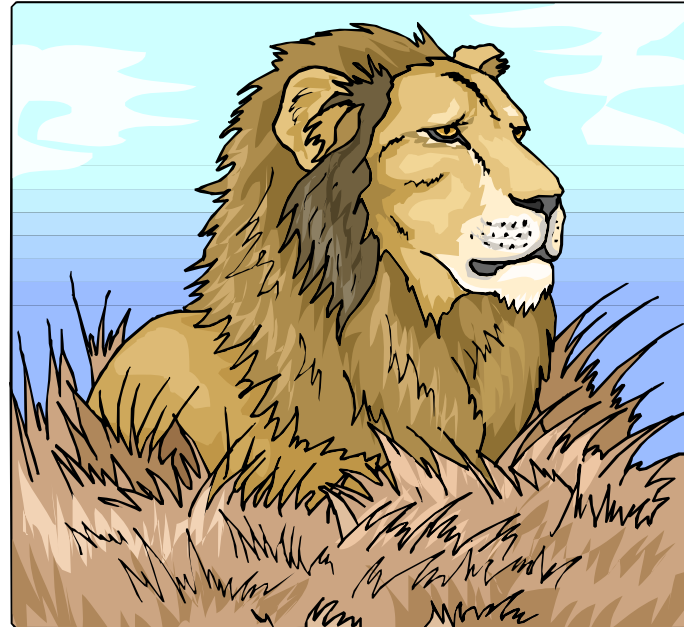
TRIPS Flexibilities

Trademarks

- Art.15.1 Members **may** require, as a condition of registration, that signs be visually perceptible.

Trademarks can be:

Sounds



Lion roar for MGM

The Smell of Grass



- EU Trademarks Office
- Smell of fresh cut grass applied to tennis balls
 - Vennootschap onder firma senta aromatic marketing

Another smell

2000234



- Strong smell of bitter beer applied to flights for darts
- Unicorn Products Ltd
- Flights for darts

A Gesture

The Mark is a gesture made by a person by tapping one side of his/her nose with an extended finger, normally the index finger of the hand on the side of the nose being tapped. An example is shown below.



2001263

- Derbyshire Building Society
- Mortgage, investment and pension services

Patents

- extension of the standard patent term to 20 years
- patentability available for all technologies (subject to limited exceptions)
- introduction of provisions on compulsory licenses

Art.25 Industrial Designs

- Members shall provide for the protection of independently created industrial designs that are new or original.
- Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

Eg Australia - “New and distinctive”

- (1) A design is a **registrable design** if the design is new and distinctive when compared with the prior art base for the design
- (2) The **prior art base** for a design consists of:
 - (a) designs publicly used in Australia; and
 - (b) designs published in a document within or outside Australia; and
 - (c) designs (disclosed in a design application with an earlier priority date)



Art. 27.1 Patents

- patents shall be available for any **inventions**, whether products or processes, in all fields of technology...

Is DNA an invention?

Association for Molecular Pathology v. Myriad Genetics Inc. 569 U.S. 12-398 (2013)
United States Supreme Court

- Myriad Genetics, Inc. Obtained patents on two human genes, mutations of which can substantially increase the risks of breast and ovarian cancer.
- This case required the Supreme Court to resolve whether a naturally occurring segment of deoxyribonucleic acid (DNA) is patent eligible under 35 U. S. C. §101 [the US Patents Code] by virtue of its isolation from the rest of the human genome.

Myriad Genetics in the US Supreme Court

- “we hold that a naturally occurring DNA segment is **a product of nature** and not patent eligible merely because it has been isolated”

Art. 5.2 EU Biotechnology Directive

Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions

2. An element **isolated** from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, **may constitute a patentable invention**, even if the structure of that element is identical to that of a natural element.

Art 27.3(b) Plant Variety Protection

- Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.

TRIPS Revision

Built in reform agenda: eg plant variety protection (art. 27.3.b); geographical indications (art. 23.4)

Plant Variety Rights Protection

- Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.
- The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement. (ie by the end of 1999)

Geographical Indications

- Art 24.2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement.

General Revision of TRIPS

Art.71 requires the Council for TRIPS to review the implementation of the Agreement from after the expiration of five years from 2000 and at two year intervals after that.

Revision Conferences

- Singapore 1997
- Seattle 1999
- Doha 2001
- Cancun 2004
- Hong Kong 2005
- Geneva 2009
- Geneva 2011
- Bali 2013
- Nairobi 2015

Review agendas EU

the TRIPS Agreement establishes minimum intellectual property standards "from which to seek further improvements in the protection of IPR. There should therefore be no question, in future negotiations, of lowering of standards or granting of further transitional periods".^[i]

^[i] WT/GC/W/193.

Review agendas - Japan

"We should not discuss the TRIPS Agreement with a view to reducing the current level of protection of intellectual property rights. To the contrary, the TRIPS Agreement should be improved properly in line with new technological development and social needs". [\[i\]](#) WT/GC/W/242.

Review agendas –India

“the TRIPS Agreement may be reviewed to consider ways and means to operationalize the objective and principles in respect of transfer and dissemination of technology to developing countries, particularly the least developed amongst them” .[\[i\]](#) WT/GC/W/147.

Doha Declaration Nov. 2001

19. We instruct the Council for TRIPS, in pursuing its work programme including ... the review of the implementation of the TRIPS Agreement under Article 71.1 ... to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1.

In undertaking this work, the **TRIPS Council** shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and **shall take fully into account the development dimension.**”

Article 7 Objectives

- 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.

Geographical Indications

Doha Declaration 18. ...we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits ... We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS...