



## RESEARCH ARTICLE

### Regulations for Trade Related Aspects of Intellectual Property Rights

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#### ABSTRACT

The Agreement on Trade related Aspects of Intellectual Property Rights of the WTO is commonly known as the TRIPS Agreement or simply TRIPS. TRIPS is one of the main agreements comprising the World Trade Organisation (WTO) Agreement. This Agreement was negotiated as part of the eighth round of multilateral trade negotiations in the period 1986-94 under General Agreement on Tariffs and Trade (GATT) commonly referred to as the Uruguay Round extending from 1986 to 1994. It appears as Annex 1 C of the Marrakesh Agreement which is the name for the main WTO Agreement. The Uruguay Round introduced intellectual property rights into the multilateral trading system for the first time through a set of comprehensive disciplines. The TRIPS Agreement is part of the “single undertaking” resulting from the Uruguay Round negotiations. This implies that the TRIPS Agreement applies to all WTO members, mandatorily. It also means that the provisions of the agreement are subject to WTO dispute settlement mechanism which is contained in the Dispute Settlement Understanding (the “Understanding on Rules and Procedures Governing the Settlement of Disputes”). The TRIPS Agreement is one of the most important agreements of the WTO.

**Keywords:** TRIPS, WTO, GATT, Trade

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#### 1. Introduction

Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement between the member nations of World Trade Organization

(WTO). TRIPS Agreement is aimed at harmonizing the Intellectual Property (IP) related laws and regulations worldwide. The TRIPS Agreement accomplishes this motive

by setting minimum standards for protection of various forms of IP. The nations that are signatory to the TRIPS Agreement have to abide by these minimum standards in their national laws related to IP. The TRIPS Agreement generally sets out the minimum standards regarding the grant of rights to the owner of IP, enforcement requirements in the national laws, and settlement of disputes and remedies to those whose IP rights get infringed<sup>1</sup>. The coverage of the TRIPS Agreement encompasses the various areas of IP including patents, trademarks, copyrights, geographical indications, industrial designs, etc. The objective of the TRIPS Agreement is to ensure the protection and enforcement of Intellectual Property Rights (IPR) to contribute to the promotion of technological innovation, transfer and dissemination of technology, mutual advantage of producers and users of technological knowledge in a manner that is conducive to social and economic welfare, and balance of rights and obligations, worldwide.

## 2. Structure of the TRIPS Agreement

Buffer: Acetonitrile (55: 45 v/v), pH of buffer adjusted to 5.8 with

The three important features of the Agreement, i.e. standards, enforcement and dispute settlement are covered in seven parts i.e. the Agreement consists of seven parts. Part I deals with the general provisions and basic principles. Part II describes the standards concerning the availability, scope and use of IPR with respect to different types of IP. Part III describes the IPR enforcement obligations of member nations, and Part IV addresses the provisions for acquiring and maintaining IPR<sup>2</sup>. Part V is directed specifically to dispute settlement under the Agreement. Part VI concerns transitional arrangements, and the Part VII concerns various institutional arrangements. The detailed discussion of the above mentioned seven parts of the Agreement will follow in subsequent sections of this article.

### Standards Concerning the Availability, Scope and Use of IPR

Part II of the agreement consists of 22 articles which deal with each of the areas of IP covered by the Agreement with respect to the main elements of protection, such as, the subject-matter to be protected, the rights to be conferred and permissible exceptions to those rights, and the minimum duration of protection. This is one of the most important parts of the Agreement as it deals with almost all the forms of IP like, Patents, Trademarks, Copyrights, Geographical Indications, etc. As an obligation under this part of the Agreement, all the member nations have to provide same protection to each of the IPs covered by the Agreement. For example, in all the member nations the duration of protection offered by a utility patent has to be for minimum 20 years.

### Agreement on Trade-Related Aspects of Intellectual Property Rights

#### Part I- General provisions and basic principles

**Article 1 Nature and Scope of Obligations:** 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, provided that such protection does not

contravene the provisions of 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<sup>3</sup>.

**Article 2 Intellectual Property Conventions:** In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

**Article 3 National Treatment:** Each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection<sup>3</sup> of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits.

**Article 4 Most-Favoured-Nation Treatment:** With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation is any advantage, favour, privilege or immunity accorded by a Member:

**Article 5 Multilateral Agreements on Acquisition or Maintenance of Protection:** The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

**Article 6 Exhaustion:** For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights<sup>4</sup>.

**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.

**Article 8 – Principles:** Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement<sup>5</sup>.

### Part II - Standards concerning the availability, scope and use of intellectual property rights

#### Section 1: Copyright and Related Rights

**Article 9 Relation to the Berne Convention:** Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived there from.

**Article 10 Computer Programs and Compilations of Data:** Computer programs, whether in source or object code, shall

be protected as literary works under the Berne Convention (1971).

**Article 11 Rental Rights:** In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works.

**Article 12 Term of Protection:** Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making<sup>6</sup>.

**Article 13 Limitations and Exceptions:** Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

**Article 14 Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations:** In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation.

## Section 2: Trademarks

**Article 15 Protectable Subject Matter:** Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks.

**Article 16 Rights Conferred:** The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion<sup>7</sup>.

**Article 17 Exceptions:** Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

**Article 18 Term of Protection:** Initial registration and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

**Article 19 Requirement of Use:** If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other

government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

**Article 20 Other Requirements:** The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings<sup>8</sup>.

**Article 21 Licensing and Assignment:** Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

## Section 3: Geographical indications

**Article 22 Protection of Geographical Indications:** Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

**Article 23 Additional Protection for Geographical Indications for Wines and Spirits:** Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

**Article 24 International Negotiations; Exceptions:** Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

## Section 4: Industrial designs

**Article 25 Requirements for Protection:** Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

**Article 26 Protection:** The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

## Section 5: Patents

**Article 27 Patentable Subject Matter:** Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.<sup>5</sup> Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced..

**Article 28 Rights Conferred:** Where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing<sup>6</sup> for these purposes that product;

**Article 29 Conditions on Patent Applicants:** Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application<sup>9</sup>.

**Article 30 Exceptions to Rights Conferred:** Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

**Article 31 Other Use without Authorization of the Right Holder:** Where the law of a Member allows for other use<sup>7</sup> of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government.

**Article 32 Revocation/Forfeiture:** An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

**Article 33 Term of Protection:** The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.<sup>8</sup>

**Article 34 Process Patents: Burden of Proof:** For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process<sup>10</sup>.

## Section 6: Layout-designs (Topographies) of integrated circuits

**Article 35 Relation to the IPIC Treaty:** Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

**Article 36 Scope of the Protection:** Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:<sup>9</sup> importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

**Article 37 Acts Not Requiring the Authorization of the Right Holder:** Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design<sup>11</sup>.

**Article 38 Term of Protection:** In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

## Section 7: Protection of undisclosed information

**Article 39:** In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

## Section 8: Control of Anti-competitive practices in contractual licences

**Article 40:** Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

## Part 3 - Enforcement of Intellectual property rights

### Section 1: General obligations

**Article 41:** Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

### Section 2: Civil and administrative procedures and remedies

**Article 42 Fair and Equitable Procedures:** Members shall make available to right holders<sup>11</sup> civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal

counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances.

**Article 43 Evidence:** The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

**Article 44 Injunctions:** The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

**Article 45 Damages:** The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

**Article 46 Other Remedies:** In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed<sup>12</sup>.

**Article 47 Right of Information:** Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

**Article 48 Indemnification of the Defendant:** The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

**Article 49 Administrative Procedures:** To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

### **Section 3: Provisional measures**

**Article 50:** The judicial authorities shall have the authority

to order prompt and effective provisional measures. To prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance.

### **Section 4: Special requirements related to border measures<sup>12</sup>**

**Article 51 Suspension of Release by Customs Authorities:** Members shall, in conformity with the provisions set out below, adopt procedures<sup>13</sup> to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods<sup>14</sup> may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods.

**Article 52 Application:** Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities<sup>13</sup>.

**Article 53 Security or Equivalent Assurance:** The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

**Article 54 Notice of Suspension:** The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

**Article 55 Duration of Suspension:** If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

**Article 56 Indemnification of the Importer and of the Owner of the Goods:**

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner

of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

**Article 57 Right of Inspection and Information:** Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected.

**Article 58 Ex Officio Action:** Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed<sup>14</sup>.

**Article 59 Remedies:** Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46.

**Article 60 De Minimis Imports:** Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments.

#### **Section 5: Criminal procedures**

**Article 61:** Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence.

#### **Part 4 - Acquisition and maintenance of intellectual property rights and related *inter-parties* procedures**

**Article 62:** Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

#### **Part 5- Dispute prevention and settlement**

**Article 63 Transparency:** Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them.

**Article 64 Dispute Settlement:** The provisions of Articles

XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

#### **Part 6 - Transitional arrangements**

**Article 65 Transitional Arrangements:** Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

**Article 66 Least-Developed Country Members:** In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

**Article 67 Technical Cooperation:** In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favor of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel<sup>15</sup>.

#### **Part 7- Institutional arrangements; final provisions**

**Article 68 Council for Trade-Related Aspects of Intellectual Property Rights:** The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures.

**Article 69 International Cooperation:** Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

**Article 70 Protection of Existing Subject Matter:** This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

**Article 71 Review and Amendment:** The Council for

TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

**Article 72 Reservations:** Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members<sup>16</sup>.

**Article 73 Security Exceptions:** Nothing in this Agreement shall be construed: To require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests.

### 3. Conclusion

Intellectual property rights or IPRs are rights given to people over the creations of their minds. These rights are given by society through the State as an incentive to produce and disseminate ideas and expressions that will benefit society as a whole. Unlike Fundamental Rights of citizens which are guaranteed by the Constitution of a country, IPRs are statutory rights enacted by the lawmaking authority in a country. On almost all the IPRs discussed, negotiations are afoot in various international fora. There is current debate on patenting of life forms, whether access to medicines through Doha declaration has been achieved, etc. Other issues of concern are biodiversity and its link with *Sui generis* systems of plant protection and technology transfer. There is also debate on whether to extend enhanced protection for geographical indications beyond wines and spirits. Some of the issues that are under debate relating to TRIPS are; The effectiveness of the 2003 “waiver” in the 2001 Doha Declaration on TRIPS and Public Health. The waiver in Doha Declaration removes a requirement that generics produced under compulsory license should be mainly for the domestic market. This would hinder their export to countries that cannot make the medicines. The TRIPS Agreement has been amended in 2005 to include these provisions in it, but the amendment has not come into force as most Members have not ratified it so far. In addition, the mechanism established in the 2003 waiver for providing affordable medicines to poor countries does not seem to have worked as only one case of its use exists (where Rwanda obtained medicines from Canada), and that too has not been very successful. WTO members are reviewing this provision.

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