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**Pratyansha Panigrahi**  
Advocate and Student LLM,  
Ajeenkya D Y Patil  
University, Pune,  
Maharashtra, India

**Dr. Shaista Peerzada**  
Assistant Professor, Ajeenkya  
D Y Patil University, Pune,  
Maharashtra, India

**Nikhil Rote**  
Assistant Professor, Ajeenkya  
D Y Patil University, Pune,  
Maharashtra, India

## World trade organization's function in protecting intellectual property

**Pratyansha Panigrahi, Dr. Shaista Peerzada and Nikhil Rote**

### Abstract

This paper analyzes the main economic issues of intellectual property rights (IPRs) protection in the context of the World Trade Organization (WTO). A retrospective view on the establishment of the TRIPS (trade-related aspects of intellectual property rights) Agreement, a still controversial accomplishment of the Uruguay Round of trade liberalization, is provided. The paper reviews the economic rationale for the harmonization of IPRs, drawing both on economic theory considerations as well as emerging empirical evidence. The impact that IPR protection can have in promoting growth and development, and the relation of IPRs with other economic policies, is discussed. The paper concludes with an analysis of the prospects for more (or less) IPRs-related consensus in the current round of WTO.

**Keywords:** World trade organization, IP protection, TRIPS, dispute resolution consultation

### Introduction

An international body called the World Trade Organization (WTO) was established to control global commerce and trade. It was put into effect in 1995 as a result of the Marrakesh Agreement, which at the time was signed by 123 states and replaced the General Tariff and Trade Agreement.

### The WTO has made two major contributions to IP Protection in pursuit of its ultimate goals

The Treaty on Trade-Related Intellectual Property Rights-related Aspects was signed first (TRIPS). It is a global treaty among the World Trade Organization's members. It establishes the requirements for the security of intellectual property and, as a result, is applicable to the aforementioned member nations.

It was decided upon during the ongoing Uruguay Round of the GATT, and the WTO is still in charge of administering it. In addition to stipulating implementation procedures, recourses, and conflict resolution processes, TRIPS guarantees several intellectual property rights. The design of a successful conflict settlement system is the next. The official dispute settlement plan was the subject of heated debate during the Uruguay Round and was eventually outlined in the Dispute Settlement Arrangement, which was a component of the Agreement that established the WTO.

The TRIPS Agreement and Conflict Resolution Procedure are the two most significant contributions made by the World Trade Organization, and this study tries to analyse them in light of the most recent advancements in the fields of international trade and intellectual property. It also shows how some of the clauses that have been criticised require to be revised in order to make them work for meeting the demands of the world community today.

### WTO and Travel Accord

The TRIPS Agreement is the result of a number of agreements that have been governing intellectual property rights since about the late 1800s. This covers the UCC, the Rome Conference, the Berne and Paris Conventions. The need for countries to protect IP Rights served as the impetus for the creation of the TRIPS Agreement, which has now evolved into one of the most complex worldwide systems of IPR rules. The US is said to have been wary of the ability of organisations like the UN and WIPO to seriously consider the value and intellectual property protection in a setting where emerging economies could object. The IP regulatory mechanisms in place at the time were not thorough or uniform. Whatever rules were in place lacked the capacity to impose sanctions or punishments for failure to adhere to the statute's requirements.

### Correspondence

**Pratyansha Panigrahi**  
Advocate and Student LLM,  
Ajeenkya D Y Patil  
University, Pune,  
Maharashtra, India

In fact, according to 1988 research by the International Intellectual Property Organization, the majority of the countries that were signatories to the Paris Agreement only accepted the laws that benefited them personally, either socially or commercially. It is said that perhaps the entire goal of making intellectual property (IP) a trade-related issue was owing to the significant income losses sustained by businesses as a result of acts of piracy. The developed United States substantially led the effort at the Uruguay Round to pressure developing and underdeveloped countries to ratify TRIPS.

Both developing and less developed countries at the GATT-WTO conference believed that providing severe IPR protection was on the agenda and that doing so could obstruct the transfer of knowledge and skills and drive up the price of agricultural and pharmaceutical products. They heavily rely on these goods to generate a sufficient amount of income. These nations then emphasised the need to maintain flexibility when carrying out the monetary and sociological goals of the TRIPS. With the ratification of this agreement, affiliates were promised that trade-related barriers would be minimised and one-sided trade licences would be abolished.

Although the Agreement has received a number of critiques since its inception, it has succeeded in lowering tensions amongst parties involved in IP issues.

In addition, developing countries have been participating in IP trade as they open up to global chains and acknowledge their capacity for innovation and creativity.

- The Agreement established guidelines for the protection of IP with the intention of facilitating and promoting IP trade. However, the drafters purposefully provided room for manoeuvring for the advantage of all signatories to safeguard areas of national interest.
- A revolutionary idea in international commerce emerged after TRIPS was established; in late 2001, a resolution pertaining to pharmaceutical products was put into effect in Doha. This made it possible for the majority of developing countries to use Article 6 of the Agreement to protect the public's health. It has to do with the implementation of compulsory licencing. Through this procedure, cheaper medications were able to be produced in place of those made in developing countries, which lacked adequate facilities for doing so.
- By requiring WTO participants to keep all WTO states informed of domestic laws and implementation mechanisms, the Agreement increased transparency.
- Facilitated knowledge exchange.

### **WTO Intellectual Property Rights Dispute Resolution Procedure**

One important aspect of TRIPS is that disputes between signatories over obligations under the Agreement may be resolved through the WTO's Dispute Settlement System (DSS). Prior IP legislation did not include provisions for global redress. In accordance with the DSU, the signatory countries are committed to addressing complaints of abuse of the Agreement's provisions as well as those abuses themselves. The DSS was designed to ensure that disagreements among signatories be resolved expeditiously and effectively.

### **Stages of Dispute Resolution Consultation:**

- The DSU permits a signatory to consult another regarding issues affecting agreements made in the area of the latter. If one signatory requests communication with another, the latter must respond within 30 days. The complainant has the right to request a panel if the dispute is not resolved in 60 days. In the event that the second party refuses to engage in conversation with the first, a panel may also be summoned.
- **Establishment of Dispute Panel:** A petition for a panel must be made in writing and include a description of the issues at hand as well as a summary of the justifications for the request. Any of the participating states may contest this. Until it decides differently, the DSB must mention every such request for a panel in the meeting when it is put on the agenda. The DSB typically holds meetings once every 30 days, but the complainant has the right to request that a meeting be held to discuss a panel request. After the plaintiff requests that meeting, such a conference must be held fifteen days later.
- **Procedures:** In drawing conclusions and making recommendations, the panel will take into account the written submissions and the arguments made by the contesting states. Following examination and approval, the same are distributed to all member countries. Normally, this circulatory process should be finished in 6 months, but it may take an additional 3 months.
- **Panel Verdicts:** Panel verdicts may be appealed through an Appellate Body acknowledged by the DSB. The Body should be composed of at least seven members who collaborate on a specific dispute. Only legal matters in the reports sent to this body by the Panel are to be taken into consideration.

They can also make clear legal positions for murky provisions. The Board's proceedings must be kept confidential and must not be shared with anybody. The conclusions and inferences of the panel may be accepted, modified, or reversed as a result of the appellate body's decisions. The Body's conclusions must be acknowledged and cannot be changed until a decision to that effect is passed within 30 days of the conclusions being circulated to the undersigned.

### **Committees for Compliance**

Either party has the right to request the creation of Compliance Panels if there is a problem with acquiescence. A compensation agreement may be made if the signatory doesn't follow the decision within the time frame set forth by the Panel.

The Signatories might also choose arbitration as a different option for resolving current problems. Before using the arbitration process, these members must first agree on its parameters and notify the other members of their agreement. On the premise that they have consented to arbitration as an alternative conflict resolution method, parties besides the conflicting parties may participate in the arbitration.

The Canada Cheap Pharmaceuticals Issue and the India Mailbox Matter were two of the WTO DRP's most notable decisions. The Mailbox regulation of India, which permitted patent claims for both pharmaceutical and agricultural

items, was a major problem in the Mailbox case. Additionally, it stipulated exclusivity for their marketing. The TRIPS Agreement's Article Twenty-Seven was under question.

The Panel's decision that the filing system was not in conflict with Article 70.8 and that the absence of private promotion rights violated Article 70.9 was submitted to the Appellate authority for reconsideration. The appellate authority confirmed both conclusions but disregarded reasonable expectations as a yardstick for interpreting the Agreement.

### **Criticism of the trips agreement and WTO's IPR dispute resolution system**

#### **TRIPS Convention**

- The ineffectiveness of sharing technological developments and inventions, as well as the provision of financial and procedural help to developing countries and LDCs as required by Articles 66 and 67. When it comes to the obligation to protect IP, TRIPS is reasonably clear, but it is silent about what constitutes effective protection.
- The absence of a developed, developing, or LDCs description this ambiguity makes enforcement difficult.
- Art. 66 mandates indirect pressure on autonomous firms to transfer knowledge and experience to LDCs and developing countries. When it comes to the use of their own technology, private enterprises are not subject to government regulation in a number of states with advanced technology.
- The pledge of wealthy nations is disregarded by the Agreement itself. To avoid fulfilling their obligations, they turn to legal nuances. They contend that Art. 66 merely authorised the supply of inducements to private firms and lacked any obligation to compel them to share their technology with LDCs and developing countries.
- According to Article 67, industrialised countries must offer financial and practical assistance to DCs and LDCs upon request and under mutually agreed-upon conditions. Legal rules, the establishment of workplaces, and training are all part of this assistance. Nevertheless, a number of experts question the effectiveness of this rule.
- Public Health: The Doha Conference, where the Doha Declaration was ratified, is where TRIPS was born. Discussions on public health, particularly those pertaining to HIV/AIDS and other epidemics, benefited from the intense determination of DCs and NGOs. The Declaration recommended that the Pact should not prevent the signatories from adopting actions to protect the general welfare of society. There are not enough treatments available due to the size of the health issues and pharmaceutical patents.

#### **UN DSS**

Non-governmental organisations and non-state actors have no opportunity to take part in the DRP.

The World Commerce Organization's mandate is to promote free trade, therefore measuring a country's development, its workforce, its health care system, its intellectual property, and other issues that are impacted by the reports that the WTO implements is not necessarily appropriate.

There are numerous opportunities for conciliation, negotiation, and arbitration regarding the DSU. This approach essentially supports the bodies that the Understanding envisions, along with the diplomatic principles that underpin them. This has, however, turned out to be more of a drawback because it is based on secrecy, lacks fair trials, encourages authoritarianism, and renders arbitrary decisions.

**Ability and Prejudice:** People who are helping with the disputes before the Organization are concerned that perhaps the bodies that hold hearings and evaluate written submissions are not as competent as they should be. The challenges are inherently complex, thus people chosen to render judgments do not necessarily need to be knowledgeable enough to comprehend the difficulties at hand or the effects of their decisions on the problematic areas. Additionally, when signatories are subjected to the same sanctions as those involved in disputes, bias issues become more prevalent.

The Secretariat has accepted the duty of filling gaps in the understanding of the WTO agreements, but these views are not subject to review or consultation with the parties to the treaties.

#### **Conclusions**

As noted above, the WTO still has a ways to go despite having reached a number of milestones since included intellectual property under its purview. To ensure that they are beneficial to people that depend heavily on their intellectual property to advance towards a prosperous future, both the TRIPS Agreement and the DSS/DRP, two of the WTO's arms, need to undergo significant adjustments.

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