



UNDERSTANDING THE WTO: THE AGREEMENTS

Intellectual property: protection and enforcement

The WTO's [Agreement on Trade-Related Aspects of Intellectual Property Rights \(TRIPS\)](#), negotiated in the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time.

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Ideas and knowledge are an increasingly important part of trade. Most of the value of new medicines and other high technology products lies in the amount of invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value – for example branded clothing or new varieties of plants.

Creators can be given the right to prevent others from using their inventions, designs or other creations – and to use that right to negotiate payment in return for others using them. These are “intellectual property rights”. They take a number of forms. For example books, paintings and films come under copyright; inventions can be patented; brandnames and product logos can be registered as trademarks; and so on. Governments and parliaments have given creators these rights as an incentive to produce ideas that will benefit society as a whole.

The extent of protection and enforcement of these rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and for disputes to be settled more systematically.

The Uruguay Round achieved that. The WTO's [TRIPS Agreement](#) is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it strikes a balance between the long term benefits and possible short term costs to society. Society benefits in the long term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and inventions enter the public domain. Governments are allowed to reduce any short term costs through various exceptions, for example to tackle public health problems. And, when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.

The agreement covers five broad issues:

- how basic principles of the trading system and other international intellectual property agreements should be applied
- how to give adequate protection to intellectual property rights
- how countries should enforce those rights adequately in their own territories
- how to settle disputes on intellectual property between members of the WTO
- special transitional arrangements during the period when the new system is being introduced.

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As in GATT and GATS, the starting point of the intellectual property agreement is basic principles. And as in the two other agreements, non-discrimination features prominently: [national treatment](#) (treating one's own nationals and foreigners equally), and [most-favoured-nation treatment](#) (equal treatment for nationals of all trading partners in the WTO). National treatment is also a key principle in other intellectual property agreements outside the WTO.

The TRIPS Agreement has an additional important principle: intellectual property protection should contribute to technical innovation and the transfer of technology. Both producers and users should benefit, and economic and social welfare should be enhanced, the agreement says.

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The second part of the TRIPS agreement looks at different kinds of intellectual property rights and how to protect them. The purpose is to ensure that adequate standards of protection exist in all member countries. Here the starting point is the obligations of the main international agreements of the [World Intellectual Property Organization \(WIPO\)](#) that already existed before the WTO was created:

- the [Paris Convention for the Protection of Industrial Property](#) (patents, industrial designs, etc)
- the [Berne Convention for the Protection of Literary and Artistic Works](#)

Types of intellectual property

The areas covered by the TRIPS Agreement

- Copyright and related rights
- Trademarks, including service marks
- Geographical indications
- Industrial designs
- Patents
- Layout-designs (topographies) of integrated circuits
- Undisclosed information, including trade secrets

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(copyright).

Some areas are not covered by these conventions. In some cases, the standards of protection prescribed were thought inadequate. So the TRIPS agreement adds a significant number of new or higher standards.

Copyright [back to top](#)

The TRIPS agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases should be protected.

It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films.

The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

Trademarks [back to top](#)

The agreement defines what types of signs must be eligible for protection as trademarks, and what the minimum rights conferred on their owners must be. It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well-known in a particular country enjoy additional protection.

Geographical indications [back to top](#)

A place name is sometimes used to identify a product. This "geographical indication" does not only say where the product was made. More importantly, it identifies the product's special characteristics, which are the result of the product's origins.

Well-known examples include "Champagne", "Scotch", "Tequila", and "Roquefort" cheese. Wine and spirits makers are particularly concerned about the use of place-names to identify products, and the TRIPS Agreement contains special provisions for these products. But the issue is also important for other types of goods.

Using the place name when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and it can lead to unfair competition. The TRIPS Agreement says countries have to prevent this misuse of place names.

For wines and spirits, the agreement provides higher levels of protection, i.e. even where there is no danger of the public being misled.

Some exceptions are allowed, for example if the name is already protected as a trademark or if it has become a generic term. For example, "cheddar" now refers to a particular type of cheese not necessarily made in Cheddar, in the UK. But any country wanting to make an exception for these reasons must be willing to negotiate with the country which wants to protect the geographical indication in question.

The agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines. These are now part of the Doha Development Agenda and they include spirits. Also debated in the WTO is whether to negotiate extending this higher level of protection beyond wines and spirits.

Industrial designs [back to top](#)

Under the TRIPS Agreement, industrial designs must be protected for at least 10 years. Owners of protected designs must be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design.

Patents [back to top](#)

The agreement says patent protection must be available for inventions for at least 20 years. Patent protection must be available for both products and processes, in almost all fields of technology. Governments can refuse to issue a patent for an invention if its commercial exploitation is prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than microorganisms), and biological processes for the production of plants or animals (other than microbiological processes).

Plant varieties, however, must be protectable by patents or by a special system (such as the breeder's rights provided in the conventions of [UPOV – the International Union for the Protection of New Varieties of Plants](#)).

The agreement describes the minimum rights that a patent owner must enjoy. But it also allows certain exceptions. A patent owner could abuse his rights, for example by failing to supply the product on the market. To

What's the difference?

Copyrights, patents, trademarks, etc apply to different types of creations or inventions. They are also treated differently.

Patents, industrial designs, integrated circuit designs, geographical indications and trademarks have to be registered in order to receive protection. The registration includes a description of what is being protected – the invention, design, brandname, logo, etc – and this description is public information.

Copyright and trade secrets are protected automatically according to specified conditions. They do not have to be registered, and therefore there is

deal with that possibility, the agreement says governments can issue “compulsory licences”, allowing a competitor to produce the product or use the process under licence. But this can only be done under certain conditions aimed at safeguarding the legitimate interests of the patent-holder.

no need to disclose, for example, how copyrighted computer software is constructed.

If a patent is issued for a production process, then the rights must extend to the product directly obtained from the process. Under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process.

Other conditions may also differ, for example the length of time that each type of protection remains in force.

An issue that has arisen recently is how to ensure patent protection for pharmaceutical products does not prevent people in poor countries from having access to medicines – while at the same time maintaining the patent system’s role in providing incentives for research and development into new medicines. Flexibilities such as compulsory licensing are written into the TRIPS Agreement, but some governments were unsure of how these would be interpreted, and how far their right to use them would be respected.

A large part of this was settled when WTO ministers issued a special declaration at the Doha Ministerial Conference in November 2001. They agreed that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. They underscored countries’ ability to use the flexibilities that are built into the TRIPS Agreement. And they agreed to extend exemptions on pharmaceutical patent protection for least-developed countries until 2016. On one remaining question, they assigned further work to the TRIPS Council – to sort out how to provide extra flexibility, so that countries unable to produce pharmaceuticals domestically can import patented drugs made under compulsory licensing. A waiver providing this flexibility was agreed on 30 August 2003.

Integrated circuits layout designs [back to top](#)

The basis for protecting integrated circuit designs (“topographies”) in the TRIPS agreement is the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, which comes under the [World Intellectual Property Organization](#). This was adopted in 1989 but has not yet entered into force. The TRIPS agreement adds a number of provisions: for example, protection must be available for at least 10 years.

Undisclosed information and trade secrets [back to top](#)

Trade secrets and other types of “undisclosed information” which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. But reasonable steps must have been taken to keep the information secret. Test data submitted to governments in order to obtain marketing approval for new pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

Curbing anti-competitive licensing contracts [back to top](#)

The owner of a copyright, patent or other form of intellectual property right can issue a licence for someone else to produce or copy the protected trademark, work, invention, design, etc. The agreement recognizes that the terms of a licensing contract could restrict competition or impede technology transfer. It says that under certain conditions, governments have the right to take action to prevent anti-competitive licensing that abuses intellectual property rights. It also says governments must be prepared to consult each other on controlling anti-competitive licensing.

Enforcement: tough but fair [back to top](#)

Having intellectual property laws is not enough. They have to be enforced. This is covered in Part 3 of TRIPS. The agreement says governments have to ensure that intellectual property rights can be enforced under their laws, and that the penalties for infringement are tough enough to deter further violations. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They should not entail unreasonable time-limits or unwarranted delays. People involved should be able to ask a court to review an administrative decision or to appeal a lower court’s ruling.

The agreement describes in some detail how enforcement should be handled, including rules for obtaining evidence, provisional measures, injunctions, damages and other penalties. It says courts should have the right, under certain conditions, to order the disposal or destruction of pirated or counterfeit goods. Wilful trademark counterfeiting or copyright piracy on a commercial scale should be criminal offences. Governments should make sure that intellectual property rights owners can receive the assistance of customs authorities to prevent imports of counterfeit and pirated goods.

Technology transfer [back to top](#)

Developing countries in particular, see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement includes a number of provisions on this. For example, it requires developed countries’ governments to provide incentives for their companies to transfer technology to least-developed countries.

[Transition arrangements: 1, 5 or 11 years or more](#) [back to top](#)

When the WTO agreements took effect on 1 January 1995, developed countries were given one year to ensure that their laws and practices conform with the TRIPS agreement. Developing countries and (under certain conditions) transition economies were given five years, until 2000. Least-developed countries have 11 years, until 2006 – now extended to 2016 for pharmaceutical patents.

If a developing country did not provide product patent protection in a particular area of technology when the TRIPS Agreement came into force (1 January 1995), it had up to 10 years to introduce the protection. But for pharmaceutical and agricultural chemical products, the country had to accept the filing of patent applications from the beginning of the transitional period, though the patent did not need to be granted until the end of this period. If the government allowed the relevant pharmaceutical or agricultural chemical to be marketed during the transition period, it had to – subject to certain conditions – provide an exclusive marketing right for the product for five years, or until a product patent was granted, whichever was shorter.

Subject to certain exceptions, the general rule is that obligations in the agreement apply to intellectual property rights that existed at the end of a country's transition period as well as to new ones.

> [more on intellectual property](#)

> See also [Doha Agenda negotiations](#)



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