



Industry's Influence on Intellectual Property Negotiations: A Review

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ABSTRACT

The commercial importance of IPRs has grown considerably, especially since the 1970s. Those national economies in which most IPR-holding corporations are concentrated have experienced a transformation in the composition of their exports in manufactures. Since 1970, for most developed countries, the contribution of advanced technologies to economic performance in terms of manufacturing value-added and exports has increased substantially. "Intellectual Property" those creations of the legal mind in relation to which the state confers upon individuals a statutory monopoly for a prescribed term to prevent their unauthorised exploitation. Present project gives focus on how industry's influence on intellectual property negotiations, impact of industry's intellectual property on economy of different countries. Multi-agent systems (MAS) offer an innovative approach towards reducing the tremendous time and human resources invested in negotiations since they are particularly suitable for resolving fragmented problems. The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations (UN) system of organizations. Indians law relating to Intellectual property statute has undergone changes to bring it in harmony with the corresponding laws in developed countries. India is a signature of GATT, and it has be founding member of WTO and mutates mutandis agreements attached to WTO, especially TRIPs. The paper will survey the significant milestones in copyright policy development over the last two decades and conclude with a conceptual model that can be tested through analysis of other case studies of cross-jurisdiction intellectual property relationships.

Keywords: IPR, WIPO, WTO, Indian patent law, TRIPs.

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INTRODUCTION

The global trend towards stronger intellectual property rights that has taken place in the past two decades has progressed in different dimensions¹. Ideas in the form of technical know-how, information, inventions, and unique product designs are products of mental activity that often have substantial value. Such products of the mind, generally called intellectual property, are significantly different from realty or tangible objects. Products of the mind can be simultaneously possessed and used by multiple parties, and different parties may even use the same product of the mind differently².

In addition, it is often difficult to determine the precise parameters of ideas and to control their use. Products of the mind inevitably rely upon pre-existing knowledge and ideas for their development and creation. Such ideas are protected by intellectual property rights. Present project deals with Hatch-Waxman act. Historical evidence shows that well designed IP systems can benefit national economies just as poorly designed ones can harm them. But how does one go about designing an appropriate IP system or fine-tuning an existing one? The economic and social impact of IP reform is very hard to predict reliably, especially in the long-term, and particularly in the case of developing countries. This is a real handicap in the present situation where countries are pressured to negotiate and implement new multilateral trade rules, bilateral or regional free trade or investment agreements, and to respond to powerful stakeholder groups often foreign ones demanding changes to national regimes that may not serve the interests of their citizens and other domestic stakeholders. Such difficulties in measuring impacts make it difficult for governments and their representatives to know what negotiating position to adopt on IP, how best to handle complex trade issue-linkage bargains, and how far they should accommodate the demands of international business interests clamouring for change to domestic IP rules. Present project gives focus on how industry's influence on intellectual property negotiations, impact of industry's intellectual property on economy of different countries³.

This study analyzes the progress of copyright enforcement in the period from 1985 to 2000. As a rapidly industrializing region, Taiwan has faced significant pressure from its international trade partners to improve intellectual property protection. This pressure has been strongest from the United States, Taiwan's largest partner. Mechanisms such as the Special 301 Provision of the 1974 U.S. Trade Act have played an important role of pressuring Taiwan to improve copyright enforcement. Media companies based in the United States have also had a significant impact, as their branches in Taiwan have undertaken litigation against copyright infringers. Copyright

enforcement is seen both as an information and economic policy issue. In order to avoid trade sanctions, the Taiwanese government has been consistently attentive to the annual Special 301 Report and is diligent in addressing the U.S. Trade Representative's (USTR) concerns. From an internal perspective, strong intellectual property protections are increasingly viewed as beneficial for improving investment climate by helping industries to develop and protect their own IPR portfolios. The protection of intellectual property rights (IPRs) has increasingly become an important issue in multilateral trade negotiations⁴. Analysis of the progress of intellectual property protection in Taiwan provides an opportunity to learn more about the dynamics of intellectual property policy development in developing countries, and the impact of U.S. actions on internal IP politics and cultural development^{5, 6}. The paper will survey the significant milestones in copyright policy development over the last two decades and conclude with a conceptual model that can be tested through analysis of other case studies of cross-jurisdiction intellectual property relationships.

Intellectual Property Rights and Negotiations

Definitions of Intellectual Property

- “Intellectual Property” may be defined as those creations of the legal mind in relation to which the state confers upon individuals a statutory monopoly for a prescribed term to prevent their unauthorized exploitation.
- An intellectual property right is also defined as “the rights given to people over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time”.
- Intellectual property (IP) rights are the rights awarded by society to individuals or organizations principally over creative works: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. They give the creator the right to prevent others from making unauthorized use of their property for a limited period. Intellectual property is intangible as opposed to tangible property (property of land, labour, capital etc.). It includes a protection of exploitation of knowledge embodied in
 - New ideas (mainly patents, trade secrets and copyrights)²
 - Product and process innovations (mainly patents, trade secrets and copyrights)Or related to Symbolic material (mainly copyrights and trademarks)
 - Creative effort (mainly copyrights)

Rights are not much use unless they are enforced. Intellectual property rights therefore allow the state to help producers of intellectual products to maintain some control over the products of their efforts after the products have been made public⁵.

Different wings under intellectual property umbrella⁷

For various administrative and historical reasons, intellectual property is usually dealt with under the following main headings:

- Literary, artistic and scientific works e.g. books. Protection of this property is governed by laws concerning Copyright.
- Performances, broadcasts e.g. concerts. Protection of this property is governed by laws concerning Copyright's Related Rights.
- Inventions the first Indian patent laws were first promulgated in 1856.e.g. a new form of jet engine. Protection of inventions is covered by laws concerning Patents⁷.
- Industrial designs e.g. the shape of a soft drinks bottle. Industrial Designs may be protected by its own specialized laws, or those of Industrial Property or Copyright.
- Trademarks, service marks and commercial names and designations e.g. logos or names for a product with unique geographical origin, such as Champagne.
- Protection against unfair competition. e.g. false claims against a competitor or imitating a competitor with a view to deceive the customer.

Intellectual property division into two branches:

- (i) Industrial property
- (ii) Copyright and the rights, which neighbour upon copyright
- (iii) Industrial property rights includes

Patent⁷:

A patent is an exclusive right awarded to an inventor of a product or process, which prevents others from making, selling, distributing, importing or using the invention, without license or authorization, for a fixed period of time.

Industrial Design:

Industrial designs protect the aesthetic aspects of an object (shape, texture, pattern, colour), rather than its functional aspects.

Trademark:

Trademarks provide exclusive rights to use distinctive, visible signs, such as brands, symbols, colours, letters, shapes or names to identify the producer of a product. In order to be eligible for

protection a mark must be distinctive of the proprietor so as to identify the origin of proprietor's goods or services. The period of protection varies, but most countries provide for the renewal of registrations, so that protection can be indefinite. Protection against trademark counterfeiting and the consequent deception of consumers may also be provided through consumer protection or unfair competition legislation.

Geographical Indication:

Geographical Indications identify the specific geographical origin of a product, and the associated qualities, reputation or other characteristics. They usually consist of the name of the place of origin.

Plant Breeders Right:

Plant breeders' rights are granted to breeders of new, distinct, uniform and stable plant varieties.

Trade secret:

Trade secrets consist of commercially valuable information about production methods, business plans, clientele, etc. They are protected as long as they remain secret by laws, which prevent acquisition by commercially unfair means and unauthorized disclosure.

Copyright

Copyright on the other hand, exists upon the creation of a literary, artistic and musical work, as well as photographs, films and videos, computer programmes, optical discs and music CDs. It prevents unauthorized reproduction, public performance, recording, broadcasting, translation, or adaptation.

Property rights can be for physical and for intellectual products

Property rights in physical things allow the holder of the right to exclude non-owners from using his property.

Exclusion serves three important social functions^{5,6}.

- First, without property rights resources are likely to be used inefficiently.
- Second, when non-owners cannot be excluded from using something they have no reason to pay for the thing and commercial exchange is impossible.
- Finally, when property may be used but cannot be sold, the incentive to invest in its creation, maintenance, and improvement is diminished.

Why Intellectual Property is important to International trade⁸

The commercial importance of IPRs has grown considerably, especially since the 1970s. Those national economies in which most IPR-holding corporations are concentrated have experienced a

transformation in the composition of their exports in manufactures. Since 1970, for most developed countries, the contribution of advanced technologies to economic performance in terms of manufacturing value-added and exports has increased substantially.

One reason for this situation is the constant and increasing pressure on businesses and national economies to be competitive. This puts a premium on innovation and creativity, aimed at developing new products and services and at differentiating existing ones from those of competitors. Perhaps the most important of these advanced technologies are information and communications technology (ICT) and those based upon the applied life sciences. Both have multiple industrial applications, and are of interest to companies operating in a wide range of product and service markets. Thus, in addition to the commercial interests responsible for innovating in such fields as software, telecommunications, pharmaceutical and biotechnology companies, many other business sectors deploy these technologies including producers and providers of computers and other electronic goods, music, television programmes, films, printed works and financial services, to name a few.

Technological change creates new opportunities for private appropriation, but also poses new challenges. One of these challenges is the threat of “free-riding”, which certain new technologies may facilitate. IP protection helps to maximize these opportunities for private appropriation while minimizing the risks of potential “free-riding”. Thus many companies operating in all the above sectors hold large intellectual property portfolios to protect products and services developed with these technologies. Indeed, for these businesses, the high market value of their goods and services may be due largely to such IPR-protectable, intangible inputs as technical knowledge and artistic creativity, or attributes such as reputation and distinctiveness⁷.

Table 1: Overview of IPR

IP	Industrial Property	Inventions	Patent	Trade secrets
			Utility Models	
			Plant varieties	
			Topographies of semiconductor products	
		Distinctive Signs	Trademarks	
			Trade names	
			Geographical Indications	
		Aesthetic creations	Designs (Industrial Designs)	
	Intellectual Property	Literary, artistic, scientific creations	Copyright (and neighbouring rights)	

Industry and Intellectual Property Negotiations

Negotiations in industries are often inefficient due to the diversity of intellectual backgrounds of the negotiating parties, the many variables involved, the complex interactions, and the inadequate negotiation knowledge of project participants. Multi-agent systems (MAS) offer an innovative approach towards reducing the tremendous time and human resources invested in negotiations since they are particularly suitable for resolving fragmented problems¹.

Although various agent negotiation mechanisms have been developed, agents' abilities in dealing with the changing environments during negotiation are still very limited and need to be studied further. This is particularly important for negotiations involving complex and dynamic industrial problems. In this regard, the ability of agents to learn from their previous interactions with other agents or their environment is very important. This paper presents an agent learning approach integrated in a multi-agent system for construction claims negotiation. Although this system is particularly designed for construction claims negotiation, it could also be useful for other industrial problems in terms of the learning mechanism adopted, the integrative approach of the learning and negotiation mechanism, and the development methodology. Details of the nature and problems in construction claims negotiation have been addressed in other publications. This paper first examines the various aspects of agent learning, then describes the Bayesian learning approach adopted in the MASCOT system, and presents an example showing how the learning approach is implemented. Finally it draws conclusions and makes recommendations for the further development of agent learning in construction².

Intellectual property rights can potentially stimulate growth in two ways: Firstly, by providing the right incentive structure to encourage innovation, and secondly, by providing a framework for the dissemination of technological knowledge⁹.

CHALLENGES AND NEED TO INTELLECTUAL PROPERTY NEGOTIATIONS

Rational to Intellectual Property Rights

IPR regimes are extremely complex systems, with strong moral and ethical rationales (including human rights, business and consumer ethics) and strong economic rationales (including incentives to creativity, increased competition and more formal organization of science and technology at the national level); see Figure for an overview.

One of the most fundamental purposes of intellectual property law is to enable the public to benefit from the innovative mental creations that spring from the minds of people.

For example, a new drug or medical discovery can alleviate suffering and prolong life. A faster computer microprocessor may increase the usefulness of computers and reduce their cost.

Development of alternative fuels may reduce environmental degradation resulting from the current reliance on fossil fuels. The creation of works of fine art may enrich our culture. Improved marketing and advertising techniques may improve product differentiation and enable consumers to more easily make purchasing decisions⁸.

Consequently, a company would have no incentive to make the investment in research and development; thus, society would lose the benefit of such activities.

The Regulation and Management of Competition

Intellectual property law is also designed to promote commercial fairness by regulating and, in some cases, managing competition. A business should not be allowed a "free ride" on the back of a competitor who has invested substantial time, effort, and capital developing a product or a marketplace reputation. At the same time, the law strives to promote competition as an important aspect of the free enterprise system. Such regulated or managed competition is a policy that is strongly embedded in our law. Both state and federal antitrust laws prohibit certain types of marketplace behavior rather than requiring unfettered freewheeling competition¹⁰.

Consideration of International Organizations related to IPR Negotiations

Intellectual property enjoys protection within a country under specific rights given by the national laws for the purpose. Thus, Intellectual Property Rights (IPRs) are subject to territorial limitations. The IPRs available within a country are not automatically extendable to another country if no agreement exists between the two countries in that respect. If laws for IPRs were substantially different from one country to another, the flow of technology and intellectual resources/property would be severely impeded, which in time would gravely undermine the economic growth and development. The owners and creators of intellectual wealth would be reluctant to send their wares to a country, which would be lax in safeguarding their interests⁹.

Such a situation indeed arose in the nineteenth century, some 130 years ago, when many foreign countries were not interested in bringing their inventions to an exhibition in Vienna in 1873 at the invitation of the Empire of Austria–Hungary. Inadequate legal protection to the exhibits as intellectual property was the reason behind this unwillingness to participate. It gave a jolt to the international community, precipitating the realization of an immediate need to devise an international understanding on Intellectual protection³.

WIPO¹¹

The WIPO 'patent agenda' is a basis for taking new steps towards the world-wide harmonization of both substantive and procedural IPR regulation. The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations (UN) system of organizations.

The convention establishing the World Intellectual Property Organization was signed at Stockholm in 1967 and entered into force in 1970. However, the origins of WIPO go back to 1883 and 1886, with the adoption of the Paris Convention and the Berne Convention respectively. Both of these conventions provided for the establishment of international secretariats, and both were placed under the supervision of the Swiss Federal Government. The few officials who were needed to carry out the administration of the two conventions were located in Berne, Switzerland.

Moral rationales	Human rights: Business ethics:	<ul style="list-style-type: none"> • The law should provide remedies against those who appropriate ideas of others, and a person who has devoted time and effort to create something has a right to claim the thing as his or her own, and also has a right to obtain some reward to all his work. • IPRs function as a safeguard for consumers against confusion of products and quality as well as deception in the marketplace (this indeed applies mostly to trademarks).
Economic investment rationale	Incentives to creativity: Market creation: Increased competition:	<ul style="list-style-type: none"> • IPRs provide the prospect of reward, which in turn encourages creative and technological advance by providing increased incentives to invent, and invest in and further develop new ideas. • Efficient IPR protection allows profit oriented firms to enter (or develop) an industry or market. • IPR helps to cover the fixed costs of inventing and producing a new product as well as protecting against new market entry. This may stimulate a creative dynamic environment as well as strengthen and broaden continuous innovators.
Economic rationale of organising science, technology and creativity	Order: Increased information and spill-over: Increased information and better advice: Uniformity:	<ul style="list-style-type: none"> • It has been commonly been argued that the prizes of industrial and commercial leadership will fall to the nation which organises its scientific forces most effectively. Although this view was mainly raised with respect to establishing scientific laboratories, but it is here suggested that it also applies to an adequate science and technology system organised at the nation level. • IPRs facilitate the world-wide development and sharing of new technologies and creative efforts. Patents and copyrights, when filed, provide immediate information to rivals who can incorporate such into their own knowledge bases even though they cannot make direct commercial use of it. This might create a more coherent technological and industrial development, faster spill-over in knowledge and creative efforts and technological progress which strengthens the national or global economy. • An intellectual property system also offers information concerning structural changes in technological development as well as technological capabilities of industry and sectors, allowing governments' to be more effectively advised on science and technology policy matters. • A national system brings in national uniformity (as opposed to regional differences in IPR legislation). This makes it possible to (or seeks to) promote cross-country trade in IPRs and international integration of science, technology and creative efforts, stimulating prosperity world-wide.

Figure. 1: Motive and Rational of IPR system

Initially there were two secretariats (one for industrial property, one for copyright) for the administration of the two conventions, but in 1893 the two secretariats united. The most recent name of the organization, before it became WIPO, was BIRPI, the acronym of the French language version of the name: United International Bureau for the Protection of Intellectual Property (in English). In 1960, BIRPI moved from Berne to Geneva.

At the 1967 diplomatic conference in Stockholm, when WIPO was established, the administrative and final clauses of all the then existing multilateral treaties administered by BIRPI were revised. The said clauses had to be revised because member States wished to assume the position of full governing body of the Organization (WIPO), thus removing the supervisory authority of the Swiss Government, to give it the same status as all the other comparable intergovernmental organizations, and to pave the way for WIPO to become a specialized agency of the United Nations system of intergovernmental organizations.

Long before the United Nations was established, BIRPI was the responsible intergovernmental organization in the field of intellectual property. WIPO, the successor to BIRPI, became a specialized agency of the United Nations when an agreement was signed to that effect between the United Nations and WIPO, which came into effect on December 17, 1974.

The agreement between the United Nations and WIPO recognizes that WIPO is, subject to the competence of the United Nations and its organs, responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development.

Function and Activities

The function of WIPO is to promote through international cooperation the creation, dissemination, use and protection of works of the human mind for the economic, cultural and social progress of all mankind. Its effect is to contribute to a balance between the stimulation of creativity worldwide, by sufficiently protecting the moral and material interests of creators, on the one hand, and the provision of access to the socio-economic and cultural benefits of such creativity worldwide, on the other hand⁶.

WIPO's place on the international scene has greatly changed since its beginnings, when it was created to serve as the secretariat of treaties concluded between States. Although WIPO has maintained this function (it currently administers 21 such treaties), together with the consequential one of promoting intergovernmental cooperation in the administration of

intellectual property, its activities have not only expanded, but also greatly diversified.

An example of the expansion of WIPO's earlier work is the growth of its registration activities. That is the increase in the use of international treaties, which facilitate a single procedure to apply for patents, and registered trademarks and industrial designs valid in up to all member States of those treaties. The Patent Cooperation Treaty (PCT), the Madrid Agreement and Protocol concerning the International Registration of Marks, and the Hague Agreement concerning the International Deposit of Industrial Designs have all given rise to an increased volume of registration activities. To strengthen this aspect of WIPO's work, a new international treaty, namely, the Patent Law Treaty, came into existence in June 2000. Its purpose is to streamline application procedures and to reduce the cost of obtaining simultaneous patent protection in several countries.

In its more recent history, WIPO is increasingly involved in helping developing countries, whose creativity has yet to be adequately harnessed, to receive the full benefits of the creations of their citizens, as well as those of the outside world. WIPO's role is to assist them also in the preparation and enforcement of laws, in the establishment of sound institutions and administrative structures, and in the training of appropriate personnel. WIPO has given particular attention to the 49 Least Developed Countries (LDCs) and has also given similar assistance to countries whose economies are in transition, in Central Asia, Central and Eastern Europe and in the Baltic region.

WIPO's cooperation for development program is closely interwoven with governmental and intergovernmental cooperation, including WIPO's agreement with the World Trade Organization (WTO), whereby WIPO assists developing countries in the implementation of WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The problem of development is compounded by rapid technological and scientific progress. WIPO's approach is twofold:

- It is to identify and to promote international solutions to the legal and
- Administrative problems posed by digital technology, especially the Internet, to the traditional notions and practices of intellectual property.

WIPO's work in alternative dispute resolution between individuals and companies, through the WIPO Arbitration and Mediation Center has been extended to cover the problems arising from the misuse of domain names on the Internet. The Internet Corporation has accredited WIPO for Assigned Names and Numbers (ICANN) to administer cases filed under ICANN's Uniform Domain Name Dispute Resolution Policy. Disputes are handled and resolved on-line, enabling

parties to settle cases in a time and cost effective manner, without being physically present in the same place¹².

A project that will greatly advance the sharing of valuable intellectual property information benefits is the worldwide global intellectual property information network (WIPONET), a project launched by WIPO in 1999. WIPONET is designed to establish a secure, global network linking the intellectual property offices of all WIPO's Member States, facilitating access to and exchange of information worldwide. Already WIPO's main and subsidiary websites are heavily used all over the world.

WIPO is increasingly adopting a global approach not only to intellectual property in itself, but to the place of intellectual property in the wider framework of emerging issues such as traditional knowledge, folklore, biological diversity, environmental protection and human rights. WIPO has followed the method of consultation and empirical research to find, for example, the relation between intellectual property and genetic resources, traditional knowledge and folklore.

One of the most significant present-day tasks of WIPO is to demystify intellectual property, so that it is recognized as a part of everyday life not only by those directly involved in it at governmental, legal, industrial and cultural levels, but also by any others who compose civil society, whether in non-governmental organizations or small businesses, whether farmers, public health personnel, individual creators or simply interested members of the general public. Realizing the importance of small- and medium-sized enterprises (SMEs) as the backbone of market economies, WIPO has established a program aimed at helping them to fulfill their potential as a powerful force behind wealth creation³.

WIPO's agenda of outreach to all members of society is through their inclusion as stakeholders and partners in global and national intellectual property systems. To ensure that such inclusion is of benefit to the parties concerned, WIPO pursues a policy of empowerment. This means that WIPO's activities aim to give to all levels of society an awareness of how they have a stake in a healthy intellectual property system, and also to provide them access to the knowledge, experience and expertise, which will enable them effectively to use those systems.

Administration

The Convention establishing WIPO provides for four different organs: the General Assembly, the Conference, the Coordination Committee, and the International Bureau of WIPO or Secretariat.

The general assembly consists of all the States, which are members of WIPO and also of any of the Unions. The Conference consists of all the States, which are members of the WIPO.

The General Assembly is the supreme organ of WIPO. Among its other powers and functions, the General Assembly appoints the Director General upon nomination by the Coordination Committee; it reviews and approves the reports and activities of the Coordination Committee as well as the reports of the Director General concerning WIPO; it adopts the financial regulations of WIPO and the biennial budget of expenses common to the Unions; it approves the measures proposed by the Director General concerning the administration of the international agreements designed to promote the protection of intellectual property; it determines the working languages of the Secretariat taking into consideration the practice of the United Nations; and it also determines which States not members of WIPO and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers.

The fourth organ of WIPO is the International Bureau of WIPO or Secretariat. It is headed by the Director General, and further consists of those who make up its regular staff; the staff in the professional and higher categories are recruited on a principle of equitable geographical distribution established in the United Nations system, and other staff are from a wide range of countries of all regions of the world⁹.

Membership

The Convention establishing WIPO declares that membership shall be open to any State which is a member of any of the Unions, and to any State which is not a member of any of the Unions, provided that it is a member of the United Nations, of any of the specialized agencies of the United Nations, or of the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice or is invited by the General Assembly of WIPO to become a member. Thus, only States can be members of WIPO or, indeed, of any other specialized agency of the United Nations.

To become a member, a State must deposit an instrument of ratification or accession with the Director General of WIPO at Geneva. States party to the Paris or Berne Conventions may become members of WIPO only if they are already bound by, or concurrently ratify or accede to, at least the administrative provisions of the Stockholm (1967) Act of the Paris Convention or of the Paris (1971) Act of the Berne Convention¹³.

WTO^{1,2,12}

The World Trade Organization (WTO) is the international organization responsible for global rules governing trade among nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. Like its predecessor, the General Agreement on Tariffs and Trade (GATT), the WTO serves as the forum for on-going multilateral trade negotiations aimed

at liberalizing world trade and administration of the resulting trade agreements. WTO trade agreements are reached based upon a consensus of participating members and are ratified domestically by each Member. WTO members are responsible for monitoring compliance with these far reaching trade agreements and setting the organization's course. The WTO also has a dispute settlement system designed to reduce trade friction through interpretation of the agreements and commitments.

The WTO was created on January 1, 1995, as the result of the Uruguay Round trade negotiations and is one of the world's leading international economic institutions. The establishment of the WTO completed the three-pillar system envisaged at Bretton Woods, alongside the World Bank and International Monetary Fund. The WTO has a cooperative relationship with the United Nations, but it is not a UN specialized agency¹².

WTO Structure

The WTO's top-level decision-making body is the Ministerial Conference, which meets at least once every two years. Ministerial Conferences have been held in Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001) and Cancun (2003).

The day-to-day work of the WTO falls principally to the General Council, which conducts work on behalf of the Ministerial Conference and reports to the conference. The General Council delegates and approves technical work done by its subsidiary bodies: the Councils for Trade in Goods, Trade in Services, and Trade-Related Aspects of Intellectual Property Rights which oversee the implementation of their respective WTO agreements. It also calls together as the Dispute Settlement Body and as the Trade Policy Review Body. The General Council oversees the Trade Negotiations Committee (TNC)².

Members

WTO membership has grown to 146 states and customs territories. WTO members account for over 90 percent of global trade, but the expansion of WTO membership continues to be an important element of WTO work. Cambodia and Nepal were in the final stages of accession, and over 20 other countries, including a number of large economies such as the Russian Federation and Saudi Arabia, are in various stages of the accession process.

Tariff reductions and rules to liberalize trade in goods

The WTO is the culmination of over fifty years of experience with the multilateral trading system, originally set up in 1947 under the GATT. The system was developed through a series of GATT negotiating "rounds," which dealt primarily with liberalization of trade in goods through

agreements to lower customs tariffs and through the development of rules to address other trade barriers.

The most fundamental WTO rules of goods trade involve non-discrimination, both in the form of national treatment (prohibiting discrimination on the basis of nationality) and most-favoured nation treatment (the principle of providing to all trading partners the same customs and tariff treatment given to the so-called “most favored nation.”). There are also many other technical rules designed to ensure market predictability¹³.

Through the years, and particularly as a result of the Uruguay Round, the rules applicable to goods trade have been expanded to improve the coverage of specific sectors such as textiles and agriculture. There are also agreements addressing such specific technical issues as customs valuation, trade remedies, product standards, subsidy disciplines, trade-related investment measures, import licensing procedures, rules of origin, pre-shipment inspection, and activities by state trading enterprises¹.

Trade in Service: The GATS Framework

The Uruguay Round expanded the scope of the multilateral trading system to cover trade in services through the General Agreement on Trade in Services (GATS),

The GATS covers trade in such important sectors as financial services, tourism and telecommunications among others. GATS established a multilateral framework and a legal basis for future negotiations aimed at eliminating barriers that discriminate against foreign services providers and deny them market access. The GATS framework includes most-favoured nation treatment and national treatment principles, as well as disciplines on domestic regulations, with special rules addressing the specific situations of particular services sectors, such as financial services, telecommunications, air transport, and movement of labor.

The framework is supplemented by national schedules that contain specific binding commitments to market access and national treatment in individual service sectors. As with agriculture, the Uruguay Round mandates continued negotiations aimed at further reform of services trade¹⁰.

Resolution of Trade Disputes

The WTO serves as a forum for the resolution of trade disputes arising among its members. The Dispute Settlement Understanding (DSU), a product of the Uruguay Round, created a stronger and more efficient system for resolving trade disputes through the establishment of procedures for consultations, legal arguments before panels of experts, and the opportunity to obtain appellate review. The settlement of disputes is the responsibility of the Dispute Settlement Body

(DSB), which has the sole authority to establish such panels to adjudicate disputes between members and to accept or reject the findings of panels and the Appellate Body, a standing appeals body of seven independent experts. The DSB also monitors the implementation of panel and Appellate Body findings and has the power to authorize retaliation when a member does not comply with DSB recommendations and rulings¹³.

The Doha Agenda

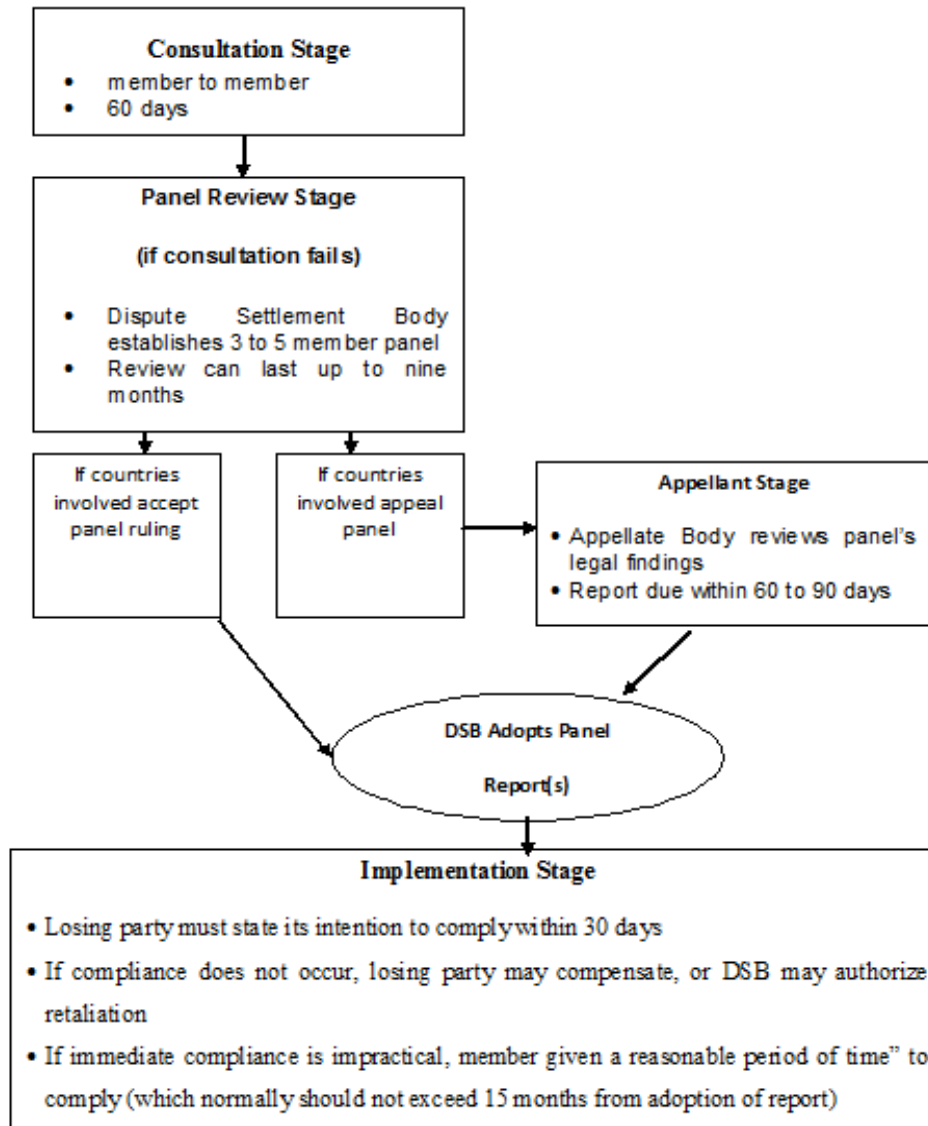


Figure. 2: WTO Dispute Settlement Process

At its Fourth Ministerial Conference, held in Doha, Qatar, in November 2001, the WTO embarked on an ambitious new round of trade negotiations — the Doha Development Agenda. The Ministerial Declaration calls for the completion of the negotiations by January 2005. The Doha mandate placed the interests of developing countries, which now comprise more than two-thirds of the WTO's membership, at the centre of the new negotiations. Recognizing the

constraints faced by these countries, WTO members have also significantly expanded technical assistance and trade capacity building efforts.

The Doha Declaration created the Trade Negotiations Committee, under the authority of the General Council, to supervise the overall conduct of the negotiations. Early in 2002, WTO members established the various negotiating bodies and designated chairs to lead the various groups and manage the agenda, with the WTO Director General serving as TNC chairman. In October 2003, members were engaged in the substantive issues in the negotiations, aided by the preparatory work of the WTO's built-in agenda on agriculture and services. With the exception of work in the areas of review of the Dispute Settlement Understanding and negotiations on the registration system for geographical indications, all negotiating areas are to be concluded at the same time, as a single undertaking¹

INDIAN LAWS RELATED TO INTELLECTUAL PROPERTY RIGHTS¹⁴

Indians law relating to Intellectual property statute has undergone changes to bring it in harmony with the corresponding laws in developed countries. India is a signature of GATT, and it has been founding member of WTO and mutates mutandis agreements attached to WTO, especially TRIPs.

In case of patent it is an exclusive right awarded to an inventor of a product or process, which prevents others from making, selling, distributing, importing or using the invention, without licence or authorization, for a fixed period of time. To govern these rights the Patent Act 1970 was created.

New inventions or improvement of existing product or process, the acquisition of this monopoly, precondition to fulfill the acquisitions, duration of protection, and other rights accompanied are regulated by Patent Act. On expiry of the patent term, it becomes public attribute where anybody can use the patented invention.

In case of Industrial designs it protect the aesthetic aspects of an object (shape, texture, pattern, colour), rather than its functional aspects. It relates to the non-functional appearance of a product, which appeals solely to the eye, which was initially protected by Design Act 1911, which is now replaced by Design Act 2000. The term of protection provided is fifteen (15) years subject to payment of renewal fees as prescribed by the rules. On expiry of the term of protection anybody can use the design.

Trademarks provide exclusive rights to use distinctive, visible signs, such as brands, symbols, colours, letters, shapes or names to identify the producer of a product. In order to be eligible for protection a mark must be distinctive of the proprietor so as to identify the origin of proprietor's

goods or services. Rights in case of Trademark are of two types:

1. Conferred by registration under before by Trademark and Merchandise mark Act 1958, which is been changed by Trademark Act 1999.
2. Acquired by using in relation to some product or service¹⁰.

List of Acts in the field of IPR in India¹³

1. The copyright Act, 1957 (Amended in 1999)
2. The patent Act, 1970 (Amended in 1999, 2002 and 2005)
3. The Trademark Act, 1999 (Replaced The Trademark and Merchandise Act, 1958)
4. The Geographical Indications of Goods (Registration and Protection) Act, 1999
5. The Design Act, 2000
6. The Semiconductor Integrated Circuits Layout Design Act, 2000
7. The Protection of Plant Varieties and Farmers Rights Act, 2001
8. The Biological Diversity Act, 2002

Trade related rules and TRIPS

The “globalization of innovation” was facilitated and driven by a complex set of factors, including changes in trade and investment governance, improved intellectual property rights through TRIPS, the growing ease and falling cost of communicating and travelling around the globe, and the concomitant vertical industry specialization and unbundling of value chains⁵. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) is the Uruguay Round agreement covering the protection and enforcement of intellectual property rights. Intellectual property rights were a key area of concern during the Uruguay Round negotiations. From the International perspective, the TRIPs Agreement was a major achievement of the Uruguay Round.

The TRIPs Agreement incorporates by reference most of the substantive provisions of two earlier multilateral IPR conventions: the Paris Convention for the Protection of Industrial Property (1967)(covering patents, trademarks, trade names, utility models, industrial designs and unfair competition) and the Berne Convention for the Protection of Literary and Artistic Works (1971) (covering copyrights).

TRIPs agreement is one of the three pillars of WTO system; TRIPs for the first time covered all aspects of Intellectual Property Rights, in one multilateral agreement - Copyright and neighboring rights, Trademark for goods and services, Geographical Indication, Industrial Design, Patents, Layout-Designs (Topographies) of Integrated Circuits, Protection of Undisclosed Information.

The agreement contains the subtended rules in all of the areas mention as well as procession law and enforcement provisions. In addition it provides border major to combat dispute settlements, counter filling and piracy¹⁴.

Purpose of TRIPs Agreement is as follows¹⁵

- Reducing the distortions and implements to international trade by promoting effective and adequate protection of IPRs, and to take measures and procedures to enforce IPRs so that they do not become barriers to lawful trade.
- Provides a multilateral framework of principles, rules, in dealing with international trade in imitated goods.
- Provide special needs to least developing countries in form of maximum flexibility in the domestic implementation of laws and regulation so as to create a sound and workable technological base.
- Resolve disputes in trade related intellectual property issues by multilateral procedures.
- To establish a mutual supportive relationship between the WTO and WIPO, as well as with other organization.
- Provide effective and appropriate means for the enforcement of trade-related intellectual property right, taking into account differences in the legal systems of the member countries¹⁶.

CONCLUSION

The government will keep making intensive efforts to develop the IPR environment. On February 17, 2005, Jack Lu, Deputy Director General of TIPO, mentioned that the TIPO's goal was to develop a comprehensive IPR environment for inventors and users. While TIPO will continue to work with the Customs, the Ministry of Education, and the judiciary on existing programs, he stated that TIPO will focus on initiatives relating to education. The Customs will cooperate with copyright holder associations to assist officers in enhancing inspection skills, while the Ministry of Education will make IPR awareness an important objective in all technological and vocational education programs. IPR week events would be held at least once a year on campus, and TIPO launched an IPR Training Academy, providing IPR awareness courses at colleges, universities, training organizations, and companies. The Academy aimed to develop 200 instructors in 2005, responsible for training over 1,000 IPR professionals in 2006, 2007, and 2008. Patricia Judd, Director of International Copyright Enforcement of the AAP, indicated that Taiwan have evolved to become a model for copyright enforcement. For example,

she stated that Taiwan's book industry continued to perform an active role to assist the government to crack down on book piracy. In addition, she indicated that fighting global book piracy is difficult and the AAP will continue to cooperate with foreign governments and other international publisher organizations to combat piracy. In general, Taiwan is viewed as a success in fighting copyright infringement.

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