

ANNEX A: KEY ISSUES AND SALIENT FEATURES OF THE TRIPS AGREEMENT

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| Scope (Art. 1) | Copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout designs of integrated circuits; undisclosed information. |
| General obligations/basic principles | |
| National treatment (Art. 3) | Requires all Members to treat nationals of other countries no less favourably than their own nationals on all matters concerning IPRs, subject to certain exceptions already provided in conventions/treaties related to IPRs. |
| Most-favoured-nation treatment (Art. 4) | Advantages, privileges granted by a Member to the nationals of any other country should be extended unconditionally to the nationals of all other Members. |
| Exhaustion of intellectual property rights (Art. 6) | For the purposes of dispute settlement, nothing in the Agreement shall be used to address the issue of exhaustion of IPRs, provided there is compliance with national treatment and most-favoured-nation treatment. |
| Basic objectives and principles (Arts. 7 & 8) | The protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology. They should also contribute 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. The Agreement allows members to adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socioeconomic and technological development. At the same time, appropriate measures can be taken in order to prevent the abuse of IPRs or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology. |
| Standards | |
| Copyright and related rights | |
| <i>Relation to the Berne Convention (Art. 9)</i> | All members are required to comply with the substantive provisions of the Bern Convention, except for the obligation on moral rights. Eligible works must be protected on the basis of their expression as a literary work, not on the basis of ideas, procedures, methods of operation or mathematical concepts as such. |
| <i>Protection of computer programs and compilation of data (Art. 10)</i> | Computer programs are protected as literary works. Compilations of data are also protected under the Agreement. |
| <i>Rental rights (Art. 11)</i> | Concerning computer programmes, Members shall provide to authors the rights to authorise or to prohibit the commercial rentals of their works to the public. As for cinematographic works, this obligation exists only if commercial rental has led to widespread copying which is materially impairing the reproduction rights. |

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| <i>Protection of performers, producers of phonograms & broadcasting organizations (Art. 14)</i> | Specific provisions are introduced for the protection of performers, producers and broadcasting organisations, and the term of protection is extended (at least 50 years for performers and producers, 20 years for broadcasting organisations) (as compared to the Rome Convention). |
| Trademarks | |
| <i>Protection of service marks (Arts. 15 & 16)</i> | Provides equal treatment to trade and service marks. Under certain circumstances also provides protection against use of dissimilar goods and services. No cancellation for reason of non-use (if use required to maintain a registration). |
| <i>Protection of well-known marks (Art. 16)</i> | Well-known marks must be protected, even when not used in a country. In determining whether a trademark is well known, the knowledge of the trademark in the relevant sector of the public is to be taken into account (Art. 16.2). |
| <i>Elimination of restrictions on use of trademarks (Art. 20)</i> | Use of trademarks is not to be encumbered by special requirements, such as use with another trademark. |
| Geographical indications | |
| <i>Geographical names (Art. 22)</i> | Provides means to prevent use of geographical direct or indirect names from misleading the public as to the true origin of the good, or which constitutes an act of unfair competition. |
| <i>Additional protection (Arts. 23 & 24)</i> | With regard to wines and spirits, protection must be provided even where there is no threat of the public being misled as to the true origin of the good. Negotiations are being undertaken with respect to the establishment of a multilateral system of notification and registration for wines. |
| Industrial designs | |
| <i>Term of protection (Arts. 25 & 26)</i> | For industrial designs, a protection of at least 10 years is required. Special provisions on textile designs leave each Member to decide whether to provide protection through copyright law or industrial design law. |
| Patents | |
| <i>Scope of protection (Art. 27)</i> | Protection should be available for any inventions, whether products of processes, in all fields of technology. Inventions that threaten public order or morality need not be patented, provided the commercialisation of such inventions is also prohibited. Most biotechnological inventions must also be protected, but plants and animals and essentially biological processes for the production of plants and animals (excluding micro-organisms and micro-biological processes) may be exempted from patent protection. |
| <i>Non-discrimination (Art. 27.1)</i> | The Agreement requires non-discrimination in the granting of patents and the enjoyment of rights, in relation to technology, the place of invention and whether patented products are imported or locally produced. |
| <i>Term of protection (Art. 33)</i> | The duration of protection must not be less than 20 years from the date of filing the application. |

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| <p><i>Other uses without authorization of the patentholder (Art. 31)</i></p> | <p>In principle, no restrictions are placed on granting compulsory licences and government use of patents. However, these practices must respect a number of conditions to prevent patent-holders' rights being undermined. Authorization of such use should be considered on its individual merits. The detailed conditions for granting these authorizations are listed in the Agreement.</p> |
| <p><i>Process patents (burden of proof) (Art. 34)</i></p> | <p>Reversal of the burden of proof in civil proceedings relating to infringements of process patents is to be established in certain cases.</p> |
| <p><i>Plant varieties (Art. 27)</i></p> | <p>Plant varieties, including seeds, must be protected through patents or alternative sui generis means.</p> |
| <p>Layout designs of integrated circuits (Arts. 35-37)</p> | <p>Substantive provisions of the Washington Treaty must be respected along with a number of additional obligations; protection includes not only the protected chip, but also articles incorporating it; and the term of protection must be 10 years. An "innocent infringer" must be free from liability, but once he/she has received notice of infringement, he/she is liable to pay a reasonable royalty.</p> |
| <p>Undisclosed information and test data (Art. 39)</p> <p><i>Protection of trade secrets</i></p> <p><i>Protection of test data</i></p> | <p>Undisclosed information (or trade secrets) must be protected against acquisition, use or disclosure in a manner contrary to honest commercial practices. To benefit from such protection, information must be secret, have commercial value owing to such secrecy, and have been subject to reasonable steps to keep it secret.</p> <p>Test data provided by a company in order to gain marketing approval for pharmaceutical and agricultural chemical products must be protected against unfair commercial use; they must also be protected against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.</p> |
| <p>Anti-competitive practices in contractual licences (Art. 40)</p> <p><i>Licensing practices</i></p> <p><i>Consultations among members</i></p> | <p>The Agreement recognizes that countries may specify in their domestic legislation the commercial licensing practices that constitute an abuse of intellectual property protection, and take steps to address these through appropriate measures.</p> <p>Members must cooperate with each other, including through the provision of information, in investigations of alleged abuse of intellectual property rights that have international dimensions.</p> |
| <p>Enforcement</p> | |
| <p>General obligations (Art. 41)</p> | <p>Members must provide effective means of action for any right holder, foreign or domestic, to secure the enforcement of his/her rights, while at the same time preventing abuse of the procedures.</p> |

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| Procedures (Arts. 43-50) | The Agreement specifies procedures for civil and judicial action, including means to produce relevant evidence. Civil remedies that must be available should include injunctions, damages and destruction of infringing goods, or disposal of these outside the channels of commerce. Provisional measures must be available to prevent infringing activity and to preserve relevant evidence. Judicial authorities must have the authority to adopt provisional measures. |
| Customs cooperation | Right holders must have the means to obtain the cooperation of the customs authorities in preventing imports of pirated copyright goods and counterfeit trademark goods. |
| Criminal procedures (Art. 61) | Criminal procedures and penalties must be available in case of wilful trademark-counterfeiting or copyright piracy on a commercial scale. |
| Indemnification of the defendant (Art. 48) | Compensation for the abuse of enforcement measures are specified, including payment of defendants' expenses, which include appropriate attorney's fees. |
| Acquisition and maintenance of IPRs (Art. 62) | Procedures or formalities for obtaining intellectual property rights should be fair, reasonably expeditious, not unnecessarily complicated or costly, and generally sufficient to avoid impairment of the value of other commitments. |
| Dispute settlement (Arts 63 & 64) | The new WTO dispute settlement procedures will apply to the TRIPS Agreement. |
| Faster procedures | Dispute settlement procedures will be faster than in the GATT because of time limits set for each stage of the process. There is no scope for interested parties to block the process of the adoption of recommendations of panels. |
| Transitional arrangements (Art. 65) | One-year transitional period for all countries to apply the Agreement. |
| Developing countries | Developing countries can delay application of the Agreement for another four years, except for national treatment and MFN obligations. These countries are entitled to an additional five-year period for introducing product patents in areas of technology (pharmaceuticals and agricultural chemicals) that are not protected at the date of application of the Agreement. This 10-year delay in the implementation of these provisions should be seen in conjunction with Art. 70.8 of the Agreement, which provides, in respect of pharmaceutical and agricultural chemical products, the following arrangements: any Member who does not make available, as of 1 January 1995, patent protection for the pharmaceutical and agricultural chemical inventions must accept the filing of applications for patents for such inventions (establishment of a 'mailbox' for patent applications claiming such product patents), and must do so from 1 January 1995, even if it is a country which may delay the application of the Agreement, as indicated above. Once the Agreement becomes applicable in that country, it must take a decision in respect of the application (either reject it or grant a patent), but, in doing so, it must apply (retroactively) the criteria of patentability as laid down in the Agreement. If its decision is |

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| | to grant a patent, that patent will be available for the remainder of the term (Art. 70, para. 8). However, an “exclusive marketing right” (for a period of five years) must be granted concerning the invention which is the subject matter of the application if, after 1 January 1995, in another country a patent application has been filed and a patent granted for that product and marketing approval obtained in such other Member (Art. 70, para. 9). |
| Least developed countries | Least developed countries are entitled to delay application of the Agreement, except for national treatment and MFN until 1 January 2006. |
| Technical cooperation (Art. 67) | The Agreement calls upon developed country Members to provide technical and financial assistance in favour of developing country Members on mutually agreed terms and conditions. |

Source: UNCTAD, 1996:8-11