

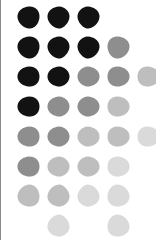
TRIPS Agreement & Challenges for Pakistan

by Majid Ali Wajid

TRIPS AGREEMENT: CHALLENGES FOR PAKISTAN

By

MAJID ALI WAJID
ADVOCATE HIGH COURT
WTO CONSULTANT



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- ✍ Objectives of TRIPS Agreement
- ✍ Significant features of TRIPS Agreement
- ✍ Implications of TRIPS Agreement on Pakistan
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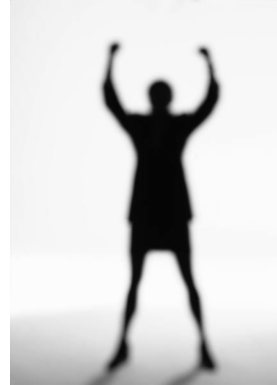
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Intellectual Property

An intellectual property is any product of the human intellect and has some value in the marketplace.

- ⌘ An idea
- ⌘ Invention
- ⌘ Expression or literary creation
- ⌘ Unique name
- ⌘ Business method
- ⌘ Industrial process
- ⌘ Chemical formula
- ⌘ Computer program process
- ⌘ Presentation

Rights given to creators to prevent others from using their inventions, designs or creations are known as intellectual property rights.



TRIPS

(Agreement on Trade Related Aspects of Intellectual Property Rights)

OBJECTIVES

The protections and enforcement of Intellectual Property Rights should contribute to:

- ⌘ **The promotion of technological innovation**
- ⌘ **The transfer and dissemination of technology**
- ⌘ **The mutual advantage of producers and users**
- ⌘ **Social and economic welfare**
- ⌘ **To prevent abuse of intellectual property rights**
- ⌘ **Balance of rights and obligations**



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SCOPE OF TRIPS AGREEMENT



The TRIPS Agreement covers five elements:

- ✍ **Basis principles of trading system applicable to intellectual property protection**
- ✍ **Protection of specific intellectual property rights**
- ✍ **Enforcement of intellectual property rights**
- ✍ **Settlement of disputes on intellectual property between members of the WTO**
- ✍ **Special transitional arrangements**

Basis Principles of Trading System envisaged under TRIPS Agreement



- ✍ **Most-Favoured Nation Treatment**
- ✍ **National Treatment**
- ✍ **WTO through TRIPS Agreement establishes a mutually supportive relationship with WIPO that administers a number of International Intellectual Property Agreements**

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Minimum Standards for the Protection of Intellectual Property Rights



TRIPS requires all WTO members to provide certain minimum standards of protection and effective enforcement for

- ✍ **Patents**
- ✍ **Copyrights**
- ✍ **Trademarks**
- ✍ **Industrial designs**
- ✍ **Integrated circuits**
- ✍ **Trade secrets**
- ✍ **Geographical indications**

Patents



- ✍ **For an invention, whether product or process, to be registered as a patent**
 - ✍ It must be new
 - ✍ It must involve an inventive step
 - ✍ It must be capable of industrial application
- ✍ **The following are non-patentable**
 - ✍ Diagnostic or surgical methods of treatment
 - ✍ Plant and animal inventions other than micro-organisms
- ✍ **Sui generis system provided by International Union for the Protection of New Varieties of Plants (UPOV) for the protection of new varieties of plants.**
- ✍ **Minimum duration of protection is 20 years**

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Copyrights



- ✍ **The subject matter of copyright protection includes**
 - ✍ **Literary, Scientific and Artistic works**
 - ✍ **The idea or its form must be original creation of the author**

- ✍ **TRIPS Agreement also ensures the protection of**
 - ✍ **Computer Programs and Databases**
 - ✍ **Rental rights to computer programs, sound recordings and films**
 - ✍ **Rights of Broadcasting Organizations**

- ✍ **Minimum duration of protection is life of the author plus 50 years**

Trademarks



- ✍ **Any sign that serves to distinguish the products or services of one undertaking from that of the other undertaking.**

Industrial Designs

- ✍ **These cover the ornamental features of products including shapes, lines and colours. Industrial designs are protected mainly in consumer articles. Duration of protection of industrial designs is 10 years.**

Integrated Circuits Layout Designs

- ✍ **Duration of protection of integrated circuits layout designs is 10 years.**

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Trade Secrets



- Trade secrets and other type of undisclosed information which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices.

Geographical Indications

- Geographical indications aim at informing the consumer that a good has the quality, reputation or other characteristic essentially attributable to its geographical origin.

Enforcement of Intellectual Property Rights



The Agreement prescribes institutional mechanism, procedures and remedies that WTO Members should adopt:

- To enable Intellectual Property Right (IPR) holders to obtain redress under civil law
- For the prosecution of counterfeiters and pirates under criminal law
- For providing provisional reliefs
- Prevention of release of infringing goods by custom authorities

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Civil Remedies

- ✍ Preventing entry of imported goods that are infringing
- ✍ To order the infringer to pay right holder damages to compensate for injury
- ✍ To order destruction of infringing goods

Criminal Proceedings

- ✍ Prosecution of the infringer under criminal law
- ✍ Imprisonment
- ✍ Fine



Special Transitional Arrangements

WTO Members were provided with following transitional periods for the implementation of the provisions of TRIPS Agreement

Developed Countries – 1 y – Till 1st Jan. 1996

Developing Countries – 5 y – Till 1st Jan. 2000

Least Developed Countries – 11 y – Till 1st Jan. 2006



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CHALLENGES FOR PAKISTAN



Major Concerns for Pakistan

Food Security Issue – Sui generis system

- ✍ TRIPS Agreement obliges WTO Members to grant protection to inventors of micro-biological processes, micro-organisms and plant varieties.
- ✍ Under Art. 27.3(b) of the TRIPs Agreement countries must provide protection to plant varieties either by patents or by an effective sui generis system.
- ✍ The sui generis system would be based upon an internationally recognized system of plant breeders rights or plant variety protection measures.

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Major Concerns for Pakistan

Food Security Issue

- ✍ There is pressure upon Pakistan to adopt a plant breeders rights system such as UPOV Convention of 1991 under Art. 27.3(b) of the TRIPs Agreement
- ✍ Pakistani farmers would have to pay royalties to TNCs on the use of protected seeds
- ✍ UPOV restricts farmers' freedom to buy seeds from different sources other than the original breeders



Major Concerns for Pakistan

Food Security Issue

- ✍ According to UPOV guidelines the practice of seed saving, selling and exchange by the farmers would be a crime
- ✍ Legal contracts drawn up by the companies will force farmers to purchase their seed year after year along with chemical inputs, a requirement that would raise farmers' costs and drive millions off the land
- ✍ It would allow seed companies to exact high royalties and increase their corporate control over agriculture and the food system of Pakistan



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Major Concerns for Pakistan

Biodiversity Issue



- ✍ TRIPs Agreement
 - ✍ Makes privatization of the world's biodiversity a reality
 - ✍ Makes no provision for benefit sharing of plant genetic resources
 - ✍ Does not recognize contribution of farmers or communities in conservation and creation of genetic resources by human selection
 - ✍ Promotes spread of mono-cropping in agriculture
- ✍ There is a need to harmonize TRIPs Agreement with that of UN Convention on Biological Diversity 1992
- ✍ Equitable sharing of profits of one's genetic and natural resources

Major Concerns for Pakistan

Biotechnology Issue – GM crops



- ✍ TRIPs Agreement encourages spread of genetically modified (GM) crops by putting a premium on food re-production through biotech methods
- ✍ Studies reveal that development of GM crops is not being driven by the needs of poor farmers but with the following motives:
 - ✍ To generate profit
 - ✍ Continuation of that profit by consolidating control over the agriculture sector
- ✍ Instead of improving yields, nearly all research into GM crops aims in improving food processing qualities.
- ✍ GM crops generally require intensive farming methods
- ✍ GM varieties are bred to be tolerant to chemical inputs thereby increasing farmers' dependency on an ever-increasing use of toxic fertilizers and pesticides

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Major Concerns for Pakistan



Access to healthcare - Pharmaceutical Industry

- ✍ Before TRIPs Agreement, the national patent legislation in most developing countries including Pakistan did not provide requisite patent protection for pharmaceutical products
- ✍ All these developing countries are now changing their national legislation on patents in accordance with TRIPs Agreement
- ✍ The multinational drug companies will have the monopoly of all patent protected drugs and will not be marketing raw materials at competitive prices.

Major Concerns for Pakistan



Pharmaceutical Industry – Access to healthcare

- ✍ Pakistani pharmaceutical industries will not be able to produce generic drugs having patent protection without paying big royalties to patent holders
- ✍ Multinational Corporations will transfer raw materials to their subsidiaries in Pakistan at higher prices.
- ✍ Consumers in Pakistan will be forced to pay high prices for these drugs.
- ✍ Under Art. 65(4) or TRIPs Agreement and S. 1(3) of Patents Ordinance, 2000, provisions relating to grant of patents for chemical products intended for use in agriculture and medicines are coming into force from 1st January 2005.

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Major Concerns for Pakistan

Solutions for Public Health Emergencies



- ✍ **Doha Declaration and decision by TRIPs Council**
- ✍ **Compulsory Licensing**
 - ✍ TRIPs Agreement under Art. 31 allows compulsory licensing under which Pakistan would be able to continue to produce generic drugs protected by patents.
 - ✍ However, this could only be used to deal with public health emergencies and not for commercial objectives.
- ✍ **Parallel Imports**
 - ✍ For drugs which Pakistan does not have the capacity to produce, these could be imported from those countries that have themselves produced it under compulsory licensing.

Major Concerns for Pakistan

IP violations – Barriers to Trade and Investment



- ✍ **According to USTR Report**
 - ✍ In 2002, Pakistan was the fourth largest source of counterfeit and pirated goods seized by the U.S. Customs Service. The vast majority of these goods were media and apparel.
- ✍ **Special & Super 301 – Watch List**
 - ✍ Widespread piracy especially of copyrighted materials
 - ✍ Products include computer programs, books, CDs, etc.
 - ✍ Lack of patent protection of pharmaceutical products and gross trademark infringements

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Major Concerns for Pakistan



Domestic Issues

- ✍ **Underdeveloped judicial system; backlogged cases in the courts resulting in delays**
- ✍ **Failure to enforce courts' orders for the protection of intellectual property rights**
- ✍ **Corruption**
- ✍ **Failure of the government to protect data exclusivity during licensing process**

Major Concerns for Pakistan



Domestic Issues

- ✍ **Government often grants licenses to sell pharmaceuticals without checking whether another firm holds an active patent on that compound.**
- ✍ **Absence of a central Intellectual Property Rights regulatory and enforcement body has been one of the reasons for weak policy of IP protection in Pakistan**
- ✍ **No detailed study has been conducted to estimate costs of implementation of IPR regime in Pakistan. These include**
 - ✍ **Institutional costs**
 - ✍ **Administrative costs**
 - ✍ **Enforcement costs; training of police and custom officials**

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Benefits to Pakistan



- ✍ The TRIPS Agreement has paved a way for
 - ✍ Revamping Pakistan's intellectual property legislations
 - ✍ Creation of necessary infrastructure to enforce the legislations
- ✍ There are long term benefits in having a stronger intellectual property regime, as it will
 - ✍ Encourage foreign investment in Pakistan
 - ✍ Provide incentives for local inventors and authors

Background



Intellectual Property Rights Regime of Pakistan used to consist of

- ✍ Merchandise Marks Act, 1889
- ✍ Patent and Design Act, 1911
- ✍ Patents and Designs Rules, 1933
- ✍ Secret Patents Rules, 1933
- ✍ Trade Marks Act, 1940
- ✍ Trade Marks Rules, 1963
- ✍ Copyright Ordinance, 1962

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Pakistan's developments in the wake of WTO Regime



Amendments and New Legislations

- ✗ Copyrights (Amendment) Ordinance, 2000
- ✗ Patents Ordinance, 2000
- ✗ Trade Marks Act, 2001
- ✗ Trade Marks Rules, 2004 (enforced on 12th April 2004)
- ✗ Registration of integrated circuit Ordinance, 2000
- ✗ Industrial Design Ordinance, 2000
- ✗ New Plant Breeder's Rights Law (Draft Stage)
- ✗ New Software Law (Pending before committee of NA)

PIPRO

(Pakistan Intellectual Property Rights Organization)



- ✗ Presently, different Authorities deal with different intellectual property rights in Pakistan
 - ✗ The Ministry of Industries (Patents)
 - ✗ The Ministry of Commerce (Trademarks)
 - ✗ The Ministry of Education (Copyrights)
- ✗ PIPRO, in future, will be the sole body to deal with all Intellectual Property Rights in Pakistan. PIPRO aims to consolidate issuance and enforcement of trademarks, patents, and copyrights in one governmental body.
- ✗ Cabinet has approved the draft bill to set up the PIPRO – Waiting for the decision of the Parliament

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Pakistan should focus on



✍ Technical Evaluation & Analysis

With an eye on recent developments, a detailed study needs to be conducted regarding the implications, opportunities, technicalities and threats involved in implementing TRIPs Agreement.

✍ Education

The public and private sectors need to make the people aware by disseminating knowledge of:

- ✍ Consequences
- ✍ Benefits
- ✍ Threats
- ✍ Ways to cope with Intellectual Property Rights

Pakistan should focus on



Identification of Key Areas

✍ Pakistan needs to identify areas where it may benefit from strengthened IP disciplines.

These could include:

- ✍ Increased protection for geographical indications of our agricultural and food products e.g. Basmati Rice, Sindhri Mangoes, Shikarpuri “Achar”, etc.
- ✍ Traditional knowledge, especially traditional medicines, need to be catalogued and given legal protection.

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Pakistan should focus on

Up gradation of Institutional Framework

In order to exploit the global intellectual property regime to its benefit, Pakistan needs to rapidly upgrade the institutional and human resources capacity.

- ✍ **By providing sustainable high quality public administration**
- ✍ **By offering effective enforcement of intellectual property rights by**
 - ✍ **Establishing specialized courts for Intellectual Property**
 - ✍ **Training of lawyers & judges**
 - ✍ **Training of police & customs officials**



Thank you

