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ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS FROM THE PERSPECTIVE OF TRIPS AGREEMENT

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1. Introduction

Intellectual property confers on individuals, enterprises or other entities the right to exclude others from the use of specific intangible creations. The peculiar feature of such rights is that they relate to pieces of information that can be incorporated in tangible objects. Protection is given to ideas,[1] technical solutions or other information that have been expressed in a legally admissible form and that are, in some cases, subject to registration procedures.

Intellectual Property rights (IPRs) are thus the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.[2] Intellectual property, very broadly, means the legal rights, which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons.[3] One is to give statutory expression to the moral and economic rights of creators in their creations and such rights of the public in access to those creations. The second is to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading, which would contribute to economic and social development.

The term IPRs covers a bundle of right, such as patents, trade marks or copyrights, each different in scope and duration with a different purpose and effect. However all IPRs generally exclude third parties from exploiting protected subject matter without explicit authorization of the right holder, for a certain duration of time. However, in the case of

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1. The term "ideas" is not used, as copyright protects the specific expression of ideas and not the idea itself.
2. See WTO, TRIPs: What are Intellectual Property Rights (2002) at < http://www.wto.org >.
3. See WIPO, BASIC DOCUMENT ON INTELLECTUAL PROPERTY RIGHTS, http://www.wipo.org, (2001).

trademarks, geographical indications and trade secrets, this may mean unlimited time under certain circumstances.[4]

Though the content of intellectual property is the information as such, intellectual property rights are exercised—generally as exclusive rights—with respect to the products that carry the protected information.[5] For example, the owner of a patent can prevent the manufacture, use or sale of the protected product in the countries where the patent has been registered. This explains why intellectual property rights may have a direct and substantial impact on industry and trade. Those who create a certain intangible may, through the enforcement of such rights, regulate the use of the creation (e.g. a musical work) and the commercialization of the product (e.g. compact disk) that contains it. The control over an intangible asset therefore connotes the control over products and markets. Furthermore, because of the fact that all types of information are intangible property, if the property rights are not granted, this will mean that the creator of the information would be unable to receive the market value of the information in today's economy. Hence, there is a need for protection by means of intellectual property rights.[6]

Traditionally speaking, intellectual property rights may be defined in two ways : (1) in a colloquial sense, IPRs include everything which emerges from the exercise of human brain and (2) in a legal sense, IPRs are understood as "...the legal rights which may be asserted in respect of the product of the human intellect".[7]

In the complex world of today, the Intellectual Property Rights (IPR) have not only gained importance within its own domain but includes a diversity of multilateral agreements, international organizations, regional conventions and instruments, and bilateral arrangements. The international law of intellectual property as it stands today consists of three types of agreement. The most important agreement amongst these that affect the greatest number of countries are the TRIPS Agreement,

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4. Watal, J. 2001. *Intellectual Property Rights in the WTO and Developing Countries.* New York: Oxford University Press. Pg. 1
5. Thurow, Lester, (1997), "Needed: a new system of intellectual property rights", Harvard Business Review, September October.
6. Primo Braga, C.A. 1995, 'Trade-related intellectual property issues: the Uruguay round agreement and its economic implications', Chapter 12 in Martin, W. and Winter L.A. (eds), *The Uruguay Round and the Developing Countries*, World Bank discussion paper 307, The World Bank, Washington D.C. pp. 381–411.
7. Maskus, K.E. 1993, 'Trade-related intellectual property rights', *European Economy*, vol. 52, pp. 11–26.

and the multilateral treaties administered by the World Intellectual Property Organization (WIPO), a specialized United Nations agency located in Geneva. One of WIPO's main objectives is 'to promote the protection of intellectual property through cooperation among States and, where appropriate, in collaboration with any other international organization.'[8]

2. Types of Intellectual Property Rights

Intellectual Property since the Paris Convention, 1883[9] divided into two parts - one, industrial property as organized under the Paris Convention and next, non-industrial property incorporated under Berne Convention, 1886.[10] This distinction of industrial and non-industrial intellectual property rights overwhelmed for a long time till the inception of WIPO[11] in 1967 and especially of the finalisation of Uruguay Round in 1993. The Convention Establishing the World Intellectual Property Organisation (WIPO) has classified intellectual property as such:[12]

1. Literary, artistic and scientific works,
2. Performances of performing artists, phonograms, and broadcasts,
3. Inventions in all fields of human endeavour,
4. Scientific discoveries,
5. Industrial designs,
6. Trademarks, service marks, and commercial names and designations,

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8. Article 3, Convention Establishing the World Intellectual Property Organization. Signed at Stockholm on July 14, 1967.
9. *Paris Convention for the Protection of Industrial Property* of March 20, (1883), as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925,at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979.
10. *Berne Convention for the Protection of Literary and Artistic Works Paris Act* of July 24, (1971), as amended on September 28, 1979 Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979.
11. *Convention Establishing the World Intellectual Property Organisation*, (1967), as amended in 1979 and came into force from 1970.
12. *Supra note* 5, art. 2 (viii).

7. Protection against unfair competition, and
8. All other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields.

The Uruguay Round concluded major trade agreements including Trade Related Aspects of Intellectual Property Rights (TRIPs), 1994[13] and established the World Trade Organisation (WTO).[14] The TRIPs has provide all types of intellectual property rights as trade related intellectual property rights,[15] which are as such:

1. Copyright and Related Rights,
2. Trademarks,
3. Geographical Indications,
4. Industrial Designs,
5. Patents,
6. Layout-Designs (Topographies) of Integrated Circuits,
7. Undisclosed Information, and
8. Control of Anti-Competitive Practices in Contractual Licences.

3. The TRIPs Agreement

The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), which was adopted with the resolution of the Uruguay Round in 1994, comprises the first single instrument to cover all main disciplines of intellectual property. In conjunction with the World Intellectual

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13. This is one of the new Agreements under WTO regime. Developed countries, especially USA, Japan and Canada wanted to include intellectual property rights into the WTO regime, while on the other hand developing countries including India, Pakistan and Argentina wanted to exclude intellectual property rights regime from WTO. At the end of 1993 both developed countries and developing countries traded off between the Agreement on Agriculture and Agreement on Textile and Clothing in one side and TRIPs on the other side. Therefore, TRIPs is blamed for serving the interest of developed countries.
14. WTO came into existence from January 1st 1995 after substituting General Agreement on Tariffs and Trade, (GATT). Currently it consists of 144 Member Countries. The highest body of WTO is Ministerial Conference, which is held in each two years. Since its beginning four Ministerial Conferences have been completed. The fourth and recent one is completed at Doha, Qatar from November 9-14, (2001).
15. Dreyfuss, Rochelle Cooper, and Andreas F. Lowenfeld (1997). Two Achievements of the Uruguay Round: Putting Trips and Dispute Settlement Together. *Virgina Journal of International Law* 37, 2 (Winter): 275–333.

Property Organization (WIPO), the TRIPS provisions have effectively expanded and harmonized a global intellectual property regime.[16]

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) recognizes that widely varying standards in the protection and enforcement of intellectual property rights and the lack of multilateral disciplines dealing with international trade in counterfeit goods have been a growing source of tension in international economic relations. With that in mind, the agreement addresses the applicability of basic General Agreement on Tariffs and Trade[17] (GATT) principles and those of relevant international intellectual property agreements; the provision of adequate intellectual property rights; the provision of effective enforcement measures for those rights; multilateral dispute settlement; and transitional implementation arrangements. TRIPS provides extremely important linkage between intellectual property rights protection and trade portions of the Uruguay Round agreements (establishing the World Trade Organization). In the copyright area, TRIPS sets forth so called "Berne-plus" minimal for substantive protection.[18]

The TRIPs Agreement establishes minimum international standards for the protection (availability, scope, use and enforcement) of IPRs (including patents) and is backed by the proven effective WTO's dispute resolution mechanism. The TRIPs Council within WTO is, in general terms, responsible for evaluating overall implementation and progress of the TRIPs Agreement.

Key to discussion is article 27.1 of TRIPs which provides that

"[...] patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application [...]". Article 27.2 on the other hand envisages that certain inventions can be excluded by Members (of WTO) from patentability in order to protect *"[...] ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment [...]"*. In this regard, article 27.3. b permits

16. Maskus, K.E. 1993, 'Trade-related intellectual property rights', *European Economy*, vol. 52, pp. 157–84.
17. The General Agreement on Tariffs and Trade came into force on January 1948.
18. "Berne-plus" means that the minimum standard for international copyright protection has risen beyond the Berne standard in the ways enumerated in the substantive section of the TRIPS Agreement on copyright (Section II, Article 9-14).

Members to exclude from patentability " *[...] plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non biological or microbiological processes*". However, this provision also stipulates that Members *"[...] shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof*".

Finally, of relevance in regards to disclosure (inclusion of PIC requirements in patent applications, disclosure of origin, etc.) are articles 8 and 29 which address principles under which Members may adopt necesary legal measures (when developing their IPR legislation) in order to promote the public interest in areas which are vital for their social, economic and technological development (as is the sustainable use of biodiversity for many countries) and determine the need for full disclosure of inventions, respectively.

These substantial TRIPs provisions have been at the core of conflicting political positions and views by developing and developed countries. Since the adoption of GATT and the creation of WTO (1994), they have been subject to intense debate and multiple and diverse interpretations have been suggested regarding their exact scope and meaning. National (and regional)[19] IPR legislation enacted over the past few years in various countries—to adjust to and conform with TRIPs standards—as well as judicial precedents in others,[20] have contributed significantly to the varied interpretation of the TRIPs Agreement.

Developed countries (with certain differences between Europe and the US and Japan) have favoured a broad interpretation of patentable subject matter but a narrow interpretation of the TRIPs exceptions, a position

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19. Decision 486 of the Andean Community (Venezuela, Colombia, Ecuador, Peru and Bolivia) on a Common Regime on Industrial Property (2001) has, for example, determined that parts or the whole of live organisms as they exist in nature, including isolated genes and biological materials, will not be considered inventions for the purpose of patentability (article 15.b). Furthermore, specific disclosure requirements (access to genetic resources and protection of traditional knowledge documentation) are established in order to process patent applications (article 26.h and i) For the text of Decision 486 see: http.// www.comunidadandina.org Similar provisions have been included in biodiversity legislation in Brazil and Costa Rica.

20. In the US for example, the Supreme Court decision in Diamond v Chakrabarty (1980) (hybridized bacterium used in the treatment of oil pollution) laid the foundation for the granting of intellectual property protection for products resulting from modern biotechnology. This 5 to 4, controversial decision of the Supreme Court has blurred the distinction between inventions and discoveries, raising considerable criticism regarding its far reaching consequences.

which would allow for patents to be granted over biological materials, isolated genes, gene sequences, and biotechnological products and processes in general. In regards to the ongoing but protracted process for the examination and review of the TRIPs Agreement within the TRIPs Council initiated in 1999 as part of the mandate in article 71.1 of TRIPs , developed countries are basically of the view that an examination should focus mainly on the degree of implementation of TRIPs in countries and not address modifications to the Agreement.

In contrast, developing countries favour a broad interpretation of exemptions in TRIPs in order to ensure the possibility for national legislation to regulate in detail how these exemptions will apply in areas where—in order to protect human and animal health and the environment in general—the national interest might deem it necessary. Furthermore, in regards to the examination process of TRIPs, developing countries propose not only the review of implementation issues, but a detailed review of substantial provisions in order to propose ammendments and modifications if necessary.[21]

3.1 The TRIPs Agreement and the Doha Declaration

The TRIPs Agreement as the most controversial component of the WTO's "package deal" struck in 1994,[22] has received many different commentaries, either praise or blame.In effect, the TRIPS Agreement has exerted negative influence on implementing domestic public health policies in many developing country Members by adversely affecting their access to medicines. Conforming with the Agreement by providing or strengthening the protection of pharmaceutical products with intellectual property rights has posed a special challenge for many developing country Members, worsening the opportunities for access to medicines, particularly for the poor.

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21. As an example, for the June 2003 meeting of the Council for TRIPs, the Permanent Mission of Morocco, on behalf of the African Group, submitted for discussion the document "*Taking Forward the Review of Article 27.3.b of the TRIPs Agreement* with specific recommendations for the modification of article 27.3.b (WTO. IP/C/W/404 26 June 2003. (03 – 3410 Council for TRIPs)). During this same Council for TRIPs meeting, delegations of Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, India, Peru, Thailand and Venezuela submitted a text for discussion entitled "The Relationship Between the TRIPs Agreement and the Convention on Biological Diversity and the Protection of Tradictional Knowledge" which proposes specific modifications to patent disclosure requirements of the TRIPs Agreement (WTO. IP/C/W/403 26 June 2003. Council for TRIPs).

22. H. Reichman, *Taking the Medicine, with Angst: An Economist's View of the TRIPS Agreement*, 4 Journal of International Economic Law , 2001, p. 795.

Declaration on The TRIPS Agreement and Public Health made at the Doha Ministerial Conference (the Doha Declaration), enables the people on the globe to see the aurora of reform in the intellectual property regimes regarding public health. Clarifying the flexibility in the TRIPS Agreement, the Declaration entitles developing country Members autonomy to make and implement domestic public health policies with respect to intellectual property protection. Nevertheless, this Declaration does not fully dismantle obstacles created by the TRIPS Agreement, which significantly constrain the autonomy of national legislatures to shape intellectual property laws in the public health perspective.[23]

Doha Declaration requires that in applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.[24] The fundamental rule of treaty interpretation as set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (the "Vienna Convention")[25] had attained the status of a rule of customary or general international law.[26]

In the framework of the TRIPS Agreement, which incorporates certain provisions of the major pre-existing international instruments on intellectual property, the context to which the TRIPS Council may have recourse for purposes of interpretation of specific TRIPS provisions, in this case Article 30, is not restricted to the text and Preamble of the TRIPS

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23. Frederick M. Abbott, *The TRIPS Agreement, Access to Medicines, and the WTO Doha Ministerial Conference*, 5 The Journal of World Intellectual Property 1, 2002, p.15.

24. Declaration on the TRIPS Agreement and Public Health, WTO Ministerial Conference, Forth Session Doha, 20 November 2001, WT/MIN(01)/DEC/2, para. 5(a).

25. Vienna Convention on the Law of Treaties, done at Vienna, 23 May 1969, entered into force on 27 January 1980.

26. See *United States—Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, p. 17. *See* also Appellate Body Report, *Japan—Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, p. 11; Appellate Body Reports, *India—Patents*, para. 46; *European Communities—Customs Classification of Certain Computer Equipment*, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68AB/R, adopted 22 June 1998, para. 84; *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, para. 114; and James Cameron and Kevin R. Gray, *Principles of International Law in the WTO Dispute Settlement Body*, 50 International and Comparative Law Quarterly, 2001, pp. 254-256.

Agreement itself, but also includes the provisions of the international instruments on intellectual property incorporated into the TRIPS Agreement, as well as any agreement between the parties relating to these agreements within the meaning of Article 31(2) of the Vienna Convention on the Law of Treaties.

3.2 Relationship between CBD and TRIPS

The relationship between the objectives of the Convention on Biological Diversity (CBD) and intellectual property rights (IPRs) is the subject of continuing debate. Equally controversial is the effect of the Agreement on Trade-Related Aspects of Intellectual property (TRIPS Agreement)–one of the agreements binding on Members of the World Trade Organisation (WTO)–on the achievement of the CBD's objectives and on sustainable development generally.

The CBD's objectives are (1) to conserve biological diversity, (2) to promote the sustainable use of its components, and (3) to achieve fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.[27] These objectives find expression in the provisions of the CBD, many of which are affected, directly or indirectly, by IPRs. The relevance of IPRs stems from their role as one of society's principal mechanisms for protecting and enforcing control over information.[28] The information encoded in genetic resources is increasingly of commercial value–as a source of new crop and plant varieties, pharmaceuticals, herbicides and pesticides, as well as new biotechnological products and processes.

Intellectual property rights are private rights. As an incentive for innovation, they grant their holder the ability to exclude others from certain activities, such as using a product or process, for a defined period of time. The control afforded by IP protection thus enables right holders

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27. Convention on Biological Diversity, June 5, (1992) Article 1

28. As noted by the CBD Secretariat "the treatment of IPRs was a contentious issue in the negotiations on the Convention. Many developing countries argued that the application of existing IPR systems hinders the transfer of technology to the developing world, and unfairly disregards the contributions of generations of farmers to the world plant genetic resources, which underpin global food security.... For their part, some developed countries argued that strong universal protection of IPR would stimulate technology transfer and investment in research and development in developing countries, indirectly increasing the incentives to conserve biological diversity." See *Report of the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity*, United Nations Environment Programme, Conference of the Parties to the Convention on Biological Diversity, Doc UNEP/CBD/COP/3/23 at para. 13.

to limit who can use the resource, and so claim the benefits of commercialisation with little competition. The patent system contemplated by the TRIPS Agreement, for example, allows the holder of a product patent to prevent third parties from making, using, offering for sale, selling or importing the product.[29]

The scope of the exclusive rights created by IPRs defines who can use the information contained in genetic resources, and so influences the distribution of the benefits flowing from this use.[30] In these ways, and others, IPRs will affect who shares in the benefits arising from genetic resources, and the type of technology developed from genetic resources, with implications for the conservation and use of biological diversity. As a result of the value associated with IPRs, there is increasing pressure by commercial interests to gain intellectual property rights over genetic resources. This pressure, and the resulting IPR systems, is raising challenges for policy-makers who seek to give effect to the objectives of the CBD.

3.3 Objectives of WTO/TRIPS

From the Preamble to the WTO/TRIPS[31], we can identify the following key objective in relation to IP (which mirror the general tenor of the entire WTO Agreement): To eliminate trade distortions and trade barriers among countries by providing for 'rules and disciplines' for effective and adequate (read here 'strengthened') protection and enforcement of IP rights, including copyright.[32]

The significance of WTO/TRIPS lies in its integration of copyright as a trade issue. The impact of subsuming copyright to the binding 'rules and disciplines' set out in WTO/TRIPS results in subjecting it to the underlying assumptions upon which the international trade system is based. Thus,

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29. Article 28 of the TRIPS Agreement
30. The scope of intellectual property rights refers to a number of factors such as the subject, duration, category of activities that IPRs extend to, as well as the availability of exceptions to private rights such as compulsory licensing, and other exceptions for research and non-commercial uses.
31. See Preamble (Appendix 1). The first paragraph reads as follows:
"Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade"
32. Article 1(2) WTO/TRIPS define IP as consisting of copyright and related rights, trademarks, geographical indications industrial designs, patents, integrated circuits topographies and undisclosed information (trade secrets).

copyright works are considered exclusively as tradeable commodities to be circulated, without restrictions, across national territorial boundaries. No allowance is made for viewing copyright in any other dimension such as, for example, an integral tool for the dissemination of national culture.[33]

The Preamble itself reinforces this orientation by expressly declaring that intellectual property rights are private rights.[34] In this way, WTO/TRIPS tends to view copyright policy from a 'rights-holder' perspective rather than defining copyright as a 'public good' in which 'user rights' are equally important imperatives to be safeguarded.

Unfortunately but not surprisingly, the major proponents of the final text of the WTO/TRIPS, the US, the EU and Japan did not consider the opinions of copyright user interests or other public interest advocates in formulating their IP agendas, relying solely on the views of IP industries and even then, to a consortium of particular industry interests. As a result, copyright 'user groups' and other public interest advocates had no voice in determining the shape and tenor of the WTO/TRIPS accord.[35]

Outside of the Preamble, Articles 1-8 of WTO/TRIPS set out General Provisions and Basic Principles as they relate to the entire gamut of IP rights and further reinforce the 'rights-holder' orientation of the agreement. For example, Article 1 permits Member States to grant more extensive protection than that stipulated under WTO/TRIPS. Thus, the

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33. The [in]ability of the WTO to accommodate issues of fundamental human concern has been the subject of much commentary especially in relation access to patented medicines for catastrophic diseases. In relation to copyright, concerns have revolved around the hardships faced by aboriginal peoples in seeking to preserve and protect their indigenous culture and folklore. Similar issues have been raised by States themselves in relation to the need to protect national cultural identity and cultural pluralism in the face of the free trade ideology of the WTO. International organizations such as the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) have been studying these issues.

34. See Preamble (Appendix 1).

35. See Mathews, D., *Globalising Intellectual Property Rights – The TRIPS Agreement*, (London: Routledge, 2002). It is worth noting that the discourse surrounding WTO/TRIPS has generally been characterized as North-South i.e. the developed or industrialized world advocating for strong rights against the dissenting opinions of the developing world for whom the benefits of strong IP rights are not at all obvious. What this "North-South" polarization suggests, falsely, is that there is consensus within the industrialized world itself as to the need to strengthen IP rights. In fact, nothing could be farther from the truth, especially in relation to copyright.

standards set out therein are only intended as minimum standards which countries are free to derogate from so long as the net result is to enhance IP rights.

Article 3 provides for national treatment i.e. that Member States must protect foreign nationals in the same manner as they treat their own citizens in relation to IP rights. Article 4 ensures most-favoured nation treatment to all WTO/TRIPS Members except under the conditions specified within that provision.[36]

Finally, Part III of WTO/TRIPS requires Member States to ensure that their national laws provide for effective mechanisms for the enforcement of IP rights domestically through the judicial system.

That said, the WTO/TRIPS is not totally weighted in favour of 'rights-holders'. The agreement gives some general recognition of the need to balance IP rights with other competing public policy objectives. The Preamble expressly recognizes as an objective "the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives".[37] This principle manifests itself in Articles 7 and 8 of WTO/TRIPS.

Article 7: Objectives

> The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, 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.

Article 8: Principles

1. Members may, in formulating or amending their laws and regulations, 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, provided that such measures are consistent with the provisions of this Agreement.
2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse

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36. This provision obliges Member States not to discriminate against each other. This includes conferring any favours, privileges or other advantages equally.
37. See Appendix 1. The Preamble also recognizes the special needs of the developing world under a separate heading.

of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

These key provisions are of particular significance in providing guidance as to the manner in which the entire WTO/TRIPS agreement is to be interpreted. They ensure that the monopoly interests of the IP rights holder will be weighed against other, equally important public policy considerations such as public health and nutrition, fair technology transfer to the developing world and socio-economic development so long as the measures undertaken by countries to safeguard these interests are consistent with the WTO/TRIPS in its entirety.

It is not clear at this stage just how Articles 7-8 would be interpreted in practice where measures are adopted in respect of copyright that do not, for example, contribute to the dissemination of knowledge and technology or are in restraint of trade or abuse of monopoly. If nothing else, they serve to provide an interpretive tool to challenge domestic policy-makers who invoke their WTO/TRIPS obligations to justify severely narrowing or eliminating 'user rights'.

3.4. The Seven Parts of TRIPS

1. With respect to copyright, the agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how data bases should be protected. An important addition to existing international rules in the area of copyright and related rights is the provision on rental rights. Authors of computer programmes and producers of sound recordings have the right to authorize or 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 which is materially impairing the right of reproduction.[38] Performers are protected from 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 reproduction of recordings for a period of 50 years.

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38. Under international law, domestic legislation is presumed to comply with Canada's international obligations. See *the Vienna Convention on the Law of Treaties* (23 May 1969) 1155 UNTS 331 (entered into force January 27, 1980). Whether the Educational and Library Exceptions are indeed WTO/TRIPS compliant is always open to challenge.

2. The agreement defines what types of signs must be eligible for protection as trademarks or service marks and what the minimum rights conferred on their owners must be. Marks that have become well-known in a particular country enjoy additional protection. The agreement identifies a number of obligations for the use of trademarks and service marks, their terms of protection, and their licensing or assignment. For example, requirements that foreign marks be used in conjunction with local marks will, as a general rule, be prohibited.
3. In respect of geographical indications,[39] members must provide means to prevent the use of any indication which misleads the consumer as to the origin of goods, and any use which would constitute an act of unfair competition.
4. Industrial designs are protected under the agreement for a period of 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.
5. As for patents, the agreement requires that 20-year patent protection be available for all inventions, whether of products or processes, in almost all fields of technology. Inventions may be excluded from patentability if their commercial exploitation is prohibited for reasons of public order or morality; otherwise, the permitted exclusions are for diagnostic, therapeutic and surgical methods, and for plants and (other than microorganisms) animals and essentially biological processes for the production of plants or animals (other than microbiological processes). Detailed conditions exist for compulsory licensing or governmental use of patents without the authorization of the patent owner.[40] Rights conferred in respect of patents for processes must extend to the products directly obtained by the process; under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process.

   Historically, plant varieties had been exempted from the international patent regime in deference to farmers' traditional practices of saving and exchanging seeds. Industrialised countries, however, have

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39. See Article 24 of the TRIPS agreement.
40. Ashish Kothari & R.V.Anuradha, *Biodiversity, Intellectual Property Rights, and the GATT Agreement: How to Address the Conflicts?* 43 ECON. & POL. WEEKLY 2814, (October 1997).

been debating the merits of PBRs as a form of monopoly that may encourage plant-breeding activity. This culminated in the International Convention for the Protection of New Varieties of Plants (UPOV Convention) in 1978, which as indicated above, was amended in 1991, further strengthening the monopolistic hold of plant breeders. Until recently, the UPOV Convention was primarily comprised of Organisation for Economic Cooperation and Development (OECD) countries. However, the TRIPs Agreement now extends the requirement to protect plant variety property rights to all WTO Member States.

6. With respect to the protection of layout designs of integrated circuits, members are to provide protection on the basis of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits opened for signature in May 1989, but with a number of additions: protection must be available for a minimum period of 10 years; the rights must extend to articles incorporating infringing layout designs;[41] innocent infringers must be allowed to use or sell stock in hand or ordered before learning of the infringement against a suitable royalty; and compulsory licensing and government use is only allowed under a number of strict conditions.
7. Trade secrets and know-how which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices.[42] Test data submitted to governments in order to obtain marketing approval for pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

3.5. Basic Principles of TRIPS

Part I of the agreement sets out general provisions and basic principles, notably a national-treatment commitment under which nationals of other members must be given treatment no less favourable than that accorded to a member's own nationals with regard to the protection of intellectual property. It contains a Most-Favoured-Nation[43] clause under

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41. Newby, T., "What's Fair Here is not Fair Everywhere: Does the American Fair Use Doctrine Violate International Copyright Law" (1999) 51 Stanford L.Rev. 1633 at p. 1649.
42. Watal, J. 2001. *Intellectual Property Rights in the WTO and Developing Countries.* New York: Oxford University Press. Pg. 10
43. Part 1 Article 1.1 of the GATT

which any advantage a member gives to the nationals of another member must normally be extended to the nationals of all other members, even if such treatment is more favourable than that which it gives to its own nationals.

Part II addresses different kinds of intellectual property rights. It seeks to ensure that adequate standards of intellectual property protection exist in all members countries, taking as a starting point the substantive obligations of the main pre-existing conventions of the World Intellectual Property Organization (WIPO)—namely, the Paris Convention (1967),[44] the Berne Convention (1971),[45] the Rome Convention[46] and the Treaty on Intellectual Property in Respect of Integrated Circuits.[47] It adds a significant number of new or higher standards where the existing conventions were silent or thought inadequate.

Part III of the agreement concerns enforcement. It sets out the obligations of member governments to provide procedures and remedies under their domestic law to ensure that intellectual property rights can be effectively enforced. Procedures must permit effective action against infringement of intellectual property rights and should be fair and equitable, not unnecessarily complicated or costly, and should not entail unreasonable time-limits or unwarranted delays. They must allow for judicial review of final administrative decisions and, generally, of initial judicial decisions.

The final section in this part of the agreement concerns anti-competitive practices in contractual licences. It recognizes the right of members to take measures in this area and provides for consultations between governments where there is reason to believe that licensing practices or conditions relating to intellectual property rights constitute an abuse of these rights and have an adverse effect on competition. Remedies against such abuses must be consistent with the other provisions of the agreement.

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44. In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property;

45. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971

46. "Rome Convention" refers to the International convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961.

47. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989.

The civil and administrative procedures and remedies spelled out in the text include provisions on evidence, provisional measures, injunctions, damages and other remedies which would include the right of judicial authorities to order the disposal or destruction of infringing goods. Members must also provide for criminal procedures and penalties at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies must include imprisonment and/or fines sufficient to act as a deterrent. In addition, members must provide a mechanism whereby rights holders can obtain the assistance of customs authorities to prevent the importation of counterfeit and pirated goods.

With respect to transition arrangements, the agreement envisages a one-year period for developed countries to bring their legislation and practices into conformity. Developing countries and, in general, transition economies must do so in five years and least-developed countries in 11 years.

Developing countries which do not at present provide product patent protection in an area of technology have up to 10 years to introduce such protection. However, in the case of pharmaceutical and agricultural chemical products, they must accept the filing of patent applications from the beginning of the transitional period, though the patent need not be granted until the end of this period.[48] If authorization for the marketing of the relevant pharmaceutical or agricultural chemical is obtained during the transition period, the developing country concerned must, subject to certain conditions, provide an exclusive marketing right for the product for five years, or until a product patent is granted, whichever is shorter.

4. Enforcement procedures in TRIPS

A weakness of the pre-existing international law in the area of intellectual property has been almost entirely silent on the issue of enforcement. High substantive standards of protection of intellectual property are of little use if rights cannot be effectively enforced. Thus, the TRIPS Agreement requires Members, in addition to granting the right holders the minimum rights contained in the Agreement, to provide domestic procedures and remedies so that they can enforce their rights effectively.

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48. Watal, J. 2001. *Intellectual Property Rights in the WTO and Developing Countries.* New York: Oxford University Press. Pg. 68-76

The TRIPS rules on enforcement constitute the first time in any area of international law that such rules on domestic enforcement procedures and remedies have been negotiated. The Agreement therefore breaks new ground in elaborating rules on the procedures and remedies that must be available under national law. These rules aim to recognize basic differences between national legal systems while being sufficiently precise to provide for effective enforcement action as well as safeguards against abuse in the use of procedures.[49] As provided in Article 1.1 of the Agreement, Member countries are free to determine the appropriate method of implementing these and other provisions of the Agreement within their own legal system and practice.

In some respects the origin of the TRIPS Agreement lies in proposals put forward in 1978 and 1979 in the final stages of the Tokyo Round of Multilateral Trade Negotiations for a GATT agreement on the prevention of the import of counterfeit goods. These proposals were not accepted at that time, but work continued in the GATT, in particular after the 1982 Ministerial Meeting. The ideas put forward at that time correspond broadly to those which were finally contained in the section of the Enforcement Part of the TRIPS Agreement on special requirements related to border measures. However, during the Uruguay Round negotiations it was agreed that the Agreement should cover also obligations on internal enforcement procedures and remedies and on minimum substantive standards.[50]

The provisions on enforcement are contained in Part III of the Agreement, which is divided into five Sections. The first Section lays down general obligations that all enforcement procedures must meet. These are notably aimed at ensuring their effectiveness and that certain basic principles of due process are met. The following Sections deal with civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures.

These provisions have two basic objectives: one is to ensure that effective means of enforcement are available to right holders; the second is to

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49. L.P. Loren, 2002. "Technological protections in copyright law: Is more legal protection needed?" *International Review of Law Computers and Technology,* volume 16, pp. 133-148.

50. Samuelson, P., "Challenges for the World Intellectual Property Organization and the Trade-Related Intellectual Property Rights Council in Regulating Intellectual Property Rights in the Information Age", [1999] 21(11) EIPR 578 at p. 591.

ensure that enforcement procedures are applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

The obligations set out are of two main types. The first type are those which prescribe procedures and remedies that must be provided by each Member - much of this is set out in terms of the authority that must be available to judges and courts or other competent authorities, such as customs. The second type of obligation is what might be described as "performance" requirements in relation to the workings of these procedures and remedies in practices; for example, they must be such as to permit effective action against infringing activity, expeditious and deterrent remedies and applied in a manner that will avoid the creation of barriers to legitimate trade.

The Agreement makes a distinction between infringing activity in general, in respect of which civil judicial procedures and remedies must be available, and counterfeiting and piracy—the more blatant and egregious forms of infringing activity—in respect of which additional procedures and remedies must also be provided, namely border measures and criminal procedures. For this purpose, counterfeit goods are in essence defined as goods involving slavish copying of trademarks, and pirated goods as goods which violate a reproduction right under copyright or a related right.

4.1. General Obligations

The proponents of the *TRIPS Agreement* in the Uruguay Round were concerned not only that minimum substantive IPRs standards be adopted, but also that they be capable of application. As noted earlier, the *TRIPS Agreement* preamble characterizes IPRs as private rights, and this implies that private right holders are responsible for seeking the enforcement of those rights. The *TRIPS Agreement* Part III on Enforcement of IPRs takes the approach of obligating Members to establish administrative and judicial mechanisms through which private IPRs holders can seek effective protection of their interests. It is implicit in all international agreements that their parties will undertake to implement them in good faith.[51] The Paris Convention includes obligations regarding the enforcement, among others, of trademark rights with respect to infringing imports (Articles 9-10). The *TRIPS Agreement* may nonetheless be characterized as the first

51. *Vienna Convention on the Law of Treaties, Article 26.*

multilateral effort to regulate the internal administrative and judicial mechanisms that countries are obligated to maintain with respect to the application of a set of agreed upon legal rules. Because of the novelty of this endeavour, there are few readily available answers regarding how the requirements of *TRIPS Agreement* Part III will be interpreted or applied.

The general obligation of Members to provide enforcement mechanisms requires that enforcement procedures "are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements".[52]

Members are obligated to ensure that enforcement procedures are "fair and equitable", and "not unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays".[53] There is additional provision on written decisions, opportunities to present evidence, and obligation to provide judicial review for administrative decision in particular contexts.[54] Article 41:5 establishes two important principles. First, Members are not required to establish separate judicial systems for the enforcement of IPRs, as distinct from general law enforcement. Second, there is no "obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law generally". The latter point is relevant to the question under what conditions a Member may be subject to dispute settlement, not for failing to adopt adequate enforcement rules, but rather for failing to "effectively" apply them. If a Member generally does not have adequate resources or capacity in the administration of its civil legal system, it should be under no special obligation to focus its attention on TRIPS enforcement matters.

4.2. Civil and Administrative Procedures and Remedies

Articles 42 through 49 of the *TRIPS Agreement* establish basic principles for the conduct of civil proceedings to enforce IPRs, such as through

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52. *Article 41:1 of the TRIPS Agreement.*
53. Subramanian, Arvind and Jayashree Watal (2000): 'Can TRIPS Serve as an Enforcement Device for Developing Countries in the WTO', *Journal of International Economic Law*, Vol.3, No.3, pp.403-16.
54. *Articles 41:2 – 41:4 of the TRIPS Agreement.*

actions brought by right holders to enjoin infringement. The rules are largely common among developed legal systems, and include rights in favour of defendants as well as complaining parties. The rules provide that parties should have the opportunity to present and contest evidence, and that adequate remedial measures should be available. There is flexibility inherent in these civil enforcement rules, such as in the area of calculating damages for infringement, as to which there is substantial existing jurisprudence that does not follow a uniform line.

It is of particular interest to note that Article 44:2 of the *TRIPS Agreement* permits Members to exclude the grant of injunctions in circumstances involving compulsory licenses and "other uses". This provision was adopted to take account of the United States government use provision (28 U.S.C. § 1498) that excludes the possibility of obtaining a civil injunction against government use of a patent, and should be taken into account in the drafting and implementation of compulsory licensing and government use measures in other Members.[55]

4.3. Provisional Measures

Article 50:1 of the *TRIPS Agreement* obligates Members to make provision for the ordering of "prompt and effective provisional measures" to prevent entry of infringing goods into channels of commerce and preserve evidence. Article 50:2 requires that judicial authorities have the power to adopt provisional measures "in audit altera parte" (outside the hearing of the other party) where delay may cause irreparable harm. This means that the IPRs holder should be entitled to seek a prompt order whether or not the party alleged to be acting in an infringing manner can be notified and given opportunity to be heard. In this event, the affected party should be notified promptly, and be given an opportunity to be heard and contest the measures that have been taken.

Judicial authorities may require complaining parties to post security in the event that their actions are without merit and damage defendants. Article 50:6 of the *TRIPS Agreement* requires that, if requested by a defendant, a proceeding on the merits of the action be initiated within a reasonable period, with time limits set forth if not decided by a judge

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55. Correa, Carlos M (1997): 'Implementation of the TRIPs Agreement in Latin America and the Caribbean', European Intellectual Property Review, Vol.8, pp. 435-43

under the law of the Member. The question whether this provision is directly applicable in European Community law was the subject of a referral from the Netherlands to the *European Court of Justice* in *Parfums Christian Dior v. Tuk Consultancy.*[56] The ECJ put the question in the hands of the Netherlands courts since the procedural rule was not within the competence of the EC.

4.4. Special Requirements Related to Border Issues

Articles 51 though 60, *TRIPS Agreement*, address measures that a Member must adopt to allow certain right holders to prevent release by customs authorities of infringing goods into circulation. Pursuant to Article 51:1 of the *TRIPS Agreement* these procedures need only be established in respect to suspected "counterfeit trademark or pirated copyright goods", and specifically excludes parallel import goods (that is, according to footnote 13, "imports of goods put on the market in another country by or with the consent of the right holder").

Article 58 provides that equivalent rules should be followed when customs authorities are granted the authority to act against suspected infringing goods on their own initiative. Generally, the specified right holder should be permitted to lodge an application with the relevant authorities that describes with sufficient particularity the allegedly infringing goods, along with information sufficient to establish a prima facie case of infringement. The applicant may be required to post security sufficient to compensate for potential injury to the importer for abuse, and the importer must also have a right to be compensated in cases of abuse of process.

There is provision for notification of the suspension to the importer, and provision for the release of suspended goods by the relevant authorities if a suspension has not been followed by appropriate legal action. The right holder is to be granted a right to inspect allegedly infringing goods, although the authorities may protect confidential information.[57] Competent authorities are to have the power to order destruction or disposal of infringing goods, and a presumption against allowing re-exportation is established.

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56. ECJ Joined Cases C-300/98 and C-392/98, Dec. 14, 2000.
57. Narayanan, P. (1997): Intellectual Property Law, eastern Law House, Calcutta, pp- 97-134

4.5. Criminal Procedures

Article 61 of the *TRIPS Agreement* obligates Members to provide criminal penalties for trademark counterfeiting and copyright piracy on a commercial scale, allowing for the possibility of imprisonment and/or fines "sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of corresponding gravity".[58]

The fifth and final section in the enforcement chapter of the TRIPS Agreement deals with criminal procedures. Provision must be made for these to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. The Agreement leaves it to Members to decide whether to provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale. While in some countries only trademark counterfeiting and copyright piracy are treated as criminal, other countries apply criminal procedures to nearly all forms of intellectual property infringements.[59]

Sanctions must include imprisonment and/or monetary fines sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity. Criminal remedies in appropriate cases must also include seizure, forfeiture and destruction of the infringing goods and of materials and instruments used to produce them.

4.6. Acquisition and Maintenance

The *TRIPS Agreement* includes a separate Part IV regarding the "Acquisition and Maintenance of Intellectual Property Rights and Related Inter-Parties procedures". This Part consists solely of Article 62. It provides that Members may apply reasonable procedures and formalities in connection with the grant or maintenance of IPRs, that registrations will be undertaken within a reasonable period of time, and that service mark registrations will be subject to the same basic Paris Convention

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58. Watal, Jayashree: Intellectual Property Rights in the WTO and Developing Countries,Oxford University Press, pp. 360-363

59. Many developed and developing countries have criminal remedies for patent infringement as for instance, Japan, Brazil and Thailand. Many others confine criminal remedies to only trademark and copyright infringement as for instance, UK, Australia, India and Malaysia.

procedures as trademark registrations.[60] It also provides that administrative and *inter partes* (that is, between parties) proceedings relating to the grant or revocation of rights will be subject to similar due process protections as those applicable to enforcement proceedings. Finally, there is provision for judicial or "quasi-judicial" review of grant and revocation proceedings, except in cases of unsuccessful opposition claims.

The procedures by which IPRs are granted or denied are of great interest to applicants, those opposing applications and the public. The *TRIPS Agreement* provides limited guidance in this area, leaving Members with considerable discretion with respect to the manner in which their grant and revocation systems are designed. However, this must be understood within the context of the various WIPO treaties that address these types of procedures and proceedings in more detail than the substantive rules that were the primary focus of the TRIPS negotiations.[61]

4.7. Issues for Dispute Settlement

There are two basic types of claims regarding the enforcement provisions of the *TRIPS Agreement* that are foreseeable. The first are claims that Members have failed to adopt laws and establish administrative mechanisms that satisfy the basic requirements of Part III of the Agreement. The second are claims that while Members may have adopted the relevant laws and mechanisms, they are failing to operate them in a manner that is "effective".

Because the enforcement rules of the *TRIPS Agreement* are unique in the multilateral context, there is little prior international experience to rely on for guidance regarding how these two basic types of claims will be addressed by panels and/or the Appellate Body. The characteristics of legal systems around the world as regards procedure in civil enforcement matters are rather different, stemming from various cultural and legal traditions. In this sense, uniform methods of implementing the

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60. D. Matthews, 2002. *Globalising intellectual property rights: The TRIPs Agreement*. London: Routledge.

61. See Article 64.1 of TRIPS, Articles XXII and XXIII of GATT (1994) and WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (1994) referred to in Article 64.1 of the TRIPS Agreement as the "Dispute Settlement Understanding" (DSU). This Understanding constitutes Annex 2 of the Marrakech Agreement. See WIPO publication No. 223 (E), World Intellectual Property Organization, Geneva 1996 at pp. 129 et seq.

enforcement provisions should not be expected. One of the principal questions that panels and/or the Appellate Body will face is how much discretion will be accorded to each Member to follow its own traditions in matters of enforcement.

Even more difficult to predict is how panels and/or the Appellate Body will evaluate claims that Members are failing to "effectively" implement their civil IPRs enforcement systems. The requirement of providing an effective system of enforcement would not appear to be directed at the process or outcome in a single case or controversy, but rather to be more concerned with repeated or systematic deficiencies. The question is, what quantum of deficiency would constitute TRIPS-inconsistent conduct, and how would this be measured? Also, since Article 41:5 expressly acknowledges that Members need not provide special attention to IPRs enforcement as compared with their general civil legal enforcement regime, there is by definition more leeway in TRIPS enforcement matters allowable to Members with less capacity within their general legal systems. There have as yet been no TRIPS dispute settlement decisions involving Part III of the agreement.

4.8 Approaching Dispute Settlement

As with the substantive subject matter of the *TRIPS Agreement*, a claim involving the enforcement provisions should be approached with the flexible nature of the relevant provisions in view. A Member is clearly permitted to approach civil enforcement within its own legal traditions, and to implement the enforcement provisions in a way compatible with its existing constitutional and regulatory framework. Throughout their histories, the most technologically advanced countries have gone through periods in which legal attitudes towards intellectual property regimes have differed.

As recently as the 1970s, in the United States there was substantial judicial scepticism concerning IPRs and their market restricting characteristics. In the late 1990s, the pendulum had swung towards viewing the market restricting characteristics of IPRs with less concern. As this pendulum swings back and forth, IPRs holders have had less and more success with pursuing civil enforcement claims in the courts.[62]

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62. Maskus, Keith (2000), *Intellectual Property Rights in the Global Economy*, Institute for International Economics, Washington DC, August.

In sum, the legal system and judiciary are entitled to strike an appropriate balance among the various national stakeholders regarding the enforcement of IPRs, provided that basic protections are effectively provided within the provisions of the *TRIPS Agreement*.

- IPRs holders are required to have access to courts or appropriate administrative authorities, and to be afforded basic due process protections. It is not required that right holders be placed in a special category outside the normal civil legal channels. While certain specific requirements must be met, e.g., in respect to the availability of provisional measures, these measures may be those applicable in all civil proceedings. It is mainly in the case of border measures (and customs authorities) that special measures may be required that are distinct from the treatment of other subject matters.
- Developing Members with limited enforcement capacity need not specially allocate resources to IPRs enforcement compared to general law enforcement.

5. Conclusion

In sum, it is in the long-term economic self-interest of developing countries to protect the intellectual property of all nations. To achieve this goal, emphasis must be placed not only on enacting intellectual property laws, but also on making certain that those laws are effectively enforced. Protection of intellectual property is not an end in itself. It is a way to encourage domestic creative activity, make it easier to acquire foreign technology, and provide access to the scientific and technological information contained in millions of patent documents. But the major concern is how to ensure patent as a system that benefits not only the small sections of the rich world but equally serves prevent disease and reduction of poverty by contributing development processes of least-developed countries.