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Intellectual Property Rights and International Trade: Balancing Innovation and Access in Global Markets

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ABSTRACT

"Intellectual property is not just about wealth creation; it is about cultural enrichment and societal well-being."

— Francis Gurry, Former Director-General, WIPO

In a time when innovation is accelerating, intellectual property rights, or IPRs, are now crucial to the dynamics of international trade. In addition to being legal tools, intellectual property rights (IPRs), which include patents, copyrights, trademarks, and trade secrets, are also economic drivers, geopolitical tools, and development gatekeepers. IP clauses are used to safeguard national interests, increase competitiveness, and encourage technological advancement as nations negotiate trade agreements.

However, there are serious equity concerns about the incorporation of IPRs into trade agreements. High-income countries frequently demand strict protections, while developing nations argue that doing so would limit their access to knowledge, technology, and medications. Global calls to temporarily waive TRIPS provisions for vaccine access brought these tensions to light during the COVID-19 pandemic.

Often adding "TRIPS-plus" criteria exceeding the WTO framework, trade agreements such as TRIPS, USMCA, and CPTPP now shape the legal environment of IP enforcement worldwide. Although this encourages creativity and investor confidence, especially in health, agriculture, and the digital economy, it may reinforce monopolies and increase disparities.

Former WIPO Director-General Francis Gurry correctly observed, "Intellectual property is not just about wealth creation; it is about cultural enrichment and societal well-being." This attitude emphasizes the importance of considering how IP systems influence human development, equity, and cultural sustainability outside of economic measures.

Tracing historical treaties, emphasizing practical examples, and providing ideas on how the world can more equitably balance innovation motivations with fair access, this blog investigates the interaction between IPR and international trade. Recent events like the U.S.-China trade agreement and EU-India FTA talks have raised the stakes of achieving this balance correctly more than ever.

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I. INTRODUCTION

Intellectual Property Rights (IPRs) have become one of the most potent instruments in forming international trade, innovation, and development in an ever more linked global economy. Once limited to national legal systems, IPRs now play a major role in the design of bilateral, regional, and multilateral trade agreements, therefore affecting all aspects from access to medicines to the preservation of cultural legacy and the digital economy. The creation of the World Trade Organisation (WTO) and the introduction of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995 formalised the connection between trade and intellectual property.

This pivotal agreement established baseline standards for intellectual property (IP) protection across all World Trade Organization (WTO) member countries, forming a cohesive global framework. Since then, trade pacts have increasingly included “TRIPS-Plus” clauses—more rigorous regulations that often exceed the WTO’s baseline—primarily advocated by wealthier nations and multinational corporations.

Nonetheless, this increase in IP protections has sparked controversy. Although enhanced intellectual property rights (IPRs) are associated with promoting innovation and attracting foreign investment, they can also impede technology transfer, hinder access to vital medicines, and restrict knowledge sharing—particularly in developing and emerging economies. The recent COVID-19 pandemic underscored these inequalities globally, as numerous nations faced challenges in obtaining affordable access to vaccines and therapies safeguarded by patents.

The function of IPRs in trade agreements transcends mere legal or economic considerations—it presents a developmental and ethical dilemma. How can we craft IP systems that motivate innovation while also guaranteeing that the advantages of this innovation are fairly distributed? This blog delves into this intricate relationship, utilizing real-world examples, significant trade negotiations, and policy discussions to examine how we can achieve an appropriate balance between protection and access, as well as private interests and the public.

(A) Understanding the Rights to Intellectual Property

Legal protections given to creators for their designs, inventions, copyrights, trademarks, and geographical indications are referred to as intellectual property rights (IPR). By guaranteeing that innovators can profit from their creations, these rights encourage innovation. By requiring

basic levels of protection for member states, the WTO's historic TRIPS Agreement harmonised international IPR norms.

(B) The Function of IPR in International Trade agreements

The expanding significance of intellectual property rights (IPRs) in the global economy is reflected in their inclusion in international trade agreements. IPR laws have an impact on how nations develop innovation strategies, settle trade disputes, and maintain public health standards in addition to the movement of products and services. A model for striking a balance between these conflicting interests can be found in the TRIPS Agreement and other regional trade frameworks.

1. Promoting Innovation and Economic Development

One of the main reasons for incorporating intellectual property rights (IPRs) in trade agreements is their ability to foster innovation and enhance economic advancement. Robust IP protection motivates inventors, researchers, and companies to invest in new technologies, products, and creative endeavors. This is especially observable in developed nations. For instance, in the United States, industries that are heavily reliant on intellectual property contribute more than **\$7.8 trillion** to the GDP and sustain over **44 million** jobs, based on a **2022 report** from the **U.S. Patent and Trademark Office**. Fields such as pharmaceuticals, biotechnology, software, and entertainment depend on global IP protection to compete effectively in international markets. The TRIPS Agreement aids in harmonizing these protections among WTO member countries, guaranteeing that innovations created in one nation can be safeguarded in others. This minimizes the likelihood of intellectual property theft or duplication as businesses venture into international markets, fostering a more secure and predictable environment for trade

2. Addressing Trade Conflicts

Differences in the enforcement of intellectual property (IP) rights among countries can lead to tensions in trade relations. For example, some nations may not effectively regulate counterfeit products, while others may implement excessively stringent enforcement measures that hinder market entry. The TRIPS Agreement of the WTO established a structured approach for tackling such conflicts. Countries are now able to voice their concerns regarding unfair IP practices through the WTO's Dispute Settlement Body (DSB), facilitating the resolution of disputes based on international norms instead of unilateral actions. This framework has been vital in diffusing tensions between significant trade partners, like the U.S. and China, where issues of IP infringement and coerced technology transfer have been longstanding points of contention. A key case is the **United States vs. China (DS362)**, in which the U.S. contested China's

enforcement of copyright and trademark regulations. The WTO panel issued a partial ruling in favor of the U.S., highlighting the importance of TRIPS in mediating intricate disputes related to IP.

3. Balancing Public Welfare

Though intellectual property rights (IPRs) primarily aim to safeguard private innovation, trade agreements also acknowledge the necessity of flexibility to promote public welfare. The TRIPS Agreement, for example, permits nations to implement measures such as compulsory licensing, allowing the production of patented goods—such as medicines—without the patent holder's permission under certain circumstances.

This allowance was vital during the COVID-19 pandemic, as numerous low- and middle-income nations faced challenges in obtaining affordable vaccines. South Africa and India spearheaded a proposal at the WTO to suspend specific TRIPS obligations concerning COVID-19 vaccines and treatments. This discussion ignited a worldwide dialogue on the ethical duties of wealthier countries and pharmaceutical companies amidst global health emergencies.

Although a partial waiver was reached in **June 2022**, detractors claimed it was insufficient and too delayed. Nonetheless, this situation underscored the necessity of striking a balance between protecting IPRs and ensuring global access to crucial technologies

II. TRIPS AGREEMENT: A GLOBAL IP FRAMEWORK

The TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), **implemented in 1995** under the World Trade Organization (WTO), represented a significant change in the worldwide governance of Intellectual Property Rights (IPRs). This agreement was the first of its kind to set uniform IPR regulations amongst all WTO members, defining minimum requirements for protection and enforcement in various sectors, **including copyrights, trademarks, patents, industrial designs, trade secrets, and geographical indications.**

The primary goal of TRIPS was to reduce international IP infringements—such as piracy and counterfeiting—that disrupted global commerce. Nevertheless, critics contend that it has favored developed countries, whose economies rely heavily on IP-centric industries. These nations had the capabilities to innovate and uphold rights, while numerous developing countries faced challenges in reconciling IPR commitments with the need for public welfare.

A significant point of contention has been TRIPS' effect on access to medicines. Nations like India and Brazil, recognized for their generic drug sectors, encountered legal and political challenges from multinational corporations for offering affordable alternatives. In retaliation,

they utilized TRIPS' flexibility provisions, such as compulsory licensing, to safeguard public health—a right supported by the Doha Declaration (WTO, 2001).

Although TRIPS brought uniformity to international IP legislation, its legacy continues to be debated, particularly regarding issues of equity and access.

(A) COVID-19: A Critical Juncture in Intellectual Property Politics

The COVID-19 pandemic clearly exposed the tension between intellectual property rights protection and public health needs. In 2020, India and South Africa suggested a waiver to the TRIPS agreement to facilitate broader vaccine production, receiving support from over 100 WTO member countries. However, pushback from wealthier nations slowed advancement. A limited waiver was eventually approved in June 2022, but critics contended that it was implemented too late and was too restrictive to make a meaningful difference in vaccine accessibility. This situation underscored the shortcomings of existing intellectual property frameworks during global emergencies and amplified calls for reforming trade-associated intellectual property regulations.

(B) TRIPS-Plus Provisions in Contemporary Trade Agreements

Contemporary Free Trade Agreements (FTAs) frequently incorporate TRIPS-Plus clauses—intellectual property regulations that go beyond World Trade Organization mandates—primarily benefiting developed countries with industries centered on intellectual property. The USMCA initially suggested a decade of data exclusivity for biologics and implemented stricter digital copyright regulations (USTR, 2020). The CPTPP permits extensions of patent terms and offers 70-year copyright protections following the creator's death. European Union FTAs (such as those with Vietnam and Canada; ongoing discussions with India) advocate for robust geographical indications, data exclusivity, and more rigorous enforcement of intellectual property rights (European Commission, 2023). Although these provisions are designed to draw investment and safeguard innovation, detractors claim they hinder competition from generic drugs, elevate the cost of medicines, and limit access in developing nations.

(C) IPR in the Digital Age and New Frontiers

The digital era is swiftly altering the IPR landscape, bringing forth new issues such as:

- Ownership of software patents and algorithms
- Enforcement of copyright in the streaming industry
- Liability concerning AI-generated content

- Data exclusivity pertaining to biotechnology and genomics

Agreements like the Digital Economy Partnership Agreement (DEPA) and the U.S.-Japan Digital Trade Agreement are setting new precedents for IP protection in this sector. Nonetheless, the rapid pace of technological advancements continues to surpass current legal structures.

1. Case Study: The IP Stalemate in the EU-India Free Trade Agreement

The negotiations for the India-EU Free Trade Agreement, which were reignited in 2022, focus significantly on intellectual property rights. The EU is pushing for more rigorous enforcement, data exclusivity, and geographical indication protections—demands that India has resisted.

India, recognized worldwide for its cost-effective generic drugs, is concerned that agreeing to TRIPS-plus terms would:

- Postpone the availability of affordable generics.
- Jeopardize national health initiatives (such as Ayushman Bharat).
- Limit exports to other developing nations.

The Indian Pharmaceutical Alliance (IPA) and public health NGOs have consistently cautioned against agreeing to provisions that could jeopardize drug affordability and accessibility (IPA, 2023)

2. Case Study: U.S.–China Trade War and Intellectual Property

The trade conflict between the U.S. and China highlights the importance of Intellectual Property Rights (IPR) in geopolitical and economic confrontations. The U.S. charged China with coercing technology transfers, stealing intellectual property, and engaging in cyber espionage against American firms. These actions were perceived as undermining fair competition and breaching WTO regulations.

In retaliation, the U.S. implemented tariffs and urged China to enhance its enforcement of intellectual property laws. This pressure eventually led to the Phase One Trade Deal in 2020, wherein China agreed to strengthen its protections for intellectual property, including patent enforcement, safeguarding trade secrets, and taking action against counterfeit products.

Although the agreement represented a step forward, concerns about enforcement persist. The conflict illustrated that protecting intellectual property extends beyond legal implications; it plays a crucial role in shaping trade policies, diplomacy, and the dynamics of the global market.

III. RECOMMENDATIONS FOR A BALANCED IP TRADE REGIME

To enhance the fairness and innovation potential of IPR systems, the following measures are crucial:

1. **Adaptable Licensing Approaches:** Promote open licensing and collaborative partnerships between the public and private sectors in areas such as health and education.
2. **Enhancing Capacity:** Support developing nations in fortifying their IP institutions without enforcing strict deadlines.
3. **Expanded Public Interest Exceptions:** Widen the scope of TRIPS exceptions for urgent situations and critical sectors.
4. **Collaborative Policymaking:** Engage civil society, academic institutions, and innovators in the IP negotiation process.
5. **Protection of Traditional Knowledge:** Safeguard indigenous knowledge systems through specialized legal frameworks

IV. CONCLUSION

Intellectual Property Rights have emerged as a significant but contentious instrument in international commerce. They can drive innovation, generate wealth, and enhance societal progress; however, they also pose a risk of deepening inequalities when influenced by limited commercial motives. As trade discussions grow increasingly intricate and interlinked, the international community must adjust IPR structures to foster access, fairness, and collective development—not merely corporate gain. This blog offers a perspective on how intellectual property rights impact international trade agreements, drawing on real-life examples such as the U.S.-China trade tensions and the discussions surrounding COVID-19 vaccines. It highlights the necessity for balanced policies that safeguard creators' interests while effectively addressing worldwide challenges.

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