



Competitive Exams: Science and Technology TRIPS

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Trade Related Intellectual Property Rights (TRIPS)

1. Fifteen years after signing of the Trade Related intellectual Property Rights (TRIPS) agreement, experts from developing countries are trying to find ways to guard against rising cost of technology and healthcare due to it.
2. THIPS agreement signed in 1994 required developing countries to bring about significant changes in their Intellectual Property (IP) laws to raise their standards of intellectual rights protection, As a result, costs of technologies like climate change related and healthcare related ones increased significantly.

TRIPS: What for Developing Countries?

1. The TRIPS agreement that was conceived to expand and strengthen intellectual property rights has not been able to deliver the benefits promised to developing countries at the time of its signing namely transfer of technology, stimulation of local innovation and increase of foreign direct investment.
2. Developed countries prompted the negotiation of the TRIPS agreement on the argument that an expanded and strengthened protection of intellectual Property Rights (IPRs) would bring about increased flows of foreign direct investment (FDI) and technology transfer to developing countries and those changes in IPRs would also stimulate local innovation.

TRIPS-Plus Looms Large

1. Now there are efforts to push the standards even higher. Developed countries are forcing developing countries to comply with more stringent IP laws through TRIPS-plus provisions that the latter have been coaxed to sign in lieu of bilateral free trade agreements. TRIPS-plus makes the IP protection requirements more stringent than TRIPS.
2. Under TRIPS agreement, patents must last for 20 years from the date of application. TRIPS-plus provisions extend the period beyond 20 years (usually indefinitely) with the excuse that need to obtain marketing approvals for new chemicals takes time and reduces the effective term of patent protection and possibility of recovering research and development funds.

Solution in South-South Technological Co-Operation

1. Government representatives and civil society groups from developing countries believe that developing countries could share the technological resource base that exists with them and establish their own intellectual property regime to keep the cost of technologies like climate and health care related ones low.
2. Closer ties and stronger co-operation among developing countries could help developing countries establish their own IP provisions and stop being dictated by the IP regime established by the developed world.

TRIPS Flexibilities

1. The TRIPS agreement also provides for some flexibility that developing countries can use to address the economic and social concern of these countries. While the bilateral agreements or free trade agreements try to nullify many of these flexibilities, the challenge before developing countries is to make most efficient use of these flexibilities.

The Flexibilities under TRIPS

1. Compulsory licenses: Mechanism used by public authorities to authorize use of a patented invention by the government or third parties without the consent of the patentholder. Countries can decide on the grounds on which it is granted and are usually resorted to for public health emergencies. Patent-holders receive compensation, usually in the form of a royalty.
2. Parallel imports: Companies often charge lower prices for a medicine in one country than in another, taking into account a range of market factors. Many countries' patent laws determine that once a patent owner sells its goods in any country, it has no right to control the resale of those goods. This means that a country with limited resources can sometimes afford more of a patented medicine by purchasing it abroad at a lower price and importing it, rather than buying it directly in its domestic market at the higher price.
3. Bolar Provision/regular exception: This permits the use of a patented invention without authorization from the patent owner in order to obtain marketing approval of a generic product before the patent expires allowing a generic product to enter the market more quickly after patent expiry, which in turn facilitates access to cheaper medicines.
4. Exemptions for least developed countries: In November 2005, before the WTO Hong Kong

Ministerial Conference, the WTO TRIPS Council extended the transition period for least developed countries from mandatory compliance with the TRIPS agreement until July 2013.

With specific reference to pharmaceutical products, the Doha Declaration, as implemented by a TRIPS Council Decision of June 2002, exempts least developed countries from having to grant patents and from providing for the protection of undisclosed information 1 January 2016.

These transition periods are subject to further extension upon duly motivated request.

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