



---

**Agreement on Trade Related  
Aspects of Intellectual Property  
Rights, including Trade in  
Counterfeit Goods (TRIPS)**

---



**Textiles Committee**  
Ministry of Textiles, Government of India  
Mumbai

**July, 2005**

**WTO CELL,**  
Market Research Wing,  
Textiles Committee,  
Ministry of Textile, Govt. of India,  
Mumbai - 400 025  
Tel. No.56527515/516/567/500  
**Email:** [tcdmr@bom7.vsnl.net.in](mailto:tcdmr@bom7.vsnl.net.in)  
**Website:** [www.textilescommittee.nic.in](http://www.textilescommittee.nic.in)

## **Preface**

The World Trade Organisation (WTO) is the institutional framework of the multilateral trading system. The WTO is the successor to the General Agreement on Tariffs and Trade (GATT). At its heart are the WTO agreements, negotiated and signed by the bulk of the worlds trading nations. These agreements provide the legal ground rules for international commerce.

Considering the emerging multilateral trading systems, a WTO cell has been set up under the Market Research Division. The objectives of this initiative are primarily to enhance the capacity of the industry in understanding the dynamics of changing global trade scenario under WTO regime.

This is the first booklet on subject "Agreement on Trade Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS)", from WTO cell. It provides a simple but comprehensive explanation of the fundamental concepts of TRIPS and is in the form of answers to commonly asked questions. I hope that this booklet will serve as a preliminary booklet on TRIPS related issues.

Eventhough there are several reports and publications in this regard in both Internet and print media, this booklet will be useful to the readers to get first hand idea on WTO.

I appreciate the sincere efforts of Dr P.Nayak, Director (Market Research), Dr N.Mahesh, Statistical Officer and all the WTO team in bringing this booklet in a user-friendly format. However, readers are welcome to give their views/suggestions for further improvement.

**(Dr.Rajiv Aggarwal)**  
**Secretary**

## **1. What are Intellectual Property Rights (IPR)?**

The objectives of IP are creations of Human Mind, the human intellect ideas and knowledge are an increasing important part of trade. Creators can be given the right to prevent others from using their inventions, designs and other creations and to use that right to negotiate payment in return for others using them. These are "Intellectual Property Rights". IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, and protection of layout design of integrated circuits and protection of undisclosed information (trade secrets).

- Government and Parliaments have given creators these rights as an incentive to produce ideas that will benefit society as a whole.
- The 1986-94 Uruguay Round achieved that the WTO's Agreement on TRIPS is an attempt to narrow the gaps in the way these rights are protected around the world and to bring them under common international rules.
- It establishes minimum level of protection that each government has to give to the Intellectual Property of fellow WTO members. The Agreement sets out minimum standards to be adopted by the parties, though they are free to provide higher standard of protection.
- When there are trade disputes over IPRs, the WTO's dispute settlement system is now available.

## **2. What are the various types of Intellectual Property?**

The areas covered by the TRIPS Agreement -

- Copyright and related rights.
- Trade marks, including service marks.
- Geographical indicators.
- Industrial designs.
- Patents
- Layout designs (topographies) of integrated circuits.
- Protection of undisclosed information including trade secrets.

**3. What are the five broad issues covered in the agreement?**

- (i) How basic *principles* of the trading system and other international intellectual property agreements should be applied.
- (ii) How to give adequate *protection* to IPRs.
- (iii) How countries should *enforce* these rights adequately in their own territories.
- (iv) How to *settle disputes* on IP between members of the WTO.
- (v) *Special transitional arrangements* during the period when the new system is being introduced.

**4. What are the basic principles under this agreement?**

- Non-discrimination features prominently.
- National treatment: treating one's own nationals and foreigners equally.
- MFN: equal treatment for nationals of all trading partners in the WTO.
- Technology Transfer: IP protection should contribute to technical innovation and the transfer of technology. Both producers and users should benefit and economic and social welfare should be enhanced, the agreement says.

**5. How to protect intellectual property?**

- The second part of the TRIPs agreement looks at different kinds of IPRs and how to protect them.
- The purpose is to ensure that adequate standards of protection exist in all member countries.
- Here the starting point is the obligation of the main international agreements of the World Intellectual Property Organisation (WIPO) that already existed before the WTO was created.
- The Paris convention for the protection of industrial property (patents, industrial designs, etc.)
- The Berne convention for the protection of literary and artistic works (copyright).
- In some cases, the standards of protection prescribed were thought inadequate so, the TRIPs Agreement adds significant number of new or higher standards.

**6. What are the legislation's covering IPRs in India?**

- (i) Patents: The Patents Act, 1970. The act was last amended in March 1999.
- (ii) Design: The Designs Act, 1911. A new Design Act 2000 has been enacted superseding the earlier Designs Act 1911.
- (iii) Trade Mark: The Trade and Merchandise Marks Act, 1958. A new Trademarks Act, 1999 has been enacted superseding the earlier Trade and Merchandise Marks Act, 1958. (Enforcement pending)
- (iv) Copyright: The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999 and the Copyright Rules, 1958.
- (v) Layout Design of Integrated Circuits: The Semiconductor Integrated Circuit Layout Design Act 2000. (Enforcement pending) Protection of Undisclosed Information: No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872.
- (vi) Geographical Indications: The geographical Indication of goods (Registration and Protection) Act 1999. (Enforcement pending).

**7. Who are responsible for administration of IPRs in the country?**

Patents, designs, trademarks and geographical indications are administered by the Controller General of Patents, Designs and Trademarks which is under the control of the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. Copyright is under the charge of the Ministry of Human Resource Development. The Act on Layout Design of Integrated Circuits. Will be implemented by the Ministry of Communication and Information

## **Copyright**

### **8. What does copyright cover?**

- (i) Literary, dramatic and musical work. Computer programs/software are covered within the definition of literary work.
- (ii) Artistic work.
- (iii) Cinematographic films which include sound.

The TRIPS agreement ensures that computer programmes will be protected as literary works under the Berne Convention and outlines how databases should be protected.

It also expands international copyright rules to cover rental rights. Authors of computer programmes and producers of sound recordings must have the right to 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, affecting copyright owners' potential earnings from their films.

The agreement says performers must also have the right to prevent 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 unauthorized reproduction of recordings for a period of 50 years.

## **Trademarks**

### **9. How is "Trademark" defined?**

Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of other and may include shape of goods, their packaging and combination of colours; and

(i) In relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark and

(ii) In relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

The agreement defines what type of signs must be eligible for protection, as trademarks and what the minimum rights conferred on their owners must be. It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well known in a particular country enjoy additional protection.

### **Geographical Indications**

#### **10. What does the term 'Geographical Indications (GI)' stand for?**

The term GI has been defined as "Geographical Indications", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Place names are sometimes used to identify a product. Well known examples include "Champagne", "Scotch", "Tequila" and "Roquefort" cheese. Wine and spirits makers are particularly concerned about the use of place names to identify products and the TRIPS agreement contains special provisions of these products. But the issue is also important for other types of goods.

The use of a place name to describe a product in this way - "geographical indication" - usually identifies both its geographical origin and its characteristics. Therefore, using the place name when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and it can lead to unfair competition. The TRIPS agreement says countries have to prevent the misuse of place names.

For wines and spirits, the agreement provides higher levels of protection, i.e. even where there is no danger of the public being misled.

Some exceptions are allowed, for example if the name is already protected as a trademark or if it has become a generic term. For example, "cheddar" now refers to a particular type of cheese not necessarily made in Cheddar. But any country wanting to make an exception for these reasons must be willing to negotiate with the country which wants to protect the geographical indication in question. The agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines.

#### **11. Who can apply for GI's registration?**

Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering geographical indication in relation to such goods shall apply in writing to the

Registrar in such' form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

**12. Which of the geographical indication cannot be registered?**

Geographical Indications:

- The use of which would be likely to deceive or cause confusion or contrary to any law.
- Which comprises or contains scandalous or obscene matter or any matter likely to hurt religion susceptibility of any class or section of citizens of India.
- Which would other wise is disentitled to protection in a court. which are determined to be generic names or indications of goods and are,
- Therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that Country.
- Which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the i goods originate in another territory, region or locality, as the case may be.

**13. What is the punishment in the Act for falsifying GI?**

A sentence of imprisonment for a term between six months to three years and a fine between fifty thousand rupees and two lakh rupees is provided in the Act. The court may reduce the punishment under special circumstances.

**14. What is term of GI protection?**

The registration of a GI shall be for a period of ten years but may be renewed from time to time for an unlimited period by payment of the renewal fees.

**15. Is there any Indian textile product/s to get intellectual property right protection for geographically indicated products?**

Yes, Pochampally ikkat, known for its unique art of dyeing from the textile cluster of Pochampally near Hyderabad, has recently managed to get intellectual property right protection for geographically indicated products.

The famous Pochampally *ikat* tie-and-dye sari has won Intellectual Property Rights protection, more than a year after its first applied. It is the first traditional Indian craft to receive this status of geographical branding. The design won protection in the Geographical Indications category. This will protect the Pochampally handloom sari from unfair competition and counterfeit. An estimated one hundred thousand weavers in Andhra Pradesh may benefit from the granting of Intellectual Property Rights to the traditional tie-and-dye fabric, which has seen falling demand due to competition from cheaper fabrics copying from their design.

**Designs**

**16. What does the term 'Design' mean according to the Designs Act, 2000?**

"Design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device.

**17. What are the designs not registrable under the Act?**

A design which

- (a) is not new or original; or
- (b) has been disclosed to the public any where in India or in any other country by publication in tangible form or by use in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or

- (c) is not significantly distinguishable from known designs or combination of known designs; or
- (d) comprise or contains scandalous or obscene matter, shall not be registered.

## **Patents**

### **18. What does it mean by Patents?**

Patents provide property rights to inventions - a novel idea, which permits in practice the solution to a specific problem. To be registered as patent, the invention must be new, must involve an inventive step and must be capable of industrial application. The Agreement stipulates that countries shall grant patents for inventions in all fields of technology and for both 'product' and 'process'.

### **19. What are the 'product' or 'process' cannot be patented?**

The following cannot be patented:

- (i) Diagnostic, therapeutic, surgical methods for treatment of humans and animals.
- (ii) Plants and animals, other than micro-organisms (micro-organisms, though not very clearly defined in conventions, scientifically mean any material which is self replicable or replicable via a host organism e.g., bacteria, gene, gene sequence, cell lines, viruses etc.)
- (iii) Essentially biological processes for the production of plants and animals (other than non-biological or micro-biological processes).

### **20. How to get a patent in India?**

The Indian Patent Office has been speeding up the issuance process with a modernisation programme and increasing the number of pattern examiners.

Normally, it takes about three years from the date of filing the application for the grant of a patent in India.

The term of every patent granted according to the patents, Act 1970, as amended in 2002, is 20 years for all categories of inventions in consonance with Article 33 of the TRIPS Agreements.

