



The Common Law of TRIPs

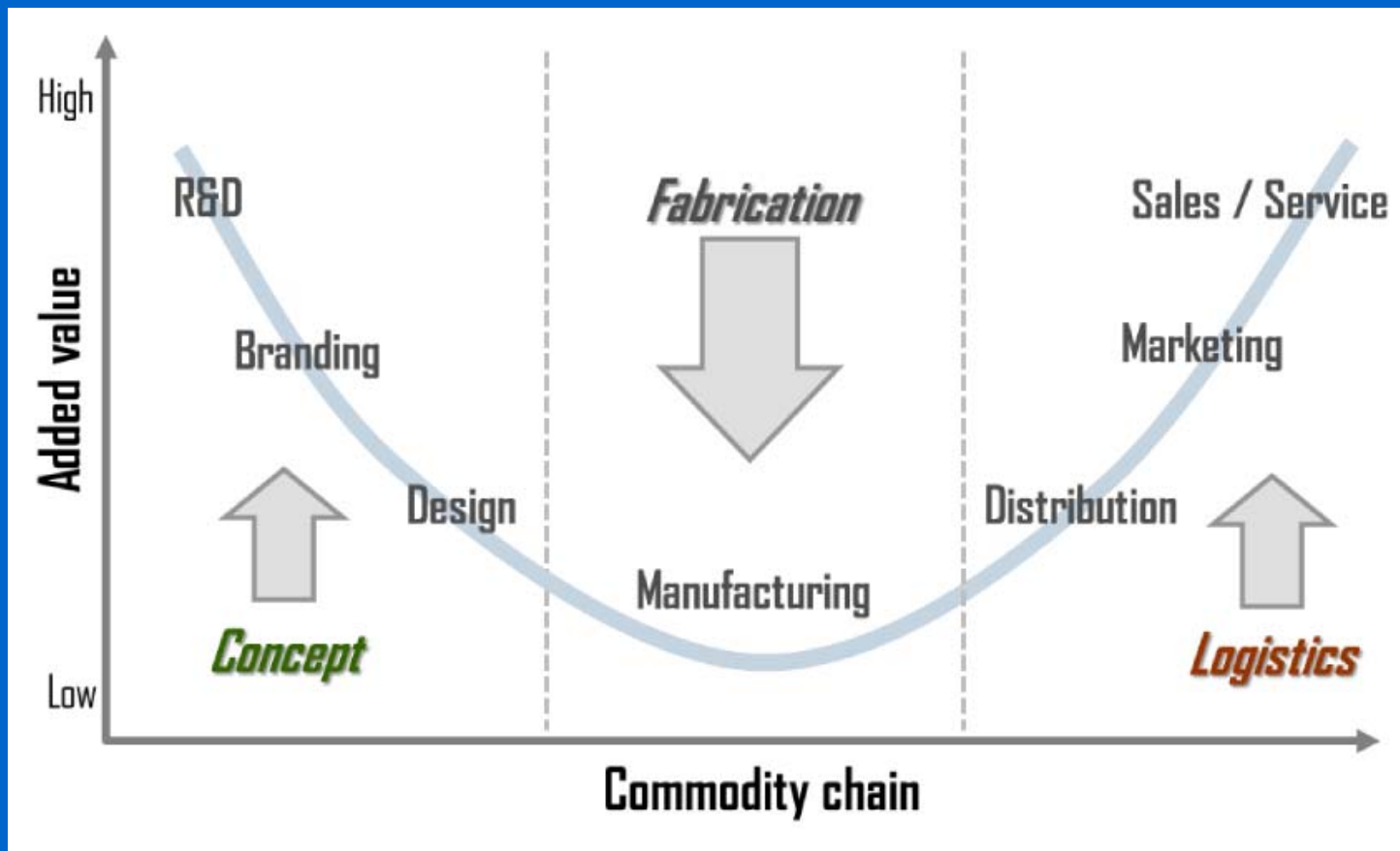


Thomas Cottier

WTO Public Forum 2015, Session 33: How TRIPS
Works: the Law and Economics of Intellectual
Property since TRIPS

October 1, 2015

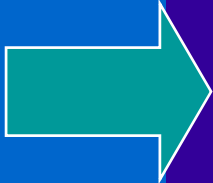
Global Value Chains



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Case Law Relating to TRIPS

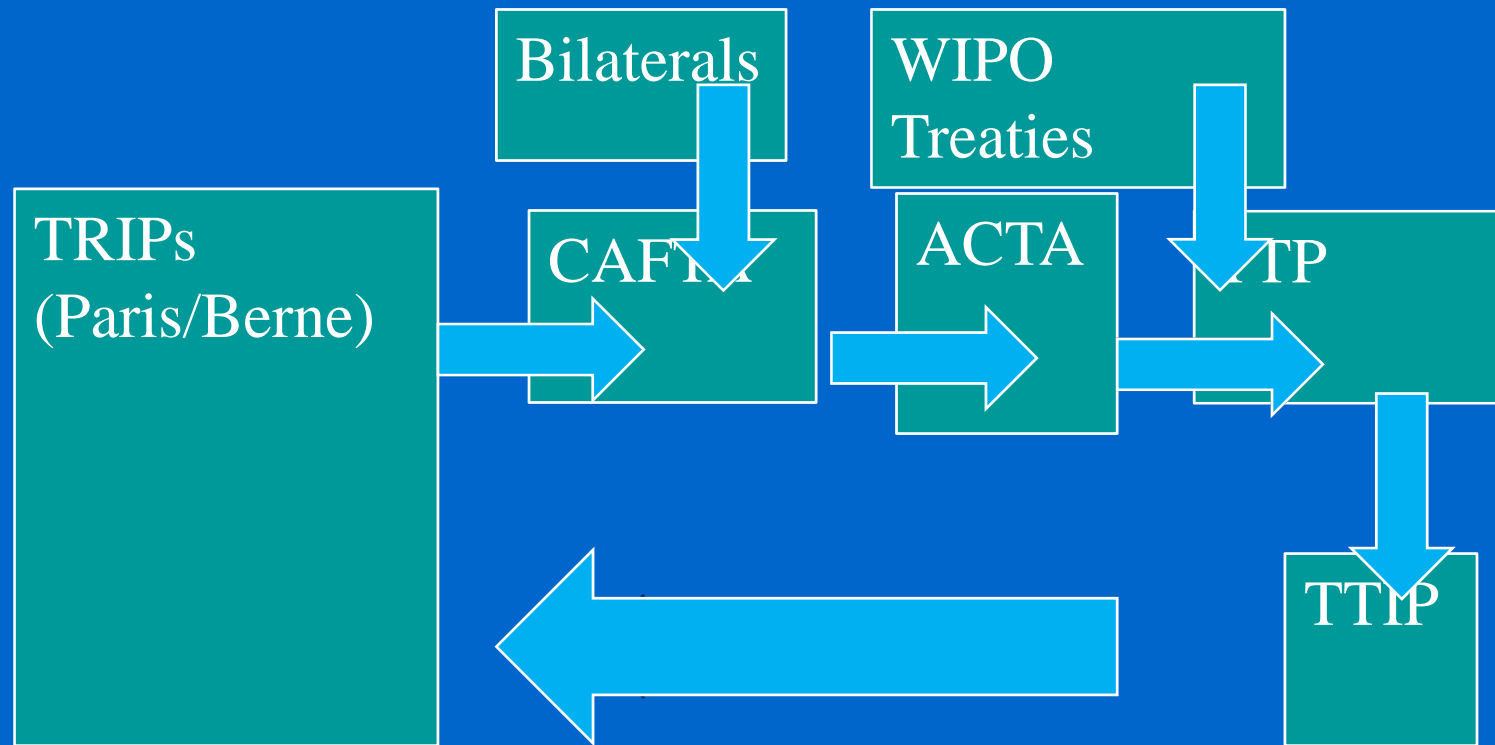
- Complainants:
 - US 18
 - EC 7
 - Brazil: 1
 - Canada: 1
 - Australia 1
- Defendant:
 - US: 4
 - EC: 9
 - LDCs: 7
 - Canada: 2
 - Japan 2
 - China 2
- Cases settled:



- Panels and Appellate Body*:
- 11 major cases decided (7 upon complaint EC)
 - India Patent: US/EC (2)*
 - Indonesia Automobiles* (US/EC/Japan)
 - Canada Patent (EC)*
 - US Copyright (EC)
 - Canada Patent Term (US/EC)*
 - US Section 211 Omnibus Act (EC)*
 - US - Copyright (EC) (Arbitration)
 - EC Trade Marks GI (US/Aus)
 - China IPR Enforcement

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Post TRIPs Process



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Likely Developments

- In diplomacy likely to see further increases of MFN based levels of protection
- Increased levels essentially driven by producer interests
- Uniform standards but benign neglect in enforcement and dispute settlement for developing countries and LLCs
- Risk of excessive protection and clogging of the system, reducing innovation and welfare?

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The Future: Towards Coherence

- Past and present combine fragmentation and integration short of taking into account all pertinent elements in shaping IPRs in law-making and interpretation
- Need to develop an intellectual framework in academic research informing future developments
- Need to bring about inclusive processes

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Relevant Context

- International trade regulation, in particular combatting economic protectionism and rent-seeking
- Anti-trust rules, unfair competition (TK and CSR)
- Investment protection
- Human rights and sustainable development
- General principles of law, constitutional law
- Linkage to real property protection

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Thank you for your attention!