

# Seminar on WTO Accessions Rules: The TRIPS Agreement

Geneva, Switzerland – 8 February 2019

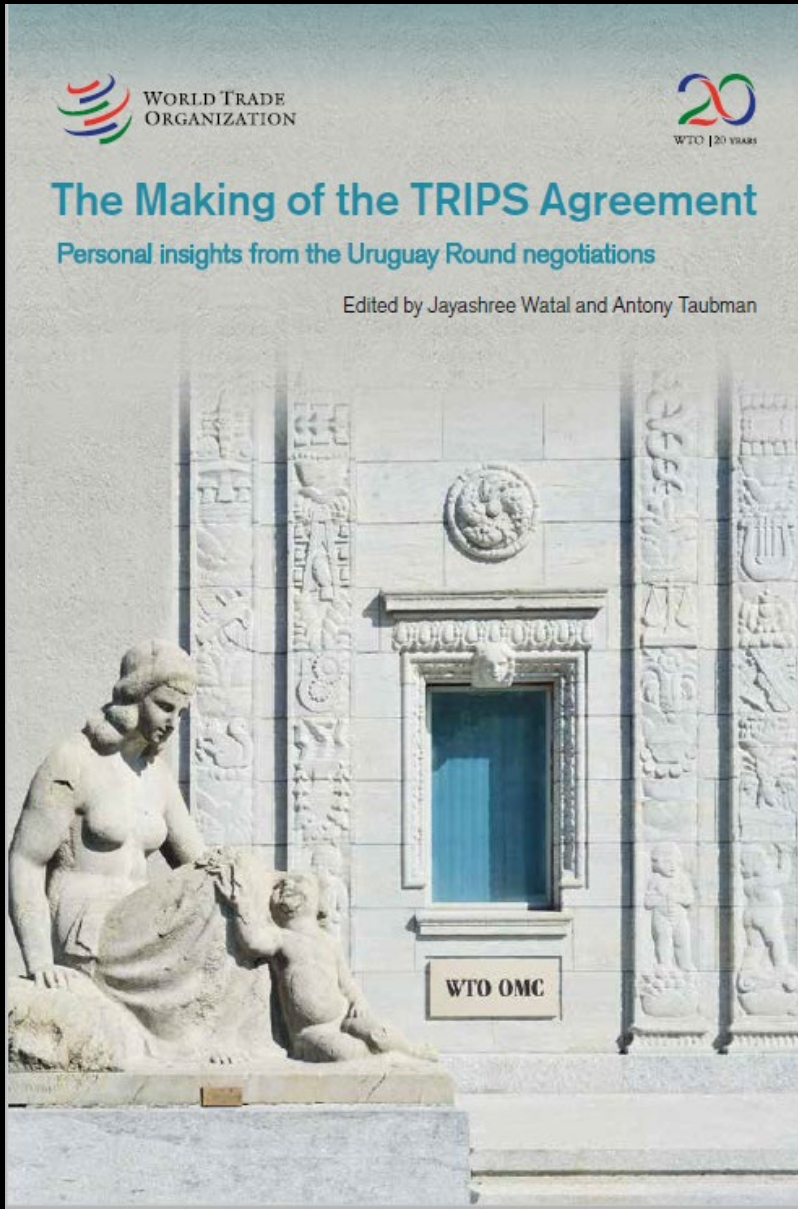
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WTO OMC

# The Making of the TRIPS Agreement



## Personal Insights from the Uruguay Round Negotiations

The “Making of the TRIPS Agreement” presents for the first time the diverse personal accounts of the negotiators of this unique trade agreement. Their contributions illustrate how different policy perspectives and trade interests were accommodated in the final text, and map the shifting alliances that transcended conventional boundaries between developed and developing countries.

Free download from [www.wto.org](http://www.wto.org)

# Structure

- What are Intellectual Property Rights?
- Main features and basic principles of TRIPS
- TRIPS in the WTO
- Notification and Review of legislation

I.

# What are Intellectual Property Rights?

PRs)?



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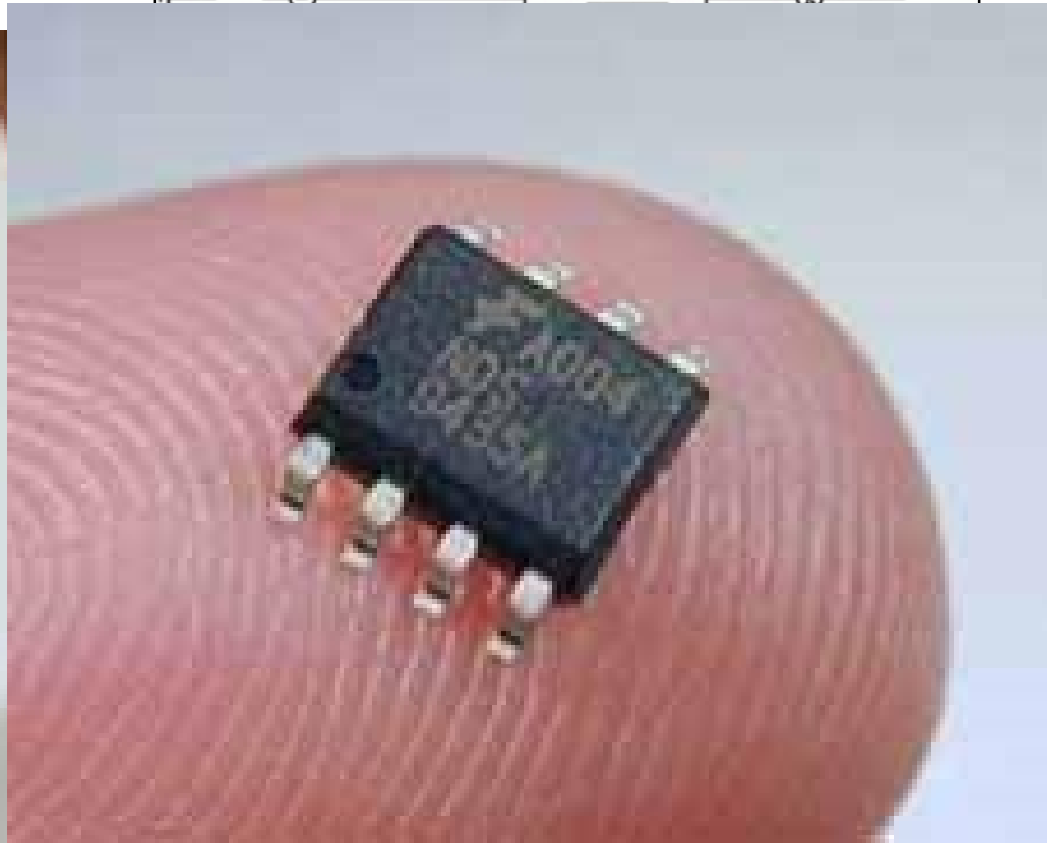


HOLIDAY FILMS



# What are Inter

# (IPRs)?



Head Lights



Front Bumper



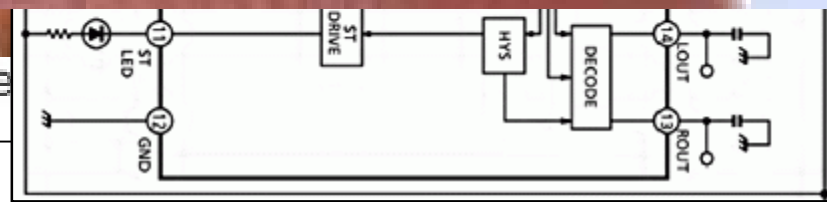
Tail Lights



Rear Bumper

or

Radiator, A/C condenser



... and kept secret



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# Territoriality of IP rights

- IP rights are granted, or arise, separately in different jurisdictions
- Criteria for validity or infringement are assessed separately in different territories
- Registered rights granted in one country are only protected and enforceable in that territory





# Intellectual Property Rights

- Intangible property
- Private rights
  - Right owners are responsible for obtaining, maintaining and *enforcing* their IP right
- Negative rights
  - Rights against infringement by third parties
- Territorial rights
  - creation, protection and infringement separate from country to country

## II.

# Main features and basic principles of TRIPS

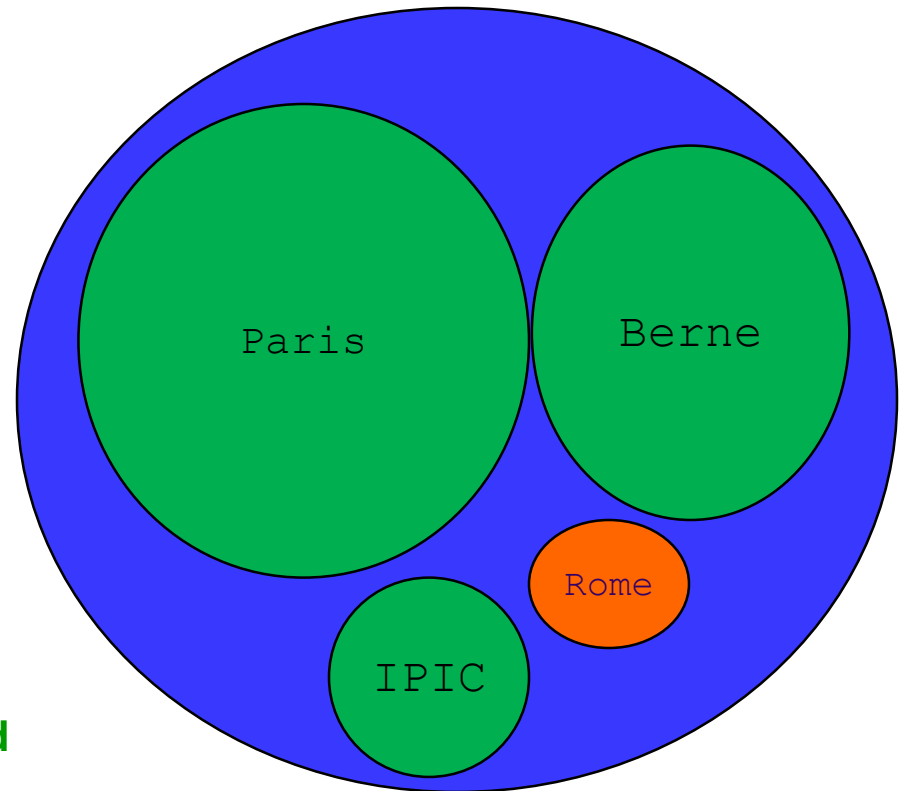
# TRIPS: Main features (1)



- Coverage of TRIPS
  - most comprehensive multilateral agreement on intellectual property to date
  - incorporating substantive provisions of:
    - Paris Convention (1967)
    - Berne Convention(1971)
    - Rome Convention (1961)
    - Treaty on IP in Respect of Integrated Circuits (1989)

# "Incorporation" Technique

- Build on existing conventions
- To avoid re-opening of existing texts
- To concentrate on negotiating the "plus" elements
- To have a short but comprehensive text



Conventions almost „fully“ incorporated  
Conventions referred to  
Berne/Paris *Plus* elements

# TRIPS: Main features (2)

- Coverage of TRIPS

Areas of intellectual property covered:

- copyright and related rights
  - trademarks including service marks;
  - geographical indications, including appellations of origin;
  - industrial designs;
  - Patents, including the protection of new varieties of plants;
  - the layout-designs of integrated circuits; and
  - undisclosed information, including trade secrets and test data.
- Control of anti-competitive practices in contractual licences

# TRIPS: Main features (3)

- Minimum standards of substantive protection
  - Defines main elements of protection
    - the subject-matter to be protected,
    - the rights to be conferred and permissible exceptions to those rights, and
    - the minimum duration of protection.
  - Incorporation of substantive provisions of the main WIPO-Conventions (Paris/Berne)
  - Additional Provisions (“Berne/Paris plus”)

# TRIPS: Main features (4)

- Enforcement Provisions
  - General Principles applicable to IPRs
  - Specifies Procedures that must be available
- Dispute Settlement
  - Part of the integrated Dispute Settlement System of the WTO
  - No unilateral action

# TRIPS Basic Principles (1)



“Members shall give effect to the provisions of this Agreement.

Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement.

Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.” (Article 1.1)



# TRIPS Basic Principles (2)

- National treatment (Art. 3)

Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals ...

- Most-favoured nation treatment (MFN) (Art. 4, 5)

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.

# WTO rules:

## Most Favoured Nation principle



The MFN principle is established in:

- **Article I of GATT – Trade in Goods**
  - Exception for RTAs: Article XXIV
- **Article II of GATS – Trade in Services**
  - Exception for RTAs: Article V
- **Article 4 of TRIPS – Intellectual Property**
  - **No Exception for RTAs**

# TRIPS Basic Principles (3)

- Exhaustion of rights (Art. 6)

For the purposes of dispute settlement ..., subject to ... Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

- Doha Declaration on TRIPS and Public Health (WT/MIN(01)/DEC/2)

Para 5(d) The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each Member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.

# TRIPS Basic Principles (4)

- Objectives (Art. 7)

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.

- Principles (Art. 8)

1. Members may ... adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, ... consistent with ... this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

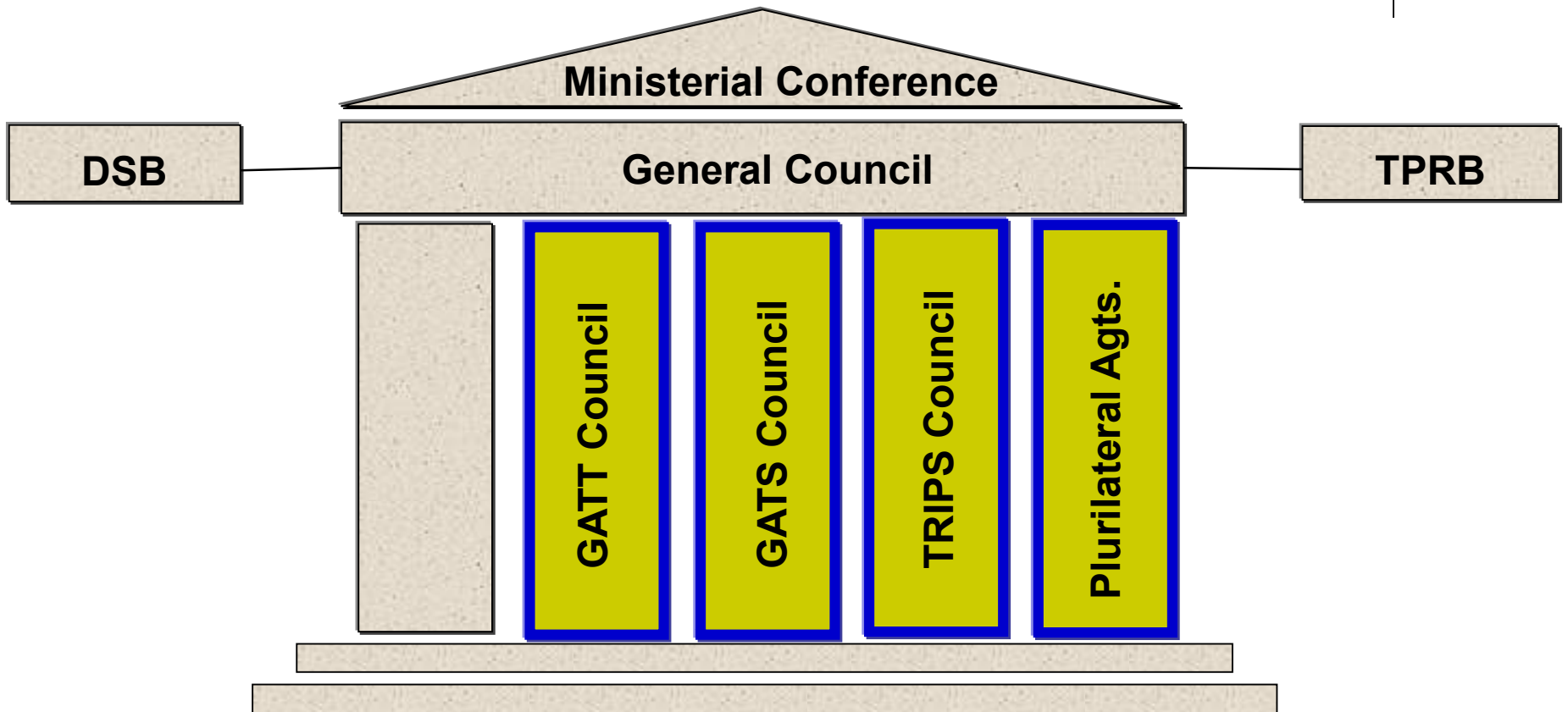
# TRIPS - Transitional arrangements

- 1 January 1995: entry into force
- 1 January 1996: developed countries
- 1 January 2000: developing countries
- 1 January 2005: developing countries extend product patent protection to areas of technology not previously covered
- **1 July 2021**: least-developed countries
- **1 January 2033**: least-developed countries provide pharmaceutical patents
- Other provisions
  - non-backsliding provision
  - special transitional arrangements in certain cases
  - mail-box and exclusive marketing rights



# III. TRIPS in the WTO

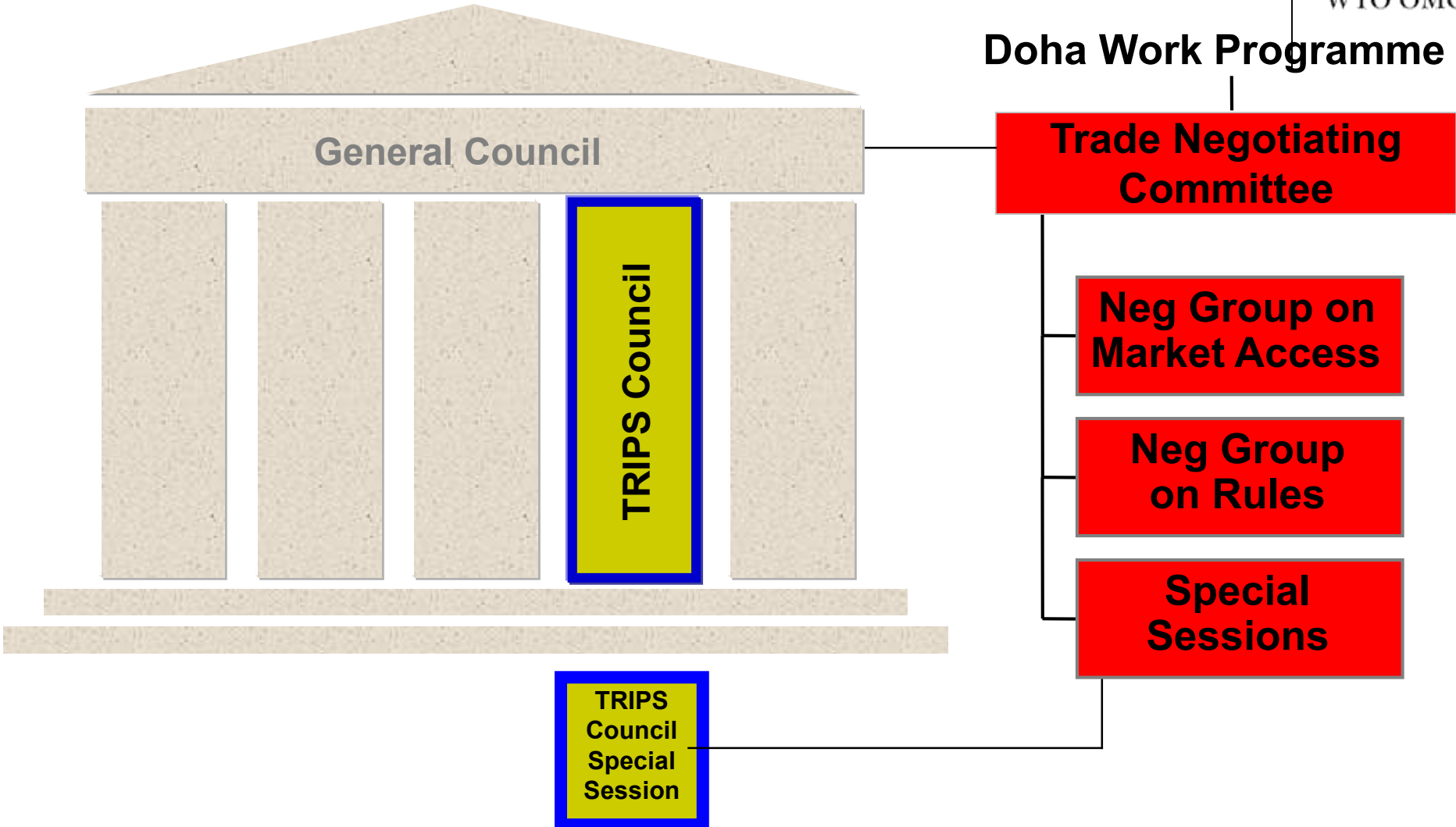
# Structure of the WTO



# TRIPS in the WTO

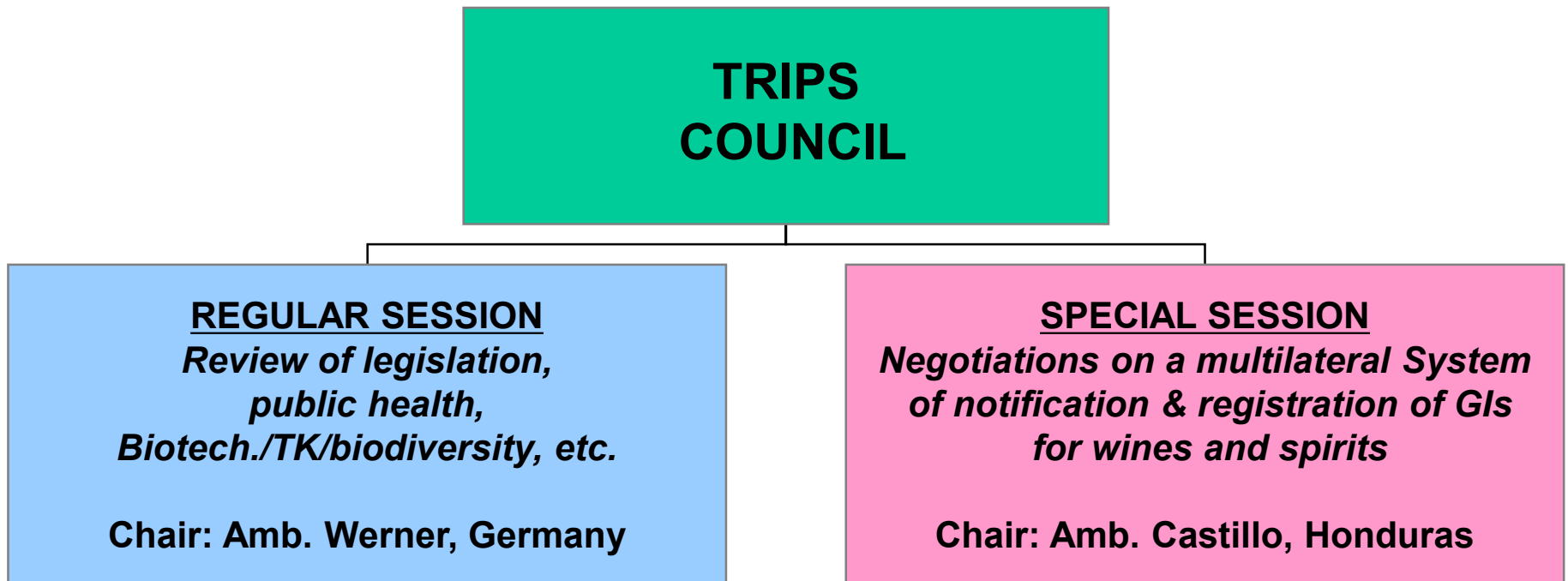


## Doha Work Programme





# TRIPS Council – Regular Session and Special Session



# TRIPS Council: Regular Session



- Notifications by Members under various provisions (e.g. Article 63.2: laws, regulations and practices)
- Review of national legislation (laws, regulations and practices), including process of questions-replies, presentations in the meeting, follow-up questions-replie
- Merits of the process in general:
  - transparency (dispute prevention effect);
  - valuable source of information;
  - right of all Members to pose questions

# IV.

## Notifications and Review

# Notification and Review

## Notification Requirements under TRIPS

- Art. 1.3 and 3.1 TRIPS
  - Use of restrictive Provisions in Berne and/or Rome Conventions
- Art. 4(d) TRIPS
  - Grandfathering of Agreements vis-à-vis MFN
- **Art. 63.2 TRIPS**
  - **Notification of Laws**
- Art. 69 TRIPS
  - Notification of Contact Points on trade in infringing goods
- Other Notifications
  - Required by incorporated provisions, e.g. use of Appendix of Berne Convention

# Notification and Review

## Notification of Laws and Regulations

- Art. 63.2 TRIPS requires Members to  
“notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement.”
- Part of the Transparency Provisions in TRIPS: Members must notify
  - primary laws (main dedicated intellectual property laws and regulations) and
  - secondary laws (“other laws and regulations”) relating to IP and subsequent amendments.
- IP/C/2 and IP/C/W/8 set out procedure and guidelines
- Notifications Documents are in IP/N/1/[country]
  - e.g. IP/N/1/USA/C/3 -> Copyright Act of the US
- Technical Cooperation Handbook on Notification Requirements downloadable from the TRIPS Gateway
  - WT/TC/NOTIF/TRIPS/1

# Notification and Review

## Review of implementing legislation

- Review by the TRIPS Council (Introduction by the notifying Member; Questions and Answers between Members)
- Originally concentrated on developed countries (before expiry of transitions period of Art. 65.2)
- Review of a Member remains on Agenda until all responses have been provided to outstanding questions
- Questions are in Documents Series IP/Q/[country]

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