

# WORLD TRADE ORGANIZATION

RESTRICTED

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## TECHNICAL NOTE ON THE ACCESSION PROCESS

Note by the Secretariat

*Implementation of the WTO Agreement on  
Trade-related Aspects of Intellectual Property Rights (TRIPS)*

This document has been prepared in consultation with WTO members and reflects the development of "standard form" questionnaires in recent accession working parties. It should assist acceding governments in the provision of information which will facilitate discussion in their working party on accession, focussing on TRIPS issues.

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Country  
**Implementation of the WTO Agreement**  
**on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

<b>TRIPS Agreement</b>	<b>Country</b>
<b>General Obligations</b>	<b>IP Agreements to which the country adheres</b>
Compliance with Articles 1 through 12 and Article 19 of the Paris Convention for the Protection of Industrial Property in respect of Parts II, III, and IV of the TRIPS Agreement. TRIPS Article 2.	
Under Paris, Article 1(2), industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.	
In Paris. Article 1(3), industrial property applies not only to industry and commerce proper, but to agricultural and extractive industries and to all manufactured or natural products, e.g., wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.	
Under Paris, Article 2, nationals of Members are to enjoy in other Members the advantages that their respective laws grant to nationals, and shall have the same protection and the same legal remedy against any infringement of their rights if they conform to the conditions and formalities imposed upon the Member's nationals.	
Paris. Article 3, requires that nationals of non-Member countries domiciles or that have "real and effective" industrial or commercial establishments in a Member country be treated as nationals of a Member country.	
Under Paris, Article 4.a right of priority is to be given an applicant for a patent, for registration of a utility model, an industrial design, or of a trademark who has filed the equivalent of a regular national filing under the domestic legislation of a Member country. The periods of priority are to be 12 months for patents and utility models, and 6 months for industrial designs and trademarks. The Article discusses the technical details of granting priority in depth.	

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Article 4bis states that patents obtained for the same invention in various members of the Paris Union are independent of each other.	
Article 4ter requires that inventors have the right to be named as such in the patent.	
Under Article 4quater restrictions or limitations on the sale of a patented product or a product produced by a patented process cannot be the grounds for refusing a patent or invalidating one already issued. Under Article 5(A)(1), importation of a patented product manufactured in a Paris Union country cannot be the basis of forfeiture of the patent. Article 5(A)(2) and (3) authorize countries to use compulsory licensing as a means to prevent abuses, such as the failure to work, but they may not forfeit a patent unless the grant of a compulsory license would not be sufficient to prevent the abuse. Proceedings for forfeiture or revocation cannot be institute until two years after the grant of the first compulsory license.	
Article 5(A)(4) prohibits application for a compulsory license for failure to work until four years have passed since tile application was filed or three years from date of grant and no compulsory license is to be granted if the patentee justifies the failure to work. Licenses are to be non-exclusive, and may not be transferred except with the enterprise or goodwill that exploits the license. Article 5(B) prohibits forfeiture of industrial designs for failure to work or for importing articles corresponding to those that are protected.	
Article 5(C) prohibits cancellation of a mark for unjustified non-use before a reasonable period of time has passed and permits the proprietor to use differing elements that do not diminish the distinctive character of a mark without invalidating the registration or diminishing the protection granted the mark. Concurrent use of the mark by co-proprietors is permitted so long as the public is not mislead.	
Under Article 5(D), protection of patents, registered trademarks, and industrial designs cannot	

TRIPS Agreement	Country
Article 5bis requires that a grace period of at least six months be provided for the payment of maintenance fees for industrial property, but a surcharge is permissible. Countries are authorized to restore patents that lapsed for non-payment of fees.	
Article 5ter prohibits a Paris Member from making use of patented devices aboard a vessel, aircraft, of land vehicle temporarily or accidentally in the territory or the Member.	
Article 5quater requires that process patent owners have all the rights against an imported product produced by the patent process that they would have with respect to products manufactured at home.	
Article 5quinques requires that Paris Members protect industrial designs.	
Article 6 makes the conditions for filing and registration of trademarks subject to domestic legislation but also makes filing and registration independent of those in other countries, including the country of origin.	
Article 6bis requires parties, ex officio if legally possible or at the request of an interested party, to refuse to register or, for a period of at least 5 years, to cancel the registration of a trademark confusingly similar to a well-known mark. No time limit is placed on a mark used in bad faith.	
Article 6ter requires Members to refuse to register or to invalidate the registration that includes, without authorization, armorial bearings, flags, state emblems, official signs and hallmarks, etc. An exception is provided for owners of rights acquired in good faith before the Convention entered into force for that country.	
Article 6quater makes the assignment of a mark valid if the portion of the business or goodwill of the business together with the exclusive right to manufacture and sell the goods bearing the mark are also transferred.	
Article 6quinques requires that trademarks duly registered in a Member be accepted for filing in other Members, with certain reservations, and establishes the conditions under which a trademark may be denied registration or may be invalidated.	

TRIPS Agreement	Country
Article 6sexties states that Paris Members undertake "to protect service marks without being required to provide for their registration.	
Article 6septies requires that trademark owners be able to oppose or request cancellation of a registration of their trademarks applied for by their agent or representative without their authorization "unless the agent or representative justifies his action.	
Article 7 states that the nature of the goods to which a trademark is applied may in no case be an obstacle to the registration of the trademark. (Duplicate language is in TRIPS Article 15.4.)	
Article 7bis requires that Members permit registration of collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even where the association is not established in the country where protection is being sought.	
Article 8 requires that trade names be protected by Members without the necessity of registration, whether or not the names are part of a trademark.	
Article 9 requires seizure on importation or exclusion of goods bearing a trademark or trade name without authorization, unless a country's laws provide for neither remedy, in which case domestic actions and remedies must be available.	
Article 10 applies the obligation of Article 9 to the direct or indirect use of false indications of source of goods, or false indication of the producer, manufacturer, or merchant of such goods.	
Article 10bis requires Members to provide protection against unfair competition, including against acts that create confusion of various kinds about the goods or activities of a competitor, that consist of false allegations about a competitor, or that are apt to mislead the public regarding a competitor's goods.	

<b>TRIPS Agreement</b>	<b>Country</b>
Article 10ter requires that Members undertake to assure to foreign nationals effective legal remedies to repress actions referred to in Articles 9, 10 and 10bis, and to allow federations and associations representing foreign businesses, on the basis of reciprocity, to take action in court and before administrative authorities to repress such acts.	
Article 11 requires that temporary protection, consistent with domestic legislation, be afforded to patentable inventions, utility models, industrial designs and trademarks in respect of goods exhibited at official or officially recognized international exhibitions held in their territory.	
Article 12 requires Members to establish industrial property offices for patents, utility models, industrial designs and trademarks for the communication to the public through publication of a periodic journal of the names of patent owners with a brief designation of their inventions, and the reproduction of trademarks.	
Article 19 authorizes Members to enter into separate and special industrial property agreements among themselves, so long as those agreements do not contravene the provisions of Paris.	
National treatment, with exceptions allowed in the Paris, Berne and Rome Conventions. Article 3.	
Most favoured nation treatment, with enumerated exceptions. Article 4.	
<b>Copyright and Neighbouring Rights</b>	<b>Citation to copyright and related laws</b>
Compliance with Articles I through 21 of the Berne Convention with the exception of Article 6bis, Article 9.1.	
Article 2 defines "literary and artistic works" as "every production in the literary, scientific and artistic domain whatever may be the mode or form of its expression," giving examples. Limitations related to speeches are provided in Article 2bis.	

TRIPS Agreement	Country
<p>Article 3 requires that protection be provided to the works of authors who are nationals of Berne Union members and to works of nationals of non-Union countries if those works are published in a Union member simultaneously with publication in the non-Union country.</p>	
<p>Article 4 requires that protection be provided cinematographic works not falling under Article 3 if the maker has a headquarters or habitual residence in a Union member and to works of architecture or artistic works incorporated into a building or structure in a Union member.</p>	
<p>Article 5 requires that authors enjoy the rights required by Berne and any other rights a country provides works on a national treatment basis without being subject to any formalities.</p>	
<p>Article 7 requires that the term of protection for copyright be 50 years following the death of the author. Special terms are authorized for cinematographic works, anonymous or pseudonymous works, photographic works and works of applied art. Article 8 gives authors of protected works the exclusive right to make or authorize the making of translations of the work.</p>	
<p>Article 9 requires that authors be given the exclusive right to authorize reproduction of the work in any manner or form with only limited exceptions that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.</p>	
<p>Articles 10 and 10bis define certain authorized "free uses of works".</p>	
<p>Articles 11, 11bis, and 11ter require that authors of dramatic, dramatico-musical and musical works and any translation thereof and authors of literary and artistic works, the exclusive right to authorize the public performance of their works, including by broadcast, public recitation and any communication to the public.</p>	
<p>Article 12 requires that authors of literary or artistic works have the exclusive right to authorize adaptations, arrangements and other alterations of their works.</p>	

TRIPS Agreement	Country
Article 13 authorizes countries to impose reservations and conditions on the exclusive right granted authors of musical works or written works that are recorded.	
Articles 14 requires that authors of literary and artistic works have the exclusive right to authorize the cinematographic adaptation and reproduction of their works and the distribution, public performance and communication to the public of the adaptation or reproduction, without the limitations authorized under Article 13(1).	
Article 14bis specifies that a cinematographic work is to be protected as an original work without prejudice to any work that is adapted or reproduced and the author of the cinematographic work is to enjoy the same rights as the author of any other work.	
Article 14ter requires "droit de suite" in connection with subsequent sales works of art and manuscripts.	
Article 15 requires that ownership of a work, for purposes of litigation, be presumed to be that which appears on the work in the usual manner.	
Article 16 requires that infringing copies of a work be subject to seizure whether domestically produced or imported.	
Article 18 requires that copyright protection be applied to all works which, at the moment Berne becomes effective, have not fallen into the public domain in the country of origin through the expiry of the term of protection.	
Article 19 authorizes Union members to provide greater protection than that required by the Convention.	
Article 20 authorizes Union members to enter into special agreements among themselves to provide more extensive rights than those provided by Berne.	
Protect computer programs, whether in source or object code, as literary works under the Berne Convention. Protect compilations of data, whether in machine readable or other form are to be protected as intellectual creations if they constitute such. Article 10.	

<b>TRIPS Agreement</b>	<b>Country</b>
Provide rental rights at least for computer programs and cinematographic works with certain exceptions. Article 11.	
Provide a term of protection of fifty years from the death of the author (Berne Article 7.1 and TRIPS Article 9.1) or, for works the term of which is not measured by the life of the author, a term of 50 years from the end of the calendar year of authorized publication, or, if not published within fifty years from making, fifty years from the end of the calendar year of making. Article 12.	
Confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the right holder's legitimate interests. Article 13.	
Provide performers with the right for 50 years from the date of a performance to prevent unauthorized fixation of their unfixed performances and of reproductions of such fixations and to prevent the unauthorized broadcast by wireless means and communication to the public of their live performances. Article 14.1 and 5.	
Provide phonogram producers with the right for 50 years from the date of first authorized fixation to prohibit unauthorized reproduction of their phonograms, directly or indirectly, and to prohibit rental of copies of their phonograms once sold or otherwise distributed. Article 14.2, .4, and .5.	
Providing broadcasting organizations with the exclusive rights for 20 years of fixation, reproduction of fixations, and rebroadcasting by wireless means of their broadcasts and the communication to the public of broadcasts of their broadcasts or provide to the owners of the copyright in the material broadcast the possibility of exercising such rights. Article 14.3 and 5.	
<b>Trademarks</b>	<b>Citation to appropriate law</b>
Provide trademark or service mark protection for any sign, or combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings. Article 15.1	

TRIPS Agreement	Country
Not deny registration for a mark based solely on the nature of the goods or services to which a trademark is to be applied. Article 15.4.	
Trademarks must be published before or shortly after registration to permit opposition or opportunity to apply for cancellation. Article 15.5.	
Provide trademark owners the exclusive right to prevent unauthorized use identical or similar marks for similar goods or services of other parties if confusion is likely to result. Article 16.1	
Presume confusion where an identical mark is used without authorization on identical goods or services. Article 16.1.	
Provide protection for well know trademarks and service marks in accordance with Article 6bis, of the Paris Convention, even where use is on goods or services which are not similar to those in respect of which a trademark is registered if the latter use would imply a connection with the right holder or would be likely to damage the right holder's interests. Article 16.2 and .3.	
Allow only limited exceptions to the rights conferred by a trademark such as fair use of descriptive terms. Article 17.	
Provide a period of protection for registration of at least seven years, renewable indefinitely. Article 18.	
Allow cancellation for non-use only after a period of three years of uninterrupted non-use unless valid reasons exist for the non-use, including government interference with use. Article 19.1.	
No encumbering of the use of a trademark by special requirements. Article 20.	
May establish conditions for licensing but compulsory licensing not permitted and owner of registered mark must be able to assign it with or without transfer of business. Article 21.	

<b>TRIPS Agreement</b>	<b>Country</b>
<b>Geographical Indications</b>	<b>Citation to appropriate law or laws</b>
<p>Provide means to prevent deceptive use of Geographical indications identifying location where a given quality, reputation or other characteristic of a good is attributable to its location. Article 22.1 and 2.</p> <p>Refuse to register or invalidate registrations of trademarks containing geographical indications except in instances in which such marks have been used continuously for at least 10 years or in good faith before 15 April 1994. Article 22.3</p>	
<p>Protect against use of geographical indications even when literally true but which falsely represent that the goods originate in another territory. Article 22.4</p>	
<p>Protect, with certain exceptions, appellations or origin for wines and spirits even against use accompanied by expressions such</p>	
<p>Protect, with certain exceptions, appellations or origin for wines and spirits even against use accompanied by expressions such as "kind," "type," "style," etc. Article 23.1 and 24.</p>	
<p>Refuse or invalidate, with certain exceptions trademark registrations containing geographical indications for wines and spirits if they do not originate in the place named. Article 23.2 and 24.</p>	
<b>Industrial Designs</b>	<b>Citation to appropriate law</b>
<p>Provide, with certain exceptions, protection for new or original, independently created industrial designs. Article 25.1.</p>	
<p>Ensure that requirements for securing protection for textile designs are not prohibitive of such protection. Article 25.2.</p>	
<p>Protection should last at least 10 years.</p>	

TRIPS Agreement	Country
Patents	Citation to appropriate law
<p>Provide patents for any inventions, whether products or processes, in all fields of technology if they are new, involve an inventive step and are industrially applicable. Exceptions are permitted for plants and animals, except for microorganisms and non-biological and microbiological processes. Exemptions are also permitted for reasons of ordre public and morality. Article 27.</p>	
<p>Provide patent owners with the right to prevent others from making, using, offering for sale, selling or importing a patented product or from using a patent process or using, offering for sale, selling or importing a product produced directly using such process. Article 28.1.</p>	
<p>Give patent owners the right to assign the rights in the patent, or transfer the rights by succession, or license them. Article 28.2</p>	
<p>Require applicants to disclose the invention so that one skilled in the art can carry it out and may require indication of the best mode and information on corresponding foreign applications. Article 29.</p>	
<p>Ensure that any exceptions to exclusive patent rights do not unreasonably conflict with normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking third party interests into account. Article 30.</p>	
<p>Compulsory licenses can be issued only when enumerated conditions are met, including such things as notice, remuneration, limitations on use and transfer of the license, etc. Article 31.</p>	
<p>Provide an opportunity for judicial review of decisions to revoke or forfeit a patent. Article 32.</p>	
<p>Provide a patent term of at least 20 years from the filing date. Article 33.</p>	

<b>TRIPS Agreement</b>	<b>Country</b>
Shift the burden of proof in process patent infringement actions to the defendant in instances in which the product produced by the process is new or where it is substantially likely that the identical product was made using the process and the patent owner has been unable through reasonable efforts to determine the process used. Article 34.	
<b>Integrated-Circuit Layout Designs</b>	<b>Citation to appropriate law</b>
Provide protection for original layout designs of integrated circuits that are registered or have been commercially exploited anywhere in the world. Articles 3, 4, 5, and 7 of the Washington Treaty as incorporated into TRIPS by Article 35.	
Make unlawful, except in certain circumstances, the reproduction, importation, sale or other distribution of a protected layout design or an integrated circuit embodying such design or an article containing such a microcircuit. Article 6 of Washington and Article 36 of TRIPS.	
Provide such protection for a term of 10 years from the filing of an application for registration or from first commercial exploitation. Article 38.	
<b>Undisclosed Information</b>	<b>Citation to appropriate law or laws</b>
Provide protection for undisclosed information that is secret (not generally known or readily ascertainable); has commercial value because of its secrecy, and has been subject to reasonable steps to keep it secret. Article 39.2.	Will provide further analysis after reviewing the appropriate law.
Protect data submitted to obtain marketing approval for pharmaceutical or agricultural chemicals utilizing a new chemical entity. Article 39.3.	
<b>Enforcement</b>	<b>Citation to appropriate law or laws</b>
- General Provisions	
Provide for effective action against infringement of intellectual property rights without creating barriers to legitimate trade or opportunities for abuse. Article 41.1	
Provide enforcement procedures that are fair and equitable and are not unnecessarily complicated or costly and do not entail unreasonable time-limits or unwarranted delays. Article 41.2	

TRIPS Agreement	Country
Provide decisions on the merits based upon the evidence presented in the case to the parties, preferably in writing with the reasons explained. Article 41.3.	
Provide for appeals to judicial bodies of final administrative decisions and of at least the legal aspects of initial judicial decisions on the merits of a case. Article 41.4.	
Civil and Administrative Procedures and Remedies	
Provide a procedure that allows plaintiffs to bring an action for infringement; requires that defendants be notified; permits both side to present evidence in support of their position; and protects confidential information. Article 42	
Authorize judges to order production of evidence necessary to substantiate a party's claims where that party has been unable to obtain such evidence from the opposing party. Article 43. 1.	
Authorize judges to enjoin a defendant, except the government, from infringing intellectual property rights. Article 44. 1.	
Authorize judges to order the payment of monetary damages adequate to compensate for the injury done by the infringement. Article 45.1	
Authorize judges to order infringer to pay right holders enforcement costs and recovery of profits and/or statutory damages. Article 45.2.	
Authorize additional remedies including seizure of infringing goods, and the materials and implements the predominant use of which is infringement. Article 46.	
Authorize indemnification of defendant, including attorneys' fees in the event of abuse by plaintiffs. Article 48.1.	
Exempt public authorities and officials from liability in connection with the administration of intellectual property laws only where the actions are taken or intended in good faith within the scope of tile relevant authority. Article 48.2.	
Ensure that administrative remedies conform to the principles in the preceding Articles. Article 49.	

TRIPS Agreement	Country
- Provisional Measures	
Authorize judges to grant temporary restraining orders and provisional relief to prevent infringement and to preserve evidence. Article 50.1.	
Authorize judges to require the complaining party to indemnify the defending party against harm if the decision on the merits finds the provisional relief unjustified. Article 50.3.	
Provide for notice, for formal action by the plaintiff after temporary restraining orders, etc. Article 50.4+.	
- Border Measures	
Provide for suspension of release by customs authorities of goods suspected of bearing a counterfeit trademark or of being a piratical copyrighted work, either at the request of a right holder. Members are authorized to extend such protection to holders of other forms of intellectual property, Article 51	
Require right holders initiating border measures to provide evidence of a prima facie infringement and a description of the goods sufficient for customs authorities to recognize them. The right holder must be notified within a reasonable time if action will be taken on his behalf. Article 52	
Authorize authorities to require the right holder requesting border measures to post a bond sufficient to protect the defendant and to prevent abuse. Article 53	
Requires prompt notification of the right holder and the importer when action under Article 51 is taken. Article 54	
Requires that customs authorities be notified within a maximum of 20 days of the receipt of notice that proceedings on the merits have begun or the suspension is to be revoked. Article 55	
Authorities must be authorized to require the right holder to compensate the importer or owner of the goods subject to border measures if goods were wrongfully detained or if proceedings leading to a decision on the merits are not begun within the allotted time. Article 56.	

TRIPS Agreement	Country
<p>Right holders must be allowed to inspect the detained goods in order to substantiate the right holder's claims. Importers must be given similar authority. Members may give the right holder the names and addresses of those involved in the importation when infringement is found to exist. Article 57.</p>	
<p>Establishes the conditions that must be in place if customs authorities are authorized to act ex officio, including the ability to ask the right holder for information at any time; the requirement to notify the importer promptly of the suspension; and the requirement that public officials be liable if they act in bad faith. Article 58</p>	
<p>Competent authorities must be able to order destruction or disposal other than by re-export of infringing goods where appropriate. Article 59</p>	
<p>Members are authorized to except from border measures small quantities of infringing goods of a non-commercial nature carried in personal luggage or shipped in small consignments. Article 60</p>	
<p>- Criminal Procedures</p>	
<p>Provide criminal procedures and penalties, sufficient to act as a deterrent, for wilful trademark counterfeiting or copyright piracy on a commercial scale. Authorizes extension of criminal actions to other forms of intellectual property where infringements are wilful and on a commercial scale. Article 61.</p>	