Trade Related Aspects of Intellectual Property Rights (TRIPS)

What is TRIPS?\textsuperscript{1,2,3}

The TRIPS Agreement is a result of a series of negotiations between governments and came into effect with the formation of the World Trade Organization in January 1995. TRIPS sets minimum standards for the protection of intellectual property, including the patenting of pharmaceutical processes and products. In addition it sets rights and obligations for governments in terms of their ability to limit these rights for public purposes, as well as to ensure that undisclosed information is protected if it is of commercial use.

What is intellectual property?

Intellectual property (IP) allows people to own their creativity and innovation in the same way that they can own physical property. Intellectual property rights (IPRs) are the rights given to people over their intellectual creations. IPRs give an exclusive right over the use of these creations for a certain period of time. The owners of an IPR can control and be rewarded for its use. The four main types of IP that entitle inventors to IPRs are:

1. Patents for inventions - new and improved products and processes capable of industrial application.
2. Trademarks for brand identity - of goods and services.
4. Copyright for material - literary and artistic material, music, films, sound recordings and broadcasts, including software and multimedia.

For the purposes of the TRIPS Agreement, “intellectual property” includes: copyrights and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout-designs and protection of undisclosed information.

What are the health implications of TRIPS?

The specific health implications of the TRIPS agreement have direct impact on pharmaceuticals policies, allocation of patent rights and cost of medicines. There is concern that TRIPS could lead to higher prices for patented medicines in developing countries. WHO estimates that about 1/3 of the world’s population lacks access to essential drugs, and that over 50% of...
people in poor countries in Africa and Asia do not have access to even the most basic essential drugs. Access to essential medicines depends on four critical elements: rational selection and use; sustainable financing; reliable supply systems; and affordable prices.

Drug prices may be influenced by some WTO agreements. While the TRIPS agreement should enhance incentives for research and development in new drugs, there is concern that it may lead to drug price increases due to more stringent patent protection. This concern was clarified at the Fourth Ministerial Conference in Doha, Qatar in 2001, which adopted the Doha Declaration on TRIPS and Public Health. The Doha Declaration affirmed the sovereign right of countries to take measures to protect public health and to give primacy to public health over intellectual property.

Thus TRIPS allows members, under certain conditions, to use safeguards, such as compulsory licensing and parallel imports for non-commercial use, e.g. in case of public health emergencies. The Doha Declaration is seen as an important step to prevent situations where countries are under pressure from industry and/or foreign governments not to fully use the flexibility of TRIPS.

TRIPS: Article 8.

1. Members may, in formulating or amending their laws and regulations, 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, provided that they are consistent with the provisions of 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. (Source: www.wto.org.)

TRIPS critics are concerned about tighter intellectual property rights disadvantaging developing countries by increasing the knowledge gap and by shifting bargaining power towards the producers of knowledge, most of who live in industrialised countries. The issue of medicines is of particular concern in the case of weak bargaining power of developing countries negotiating prices with the powerful pharmaceutical industry.

TRIPS supporters claim it will stimulate transfer of technology, encourage foreign direct investment, strengthen research and development, and ensure early introduction of new products in developing countries. Critics say the distributional impact of TRIPS may in fact shift resources from consumers, the public sector, and developing countries to multi-national, research-based
industries. They feel this is particularly relevant in the case of health technologies, biotechnology, gene technology, and pharmaceuticals.

Concerns about access of pharmaceuticals for poor countries are related to:
- higher consumer prices for medicines
- larger foreign exchange outflow due to higher imports and lower exports
- smaller employment generation due to lower domestic production

There is also fear that there will be less emphasis on medicines for developing world markets and more for the more lucrative industrialised concerns – obesity, impotence, ageing, baldness, etc. Industry has already begun to turn away from tropical diseases.

According to a report by WHO and WTO, TRIPS aims to achieve a balance between the public health goals of providing incentives for future inventions of new drugs and ensuring affordable access to existing drugs. The Agreement contains several provisions to enable governments to protect intellectual property taking into account public health considerations and, in particular, to promote access to medicines for all. TRIPS provides flexibility by allowing countries, under certain conditions, to limit exclusive patent rights, as reaffirmed in the Doha Declaration.

One important issue is that of counterfeit drugs, both patented and non-patented. According to WHO and WTO, the TRIPS Agreement addresses this in three ways:

- It ensures that owners of trademarks are able to obtain protection for their trademark under the law of each WTO member;
- It specifies the procedures and remedies for effective enforcement of rights;
- It provides for international cooperation to fight counterfeiting by promoting the exchange of information and cooperation with respect to counterfeit trademark goods.

Other WTO health-related issues deal with food security, free movement of goods and services, etc. There are also three areas of emerging interest: biotechnology, information technology, and the use of herbal medicines and traditional knowledge to treat illness. Demand for herbal medicines is increasing among industrialised nations, contributing to growing international trade. There is thus increasing concern about protecting it adequately and ensuring that the benefits are fairly and equitably shared.

The TRIPS agreement has introduced minimum standards and the principle of non-discrimination. Before TRIPS came into force, international conventions did not specify minimum standards for patents. Since the Agreement patent protection has been much stronger. Now patent protection must last 20 years
from the date the patent application was filed for any invention, whether a product or a process.

In the final analysis it is important that governments seek a balance in health and trade policy at the national and international levels to minimise the adverse consequences for the world’s less affluent populations.

For further information, please contact: icn@icn.ch

The International Council of Nurses (ICN) is a federation of more than 130 national nurses associations representing the millions of nurses worldwide. Operated by nurses and leading nursing internationally, ICN works to ensure quality nursing care for all and sound health policies globally.

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References

1 http://www.rkdewan.com/et/epage44.htm
3 http://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm#WhatAre
4 http://www.wto.org
5 Compulsory licensing refers to authorisation to make, use or sell a patented invention without the patent-owner’s consent.
6 Parallel imports occur when a product protected by intellectual property rights sold by or with the rights-holder’s consent in one country is resold in another country without the rights-holder’s authorisation.