



# TRADE BEAT

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## Intellectual Property Rights — Part I

### What is Intellectual Property (IP)?

According to the World Intellectual Property Organization (WIPO), Intellectual Property (IP) refers to “creations of the mind: inventions; literary and artistic works, and symbols, names and images used in commerce”. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

### What are Intellectual Property Rights (IPR)?

“Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time”, as defined by the World Trade Organization (WTO). IP Rights are like any other property right and allow the right holders to benefit economically from their own work or their investment in a creation. According to WIPO “these rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.” Intellectual Property rights are protected, among others, to encourage and reward creative work (e.g. copyright), promote technological innovation (e.g. patents) and to protect consumers (e.g. trademarks).



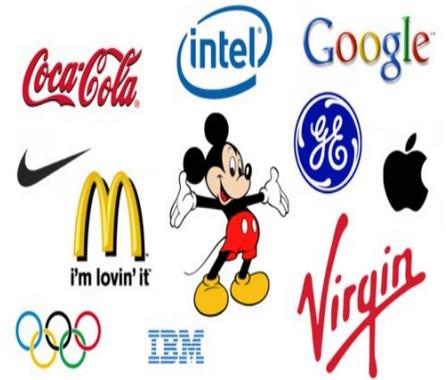
### IP is divided into two categories: **I. Copyright and Rights related to Copyright**

– Copyright covers literary works (such as novels), films, music, works of art (such as paintings), computer programmes and architectural designs. Copyright protection offers protection of rights for a minimum term, during the life of the author and fifty years (50) after his death. Protection through copyright and the rights related to copyright, (also known as neighbouring rights) are also given to the rights of performing artistes in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programmes. The term of protection is at least fifty years (50) for performers and producers of phonograms, and twenty (20) years for broadcasting organizations. There are some permissible exceptions to copyrights e.g. free uses for certain specific purposes such as teaching. In general, limitations or exceptions to copyright are allowed if three conditions are met; limitations or exceptions confined to certain special cases; they do not conflict with a normal exploitation of the work; and they do not unreasonably prejudice the legitimate interest of the right holder.



**II. Industrial Property (IP)** – can be categorized in two main areas: In the first category, IP may be characterized as the protection of distinctive signs; such as trademarks and geographical indications. In the second category, IP may be characterized by the protection of inventions protected by patents, as well as industrial designs and trade secrets, and may be additionally characterized by protection to stimulate innovation, design and creation of technology.

**Trademarks** — A trademark is a distinctive sign, or a combination of signs, which is used to distinguish the goods or services of one undertaking from the goods and services of another undertaking. This practice dates back to ancient times when craftsmen placed unique marks on their products or artistic works to distinguish them from the works of others. The system of trademark registration and protection helps consumers to identify and purchase a product or service based on its specific characteristics and quality, denoted by its unique trademark. The basic right given to the owner of a registered trademark is to prevent the unauthorized use of an identical or similar sign on similar goods or services, to the extent that it would create a likelihood of confusion among consumers, as to whether those goods or services originate from the right holder’s undertaking.



**Geographical Indications (GI)** — According to WIPO, “A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin,” e.g. an appellation of origin, which generally consists of a geographical name or a traditional designation used on products which have a specific quality or characteristics that are essentially due to the geographical environment in which they are produced, such as “champagne” from France. The protection of such distinctive signs aims to stimulate and ensure fair competition, and to protect consumers by enabling them to make informed choices between various goods and services. The protection may last indefinitely, provided the sign in question continues to be distinctive.

A **Patent** is an exclusive right granted for an invention, which is a product or a process that generally provides innovation, or offers a new technical solution to a problem. Patents are protected; therefore, an invention cannot be commercially made, used, distributed or sold without the consent of the patent owner. Patent rights are usually enforced in courts that have the authority to stop patent infringement and an infringement can be declared invalid upon a successful challenge by a third party. Patent protection recognizes the creativity of an individual and offers the possibility for material reward, which acts as an incentive to create marketable inventions. In order to prevent the exploitation of a patented invention, protection is given to the patent owner, generally, for a limit of twenty (20) years. Patents also provide protection for the results of investment in the development of new technology, which provides incentive and the means to finance research and development activities. This patent can offer a new technical solution to a problem, and as such improve the overall quality of human life. There are however, three (3) permissible exclusions to patentability: inventions contrary to public order or morality may not be patented; diagnostic, therapeutic and surgical methods for the treatment of humans or animals may not be patented; and plants and animals may not be patented.



## WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement

The primary objective of the TRIPS Agreement is to promote the adequate and effective protection of IP rights, while mitigating the impediments and distortions that can affect international trade. The Agreement was entered into force on January 1, 1995 and, to date, is the most comprehensive multi-lateral agreement on intellectual property. It was established to ensure that measures and procedures relating to the enforcement of IP rights, do not themselves become barriers to trade and includes provisions on copyright, trademarks, geographical indications and patents. The Agreement was born out of the main conventions of the World Intellectual Property Organization (WIPO) and sets minimum standards of protection for IP, which includes the subject matter to be protected, the rights given to IP holders, and the permitted exceptions aimed at balancing the legitimate interests of IP holders and of users. The Agreement is administered by the Council for TRIPS in the WTO and negotiations on specific TRIPS issues are ongoing as a part of the Doha Development Agenda (DDA). The Doha Round is the latest round of trade negotiations occurring within the WTO, and seeks to improve the international trading system by lowering trade barriers and revising trade rules. Due to the strong development component of the negotiations, the Round was dubbed the DDA, and focuses on development issues and trading prospects for developing countries.



### Basic Principles and Main Disciplines of the TRIPS Agreement

Under the TRIPS Agreement WTO Members may, but are not obliged to, implement into their laws more extensive protection than is required by the Agreement, in order to effect a “minimum standard of protection” which should be accorded to each Member. The basic obligations contained in the TRIPS Agreement are subject to the national treatment and most favoured nation (MFN) principles of the WTO and allow each Member to establish its own regime for exhaustion. (Subject to MFN and national treatment, **exhaustion** describes the fact that once you have legitimately obtained, e.g. a protected DVD, you are free to further sell, transfer or otherwise distribute it without further authorization from the right holder.) In the context of the Agreement, the national treatment principle requires each member to accord to the nationals of other Members treatment that is no less favourable than that accorded to its own nationals, with regard to the protection of intellectual property. In the same context, the MFN principle requires that any advantage given by a Member to the nationals of any other Member shall be given to the nationals of all other Members, with respect to IP protection.



### TRIPS and Public Health

A Member’s right to adopt measures for reasons relating to public health, is provided for in the Doha Declaration on the TRIPS Agreement and Public Health (November 2001). The Declaration responds to concerns about the possible implications of the TRIPS Agreement for public health, in particular access to patented medicines. The Declaration stipulates that the TRIPS Agreement should be interpreted and implemented in a way that supports a Member’s right to protect public health and, in particular, promote access

to medicines for all. Clarification of certain flexibilities relating to compulsory licenses for patented medicines were outlined in the Declaration with special attention to Least Developed Countries (LDCs) who were granted an extension to the period of transition for certain obligations related to pharmaceutical products covered under the TRIPS. Recognizing that certain WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement, “Paragraph 6” was an instruction to the TRIPS Council by the WTO General Council, to find an “expeditious solution” to the needs of developing Members in accessing medicines protected by patent. “Paragraph 6”, is aimed at helping developing countries with insufficient or no manufacturing capacities in the pharmaceutical sector to import cheaper generic medicines produced under compulsory licensing.

## TRIPS Provisions



**Enforcement of IP Rights** — According to Article 41, the TRIPS Agreement requires WTO Members to make available enforcement procedures to permit prompt and effective action against any act of infringement of IP rights covered by the Agreement. The provisions on enforcement include obligations relating to civil and administrative procedures against IPR infringements and adoption of provisional measures. Customs plays a critical role in the enforcement of IPR infringements especially with movement of goods across international borders. As a result, special border measures are provided for in the Agreement, which allow for obtaining the cooperation of customs administrations to intercept infringing goods at the border. The application of criminal procedures and penalties are also allowed in certain circumstances once there is an established infringement of certain IPR, such as counterfeit trademarks and pirated copyright goods.

**Transparency** — The TRIPS Agreement provides for transparency obligations under Article 63.3 of the Agreement, as Members are required to notify their laws on IP rights protection. Essentially, WTO Members have to provide written information to the WTO on all their laws concerning the protection of IPR.

**Technical and Financial Cooperation** — Article 67 of the TRIPS Agreement requires all developed Members to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and LDC Members to facilitate the implementation of the Agreement.

## IPR Institutions

**WIPO** — The World Intellectual Property Organization, is an international organization dedicated to ensuring that the rights of creators and owners of intellectual property are protected worldwide, and that inventors and authors are therefore recognized and rewarded for their ingenuity. Established in 1970, WIPO provides a stable environment for marketing products protected by IP and establishes a close relationship with WTO Members to ensure an efficient IP system which acts as a catalyst for economic development and the social and cultural well being of all Members. As part of the United Nations system of specialized agencies, WIPO serves as a forum for its Member states to establish and harmonize the rules and practices for the protection of IPR. WIPO also services global registration systems for trademarks, industrial designs and appellations of origin, as well as a global filing system for patents. These systems are under regular review by WIPO's Members and other stakeholders to determine how they can be improved to better serve the needs of users and potential users.

**JIPO** — The Jamaica Intellectual Property Office was established in 2001 under the Jamaica Intellectual Property Office Act 2001. Its primary objective is to strengthen the administrative infrastructure of intellectual property in Jamaica. Its mandates include: the harmonization of Jamaican legislation on IP with international treaties; the facilitation and encouragement of compliance with intellectual property laws; and ensuring the full operation of the relevant laws. JIPO bears direct responsibility for the registration of trademarks, industrial designs and geographical indications, administering copyrights and related rights as well as the patent system, and the Layout Designs (topographies) Act.

In concluding, the progress and well being of humanity rest on its capacity to create and invest new works in the areas of technology and culture. The legal protection of new creations encourages the commitment of the additional resources for further innovation, and the promotion and protection of intellectual property spurs economic growth, which creates new jobs and industries and enhances the quality and enjoyment of life.

The Intellectual Property System acts as a catalyst for economic development and social and cultural well being, and has to be efficient and equitable in order to aid all countries in realizing the intellectual property potential. The intellectual property system also helps to strike a balance between the interests of innovators and the public, which provides an environment that fosters creativity and invention for the benefit of all.

Our next publication will feature the agencies involved in the protection of intellectual property rights, the legal authority under which they are guided and their efforts in promoting and protecting the interests of the relevant right holders.



***International Liaison Unit***

***922-5140-8 ext. 3028/3182***

***Email: [International.liaison@jacustoms.gov.jm](mailto:International.liaison@jacustoms.gov.jm)***

***Website: <http://www.jacustoms.gov.jm>***