

## 2. What is TRIPS?

The TRIPS Agreement is one element of the Uruguay Round results, the package which also created the World Trade Organization. As such, it came into force with the WTO on January 1, 1995.

It sets out the rules that Members of the WTO must follow in setting up systems to protect intellectual property rights within their borders specifying, for example, that such rights must be granted to foreign innovators in the same measure as they are to domestics (national treatment), and that nationals of no particular WTO Member country must be favoured over those of others (non-discrimination). The Agreement is unique among the WTO rules in that it is positively proscriptive. That is, all other WTO rules describe what countries may *not* do, while TRIPS describes what countries *must* do. In this sense, TRIPS is a manifestation of the evolution of the international trade regime toward non-tariff aspects of law which were formerly considered purely domestic policy.

The fact that TRIPS is part of the WTO means that any Member of the WTO must follow its strictures. Before the advent of the WTO, the contracting parties to the GATT were able to pick and choose among a number of "plurilateral" Agreements, deciding which was or was not in their interest. The WTO, however, brings virtually all the Agreements together under one umbrella, and membership in the Organization implies accession to all of them. Bringing all the Agreements together also means that there is scope for what is called "cross-retaliation". A country found to be contravening the TRIPS Agreement, for example, would be subject to retaliation in terms of its trade in goods, though goods are covered by a different Agreement. This makes Agreements such as TRIPS much more powerful than the old plurilateral Agreements, which could only penalize in terms of the type of trade they covered.

All WTO Members are required to have laws in place applying the TRIPS provisions as of one year from the entry into force of the WTO. Developing country Members, however, and Members in transition from centrally-planned economies, are entitled to a transition period of four additional years. Least developed country members, "in view of their special needs and requirements, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base",<sup>2</sup> are allowed an additional five years of transition, for a total of ten years. This paper will argue that the transition period be used strategically by countries such as Pakistan.

## 3. What Are Intellectual Property Rights?

Intellectual property rights are a legally enforceable but limited monopoly, granted by the state to an innovator. They specify a time period during which others may not copy

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<sup>2</sup> TRIPS, Article 66.1.