

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

# DISPUTE SETTLEMENT

WORLD TRADE ORGANIZATION

3.14 TRIPS



**UNITED NATIONS**  
New York and Geneva, 2003

## NOTE

**The Course on Dispute Settlement in International Trade, Investment and Intellectual Property** consists of forty modules.

This Module has been prepared by Mr. F. Abbott at the request of the United Nations Conference on Trade and Development (UNCTAD). The views and opinions expressed are those of the author and not necessarily those of the United Nations, WTO, WIPO, ICSID, UNCITRAL or the Advisory Centre on WTO Law.

The designations employed and the presentation of the material do not imply an expression of any opinion whatsoever on the part of the United Nations concerning the legal status of any country, territory, city or areas or of its authorities, or concerning the delimitations of its frontiers or boundaries. In quotations from the official documents and the jurisprudence of international organizations and tribunals countries are designated as reported.

The United Nations holds copyright to this document. The course is also available in electronic format on the UNCTAD website ([www.unctad.org](http://www.unctad.org)). Copies may be downloaded free of charge on the understanding that they will be used for teaching or study and not for a commercial purpose. Appropriate acknowledgement of the source is requested.

UNCTAD/EDM/Misc.232/Add.18
----------------------------

Copyright © United Nations, 2003  
All rights reserved

## TABLE OF CONTENTS

<b>Note</b>	<b>ii</b>
<b>What you will learn</b>	<b>1</b>
<b>1 General Principles of the TRIPS Agreement</b>	<b>3</b>
<b>1.1 Rights and Obligations</b>	<b>3</b>
1.1.1 Structure of the Agreement	3
1.1.2 Discretion and Flexibility	4
1.1.3 Implementation into National Law and the Question of Direct Effect	5
1.1.4 Mandatory and Discretionary Rules	5
<b>1.2 General Principles</b>	<b>6</b>
1.2.1 National and Most Favoured Nation Treatment	6
1.2.2 Exhaustion of Rights	7
1.2.3 Objectives and Principles	8
1.2.4 The Relationship of the TRIPS Agreement to the WIPO Conventions and Treaties	9
1.2.5 The Doha Declaration on the TRIPS Agreement and Public Health	9
<b>1.3 Approaching WTO Dispute Settlement</b>	<b>10</b>
<b>1.4 Test Your Understanding</b>	<b>10</b>
<b>2 The TRIPS Agreement as a Body of Substantive Rules</b>	<b>11</b>
<b>2.1 The Establishment of Substantive Norms</b>	<b>11</b>
2.1.1 Express Provision and Incorporation	11
2.1.2 Scope of Subject Matter Coverage	11
2.1.3 Subject Matter Areas	12
<b>2.2 Copyright and Related Rights</b>	<b>12</b>
2.2.1 Incorporation of Berne	12
2.2.2 Idea-expression Dichotomy	12
2.2.3 Supplements to Berne	13
2.2.4 Specificity	13
2.2.5 Options, Including Fair Use	13
2.2.6 The National Constitution and Copyright	14
<b>2.3 Trademark</b>	<b>14</b>
2.3.1 Incorporation of the Paris Convention	14
2.3.2 The Subject Matter of Trademark Protection	14
2.3.3 Trademark ownership	15
2.3.4 The Scope of Trademark Protection	15
2.3.5 Exceptions and Fair Use	16
2.3.6 Duration and Other Aspects	16

<b>2.4</b>	<b><i>Geographical Indications</i></b>	<b>16</b>
2.4.1	<i>Subject Matter</i>	16
2.4.2	<i>Wines and Spirits</i>	17
2.4.3	<i>Negotiations</i>	17
2.4.4	<i>Potential Disputes</i>	17
<b>2.5</b>	<b><i>Industrial Designs</i></b>	<b>18</b>
2.5.1	<i>Subject Matter</i>	18
2.5.2	<i>Methods of Protection</i>	18
2.5.3	<i>Scope and Duration</i>	18
<b>2.6</b>	<b><i>Patent</i></b>	<b>19</b>
2.6.1	<i>The Paris Convention</i>	19
2.6.2	<i>Differences in Perspective</i>	19
2.6.3	<i>Subject Matter Scope</i>	19
2.6.4	<i>Scope of Protection</i>	21
2.6.5	<i>Disclosure</i>	21
2.6.6	<i>Exceptions</i>	21
2.6.7	<i>Other Uses</i>	22
2.6.8	<i>Term of Protection and Other Aspects</i>	23
<b>2.7</b>	<b><i>Lay-out Design of Integrated Circuits</i></b>	<b>23</b>
<b>2.8</b>	<b><i>Undisclosed Information</i></b>	<b>24</b>
2.8.1	<i>Relationship to Paris Convention</i>	24
2.8.2	<i>Trade Secret</i>	24
2.8.3	<i>Test and Regulatory Data</i>	24
<b>2.9</b>	<b><i>Competition Rules</i></b>	<b>25</b>
<b>2.10</b>	<b><i>Approaching WTO Dispute Settlement</i></b>	<b>26</b>
<b>2.11</b>	<b><i>Test Your Understanding</i></b>	<b>27</b>
<b>3</b>	<b><i>TRIPS Agreement Rules on Enforcement</i></b>	<b>29</b>
3.1	<i>General Provisions</i>	29
3.2	<i>Civil and Administrative Procedures and Remedies</i>	30
3.3	<i>Provisional Measures</i>	30
3.4	<i>Special Requirements Related to Border Measures</i>	31
3.5	<i>Criminal Procedures</i>	31
3.6	<i>Acquisition and Maintenance</i>	32
3.7	<i>Issues for Dispute Settlement</i>	32
3.8	<i>Approaching Dispute Settlement</i>	33
3.9	<i>Test Your Understanding</i>	34
<b>4</b>	<b><i>The Dispute Settlement System of the TRIPS Agreement</i></b>	<b>35</b>
4.1	<i>Transparency</i>	35
4.2	<i>Dispute Settlement</i>	35
4.3	<i>Non-violation in TRIPS</i>	36
4.4	<i>Proceedings</i>	38
4.4.1	<i>General application of DSU</i>	38
4.4.2	<i>Expert Consultation and Negotiating History</i>	38
4.4.3	<i>Claim and counterclaim</i>	39

---

4.4.4 Customary International Law and TRIPS	39
4.5 Approaching Dispute Settlement	40
4.6 Test Your Understanding	41
5 Jurisprudence Under the TRIPS Agreement	43
5.1 India – Patent Protection	43
5.2 Canada – Pharmaceutical Patents	44
5.3 United States Section 110(5) Copyright Act	46
5.4 Canada – Patent Term	47
5.5 United States Section 211 Appropriations Act	47
5.6 United States’ Claims Regarding Brazil’s Compulsory Licensing Legislations	49
5.7 Approaching WTO Dispute Settlement	50
5.8 Test Your Understanding	50
6 Case Study	51
7 Further Reading	53
7.1 Books and Articles	53
7.2 Dispute Settlement Reports	53
7.3 Documents and Information	53



## WHAT YOU WILL LEARN

---

The *Agreement on Trade-Related Aspects of Intellectual Property Rights* (“TRIPS Agreement”) is the first WTO agreement requiring Members to establish a relatively detailed set of substantive norms within their national legal systems, as well as requiring them to establish enforcement measures and procedures meeting minimum standards. The *TRIPS Agreement* is sometimes referred to as the first WTO agreement that prescribes “positive law”. This factor alone might account for a more than typical level of controversy as Members deal, in many cases, with adopting rather far-reaching changes to their national legal systems.

However, added to the uniquely “positive” aspect of the *TRIPS Agreement* is a negotiating history that for a long time was highly contentious, particularly as between developed and developing Members, and the fact that the *TRIPS Agreement* touches upon sensitive and important social issues. In the final analysis, it should not be surprising that the TRIPS Agreement has generated a considerable amount of controversy among WTO Members, even if to date much of that controversy has not resulted in formal dispute settlement proceedings.

The TRIPS Agreement addresses a wide range of intellectual property subject matter areas (copyright, trademark, patent, and so forth). It also covers competitive markets, enforcement measures, dispute settlement, and transitional arrangements. This Module provides an introduction to these various aspects of the TRIPS Agreement, and seeks to focus on the kinds of questions that should be asked when approaching dispute settlement. In some areas, the questions are answered, but the entire field of intellectual property rights protection, including enforcement measures, cannot be covered in a single Module or short course. Moreover, the questions will change along with the technologies that form the subject matter of intellectual property rights protection. The objective of this Module is to provide sufficient background so that as specific issues arise, the diplomat or lawyer understands how to approach them.

This Module begins by discussing some general principles or concepts applicable to the field of TRIPS dispute settlement. It then deals with the various substantive subject matter areas covered by the agreement. It turns to enforcement measures, and afterwards to specific aspects of the WTO dispute settlement process. Finally, the existing WTO jurisprudence is described.

预览已结束，完整报告链接和二维码如下：

[https://www.yunbaogao.cn/report/index/report?reportId=5\\_10726](https://www.yunbaogao.cn/report/index/report?reportId=5_10726)

