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Cooperation between World Intellectual Property Organisation
and the World Trade Organisation in the field of assistance to
Developing Countries

By

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Summary

There are two matters, which have important impacts on development of the international intellectual property rights (IPRs). The first is the significant economic importance of the IPRs and its large share in international trade and the second is the protection of IPRs especially in developing and importing countries. More than two thirds of the WTO members are developing countries (DCs) and they have an important role to play in international trade, mainly as importers of goods and technology. There is an undeniable link between the new industrial products and technology and the intellectual property rights, which should be protected to encourage new inventions for the next generation of products and technology. Since 1970 the industrialized countries have started to feel that the existing intellectual property system, especially the protection mechanisms and dispute settlement resolutions within the WIPO administered conventions could not protect the international IPRs. Therefore, they attempted to include the IPRs in another framework, namely the General Agreement on Tariffs and Trade (GATT). Industrialized countries have previously tried to revise the traditional intellectual property system within the Paris convention to include new and more effective patent protection provisions, but these attempts have failed because of the polarization of the issue between the developed and developing countries. Since 1986 the inclusion of IPRs has officially been a part of the Uruguay round agenda, and lengthy and complex discussions have started between the two blocks of industrialized and developing countries. For example, developing countries have argued that any provisions regarding IPRs must be done within the WIPO and not GATT, which was a multilateral trade negotiations forum and was not therefore competent in the matter. The inclusion of the IPRs in the GATT negotiations is only for the benefit of the developed countries. In contradiction the industrialized countries were arguing for the inclusion of IPRs in a wider framework and GATT. The developed countries discussed that the inclusion of the IPRs would benefit the developing countries as the encouragement of domestic inventions, a high standard protection of IPRs; increase in foreign investment and the transfer of technology to the DCs.

Finally, after 8 years, the DCs block surrendered and the agreement on trade related aspects of intellectual property TRIPS, was adopted as annex 1C of the agreement establishing the World Trade Organisation in 1994 and entered into force from January 1995.

However, the WTO member countries, which were mostly the prominent members of WIPO administered conventions, avoided the duplicity. The TRIPS agreement principally established on the basis of the existing IPRs systems, updates some areas of the IPRs according to changing needs and modern technology. Furthermore, TRIPS incorporated the basic provisions of the Paris and Berne conventions in regard to the National Treatment principle and the protection of IPRs. But it widened the principle of the Most Favoured Nations and added a dispute settlement system to TRIPS, which is covered by the WTO general dispute settlement resolution, and specific provisions for the protection of IPRs including the civil and criminal procedures and the border measures.

As a result of the Uruguay round negotiations, and taking into account the socio economic and cultural situations of the DCs and in particular the Least Developed Countries (LDCs), some preferential provisions have been set out for the DC members of the WTO, mostly in the form of transitional arrangements which would delay their obligations under the TRIPS agreement. According to these provisions, developing countries have four years transitional time until 1 January 2000 and least developing countries (LDCs) have 10 years transitional time – until 1 January 2006. When the TRIPS agreement was set up it was clear that a mere prediction of the preferential provisions in the TRIPS agreement would not be enough for the DCs and the LDCs to undertake their obligations and that they would need a great deal of assistance, both legally and technically. To this end other provisions were adopted which would provide assistance for these member states in the form of technical cooperation from the developed countries:

The WTO, originally a forum for fair trade, with little experience in intellectual property, found providing assistance and cooperation to the DCs and LDCs a difficult task. The WIPO, on the other hand, as a unique administrator of the traditional intellectual property conventions and as a

UN specialised agency, which dealt with DCs and LDCs through its ongoing cooperation for development programme, was the proper organisation. The TRIPS agreement therefore mandated the council for TRIPS to arrange the future cooperation between the two organisations to coordinate legal and technical assistance to DCs and LDCs to meet their obligations under the TRIPS agreement.

According to the mandate of the TRIPS agreement and according to the decision of the WIPO General Assembly, the agreement between the WIPO and WTO was concluded in 1995 and entered into force in 1995 mainly for the implementation of the TRIPS agreement.

After the conclusion Of the WIPO-WTO agreement, the international bureau of the WIPO mandated to provide the legal and technical assistance to the DCs and LDCs gave priority to those countries faced with the immediate need to meet their implementation obligations for the 2000 deadline.

WIPO received several requests for assistance, and most of these requests were within the framework on ongoing WIPO programmes. WIPO's assistance to DCs and LDCs is categorised as follows: Legislative assistance, Awareness Building and Human Resource Development, Institution Building and Modernisation of the Intellectual Property System; Studies and Publications on the Implication of the TRIPS agreement, and to hold national and international seminars, workshops and joint initiatives, etc.

However, matters dealing with the competences of these two organisations, the future development of IPRs within each of these organisations, the recent development in assistance to the DCs and LDCs, including the Doha ministerial declaration and the declaration of the TRIPS agreement and the public health (in WTO framework) , are briefly examined in this study.

Preface

To my wife for all her love and patience during this study

Aknowledgment

I want to express my special gratitude to my supervisor ,Professor Mpazi Sinjela Director of the WIPO Worldwide Academy.

I would like to thank Raoul Wallenberg Institute for affording me this education opportunity.

Abbreviations

ACTPN:	US president Advisory Committee on Trade Policy and negotiations
ADR:	Alternative Dispute Resolutions
BC:	Berne Convention
BIRPI:	United International Bureaux for the Protection of Intellectual Property
CLEA:	The Collection of Laws for Electronic Access
DCs:	Developing Countries
EC:	European Communities
GATT:	General Agreement on Tariffs and Trade
GATS:	General Agreement on Trade in Services
ICANN:	Internet Cooperation for Assigned Names and Numbers
ICITO:	the Interim Commission for the International Trade Organization.
ITC:	International Trade Committee
IPRs:	Intellectual Property Rights
LDCs:	the Least Developed Countries
MFN:	Most Favoured Nations
PC:	Paris Convention
PLT:	Patent Law Treaty
PCT:	Patent cooperation Treaty
TRIPS:	Trade Related Aspects of Intellectual Property rights
UDRP:	the Uniform Domain name dispute Resolution Policy
UN:	United Nations
UNCTAD:	United Nations Conference on Trade and Development
WCT:	WIPO Copyright Treaty
WPPT:	WIPO Performances and Phonograms Treaty
WIPO:	World Intellectual Property Organization
WTO:	World Trade organization

1 Introduction

The protection of intellectual property rights is an international issue, considering globalisation and the significant increase of international trade and the fixed place of intellectual property rights (IPRs) within the context of international trade. Each country, notwithstanding its level of development, needs to develop relationships with other countries and cannot be isolated in a complex globalized economy. IPRs, as a very important part of international trade, especially in the new and modern forms of technology production, such as information and communication technologies, must be protected, taking into account the balance between the rights of the IPRs right holders from the developed countries and the public interest of the importer developing countries.

However during the twentieth century, protection of the intellectual property rights (IPRs) was confined to traditional IPRs treaties, mainly the Paris convention for the protection of industrial property (1883) and the Berne convention for the protection of literary and artistic works (1886). With the improvement of technology specifically electronic communication facilities, the challenges between the developed countries and developing countries in IPRs protection has entered into a new international stage. In other words the possibility of fast and exact imitation of the products, especially in the copyright area, encouraged the producers of IPRs to seek for an effective international legal instrument to protect their rights.

Amongst the attempts for the development of intellectual property rights, the successful conclusion of the agreement on the trade related aspects of intellectual property (TRIPS Agreement) was undoubtedly a turning point. As an integral part of the agreement establishing the World Trade Organisation (WTO), all the WTO members are obliged to have the minimum standards for IPRs protection. The TRIPS agreement is based on the traditional intellectual property treaties, but it is the first international IPRs agreement which covers intellectual property rights as a whole (namely, copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and undisclosed information), but does not cover moral rights.

From the very beginning of the TRIPS negotiations within the Uruguay round multilateral negotiations, the developing countries began to challenge the inclusion of the IPRs in the framework of GATT, and it took 8 years from the

1986 starting point in Punta Del Este, Uruguay to the conclusion of the TRIPS Agreement in Marrakech in 1994.

The TRIPS agreement demands major changes in national laws of the WTO member countries. This demand is much greater on the developing country (DCs) and the least developed country (LDCs) members, which are far from the current standards of IPRs protection of the developed country members.

The lack of legislative and administrative infrastructure in the DCs and LDCs and their immediate need for legal and technical assistance for the implementation of the TRIPS agreement was clear at the start. Therefore the negotiators were encouraged to provide, firstly some preferential provisions for the implementation of the TRIPS agreement, mainly transitional arrangements which would delay the full implementation of the agreement and secondly to initiate provisions for assistance to developing countries, such as technical cooperation and legal and technical assistance from the WTO developed country members. Thirdly provision of a framework for cooperation between the WTO and other international organisations, with the focus on WIPO. This resulted in the conclusion of the agreement between the WIPO and WTO in 1995, which entered into force on 1 January 1996.

For the above reasons and because of the lack of expertise and human resources within the WTO, the TRIPS agreement obliged the WTO developed country members to provide assistance to the developing countries, in the form of technical cooperation.

It seems that the cooperation between the WIPO-WTO started from the conclusion of the TRIPS agreement, considering that TRIPS was based on the main WIPO administered treaties, the Paris and Berne conventions, although it also added some new aspects. TRIPS has provided the legal base and identified the legal and technical assistance and responsible body (TRIPS council) to coordinate the issue with the WIPO.

It should be pointed out that, after the conclusion of the agreement between WIPO and the United Nations, and the acceptance of WIPO as a UN specialised agency, the legal and technical assistance of WIPO to developing countries started within the framework of UN-WIPO relationships and was continuing in regards to improving the IPRs in these countries. However, by the conclusion of the TRIPS agreement, these activities were greatly increased due to obligations of WIPO under the WIPO-WTO agreement and in response to many requests from the DCs and LDCs which were accustomed to referring their questions to WIPO.

From the WIPO point of view, the activities in assistance to the DCs and LDCs for the implementation of the TRIPS agreement can be classified in the following categories: legislative assistance, awareness building and human resource development, institution building and modernisation of the intellectual property

system, studies and publications on the implication of the TRIPS agreement and national and international meetings, seminars, workshops and joint initiatives.

There were some ideas at the time of the negotiations and the conclusion of the TRIPS agreement that the main role of the development of IPRs had shifted from the WIPO to WTO. But according to the following reasons, these ideas were far from the reality. The WTO is firstly a forum for the promotion of free and fair international trade, and has insufficient financial and human resources. WIPO, however, as a UN specialised agency is the unique international organisation, which currently administers 21 IPRs treaties and has a large membership (currently 181 members). WIPO has a good supply of human and expertise resources and also enjoys the assistance of a wide range of NGOs worldwide. The post TRIPS functions of WIPO, in lawmaking (three IPRs treaties were concluded under the auspices of WIPO after the conclusion of the TRIPS agreement), and the enormous activities of WIPO regarding the legal and technical assistance to developing countries to meet their obligations under the TRIPS agreement, point to the important role of the WIPO in the future development of IPRs.

Concerning the above discussion this study shall briefly highlight the background of the two organisations and, how WTO as a forum for multinational trade negotiations did come to IPRs, the examples of challenging matters between the developed and developing country members of the WTO during the TRIPS negotiations, the impacts of the existing intellectual property rights treaties and the incorporation of these treaties in TRIPS. The study also focuses on the WIPO-WTO cooperation on the assistance to the developing countries, specifically on the TRIPS implementation. However, the recent development in assistance to developing countries in the context of the TRIPS agreement and the future issues of the WIPO-WTO shall be examined in this study.

2 World intellectual property organization, WIPO

2.1 Background

The desire for international consensus for the protection of intellectual property rights is not a new phenomenon. The Paris convention for the protection of industrial property 1883¹ (Paris) convention and the Berne convention for the protection of literary and artistic works 1886

² (Berne) convention codified the international norms of the protection of intellectual property.

The Paris and Berne conventions remained the cornerstones of intellectual property regime during the most of the twentieth century. Both conventions were revised at different occasions, in order to develop intellectual property and to add the changing needs of member countries.

The administration of The Paris and Berne conventions brought together a unified international organization called the United International Bureaux for the Protection of Intellectual Property (best known by its French acronym (BIRPI). Based in Berne, Switzerland, with a staff of seven.³

As the importance of intellectual property grew, the structure and form of the Organization changed as well. In 1960, BIRPI moved from Berne to Geneva to be closer to the United Nations and other international organizations in that city.

2.1.1 Establishment of WIPO (Stockholm 1967)

The world intellectual property organization (WIPO) was established in 1967 by a convention signed at Stockholm on July 1967 and effective in 1970, and was amended on September 28, 1979.⁴

According to article 3 of the convention the purpose of the organization is promotion of intellectual property throughout of the world and the administration of the cooperation among the "unions".⁵

¹ Paris convention for the protection of industrial property of March 20, 1883 as revised. WIPO website, <http://www.wipo.int/clea/docs/en/wo/wo020en.htm>

² Berne convention for the protection of literary and artistic works; of September 9, 1886 as revised, WIPO website, <http://www.wipo.int/clea/docs/en/wo/wo001en.htm>

³ United international bureaux for the protection of intellectual property, established in 1893 WIPO website. <http://www.wipo.int/>

⁴ Convention establishing the world intellectual property organization (signed at Stockholm on July 14, 1967 and as amended on September 28, 1979), WIPO web site. <http://www.wipo.int/clea/docs/en/wo/wo029en.htm>

⁵ According to Stockholm convention article 2 (vii) "Unions" shall mean the Paris Union, the Special Unions and Agreements established in relation with that Union, the Berne Union, and any other international

As the main international organization that is responsible for all the activities related with intellectual property at the international scale, Several international conventions are administered by WIPO, such as Paris convention, Berne convention, Rome convention,⁶ WIPO copyright treaty,⁷ and the Patent Cooperation Treaty (PCT).⁸

According to article 3 and 4 of Stockholm convention, in order to attain its main purpose of “protection of intellectual property throughout the world” WIPO “shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world.; may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property; shall encourage the conclusion of international agreements designed to promote the protection of intellectual property; and shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property.”⁹

2.1.2 WIPO as a UN specialized agency (agreement between WIPO and UN 1974)

Long before the establishing of the United Nations, BIRPI was the responsible intergovernmental organisation in the field of intellectual property. WIPO, the successor to BIRPI, was established in 1967 resulting from the Stockholm convention, became a specialized agency of the United Nations when an agreement was signed to that effect between the United Nations and WIPO which came into effect on December 17, 1974.¹⁰

This global outreach has made one researcher comment: “This allowed WIPO to become a global agency, as opposed to a small club of mainly developed countries, which it really was at the time”.¹¹

According article 1 of the UN - WIPO agreement, WIPO’s mandate in regards of cooperation within the United Nations system is “for promoting creative

agreement designed to promote the protection of intellectual property whose administration is assumed by the Organization;

⁶ International convention for the protection of performers, producers of phonograms and broadcasting organizations, done at Rome on October 26, 1961, see; WIPO website, <http://www.wipo.int/clea/docs/en/wo/wo024en.htm>

⁷ WIPO copyright treaty and agreed statement concerning the WIPO copyright treaty, adopted in Geneva on December 20, 1996, see; WIPO web site, <http://www.wipo.int/clea/docs/en/wo/wo033en.htm>

⁸ Patent cooperation treaty, Done at Washington on June 1970, amended on September 28, 1979 modified on February 3, 1984, and October 3, 2002, as in force from April 1, 2002, see; WIPO website, <http://www.wipo.int/pct/en/texts/articles/atoc.htm> and for a complete list of WIPO administered treaties see WIPO website, <http://www.wipo.int/treaties/en/index.html>

⁹ Article 3 and 4 of Stockholm convention.

¹⁰ Agreement between United Nations and world intellectual property organization. (1974)...

¹¹ Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation’s impact on international trade and intellectual property law, Saint John’s journal of legal commentary, spring 2003

intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs”¹²

WIPO, as a specialized UN agency, undertook to cooperate in the provision of technical assistance for development in the field of intellectual creation¹³, agree to co-operate within the field of its competence with the United Nations and its organs, in promoting and facilitating the transfer of technology to developing countries in such a manner as to assist these countries in attaining their objectives in the fields of science, technology, trade and development.¹⁴

WIPO is an independent organization although it belongs to the UN family; like the other UN specialized agency, WIPO has, its own constitution, its own governing bodies, its own programmes and activities and basically remains responsible, under its governing bodies.

WIPO’s position at the international scene has changed greatly during the past decades, while the organization has saved its role as the administrator of the intellectual property treaties (“it currently administers 21 of such treaties”)¹⁵ but nowadays the activities of WIPO have not only increased but have also diversified.

For instance one of the new functions of WIPO is the registration activities which provide a single procedure to apply for the patent, and register trade marks and industrial designs in regards of the patent cooperation treaty (PCT), the Madrid agreement and the protocol for the international registration of marks¹⁶, and the Hague agreement concerning the international deposit of industrial designs¹⁷. In addition, a new international treaty, the patent law treaty (PLT)¹⁸ was concluded in June 2000 to streamline the application procedure and reduce the cost of obtaining simultaneous patent protection in different countries.¹⁹ WIPO has grown from 13 members in 1970 to 181 today.²⁰

¹² Article, 1 of UN-WIPO agreement, see No, 12

¹³ Article, 9 of UN-WIPO agreement, see No, 12

¹⁴ Article, 10 of UN-WIPO agreement (see No, 12)

¹⁵ WIPO intellectual property hand book: policy, law and use WIPO website; <http://www.wipo.int/about-ip/en/iprm/index.htm> and for a complete list of WIPO administered treaties see WIPO website, <http://www.wipo.int/treaties/en/index.html>

¹⁶ Madrid agreement concerning the international registration of marks of April 14, 1891 as amended on September 28, 1979. WIPO website; <http://www.wipo.int/treaties/en/registration/madrid/index.html>

¹⁷ The Geneva Act of the Hague agreement concerning the international registration of industrial designs (adopted on July 2, 1999) http://www.wipo.int/hague/en/legal_texts/wo_haa_t.htm

¹⁸ Patent law treaty (adopted at Geneva on June 1, 2000) WIPO website; <http://www.wipo.int/treaties/en/ip/plt/index.html>

¹⁹ The adoption of PCT treaty in 1970 “ has allowed WIPO to be unique among UN agencies in that it is a self-funding agency by and large, with over ninety-one percent of WIPO's budget coming from fees paid by the private sector for its services. The PCT generates the bulk of this revenue from fees paid by applicants who use the Patent Cooperation Treaty to secure the filing of a patent application in multiple countries with a single application. WIPO, therefore, is not dependent on any single member state paying its dues” see;

2.2 WIPO and development of international IPRs law

Following the mandate of WIPO General Assembly²¹ and as a result of WIPO-WTO agreement of 1995, the international bureau²² carries out a wide range of activities related to the agreement on trade related aspects of intellectual property (TRIPS), mostly within the WIPO's ongoing cooperation for development programme²³. These activities were organized in response to the requests from the developing country members of WIPO, These activities include:

Legislative advice, awareness building and human resources development, institution building and modernization of intellectual property system and enforcement, studies and publications as well as the activities under the WIPO – WTO agreement²⁴.

WIPO's cooperation for development programme has close relations with the some important intergovernmental organisation such as WTO on the TRIPS

Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation's impact on international trade and intellectual property law, Saint john's journal of legal commentary, spring 2003

²⁰ WIPO web site- http://www.wipo.int/about-wipo/en/members/member_states.html (last visited October 10,2004)

²¹ “The General Assembly is the supreme organ of WIPO. Among its other powers and functions ,the General Assembly appoints the Director General upon nomination by the coordination committee ;it reviews and approves the reports and activities of the coordination committee as well as the reports of the Director General concerning WIPO ;it adopts the financial regulations of WIPO and biennial budget of expenses common to the unions; it approves the measures proposed by the Director General concerning the administration of the international agreements designed to promote the protection of the intellectual property ;it determines the working languages of the secretariat taking into consideration the practice of the United Nations ;and it also determines which states not members of the WIPO and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as Observers.” See,(WIPO intellectual property hand book 1.35) for more detailed information see WIPO intellectual property hand book ,policy ,law and use. <http://www.wipo.int/about-ip/en/iprm/index.htm>

²² “ The forth organ of WIPO is the International Bureau of WIPO or Secretariat .It is headed by the Director General ,and further consist of those who make up its regular staff; the staff in the professional and higher categories are recruited on a principle of equitable geographical distribution established in the United Nations system ,and other staff are from the wide range of countries of all regions of the world. .” See,(WIPO intellectual property hand book 1.35) for more detailed information see WIPO intellectual property hand book ,policy ,law and use. <http://www.wipo.int/about-ip/en/iprm/index.htm>.

²³ “WIPO's development cooperation aims to assist developing countries –including the least developed countries (LDCs), for which a special unit has been established in the WIPO secretariat -to attain levels of socio –economic development through their intellectual property systems, which enable them to enter into effective partnership with moor developed countries ,and generally to take their place in the world”. .” See,(WIPO intellectual property hand book 1.35) for more detailed information see WIPO intellectual property hand book ,policy ,law and use. <http://www.wipo.int/about-ip/en/iprm/index.htm>

²⁴ WIPO's Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000
http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf

implementation for DCs and LDCs, which is a subject of an agreement between the two organizations.

The other main work of WIPO is an alternative dispute resolution service between individuals and companies through the WIPO arbitration and mediation centre.²⁵

WIPO's activities in progressive development of international intellectual property (IP) law include, treaty making and the development of the international norms through model laws, guidelines, non-binding resolutions etc.

One of the most important activities of WIPO which provides a kind of financial independence for the organization, is its "global protection service" in regards with the protection of patents under the patent cooperation treaty (PCT)" protection of the trademarks under the Madrid agreement concerning international registration of marks 1967(Madrid system) and protection of the industrial designs under the Hague agreement concerning the international deposit of industrial designs (Hague system). As noted by Paul Salmon," The PCT itself brings in over eighty-five percent of WIPO's income".²⁶

2.3 Assistance to developing countries

The framework of international legislative and administrative assistance to developing countries has been strengthened by the TRIPS agreement administered by the WTO in cooperation with WIPO. Developing countries (DCs) which are member states of WTO were given different periods of time to upgrade their intellectual property system, before being obliged to apply the TRIPS agreement, the last to be so obliged will be 49 least developed countries (LDCs) which have until January 1,2006.²⁷ WIPO's programmes of assistance and support to the LDCs in particular has been intensified to help them to meet this deadline but other developing countries continued to be assisted as well.²⁸

As a specialized UN agency WIPO has to promote the protection of intellectual property on one hand and provide the facilities for transferring technology to Developing countries on the other hand. According the article 1 of the WIPO-UN agreement, the WIPO's mandate is "To accelerate the social, cultural and economical development of DCs and the LDCs, subject to the competence and responsibilities of the United Nations and its organs".²⁹

²⁵ " in September 1993, the WIPO General Assembly unanimously approved the establishment of the WIPO Arbitration Centre, now called the WIPO Arbitration and Mediation Centre, the Centre offer services for the resolution of international property disputes between private parties through arbitration and mediation. the Centre also administers special administrative procedures for the resolution of dispute arising out of the registration of internet domain names." See, (WIPO intellectual property hand book 1.35) for more detailed information see WIPO intellectual property hand book, policy, law and use. <http://www.wipo.int/about-ip/en/iprm/index.htm>.

²⁶ See, Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation's impact on international trade and intellectual property law, Saint John's journal of legal commentary, spring 2003

²⁷ See; articles 65,66 of the TRIPS agreement.

²⁸ See;(WIPO intellectual property handbook. Policy, law and use) . <http://www.wipo.int/about-ip/en/iprm/index.htm>

²⁹ Article, 1 of UN-WIPO agreement of 1995

In its more recent history WIPO took the responsibility of helping the developing countries to receive their full protection of their creativity, assisting on the increasing knowledge of managing intellectual property, to establishing proper institutions and to prepare the legal text for legislation and implementation of their obligations to international intellectual property context. The LDCs have been given particular attention by WIPO through a special LDCs unit, which was established in 1998 to focus specially on the needs of the least developed countries in this regards.

3 World trade organization

Background

3.1 GATT

The roots of contemporary international trade originated from the late nineteen twenties. At that time the major trading countries felt a lack of rules and discipline, which was a barrier to the development of international trade. The economic problems, which resulted from the Second World War and the necessity for a new international trade framework, have emphasized the issue. The UN conference on trade and employment in Havana resulted in formulating the Havana Charter, the Charter however, failed to achieve its objective because of a decline by the United States and United Kingdom. Consequently, however the international trade chapter of Havana Charter was converted into the General Agreement on Tariffs and Trade (GATT) in 1947.

GATT was not an international organization and was administered by an Interim committee, which was called the Interim Commission for the International Trade Organization. (ICITO).

The main concerns of GATT before the nineteen seventies have been to reduce the tariffs in different countries in order to facilitate trade in goods, but from the beginning of the nineteen seventies some new concerns were included in the GATT multilateral negotiations (MTNs).

Several MNTs rounds have taken place in GATT as follows:

(I) Geneva 1947;(II) Annecy 1948;(III) Torquay 1950;(IV) Geneva 1956;(V) Dillon 1960-1;(VI) Kennedy 1964-7;(VII) Tokyo 1973-9; and Uruguay 1986-94

Before the last two rounds of negotiations, the main focus of the GATT was mostly on the provision of reduction of tariffs and facilitation of international trade, for the export and import of goods.³⁰

³⁰See; Lal Das, Bhagirath .The World Trade Organization: A guide to the Framework for International Trade. Zed Books Ltd. 1999 chapter (1.1)

3.2 Uruguay Round

In September 1986 the 18th major round of the multilateral international trade negotiation's started in Punta Del Este, Uruguay .In addition to the former subjects, in this round two more important subjects were included for negotiation, first, the constitutional structure for international cooperation in trade and services; Second; inclusion of intellectual property provisions in GATT, which was opposed by the developing countries in the first stages. Ultimately in 1994 the final Act of Uruguay round was signed by the member countries and this resulted in the agreement establishing the world trade organization. ³¹

3.3 Agreement establishing the WTO (1994)

On April 15, 1994, at the Marrakech Meeting of Trade Ministers, the Final Act Embodying the Results of the Uruguay Round (Final Act) and the Agreement Establishing the World Trade Organization (WTO Agreement) were opened for signature by the countries in attendance. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Including Trade in Counterfeit Goods was attached to the WTO Agreement as Annex 1C and entered into force on January 1, 1995.

The World Trade organization established by WTO Agreement became the "only global international organization dealing with the rules of trade between nations." The WTO is located in Geneva, Switzerland with a membership of 148³² countries. The functions of the WTO are to administer WTO trade agreements, act as a forum for trade negotiations, handle trade disputes, monitor national trade policies, provide technical assistance and training for developing countries, and cooperate with other international organizations.

The WTO's primary objective is to help trade flows smoothly, freely, fairly, and predictably. The main function of WTO is to administer the multinational trade agreement within it and to establish a forum for negotiation, resolution, review of national trade policies and dispute settlement. It is also required to cooperate with the other international organizations and helps the development of the DCs and

³¹ Karl Beier, Friedrich & Schriker, Gerhard. From GATT or WIPO? Max Planck institute for Foreign and International Patent, Copyright and Competition law, (IIC studiesVOL.11) VCH Federal Republic Germany, 1989 pages 104,105

³² WTO has 148 members by October 13,2004, WTO website
http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

LDCs. The ministerial conference is the highest decision making body and is composed of all WTO members.

For a better understanding of the legal texts of the establishing agreement of the WTO a brief explanation regarding the reading of WTO agreement is useful. The establishing agreement of the WTO is an umbrella agreement, which consists of 4 annexes.

Annex 1 includes 3 parts as follows;

Annex 1 (A) GATT 1994 plus some other 12 agreements, which in whole is called multilateral agreements on trade in goods.

Annex 1(b) General Agreement on Trade in Services (GATS) including its own annexes.

Annex 1(C) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

Annex 3: Trade Policy Review Mechanism

Annex 4: Pulilateral Trade Agreements consisting of 4 agreements.³³

In addition according to article II (4) of the agreement establishing WTO, (GATT 1947) is legally distinct from the (GATT 1994),³⁴

Therefore, GATT 1947, includes the original GATT of 1947 along with all the revisions which have taken place until the end of December of 1994, and GATT 1994 means the GATT 1947, including decisions taken under until 31 December 1994, plus the Uruguay round understandings provisions, plus the new protocol relating to tariff concessions adopted at Marrakech in April 1994.³⁵

³³ article XVI ,miscellaneous provisions, list of annexes, agreement establishing the world trade organization

³⁴ article: II (4) The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

³⁵See; Lal Das, Bhagirath .The World Trade Organization: A guide to the Framework for International Trade. Zed Books Ltd. 1999, pages 9,10

3.4 WTO and developing countries

A great number of WTO members are DCs and LDCs³⁶, and they have an important role in international transactions, consequently there is an ever-increasing debate about their cooperation and their needs and advantages in international trade contexts. The agreement establishing WTO in its preamble recognized one of its purposes as:

The “need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.”

Although the challenge between the industrialized countries (north) and the “developing” and “least developed countries” (south) is as old as the history of the international trade, but the inclusion of the Agreement on trade-related aspects of intellectual property TRIPS, as an integral part of the WTO agreement is considered a turning point to this challenge. It is said that the TRIPS is the first single international agreement that includes the whole areas of intellectual property, with an effective system of dispute settlement, which is binding upon the WTO member countries, most of them, DCs and LDCs.

Before the conclusion of TRIPS agreement, the industrialized member countries of the WTO, generally were dissatisfied by the weak protection of existed intellectual property laws in the developing country members. The TRIPS agreement with the minimum standards of international protection of intellectual property and by establishing a new institution (TRIPS council) to monitor transparency and the national implementation measures was supposed to be a great development in this concern. In addition the WTO dispute settlement that covers the TRIPS agreement was a new and more effective mechanism to protect the intellectual property rights of the developed countries.³⁷

When TRIPS agreement was concluded in 1994, many of the WTO members did not have pre-existing intellectual property regimes in place, or they were very weak in this regard. TRIPS established a flexible accession system to provide transitional periods for the developing and least developed countries.³⁸

However the provisions concerning DCs and LDCS within WTO multilateral agreements, generally can be classified in five categories; provisions aimed at increasing trade opportunities through market access; provisions requiring WTO Members to safeguard the interest of developing countries; provisions allowing flexibility to developing countries in rules and disciplines governing trade

³⁶ “About two thirds of around 147 of WTO members are developing countries” WTO website http://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm last visited October 14, 2004

³⁷ See; Helfer Laurence R; Regime shifting: the TRIPS agreement and New dynamics of international intellectual property lawmaking, Yale journal of international law winter 2003,

³⁸ See; transitional arrangements in this paper.

measures; provisions allowing longer transitional periods to developing countries; and provisions for technical assistance.³⁹

4 How WTO did come to deal with Intellectual Property Rights?

For half a century WIPO and its predecessor BIRPI have been a unique, international organization, dealing with the intellectual property issues. But from the early nineteen eighties the industrialized countries started a movement to establish a new protection system of intellectual property rights in the context of international trade; this ultimately resulted in the conclusion of the TRIPS agreement.⁴⁰

However The inclusion of IPRs in a trade multilateral agreement during the Uruguay round, was not a simple issue, there were a lot of challenges between the industrialized countries and the developing countries for instance, A group of developing countries lead by Brazil and India have emphasised that, the competent organization for addressing of piracy and counterfeiting issues of intellectual property within the developing countries, is WIPO rather than GATT multilateral trade negotiations. These developing countries argued that, the WIPO had the practical advantages for the issue because of its experiences, expertise, and financial and human resources. The other advantage was that the developing countries could protect their interests through the numerical voting system of WIPO.⁴¹

It has been argued that, a lack of effective enforcement, which generally, did not exist in the WIPO administered conventions, encouraged the developed countries to move the discussion from the WIPO to WTO. It should be pointed out that according to the convention establishing the WIPO, one of the objectives of WIPO is “to promote the protection of intellectual property throughout the world through cooperation among States”.⁴² But there is no formal enforcement mechanism, no dispute settlement system, among the member states; the only mechanism is the moral persuasion of the WIPO member states to implement their

³⁹ high level symposium on trade and development (Geneva 17-18 march ,1999)background document, WTO website http://www.wto.org/english/tratop_e/devel_e/hlstat_e.htm

⁴⁰ For a deep study about TRIPS see;(1) Karl Beier, Friedrich & Schricker, Gerhard. From GATT to TRIPS .Max Planck institute for Foreign and International Patent, Copyright and Competition law, (IIC studies,VOL.18) VCH Federal Republic Germany, 1996;
(1)Correa, Carlos M. Intellectual Property rights, The WTO and Developing Countries, the TRIPs Agreement and Policy Options, Zed Books Ltd. 2000,

⁴¹ See; Matthews, Duncan. Globalizing Intellectual Property Rights, the TRIPs Agreement. First published by Routledge 2002, (the origins of TRIPS agreement.)

⁴² See; article 3 of convention establishing the (1967)

treaty obligations, through the general assembly. It is also worth noting that the attempts to provide an effective enforcement mechanism through revision of WIPO administered treaties had failed prior to the conclusion of the TRIPS agreement.⁴³

4.1 Reasons for conclusion of the TRIPS agreement

The TRIPS agreement was adopted in the framework of the Uruguay round of multilateral trade negotiations. The TRIPS agreement incorporated the intellectual property protection into the general agreement on tariffs and trade; it is an integral part of the final act of Uruguay round resulting in the agreement establishing WTO. The inclusion of IPRs protection into the framework of WTO was strongly advocated by the developed countries. Some of the arguments of the developed countries for the inclusion of IPRs are as follows. This inclusion would help to liberalize international trade and provide more protection of trade related aspects of intellectual property rights, through an effective enforcement mechanism of the WTO.

The developed countries argued that, the GATT system has three main advantages to WIPO. First GATT has a broader framework, which increases the chances for the success. In such a wide framework, there are positive and negative aspects for the contracting parties with different concerns, which encourage them to accept some obligation to benefit from the other part of the contract; this issue could be hardly achieved through the narrower forum like WIPO. Second the problem of block formation as it happened during the attempt to revise the Paris convention could not happen in the GATT framework and the compromises are fairly facilitated.

Third, the GATT dispute settlement is more effective and more practical than the WIPO administered conventions, which is rather theoretical in nature, specifically considering the provisions of the Paris⁴⁴ and Berne⁴⁵ conventions, which give authority to the ICJ to solve the problem. However the question of whether the GATT dispute settlement could be included in the WIPO administered conventions, was not answered until now, even though, it was discussed at least at two occasions of, "the discussion of the model provisions against piracy" and "the preparation of the draft treaty on the protection of the semiconductor chip masks".⁴⁶

⁴³ See, Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation's impact on international trade and intellectual property law, Saint John's journal of legal commentary, spring 2003

⁴⁴ See, article 28 of Paris convention (1967)

⁴⁵ See, article 33 of Berne convention (Paris act 1979)

⁴⁶ Karl Beier, Friedrich & Schricker, Gerhard. GATT or WIPO? Max Planck institute for Foreign and International Patent, Copyright and Competition law, (IIC studies VOL.11) VCH Federal Republic Germany, 1989, pages 35,35

The GATT framework can shift the focus of international discussion from procedural uniformity of the WIPO treaties to minimum standards of substantive protection; TRIPS can establish these minimum standards and mandated mutual recognition of intellectual property, and for the first time, a mechanism for the global enforcement can come into existence.⁴⁷

These arguments were contradicted by DCs against inclusion of IPRs in the first stages of the negotiations, but incorporation of IPRs became more acceptable when the prominent DCs adopted the free market policy and following increasing pressure from the developed countries such as the USA through the bilateral treaties and trade sanctions.

In 1990 a Group of 14 DCs presented a GATT proposal concerning the regulation of counterfeit goods as well as uniform substantive provisions for IPRs protections. The proposal included 3 main objectives (1) it emphasized the importance of public policy objectives underlying national IPR systems; (2) it insisted on the necessity of respect for both national legal tradition regarding IPRs and the diverse needs of the countries participating in the negotiations; and (3) it attempted to minimize the actual substantive IPR standards being considered. This proposal had a great impact on the framework of the TRIPS agreement.⁴⁸

4.2 Increasing economic significance of the intellectual property

With the improvement of technology and the increasing of international trade the importance of intellectual property rights in international trade scales was increased greatly. Each section of high technology has some links to intellectual property. For the industrialized countries, which were the main producers and the exporters of high technology, a minimum standard of international IPRs protection was vital to avoid losing billions of dollars resulting from piracy and counterfeiting of their products in the importer countries, mostly developing countries. This was specifically the problem of pharmaceutical and information industries and audiovisual entertainment such as music and film industries.

For example “US and European companies invest about 20 percent of their sales income in research and development with the aim of producing the next generation of medicinal products, this being by far the highest level of investment of any industrial sectors”.⁴⁹

⁴⁷See; Cheek, Marney L. The limits of informal regulatory cooperation in international affairs: a review of the intellectual property regime, George Washington law review 2001.

⁴⁸See. Smith, Carrie P. patenting life: the Potential and the pitfalls of using WTO to globalise intellectual property rights, North Carolina journal of international law and commercial regulations, fall, 2000;

⁴⁹ Matthews, Duncan. Globalizing Intellectual Property Rights, the TRIPs Agreement. First published by Routledge 2002, page 8;

It is believed that, at the time of the TRIPS negotiations most of the research and development made in the developed countries, and the DCs and LDCs were mostly the importers of technology. However the large scale piracy and counterfeiting of the industrialized countries products and exportation of counterfeiting goods to importer countries caused huge amount of losses in industrialized countries. .⁵⁰

4.3 Pressure of multinational corporations

WIPO was disfavoured by the multinational corporations as well as their industrialized countries, which believed that the voting system of WIPO found in the UN system, gave the equal chance for every member states notwithstanding their ability to produce intellectual property. With the increased number of “developing” and “least developed” countries as WIPO members, they were able to block the industrialized countries substantive harmonization initiatives.

Among the industries, which pressured and actively followed the IPRs protection issues, pharmaceutical companies and copyright industries in US should be pointed out. They argued that because of their low entry barriers, they were highly exposure to piracy. These industries were represented by high-ranking CEOs such as “-Ed-Pratt, chief executive officer (CEO) OF Pfizer and John Opel, CEO of IBM which were members of the US president Advisory Committee on Trade Policy and Negotiations (ACTPN). The ACTPN was designed to provide direct input by the US business sector into US trade policy.”⁵¹

4.4 Trading attractions of GATT/WTO for industrialized countries

Three institutional features of GATT/WTO multilateral negotiations attracted the United States and the EC as the main motivators of the conclusion of TRIPS agreement and made it preferable to WIPO for the intellectual property protection standards negotiation.

First the US and EC have the largest domestic markets, therefore they enjoy a dominant position on the negotiation within the GATT/WTO and ultimately had powerful trade bargains to shape the negotiations to their interest by promising to open or threatening to close their markets to foreign goods. The consensus

⁵⁰ See; Karl Beier, Friedrich & Schricker, Gerhard. From GATT to TRIPs .Max Planck institute for Foreign and International Patent, Copyright and Competition law, (IIC studies VOL.18) VCH Federal Republic Germany, 1996, page 8.

⁵¹ See; Matthews, Duncan. Global zing Intellectual Property Rights, the TRIPs Agreement. First published by Routledg 2002, page 18;(for a deep study of the impacts of multinational companies on establishing TRIPS agreement, see chapters 1,2 of this reference)

structure of GATT/WTO negotiations let the industrialized countries easily block trade advancement of proposals of the weak countries; in addition the consensus system legitimates the final product of negotiations as the unanimous consent among the member states

The Second attraction was the inclusion of the intellectual property protection in the broad framework of the GATT/WTO and mixing it with the other trading issues, which can be introduced to many countries with the divergent interests. This means the countries with lower intellectual property protection, accept the higher level of protection in order to benefit from the other parts of the agreement. This was the case of the developing countries, which accepted the TRIPS agreement in order to have access to the markets of the industrialized countries for their agricultural products, textiles, and other goods. According to this definition the US, EC could earn the broader and deeper intellectual property protection by moving the negotiations from the WIPO to WTO context.

It is believed that; the GATT dispute settlement as a major achievement of Uruguay round was a restructuring of the dispute settlement equipped by the decision binding rules upon all the WTO member countries, therefore it was preferred to the theoretical dispute settlement of WIPO administered treaties, which was rarely used by the WIPO member countries in practice. It should be pointed out that the main WIPO administered treaties, refer the dispute settlement to the International Court of Justice (ICJ), furthermore according to these conventions, any member states may “ declare that it does not consider itself bound by the provisions; with regard to any dispute between such country and any other country of the Union”. The WTO dispute settlements give the power of retaliatory sanction if the loosing party does not alter the WTO incompatible national laws or provide the proper Compensation.⁵²

4.5 Unilateral measures and bilateral agreements

The other reason for successful conclusion of the TRIPS agreement could be found in the power of unilateral trade sanction of industrialized countries, especially United States, which widely used this means against developing countries.⁵³

Protection of intellectual property through imposing bilateral agreements against the uncooperative countries have been an option for the powerful countries like

⁵² See; Helfer Laurence R; Regime shifting: the TRIPS agreement and New dynamics of international intellectual property lawmaking, Yale journal of international law winter 2003,

⁵³ See; Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation's impact on international trade and intellectual property law, Saint john's journal of legal commentary, spring 2003

the United States and European countries, for some decades, for instance one can point to the “the procedure of US International Trade commission (ITC), based on the Sec.337 of the 1930 tariff Act in the version of 1974 trade ACT and, subsequently, on the 1988 omnibus trade and competitiveness ACT,” in the United States of America.⁵⁴

FROM the 1970s USA was pressuring the countries to provide a more effective protection for the intellectual property aspects, for instance under the Caribbean basin initiatives, the generalized system of preferences programme, the Andean preference Act, and the “special 301 provisions of US Trade law.”⁵⁵

The important role of bilateral trade sanction of developed countries against the developing countries in the conclusion of the TRIPS agreement, has interpreted by a commentator, as the main reason for the conclusion of the TRIPS and more effective than the multilateral trade negotiations. However for the first time, USA used the special 301 provision of US trade law against the India, china and Thailand by placing these countries on the priority watch list because of wide piracy and counterfeiting and inadequate protection of the American pharmaceuticals, books and audio visual products.⁵⁶

4.6 Weakness of traditional intellectual property system to protect the intellectual property rights.

At the end of the twentieth century the traditional intellectual property set up through the Paris and Berne conventions have been faced with criticism because of their non-effectiveness. It is said that at the time of establishing of these treaties, the matter of global connectedness and harmonization of IPRs was less important than today, though the mechanisms that was predicted to protect IPRs in these conventions is less effective today. For instance the national treatment cannot provide the favourable IP protection in such countries, which will not protect the foreigners, particularly when the general trend of DCs is to weaken IP laws.

⁵⁴ See; Karl Beier, Friedrich & Schricker, Gerhard. From GATT to TRIPs .Max Planck institute for Foreign and International Patent, Copyright and Competition law, (IIC studies VOL.18) VCH Federal Republic Germany, 1996,pages, 16,17;

⁵⁵ See; Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation’s impact on international trade and intellectual property law, Saint john’s journal of legal commentary, spring 2003

⁵⁶ Matthews, Duncan. Global zing Intellectual Property Rights, the TRIPs Agreement. First published by Routledg 2002, page 31;(for a deep study about the affects of multinational companies and big industries in conclusion of TRIPS see this book)

TWO cornerstones of traditional intellectual property namely the Paris and Berne conventions, which claim the universal applicability, were unsuccessful to achieve this goal, at the time the TRIPS entered into force in 1995. Only 31 of 129 Paris union member states had been the member of the Madrid agreement, the only other agreement in the industrial property protection in force, in the copyright, the situation was similar, from the 111 member states of the Berne convention only 95 had joined the universal copyright convention, 47 were members of the Rome convention and 52 were party to the Geneva convention.⁵⁷

The industrialized countries were dissatisfied with the WIPO mechanisms, specifically the low level of intellectual property protection and a lack of international enforcement of intellectual property within WIPO, which resulted in the piracy and counterfeiting of their productions. This led them to seek for another forum to further protection of their intellectual property rights.⁵⁸

In regards of international intellectual property enforcement it should be pointed that, the WIPO administered conventions refer the international responsibility of the member states to adopting minimum standards by the national laws, notwithstanding that these laws do not enforced or lacked an effective enforcement. This largely discharged the responsibility of the member states. The provisions of the WIPO administered treaties “indirectly require appropriate enforcement measures, in that they oblige a country party to adopt the measures necessary to ensure the application of the treaty”⁵⁹ for example article 25 (1) of Paris convention states that:

*Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.*⁶⁰

But TRIPS agreement required the WTO members to implement the rules of TRIPS through specific mechanisms including the imposition of remedies. If a member state failed to protect IPRs, the rights owners can trigger the WTO dispute settlement, through petition of their own member states.⁶¹

⁵⁷ See; Karl Beier, Friedrich & Schricker, Gerhard. From GATT to TRIPs .Max Planck institute for Foreign and International Patent, Copyright and Competition law, (IIC studies VOL.18) VCH Federal Republic Germany, 1996,pages 9, 10

⁵⁸ See; Romano, Frank, global trademark and copyright 1998:protecting intellectual property rights in the international market place, international conventions ad treaties, practicing law institute,

⁵⁹ WIPO Publication NO.464 (E), Implication of the TRIPS agreement on treaties administered by WIPO, 1996, reprinted 1997,NO.181

⁶⁰ To contrast see; articles, 25 of PC, 36 of BC and 41 of TRIPS agreement.

⁶¹ Articles 41-61 of TRIPS agreement, and see No.59 above

Industrialized countries turned to the Uruguay round negotiations in an attempt to secure the minimum standards of protect of intellectual property. The TRIPS agreement was supposed to have advantage to traditional IP conventions, in that; while TRIPS incorporates and reaffirms the major provisions of IPRs of the WIPO administered conventions⁶², it provides a more effective enforcement mechanism⁶³ and a practicable dispute settlement procedure^{64 65}.

4.7 Failure to revise the WIPO administered conventions

The other reason, which was encouraged the industrialized countries and which led them to seek for other forum than WIPO to discuss the intellectual property rights problems, was that most likely the matter of unsuccessful revision of the WIPO administered treaties, for instance the developed countries had tried for more ten years to update the Paris convention, which was never successful. They wanted to include more detailed patent rules, such as strengthening some of the conditions on compulsory licensing of patents, while most developing countries insisted on weakening the Convention. The Paris Convention revision negotiation ended in a North-South stalemate. Therefore the Paris convention remained untouched from its last revision in 1967, like the Berne convention, which has not been updated from its last revision in 1971.⁶⁶

The developed countries wanted a much more effective enforcement system, which could prevent large-scale piracy and counterfeiting of goods which international trade was faced with at the time. From the developing countries point of view any revision of the Paris convention was to be done in the light of a report by the UN Conference on Trade and Development (UNCTAD), which was conducted in 1974. The UNCTAD study concerned the development and technology transfer to developing countries. In its report, UNCTAD had concluded that 84 percent of the patents issued in developing countries were owned by the nationals of five countries (USA, Germany, France, Switzerland and UK), whereas only 1 percent of the patents were owned by nationals of developing countries within their own states. The UNCTAD reports encouraged the developing countries to seek revisions to the Paris convention in order to retain the use of compulsory licences.

⁶² Article 2 of TRIPS agreement in regard of Paris convention and article 9 of Trips agreement in regards of Berne convention.

⁶³ Part III of TRIPS agreement, enforcement of intellectual property articles 41-61

⁶⁴ Article 64 of TRIPS agreement,

⁶⁵ See; Gutowski, Robert J; the marriage of intellectual property and international trade in the TRIPS agreement: strange bedfellows or match made in heaven? Buffalo LAW review winter 1999

⁶⁶ See; Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation's impact on international trade and intellectual property law, Saint john's journal of legal commentary, spring 2003

Under that situation, the negotiators from both sides could not overcome their differences and the three conferences for the revision of the Paris convention in Geneva (1980), Nairobi (1981) and Geneva (1982) remained inconclusive.⁶⁷

5 WIPO- WTO cooperation

5.1 TRIPS is not actually a new agreement.

WTO as defined in its establishing agreement, originally is a forum for the multilateral trade negotiations of its member states, and WIPO as defined in establishing agreement (1967 Stockholm) and the agreement between the WIPO and United Nations, is an organization. “to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization”⁶⁸. What joins, these two organizations is the TRIPS agreement, which is in the centre of cooperation between two organisations.

The establishers of the TRIPS agreement, which mostly were the prominent member states of WIPO, administered conventions, were well aware of the intellectual property rights instruments and attempted to avoid duplicity. However the TRIPS agreement was built on the basis of the earlier WIPO administered conventions mainly the Paris and Berne conventions, while it updated the existed intellectual property conventions.⁶⁹

Though, the TRIPS agreement is not a completely new development in the international economic law, it should be considered as the continuing of the WIPO administered treaties in many aspects. In fact, The TRIPS agreement requires compliance with the main WIPO administered treaties, like the Paris and Berne conventions, with the exception of moral rights (article 6bis of the Berne convention).⁷⁰

⁶⁷ See; Matthews, Duncan. Globalizing Intellectual Property Rights, the TRIPs Agreement. First published by Routledge 2002, attempts to revise WIPO conventions, page 10-12

⁶⁸ Article 3 of convention establishing the world intellectual property organization (Stockholm 1967)

⁶⁹ See; article 2 of TRIPS agreement

⁷⁰ See; Matthews, Duncan. Globalizing Intellectual Property Rights, the TRIPs Agreement.

One of advantages of the TRIPS agreement for the WIPO is a large increase in the membership of WIPO administered conventions, because of the incorporation of the basic provisions of WIPO's fundamental treaties into the TRIPS agreement. Since the conclusion of TRIPS agreement the membership of the Berne convention jumped from 84 in 1990 to 146 in 2000 and the Paris convention has gone from 100 to over 160 in 2004.⁷¹

The TRIPS is the first international agreement, which covers the whole regime, of intellectual property rights, including the obligation of protection of minimum standards, and an effective enforcement through its dispute settlement mechanisms.

5.1.1 Incorporation of the major WIPO administered conventions into TRIPS agreement

As stated above, the framework of the TRIPS agreement is based on the traditional intellectual property treaties namely the Paris and Bern conventions. Article 2 of the TRIPS agreement entitled "intellectual property conventions" requires the members to comply with articles 1-12 and article 19 of the Paris convention (1967) with regards to parts II, III, and IV of the TRIPS agreement.

Articles 1 to 11 of Paris convention constitutes the basic provisions regarding, the protection of the intellectual property and article 12 (1) requires each member country of the Paris union, to "establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial design and trademarks."⁷²

Article 2(2) of TRIPS agreement includes the obligation of members to comply with the provisions of the other conventions, this article reads as:

First published by Routledge 2002, attempts to revise WIPO conventions, page 10-12

⁷¹ See; Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation's impact on international trade and intellectual property law, Saint John's journal of legal commentary, spring 2003

⁷² See; article 12 of Paris convention (1967), see also; Blakeney, Michael; Trade Related Aspects of Intellectual Property Rights: A Concise Guide to TRIPS Agreement, London sweet & Maxwell.1996, section, 3.03

2. *Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.*

In article 2(2) the TRIPS agreement reaffirms that, with the exceptions of the provisions of part V to VII of TRIPS agreement on,(dispute prevention and settlement, transitional arrangements, institutional arrangements and final provisions),the members shall not derogate from their obligation to each other under the fundamental WIPO administered treaties of Paris convention ,Berne convention ,Rome convention and the treaty on intellectual property in respect of integrated circuits.⁷³

5.1.2 The National treatment principle in TRIPS and WIPO administered conventions

The principle of national treatment is the cornerstone of the Paris convention for the protection of the Industrial property (art, 2)⁷⁴, the Bern convention for the protection of literary and artistic works (art.3to5)⁷⁵. The fundamental principle of National Treatment incorporated into TRIPS agreement article 3.1, requires the WTO members to accord the nationals of other Members “treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits”.⁷⁶

⁷³ WIPO Publication NO.464 (E), Implication of the TRIPs agreement on treaties administered by WIPO, 1996, reprinted 1997

⁷⁴Article 2 of Paris, convention (1967) states that; (1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

(2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

⁷⁵ See; articles, 3,5 of Berne convention (Paris act 1979)

⁷⁶ Article 3.1 of TRIPS states that: 1.Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection⁷⁶ of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

“As far as the beneficiaries of related rights are concerned however, national treatment only applies in respect of the related rights provided for the TRIPS agreement itself”.⁷⁷

Article 3 of the TRIPS agreement, which reaffirms the National Treatment principle, extends it further, to the performers, producers of phonograms and broadcasting organizations. In this regard, the National Treatment only applies when these rights are under the TRIPS agreement.⁷⁸ Article 3 of TRIPS agreement is considered as a symbolic sign cornerstone of IPRs protection.⁷⁹

5.2 TRIPS novelties in protection of intellectual property rights law

Although TRIPS agreement generally accords the provisions of the WIPO administered conventions regarding the protection of intellectual property rights, it also initiated new aspects of IPRs, its major provisions in this regards are as follows;

It extends the scope of the Berne convention and the Rome convention concerning rental rights;⁸⁰

It incorporates the provisions of the Berne and Rome Convention⁸¹ and Provides for the retroactive application of intellectual property protections for all subject matter.⁸²

⁷⁷ See; WIPO Publication NO.464 (E), Implication of the TRIPs agreement on treaties administered by WIPO, 1996, reprinted 1997, No .4

⁷⁸ See, Matthews, Duncan. Globalising Intellectual Property Rights, the TRIPs Agreement. First published by Routledg 2002. page 47.

⁷⁹ Blakeney, Michael; Trade Related Aspects of Intellectual Property Rights: A Concise Guide to TRIPs Agreement, London sweet & Maxwell.1996, section, 3.04;

⁸⁰ Articles11, 14(4) of TRIPS agreement.

⁸¹ Articles, 9(1), 10(1), 14(3) (6) of TRIPS agreement

The TRIPS agreement promotes the “transparency” among different government organs by imposing obligations to “notify” virtually every aspect of a country's relevant laws and regulations, and institutionalizes a formal process to exchange questions and answers on those laws and regulations;⁸³ finally, the TRIPS system, as noted above, gives teeth to the treaty's requirements by adding a comprehensive dispute settlement system.⁸⁴

5.2.1 Most Favoured Nations principle

Article 4 of the TRIPS agreement defines the Most Favoured Nations principle (MFN) as follow.

“With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members”.

The most favoured nations (MNF) works as a non- discrimination principal between the nationals of the member states in each of the member countries of TRIPS agreement, in addition to non-discrimination between their own nationals and the nationals of other states according to national treatment.

There are some exemptions to this rule, which are stated in articles 4 and 5. Article 5 of the TRIPS agreement provides that the national treatment principle and the most-favoured- nation treatment principle which are required by articles 3 and 4 do not apply to procedures provided in intellectual property agreements concluded under the auspices of the world intellectual property organization. The MFN principle is a new principle, which was established by the TRIPS agreement and is not contained in the Paris and Berne conventions.⁸⁵

It should be noted that; “the inclusion of the most –favoured- nation provision within an intellectual property convention, is an innovation attributable to the trade law context of the TRIPS agreement.”⁸⁶ Articles 3 and 4 of the TRIPS agreement notably deal with the principles of national and most favoured nation (MFN) treatment and apply to copyright as well as other areas of the TRIPS

⁸² Article 4 of TRIPS agreement

⁸³ Article 63 of TRIPS agreement

⁸⁴ Article 64 of TRIPS agreement

⁸⁵See; WIPO Publication NO.464 (E), Implication of the TRIPs agreement on treaties administered by WIPO, 1996, reprinted 1997,No, 5,6

⁸⁶ Blakeney, Michael; Trade Related Aspects of Intellectual Property Rights: A Concise Guide to TRIPs Agreement, London sweet & Maxwell.1996,section 3.06

agreement. Both these principles attempt to deal with the problems created by the individual member states application of material reciprocity to situations not covered by the Berne Convention.

According article 5 of the TRIPS agreement, the principles of national treatment and the most favoured nation do not apply to procedures provided in intellectual property agreements concluded under the auspices of the world intellectual property organization.

6 The agreement between WIPO and WTO (1995)

On January 1, 1996 the agreement between the world intellectual property organization and the world trade organization entered into force. This agreement provides mainly, WIPO-WTO cooperation for the implementation of TRIPS agreement.⁸⁷

The idea of the cooperation agreement was a controversial one at the beginning; many of the developing countries were opposed to moving the intellectual property discussion from its competence of WIPO to the WTO. It was feared that WIPO might give weak advice about TRIPS agreement implementation, but ultimately it was recognized that no matter where a country sought advice, on implementation of TRIPS agreement, any country was responsible for fulfilling its obligations under the TRIPS Agreement. Each member country is subject to the WTO dispute resolution system, and therefore the feeling was that the more assistance made available to countries in implementing their TRIPS obligations, the better.⁸⁸

At the time of the conclusion of the TRIPS agreement, WTO, which was a newly established organization, did not have any experiences and human resources to deal with the intellectual property rights within TRIPS agreement. At the opposite WIPO as the specialized agency of UN, and with its rich human resources and ongoing programmes dealing with the intellectual property development was the key organization to counsel and cooperate for the implementation of the TRIPS agreement. Therefore to avoid duplicity and according to article 68 of TRIPS agreement and mandate of general assembly of WIPO, the WIPO-WTO agreement was concluded.

⁸⁷ Agreement between the world intellectual property organization and the world trade organization (of December 22,1995)

⁸⁸ See; Salmon, Paul. Cooperation between WIPO and WTO, symposium globalisation's impact on international trade and intellectual property law, Saint john's journal of legal commentary, spring 2003

According to WIPO-WTO agreement, there are three main areas of cooperation between WIPO and WTO agreement, namely, Deposit of laws and regulations⁸⁹, implementation of article 6 ter of the Paris convention for the purposes of TRIPS agreement⁹⁰, legal and technical assistance to the members of both organizations, in regard with the TRIPS agreement.⁹¹

Generally The WIPO-WTO Agreement provides three issues; first to provide assistance to members of both organizations on the same basis that they provide their own members. It means that WIPO is to give assistance to countries that are not members of WIPO. The second point is that WIPO makes available to the WTO and its member states its collection of laws on IPRs. Third, WIPO also processes the so-called Article 6ter notifications under the Paris Convention.

This paper will focus on the cooperation between two organisations regarding the provisions of the TRIPS agreement in assistance to DCs and LDCs.

6.1 Cooperation in assistance to DCs and LDCs

Since the establishment of the WIPO, the organization has been dealing with the assistance to its DCs and LDCs member countries, mostly in cooperation with the other organs of the United Nations. However following the conclusion of the TRIPS agreement and under the WIPO-WTO agreement (1995), WIPO reorganized its programmes in assistance to DCs and LDCs in cooperation with the WTO. The main purpose of the WIPO –WTO cooperation was legal and technical assistance to DCs and LDCs for the implementation of the TRIPS agreement.⁹²

The WIPO's activities were mostly incorporated into the cooperation for development programme, which included legislative advice, awareness building and human resource development, institution building and modernization of the intellectual property system and enforcement. Additionally, they included studies

⁸⁹ Article 2 of WIPO-WTO agreement (1995)

⁹⁰ Article 3 of WIPO-WTO agreement (1995)

⁹¹ Article 4 of WIPO-WTO agreement (1995) legal –technical assistance and technical cooperation (1) [*Availability of Legal-Technical Assistance and Technical Cooperation*] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to Member States of WIPO which are developing countries. The WTO Secretariat shall make available to Member States of WIPO, which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement, as it makes available to developing country WTO Members.

(2) [*Cooperation Between the International Bureau and the WTO Secretariat*] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature.

⁹² See, WIPO's Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000
http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf

and publications as well as the activities under the WIPO-WTO agreement. WIPO has great experiences in this field and many of the DCs and LDCs, which are the members of both organizations, are accustomed to getting assistance from WIPO for many years.⁹³

6.2 DCs and LDCs definition

There is no specific definition of “developed” “developing” and the “least developed” country members within WTO multilateral agreements, and the countries declare their classification themselves. However this claim can be challenged by the other members, because being developing or the least developed country is accompanied by some advantages in the TRIPS agreement namely, longer transitional arrangement delaying the full implementation of the TRIPS agreement⁹⁴, as well as technical assistance from the developed countries under articles 66(2) and 67 of the TRIPS agreement.⁹⁵

Currently there are sixty-nine countries that claim the “developing country” status.⁹⁶

The United Nations has recognized “Least developed” countries and the same countries are accepted by WTO as “least developed” member countries.⁹⁷

The criteria of UN to recognize a country as “least developed” are as follows;
Low national income defined as per capita under \$900 for countries now joining the list.

Weak human assets (a composite index based on health, nutrition and education indicators).

⁹³ See, WIPO's Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000
http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf

⁹⁴ See, Articles; 65,66,of TRIPS agreement “transitional arrangements”

⁹⁵ See, Articles; 67,of TRIPS agreement “technical cooperation”

⁹⁶ WTO, website, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

Developing countries are; Antigua and Barbuda, Argentina, Bahrain, Barbados, Belize, Bolivia, Botswana, Brazil, Brunei Darussalam, Cameroon, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Dominica, Dominican Republic, Egypt, El Salvador, Estonia, Fiji, Gabon, Ghana, Grenada, Guatemala, Guyana, Honduras, Hong Kong, China, India, Indonesia, Israel, Jamaica, Kenya, Korea, Kuwait, Macau, Malaysia, Malta, Mauritius, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland (areas which were not reviewed in '96-'98), Qatar, Saint Lucia, Singapore, Sri Lanka, St. Kitts and Nevis, St. Vincent and Grenadines, Suriname, Swaziland, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, Uruguay, Venezuela, Zimbabwe http://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm#Transition (last visited October 15, 2004)

⁹⁷ The WTO recognizes as least-developed countries (LDCs) those countries which have been designated as such by the United Nations. There are currently 50 least-developed countries on the UN list, 32 of which to date have become WTO members; WTO website; http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm

High economic vulnerability (a composite index based on indicators of instability, agriculture production and export, inadequate diversification and economic smallness).

Under the (UNCTAD) criteria⁹⁸, a country is added to the list when it meets “inclusion thresholds on all three criteria and if its population does not exceed 75million. Thrity of forty -nine countries (under UNCTAD criteria) are members of WTO.⁹⁹

It should be noted that, despite the classification of the United Nations which can be used as a standard classification, to distinguish between developing and developed countries, still the WTO members do not agree on a unified standard and the TRIPS agreement has not a mechanism to coordinate these different standards.¹⁰⁰

However despite the international attempts of the United Nations and its specialized agencies including WIPO, for the development of the LDCs, the number of countries in this group has risen to 49. This means that the number of LDCs more than doubled during the last 30 years. From 23 of the original states, which were classified by UN for the first time, only Botswana managed to leave this category. More importantly a substantial increase in the number of LDCs has taken place during the 1990s in which, the number of LDCs have increased from 41 in 1990 to 48 in 1995, 34 of which are in Africa, 14 are in Asia and one in the Latin America. Out of this entire group, 16 of these countries are landlocked and the high cost of transportation is an additional barrier to their economic development. Some are island States and due to their small size, insularity and remoteness from the main economic centres, they are faced with especial problems.¹⁰¹

⁹⁸ The WTO recognizes as least-developed countries (LDCs) those countries, which have been designated as such by the United Nations. There are currently 50 least-developed countries on the UN list, 32 of which to date have become WTO members; Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Congo, Democratic Republic of the, Djibouti, Gambia, Guinea, Guinea-Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal ,Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda Zambia http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm

⁹⁹ See; Koepsel, Kristen m. how developed countries meet their obligations under article (67)of TRIPS agreement, the journal of law and technology, 2004

¹⁰⁰ See; Zhian, Dean LU, presentation transcripts, university of Baltimore intellectual property law journal, spring, 1997.

¹⁰¹ See; WIPO website in, <http://www.wipo.int/ldcs/en/statistics/evolution.htm>

6.3 Implementation of TRIPS agreement

6.3.1 Legislative assistance

After the conclusion of WTO –WIPO agreement, while WIPO continued its development program, more focus was directed to the assistance to developing countries dealing with TRIPS implementation, to modernize their legislative and administrative infrastructure with the goal of in immediate conformity with the TRIPS agreement.

For the purpose of the DCs and LDs compliance with the TRIPS agreement on the specified deadline on January 1, 2000 and January 1, 2006, DCs ad LDCs needed immediate legal assistance; the WIPO’s international bureau has provided assistance in the form of legislative advice, for a considerable number of developing countries.

At the extraordinary WIPO general assembly session in Geneva held from September 26 to 4 of cot 1994, a resolution was adopted. According this resolution; the International Bureau of WIPO was to be responsible to provide assistance to every country which expressly requested for advice on questions concerning the compatibility of its current national laws or planned national IPRS legislation, with not only the WIPO administered treaties but also the other international laws and regulation of IPRs, including the TRIPS agreement.

The International bureau activities to be undertaken included:

Amending and modernizing the existing IPRs, through preparation of draft provisions; According to WIPO report, from 1996 to 2001 International Bureau had prepared near 300 comments and suggestions on draft laws, which had been received from governments of the DCs and the secretariat of regional organizations in DCS. Further assistance was provided in 205 cases to some DCs and LDCs during the above period.¹⁰²

6.3.2 Awareness Building and Human Resource Development

Human resources development has always received the central attention of WIPO. However after the conclusion of the WIPO-WTO agreement and mandate of WIPO assistance to DCs and LDCs for the implementation of the TRIPS agreement, this issue became even more important.

A better understanding of the TRIPS agreement provisions and its role on international trade and technology transfer, for the governments as well as civil

¹⁰² See, WIPO’s Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30 ,2000, table One
http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf WIPO report table one

societies of developing countries are necessary prerequisites for a comprehensive TRIPS implementation.

Due to the new mandate of WIPO after establishing TRIPS agreement, WIPO reoriented and enhanced its development programmes to adjust it with the requirements of the TRIPS agreement. However WIPO reorganized its development program considering the diverse range of beneficiaries and the specific needs of each DCs and LDCs.

Because of the immediate needs of DCs and LDCs to meet their obligations under the TRIPS agreement, since January 1996 WIPO has been carrying out many activities in the concerned areas, particularly including:

Organizing several meeting for the senior officials and policy- makers to familiarize them with the requirements of the TRIPS agreement and its implementations, such meetings were held at the regional level, including eight “Mega” meetings in different parts of the world. “Over 11,378 participants benefited from these meetings.”¹⁰³

Organizing the national and sub regional meetings in order to train different target groups and holding the training courses for the policy makers, the judiciary, attorneys, right holders, police officials, customs, the private sectors, etc.

Organizing study programmes for officials of DCs and arranging the exchange study program between selected developed countries and DCs to learn from the exchange experiences and information about TRIPS implementation.

The invitation of the experts from the WTO and the other international organizations and IPRs offices from developed countries, at WIPO’s expense in order to take courses for the participants from DCs.

The establishing of the WIPO Worldwide Academy (the Academy) shows the importance of human resource development as a component of institution building in order to enable developing countries to meet their obligations under the TRIPS Agreement fully.¹⁰⁴

¹⁰³ WIPO report paragraph 19 is as follow; 19. WIPO’s cooperation for development activities were organized in close cooperation and consultation with a number of regional and sub regional offices (such as African Regional Industrial Property Organization (ARIPO) and Organization Africaine de la Propriété Intellectuelle (OAPI) and economic or political groups (such as Andean Pact, Association of South East Asian Nations (ASEAN), Bangladesh India Myanmar Sri Lanka Thailand - Economic Cooperation (BIMSTEC), Economic Community of West African States (ECOWAS), Common Market of the South (MERCOSUR), Pacific Islands Forum Countries, Southern African Development Community (SADC), South Asian Association for Regional Cooperation (SAARC), Organization of African Unity (OAU) and others) covering common areas of concern and sharing experiences and resources.

¹⁰⁴ For complete information, see ;WIPO’s Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30 ,2000
http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf

6.3.3 Institution Building and Modernization of the Intellectual Property System

A modern system of intellectual property is an integral part of not only TRIPS implementation but also for a successful participation in globalized trade. Therefore, to increase the national capacity for implementation of TRIPS agreement, a developing country needs administrative and institutional infrastructure in several areas like research and development, industry, commerce, finance and teaching.

In its mandate of providing legal-technical assistance to developing countries, WIPO concentrates on institution building and modernization of intellectual property administration through a wide range of activities, particularly as follows;

Upgrading the IPRs system of DCs and LDCs including IP offices through legal and technical assistance. Providing the facilities for automation of the IP offices in DCs to maintenance, acquisition and administration of IPRs. By operating of WIPOnet in November 2001, many IP offices were linked to other IP offices and to WIPO through WIPOnet and have been equipped by WIPO.¹⁰⁵

In regards of electronic commerce, WIPO has organized several consultations in different regions of the world including two international conferences held in 1999 and 2000 in Geneva.¹⁰⁶

There is much more details about the WIPO activities in institution building and modernization which could be found on the series of WIPO reports called "WIPO's Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement".¹⁰⁷

6.3.4 Enforcement

The TRIPS agreement as stated before, is an integral part of the agreement establishing WTO, (annex 1C). It is legally binding upon all of the WTO member states. However according to article 65 and 66 of TRIPS, there are some transitional arrangements for DCs and LDCs which provide delaying of

¹⁰⁵ “Given the strategic importance of information technology in making the international intellectual property system more efficient, WIPO is carrying out a major project to develop and establish WIPOnet - a global intellectual property information network. WIPO net is of particular relevance to developing countries, as it would facilitate the electronic integration of developing countries in the international digital environment, thus narrowing the information gap that exists between the developed and developing countries. To further this objective, developing country intellectual property offices will be provided Internet connectivity and basic equipment under the WIPOnet project”. (WIPO website, general information: <http://www.wipo.int/about-wipo/en/gib.htm#wiponet>)

¹⁰⁶ WIPO has published the “primer of electronic commerce and intellectual property issues” as a general overview of the relations of electronic commerce and the intellectual property has been the other activity WIPO in this concern.

¹⁰⁷ See; WIPO's Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000
http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf

implementation of the agreement up to January 1, 2000 and January 1 of 2006 respectively.¹⁰⁸

When TRIPS agreement was adopted, many of the DCs and LDCs that were WTO members did not have any legislative or administrative infrastructure for the implementation of the agreement, or had a very weak system. Consequently such countries were faced with a lot of questions, which traditionally must have been referred to WIPO because many of these countries were the WIPO members. In other words, for years WIPO had been the unique reference for such assistance and under the WIPO - WTO agreement of 1995, WIPO was considered as the legal and official reference.

As a result of this situation a large number of requests from the DCs and LDCs received by WIPO concerned the enforcement provisions in the TRIPS agreement.

WIPO started to undertake a large number of activities in this regard including;

Advising and assisting DCs and LDCs in understanding the enforcement provisions of the TRIPS agreement, with a view to upgrading the enforcement mechanisms.

Providing the special training programmes for the judges, prosecutors, police and custom officials and right holders.

To organize several interregional, regional, sub regional and national meetings concerning the enforcement provisions of the TRIPS agreement in order to create awareness of the implication of the enforcement of IPRs under the TRIPS agreement.

To encourage the DCs and the other interested countries to make use of the WIPO's Arbitration and Mediation Center in their dispute settlement concerns.

Organizing some training courses and special meeting in regards to the enforcement provisions of the TRIPS agreement.

Towards this end the WIPO World Wide Academy has organized some special courses for the training the officials of the DCs.

To organize training and orientation programmes for the senior customs officials in cooperation with the other organizations like the WTO, WCO and the IP offices of the developed countries and the association of right holders.

¹⁰⁸ See; transitional arrangements in this paper.

6.3.5 Studies and publications on the Implications of the TRIPS agreement

There are a lot of studies and publications with regard the implementation of TRIPS agreement, which were initially prepared for distribution during the seminars, symposia, courses and workshops, which were organized by WIPO since the establishment of TRIPS agreement. These documents, and studies were prepared by the WIPO expert and officials.

Among these publications, two important publications could be singled out which were specifically prepared with regard the implementation of the TRIPS agreement.

“Implication of the TRIPS agreement on the Treaties Administered by WIPO” is the title of a study by WIPO, which was published in 1996, available in English, Arabic, Chinese, French, Russian and Spanish. This publication was widely distributed among the WIPO and WTO members. It is a study of one by one article of the TRIPS agreement and scrutinizing on the implication of each article on any WIPO- administered treaties. It explained any changes in the obligation of a member country of the concerning WIPO-administered treaty, which is obliged by the TRIPS agreement due to memberships of the WTO.¹⁰⁹

The other publication of WIPO with this regard was a single booklet, which included the text of the TRIPS agreement, and the incorporated sections of the WIPO administered treaties that TRIPS agreement referred to, directly or indirectly.¹¹⁰

WIPO intellectual property handbook, which was, published by WIPO in English, contains information of the fields of intellectual property, international treaties and the administration of the IPRs, its role in development and the TRIPS agreement.¹¹¹

6.3.6 Other activities under the WIPO-WTO agreement

The cooperation of WIPO and WTO under, WIPO –WTO agreement of 1995 which entered into force on January 1 1996, covers three substantive areas as

¹⁰⁹ WIPO Publication NO.464 (E), Implication of the TRIPS agreement on treaties administered by WIPO, 1996, reprinted 1997

¹¹⁰ Agreement between the World intellectual property and the World Trade organization (1995) WIPO publication, No.223 (E) WIPO 1996 reprinted 2002

¹¹¹ For more detailed information see WIPO intellectual property handbook, policy, law and use. <http://www.wipo.int/about-ip/en/iprm/index.htm>

follows: laws and regulations, implementation of Article 6ter of the Paris Convention and legal-technical assistance to developing countries.

6.3.7 Laws and Regulations

Concerning laws and regulations, an information and documentation service has been established by WIPO, which is in charge of responding to inquiries within WIPO or from external inquirers. Most of the external inquiries relates to exchange of information between the two organizations in the cooperation framework of two organizations. A paper collection of the legislation is maintained and updated by the collection of laws section of WIPO.

The Collection of Laws for Electronic Access (CLEA) is another prominent electronic facility, which is provided and published on the Internet by WIPO since 1999 in regard to the laws and regulation. This collection contains “more than 2,570 bibliographic data entries concerning international treaties”, national and international laws which were communicated by WIPO member countries under the provisions of Article 15(2)¹¹² of the Paris Convention and Article 24(2)¹¹³ of the Berne Convention, or notified to the Council for TRIPS and communicated to WIPO by WTO under Article 2(4)¹¹⁴ of the WIPO-WTO cooperation Agreement.

- 1,915 full texts of laws and treaties in electronic form, in English, French and/or Spanish.

¹¹² Article 15(2) of Paris: (2) The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property. Furthermore, it shall furnish the International Bureau with all the publications of its industrial property service of direct concern to the protection of industrial property, which the International Bureau may find useful in its work.

¹¹³ Article 24 (2) of Berne convention: (2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

¹¹⁴ (4) [*Laws and Regulations Received by the WTO Secretariat from WTO Members*]

(a) The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under [Article 63.2 of the TRIPS Agreement](#) in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.

(b) The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under [subparagraph \(a\)](#).

6.3.8 Assistance in the translation of laws

As a part of WIPO, ongoing program, and under the article 2(5)¹¹⁵ of WIPO-WTO agreement, assistance in the translation of laws and regulations is given by WIPO to its Member States as well as developing country Members of WTO that are not Member States of WIPO to enable them to fulfill their obligation to notify their laws and regulations to the TRIPS Council.

6.3.9 Article 6ter of the Paris Convention

According to article 3¹¹⁶ of the WIPO –WTO agreement, the international bureau of WIPO shall apply the procedures applicable under Article 6ter of the Paris Convention.¹¹⁷ In the communication of emblems and transmittal of objections under the TRIPS Agreement.

Concerning the provision of article 6ter of Paris convention (1967), the International Bureau of WIPO has communicated 68 notifications from the member states and intergovernmental organizations from January 1,1996 to December 31,2001. These notifications were communicated in order to protect the flags, emblems, armorial bearings, names or abbreviations of the member countries and related international organizations.

However these notifications were communicated by WIPO without prejudice to date on which the WTO members are bound under the TRIPS agreement.¹¹⁸

6.4 WIPO-WTO Joint Initiatives

Following the mandate of article 4 of WIPO-WTO agreement, which emphasized the larger and closer cooperation between the two organizations for legal-technical assistance to DCs and LDCs, a lot of activities have been committed by both organizations, including;

Organizing meetings, seminars and symposia, attending by the representatives of two organizations in each other's meetings and symposia as observer and

¹¹⁵ (5) [*Translation of Laws and Regulations*] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same assistance for translation of laws and regulations for the purposes of [Article 63.2 of the TRIPS Agreement](#) as it makes available to Members of WIPO which are developing countries

¹¹⁶ Article 3 of WIPO-WTO agreement;

¹¹⁷ Article 6 ter of Paris convention (1971)

¹¹⁸ See, WIPO's Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000

http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf

participant, and providing the requested experts to each other. Such meetings have been organized by the two organizations every year from the 1996 until to date.¹¹⁹

6.4.1 WIPO Joint initiative with WTO in July 1998.

In July 1998, WIPO lunched a joint initiative with WTO; the purpose of this joint initiative was assisting to developing countries to meet their obligations for the implementation of TRIPS by the deadline namely January 1, 2000.

The joint initiative was in the form of joint communication by Directors General of the two organizations, which was sent to the ministers of the concerned developing countries. The purpose of this joint initiative was to maximize the valuable resources of the two organizations and enhance the cooperation in assistance to developing countries to meet their obligations under the TRIPS agreement. At the 2000 deadline, both of the organizations agreed that the most of the duties would go to WIPO.

In response, at least, 36 DCs and territories have sent their acknowledgment letters and requests for assistance. The received requests were comprehensive, but general in nature; in most of these cases the required assistance was mostly the same as the assistance of WIPO to the DCs within its on going program. Therefore WIPO reviewed its development cooperation program and incorporated the requests into its program for a more complete account.

In response to the requests of DCs several meetings were organized in order to discuss and coordinate the assistance to be provided by each respected organizations. The priority was been given to the countries, which needed the urgent assistance to meet their obligation of implementing the TRIPS agreement by the 2000, deadline. Several missions from WIPO-WTO took place in the countries concerned. Particularly, the following are noteworthy;

A joint regional symposium on "Implementation of the TRIPS Agreement" in Bangui, Central African Republic, for French-speaking sub-Saharan African countries from March 23 to 26, 1999. In addition, three national seminars were planned and carried out jointly by WIPO and WTO in Colombia, Cuba and Venezuela during the latter part of 1999 and in 2000".¹²⁰

¹¹⁹ Ibid.

¹²⁰ Ibid.

6.4.2 WIPO-WTO joint initiative to assist LDCs June 2001

Another joint initiative was launched by WIPO-WTO in 2001. The purpose of this joint initiative in particular, was to promote assistance to the LDCs members of the WTO to meet their obligations under the TRIPS agreement deadline of January 1, 2006. To this end, the joint initiative has provided assistance to the LDCs to bring their laws on copyright, patents, trademarks and other areas of intellectual property into line with the TRIPS agreement. In addition the joint initiative promoted assistance in drafting the laws and regulation in regard with the effective enforcement of IPRs and to fight against the infringement of IPRs within LDCs.¹²¹

The joint initiatives had two phases. First the WIPO and WTO organized two regional workshops in 2002, one for the least-developed sub-Saharan African countries and Haiti, and the other for the LDCs in the Asia-Pacific region. In the second phase, assistance provided was to focus on action plans specific to individual countries.

The objectives of these workshops were to “familiarize officials from these countries with the basic concepts, principles and obligations laid down in the TRIPS Agreement, in particular with a view to facilitating its implementation and identifying critical implementation challenges. The invitation included the LDCs, which were neither members of WTO nor members of WIPO.

These workshops and the bilateral contacts provided a list of priorities for assistance that should be committed in the second phase, which would focus on country specific action plans” As of December 2001, requests for assistance in the areas of legislation and training had been received from 14 LDCs.¹²²

7 Transitional arrangement

Longer time periods for the implementation are provided for many agreements under the WTO forum, mostly in the form of delaying to comply with the full terms of the provisions of an agreement.¹²³ This paper will only cover the

¹²¹ Article 66 of TRIPS agreement,

¹²² See, See, WIPO’s Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000
http://www.wipo.int/documents/en/meetings/2000/ace_ip/pdf/wipo_trips_2000_1.pdf

¹²³ Longer time periods for implementation are provided for in all WTO agreements, with the exception of the Agreements on the Implementation of Article VI (anti-dumping) of GATT 1994 and on Preshipment Inspection. In most cases, flexibility takes the form of an agreed delay, on the part of developing countries, of certain or all provisions of the agreement concerned. For instance, the Agreement on Subsidies and Countervailing Measures allows for a transition period of eight years, while the agreement on TRIPS allows for a general transition period of four years for developing countries, with an additional five year period to extend product patent protection to areas of technology not so protected at the outset. The Agreement on Customs Valuation also contains a transition period of five years, with an additional three years to phase in the “computed value” method of valuation. The Agreement on Trade-Related Investment Measures allows developing Members five years to phase out TRIMs. The Agreement on the Application of Sanitary and Phytosanitary Measures

flexibilities, which provided to DCs and LDCs ¹²⁴for implementation of TRIPS agreement. Part VI of TRIPS agreement entitled “Transitional Arrangements” which consist of articles 65, 66, and 67.

In response to the developing countries challenges, during the Uruguay round multilateral trade negotiations that they needed time to adjust their economies and legal systems to meet the requirements of TRIPS agreement, TRIPS provided some preferential treatment for the DCS and the LDCs.

As stated before, at the time of conclusion of the TRIPS agreement, most of the DCs and all of the LDCs did not have the proper, economical, social and cultural, capacities, for implementation of the TRIPS agreement and in particular they were suffering from weak legislative and administrative framework in regards to the IPRs protection.¹²⁵

The first two articles of the transitional arrangements, articles 64and 65 of the TRIPS agreement deal with delaying in the implementation of the TRIPS agreement to apply by all countries. There is a one-year of delay for all of the member states, which was considered useful, as most of the countries needed this period to review and amend their national laws.¹²⁶

Under article 65(2) the developing countries were entitled for a four years period of delay, similarly the countries that are in the "process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations”¹²⁷.

However, according to the last phrase of article 65(2) all Members, even those availing themselves of the longer transitional periods; have to comply with the national treatment and MFN treatment obligation as of 1 January 1996.

allows developing countries to delay application of most of its provisions for a period of two years following the entry into force of the WTO.”(WTO ,High Level Symposium on, Trade and Development, Geneva, 17-18 March 1999,Background document, Development Division, World Trade Organization)

¹²⁴ See, DCs and LDCs definition above;

¹²⁵ See, (WTO, High Level Symposium on, Trade and Development, Geneva, 17-18 March 1999,Background document, Development Division, World Trade Organization)

¹²⁶ Article 65(1) of trips agreement “transitional arrangements” 1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

¹²⁷ Article 65(3) of TRIPS agreement, 3.Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

Special transition rules apply in the situation where a developing country does not provide product patent protection in a given area of technology, especially to pharmaceutical or agricultural chemical inventions, on the general date of application of the Agreement for that Member, i.e. in the year 2000. According to Article 65.4, such a developing country may delay the application of the TRIPS obligations on product patents to that area of technology for an additional five years.

According article 66(1) of TRIPS agreement a period of ten years delay is provided for the least-developed countries considering “their, economic, financial, administrative constraints, and their need for flexibility to create a viable technological base”. Article 66(1) further states, “The council for TRIPS shall, upon duly motivated request by a least developed country member, accord extensions of this period”.¹²⁸

The "non-backsliding" clause in Article 65.5 forbids countries from using the transitional period to reduce the level of protection of intellectual property in a way, which would result in a lesser degree of consistency with the requirements of the Agreement, “This is referred to as the “standstill” or “no-rollback” provision”.¹²⁹

It is argued that despite the existing provisions of transitional arrangements in favour of the DCS and LDCs in the TRIPS agreement, there are some areas in which the limited form of IPRs protection exists under the transitional periods. For example a closer analysis of article 70(8,a) of the TRIPS agreement indicates that this article requires a kind of immediate protection of pharmaceutical, agricultural and chemical inventions. In other words, such inventions must be filed under the so-called “mail box” provisions under this article. Article 70 (8; a) states that: the concerned inventions must be filed from general date that TRIPS entered into force, whereby a concerned product filed in a DCs, a five years exclusive marketing rights shall be granted to the patent holder, prior to the granting or rejection of the patent in that country provided that a patent had been granted for the same product in another member country and marketing approval had been obtained in another country as well.¹³⁰

¹²⁸ See the, DCs and LDCs definition above

¹²⁹ WIPO Publication NO.464 (E), Implication of the TRIPs agreement on treaties administered by WIPO, 1996, reprinted 1997.NO.222.

¹³⁰ See; Matthews, Duncan. Globalizing Intellectual Property Rights, the TRIPs Agreement. First published by Routledg 2002, P 75

8 Technical cooperation

The impact of the TRIPS Agreement on the DC and LDC Members of WTO is a controversial matter. However for the founders of TRIPS agreement, it was clear that, most of DCs and LDCs did not have the capacity to adjust to the TRIPS provisions and to include them into their national laws, because of the lack of proper legal and administrative infrastructure. Consequently without the technical cooperation of developed member states including, legal, and technical assistance, these countries, could not have been able to meet their obligations under the TRIPS agreement.

Many of the developing countries will need training for administration and enforcement of intellectual property rights; assistance in amending their national laws; re-organization, modernization and automation of their intellectual property administrative system; introduction of effective methods of enforcement of intellectual property rights; promotion of awareness in the entire society, researchers, police, legal, judicial, writers, artists; collection and dissemination of patent information; and promotion of innovation and inventiveness.¹³¹

As mentioned before, the World Intellectual Property Organization (WIPO) formally committed to providing technical assistance to these countries in order to help them meet their compliance deadlines under the TRIPs Agreement.¹³² In fulfilling this role, WIPO holds regional conferences and seminars to disseminate information; it also sponsors exchanges between bureaucrats from industrialized and developing countries. WIPO's International Bureau provides draft laws and information on creating effective enforcement regimes.¹³³

8.1 Technical assistance of developed countries (art 67of TRIPS agreement)

In general, WTO technical assistance seeks to inform developing country governments about their rights and obligations under the WTO Agreements and to help build their capacity to apply the agreements and participate in WTO

¹³¹ See; Yu, Peter K, Towards a nonzero-sum approach to resolving Global intellectual property disputes; what we can learn from, mediators, business strategists and international relations theorists, university of Cincinnati law review, winter 2002

¹³² Article 4 of the agreement between WIPO and WTO (1995)

¹³³ See; Yu, Peter K., towards a nonzero-sum approach to resolving Global intellectual property disputes; what we can learn from, mediators, business strategists and international relations theorists, university of Cincinnati law review, winter 2002

discussions. Reflecting the nature of the agreements, WTO technical assistance is becoming increasingly technical and specialized, often using expert consultants or conducted in cooperation with other agencies. Examples are the joint WTO/WIPO programme of technical cooperation on intellectual property issues and the recently established programme of technical assistance in the area of customs valuation. In addition, the WTO also provides technical assistance to help applicant countries to comply with the requirements for accession to the WTO.¹³⁴

Technical assistance for developing countries and least developed countries, not only is a crucial matter for the enforcement of intellectual property within TRIPS agreement, but also without the technical assistance mechanisms, the cost of TRIPS implementation for the DCs and LDCs will be much more higher and their compliance will face problems. This is also an area for the collaboration with the WIPO. For years WIPO administered conventions and the organisation has itself been the centre of the intellectual property development, and today WIPO remains an important organisation, despite the belief that the main role has shifted to WTO. With this regards and under the WTO-WIPO agreement, WIPO took the responsibility of providing advice on the legislative and administrative programme for the DCs and LDCs in order to enable them to comply with the TRIPS obligations.

Article 67 of the TRIPS agreement requires the developed countries to provide financial and technical assistance to developing countries, to enhance their implementation capabilities, it even suggests that the right holders should pay some part of their gain, resulting from the protection of intellectual property towards this end.¹³⁵

Since the TRIPS agreement is an integral part of the WTO multilateral agreement, it must be read in conjunction with the other parts of the establishing agreement of WTO. The WTO agreement in its preamble states that:

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development;

¹³⁴ See, (WTO, High Level Symposium on, Trade and Development, Geneva, 17-18 March 1999, Background document, Development Division, World Trade Organization)

¹³⁵ See; Matthews, Duncan. Globalizing Intellectual Property Rights, the TRIPs Agreement. First published by Routledg 2002, Pages 119-122

By the ordinary meaning of terms of agreement, the interpretation of article 67, defines the types of technical and financial cooperation for the DCs and LDCs as follows;

Assistance in preparation of laws and regulations on the protection and enforcement of intellectual property rights.
Prevention of the abuse, of intellectual property rights,
Support regarding the establishing or reinforcement of intellectual property rights,
Training of personnel for domestic offices and agencies relevant to intellectual property rights.

But one should not consider this as a restrictive clause, when article 67 is read with the preamble of the TRIPS agreement, which says;

*“ to reduce distortions and impediments to international trade” and “Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base.”*¹³⁶

Without the financial and technical cooperation of the industrialized countries, the DCs and LDCs could never be able to create a sound and viable technological base for the domestic implementation of laws and regulations of TRIPS agreement. The flexibility in the implementation of the agreement namely transitional arrangement, which is legally provided in TRIPS, will not be enough for the DCs and LDCs to achieve this goal.

Technical cooperation of developed countries under article 67 of TRIPS has been a matter of discussion in TRIPS council annual sessions; from 2002 this title has changed to “technical cooperation & capacity building”. However, little information is made available regarding the assistance provided by the developed countries during the life of the TRIPS agreement.

9 TRIPS council and dispute settlement

TRIPS council was established by Article IV of the WTO establishing agreement which states that” The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "council for TRIPS").¹³⁷ The council for TRIPS has many functions which are defined in different articles of the TRIPS agreement, such as

¹³⁶ See; preamble of TRIPS agreement;

¹³⁷ Article IV (5) WTO establishing agreement states that:(5). There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council..."). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS").

monitoring the operation of the agreement (article 68)¹³⁸, reviewing and amending the agreement (article 71)¹³⁹ receiving notification of laws and regulations pertaining to TRIPS (art.63.2)¹⁴⁰ receiving the LDCs request of extension of transition period (article 66.1).¹⁴¹

From the WIPO-WTO cooperation point of view TRIPS Council is the responsible body within the TRIPS agreement. According to Article 68 of the TRIPS agreement, the council for TRIPS is responsible for monitoring the operation of the agreement particularly the members' compliance, their obligations under the TRIPS, it shall offer the consultation on the trade related aspects of intellectual property rights, and the other responsibilities which are assigned to it by the members, specifically, assistance to the members on dispute settlement matter such as procedures. TRIPS council may consult and seek information from any sources, which it deems appropriate like the intergovernmental organizations and is specifically responsible for the establishing the cooperation arrangements with WIPO.

The WTO council for TRIPS lies on the heart of institutional arrangements of the world trade organisation. The role of TRIPS council is to ensure the transparency of implementation and enforcement of TRIPS. It plays as a coordination body between WTO and other intergovernmental organizations coordinating the financial and technical assistance of developed countries to the DCs and LDCs.¹⁴²

¹³⁸ Article 68 of TRIPS agreement: The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

¹³⁹ Article 71 of TRIPS agreement; The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments, which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

¹⁴⁰ Article 63(2) of TRIPS agreement. 2 Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council of a common register containing these laws if consultations with WIPO on the establishment and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).

¹⁴¹ See; Blakeney, Michael; Trade Related Aspects of Intellectual Property Rights: A Concise Guide to TRIPS Agreement, London sweet & Maxwell.1996 sections, 15.12,13,

¹⁴² See; Koepsel, Kristen m. how developed countries meet their obligations under article (67) of TRIPS agreement, the journal of law and technology, 2004

The last sentence of article 66.1 of the TRIPS agreement read as follows; “The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period”.

According to this article, the special economic, financial needs, and administrative constraints, and need for flexibility to create a viable technological base, in LDCs, these countries are entitled to request for an extension of the transitional period, such an extension will be accorded by TRIPS council.

Article 68 of the TRIPS agreement also states that; “in consultation with WIPO, the council shall seek to establish, within one year of its first meeting, appropriate agreements for cooperation with bodies of that organisation” The first meeting of TRIPS council was held on march 9,1995 in Geneva.¹⁴³These arrangements for cooperation have been implemented in the agreement between the World intellectual property and world trade organization of December 22, 1995.

It is under the commitment of industrialized countries in article 67 that most of the information exchange and technical assistance described in previous sections can be attributed to TRIPS obligations, but while the developed countries report their technical cooperation to the TRIPS council, the council does not directly provide Technical assistance programme.

9.1 WTO Dispute settlement

From the first days of Uruguay round negotiations, the developed countries intended to use GATT multilateral mechanism of dispute settlement in the intellectual property rights context. In other word the new era of the international trade and the increasing of economic significance of intellectual property rights needed a more effective mechanism of dispute settlement than mechanisms which have predicted in traditional intellectual property conventions.

From the developing countries point of view, inclusion of TRIPS agreement within GATT dispute settlement system means that the retaliatory measures can be included in the case of failing to act under the TRIPS obligations.¹⁴⁴ But again DCs and LDCs prefer to answer charges in a multilateral settlement system rather

¹⁴³ WIPO Publication NO.464 (E), Implication of the TRIPs agreement on treaties administered by WIPO, 1996, reprinted 1997,NO.227-229

¹⁴⁴See; article 22 (7, 8) of WTO Understanding on Rules and Procedures governing the settlement of disputes (1994).

than to be under pressure of bilateral sanctions of industrialized countries such as the USA or the EC.¹⁴⁵

As a result of this argument the provisions of articles XXII and XXIII of GATT 1994 as elaborated and applied by the WTO Dispute Settlement Understanding,¹⁴⁶ (DSU) was introduced in the TRIPS agreement under its article 64.

It has been argued that the WTO dispute settlement understanding provisions has some advantages for the DCs and LDCs including: the facility of having their representatives in panels, which deals with the DCs matters¹⁴⁷. The DCs can introduce to panels their discussions concerning the preferential treatment, which is offered by the TRIPS agreement.¹⁴⁸ In dispute settlement cases involving DCs, the dispute settlement body shall consider the appropriate action to be taken concerning the economy of DCs and the impacts of such an action on the domestic economy of DCs.¹⁴⁹

According article 25. 2 of WTO dispute settlement understanding (1994)“In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made.”

Furthermore, developing countries will benefit from having retaliatory measures of developed countries subjected to WTO dispute settlement review.

¹⁴⁵ See;Karl Beier, Friedrich & Schricker, Gerhard. From GATT to TRIPs .Max Planck institute for Foreign and International Patent, Copyright and Competition law, (IIC studies VOL.18) VCH Federal Republic Germany, 1996,pages 351-353

¹⁴⁶ See; WTO Understanding on Rules and Procedures governing the settlement of disputes (1994). This understanding, referred to in article 64.1 of the TRIPS agreement as the “dispute settlement understanding “and hereinafter referred to as “DSU”. Constitutes annex 2 of the Marrakesh agreement establishing the WORLD trade Organization. Which was concluded on April 15.1994.and entered into force on January 1.1995. [WIPO note] WIPO Publication NO.464 (E), Implication of the TRIPs agreement on TREATIES ADMINISTERED BY WIPO, 1996, reprinted 1997,NO.227-229, P 129

¹⁴⁷ See; article 8 (10) of WTO Understanding on Rules and Procedures governing the settlement of disputes (1994) states that: 10.When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panellist from a developing country Member.

¹⁴⁸ See; article 12 (11) of WTO Understanding on Rules and Procedures governing the settlement of disputes (1994) states that: 11.Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures

¹⁴⁹ See; article 21 (8) of WTO Understanding on Rules and Procedures governing the settlement of disputes (1994) states that: 8.If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Industrialized nations may not unilaterally punish DCs and LDCs countries for alleged IP violations under TRIPS. With this type of monitored system, smaller countries will be less hesitant to challenge larger countries on which their trade depends. Indeed, throughout the negotiations in the Uruguay Round, DCs stressed the need for an enforceable, non-discriminatory multilateral trading system. Such a system protects developing countries from bilateral pressure of industrialized countries.

10 WIPO dispute settlement

WIPO has historically been a forum for policymaking and coordination, not enforcement. Theoretically Paris and Berne conventions refer the disputes to the International Court of Justice^{150, 151} but this option is rarely used by the members, firstly because countries may choose to declare themselves not bound by the dispute settlement provision at the time of accession to the ICJ statute; secondly even in the case of settlement of a dispute by the ICJ, the losing party can choose to leave the relevant convention to avoid the sanction.¹⁵²

10.1 Alternative Dispute Resolution

Alternative Dispute Resolution, or ADR, refers to methods of resolving intellectual property disputes without having to bring a lawsuit in the courts of law. There are many forms of ADRs. The most common are arbitration and

¹⁵⁰ Article 28 of Paris convention states that:(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

¹⁵¹ Article 33 of Berne convention; (1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

¹⁵²See; Cheek, Marney L. The limits of informal regulatory cooperation in international affairs: a review of the intellectual property regime, George Washington law review 2001.

mediation. Intellectual property disputes are also resolved on the basis of expert opinions.¹⁵³

Commercial disputes including the disputes involving the IPRs which need a quick and less expensive way of settlement than the ordinary judicial dispute settlements. Private commercial parties prefer an alternative to the lengthy and costly procedures before the courts. To this end WIPO Arbitration and Mediation Centre assist individuals and companies to settle their disputes all over the world. The centre provides a list of experts and specialized arbitrators from more than 100 countries of the world. These arbitrators adjudicate according to the rules and regulations of WIPO's arbitration procedures. The arbitration can take place in any country, any language and under any law due to its large flexibility. The WIPO's arbitration procedure has been successful and attracted many of the companies, which are unable or unwilling to enter to lengthy and costly litigations, particularly at the international level.¹⁵⁴

10.2 WIPO arbitration and mediation centre

In September 1993 The WIPO Arbitration Centre was established by the unanimous decision of the WIPO general assembly, the centre is now called the WIPO arbitration and mediation centre.

With the increasing economic significance of the intellectual property rights and the need for a practical commercial dispute settlement, the arbitration institutions became more frequent, to solve the problems and avoid of cumbersome and expensive litigations.

In addition, the existence of a multiplicity of national and regional rights, which cover the same subject matter, needs a dispute settlement system in which, the parties to a dispute can avoid recourse to a different legal system.

For such disputes, the possibility to choose neutrals with specialized expertise is of a great importance, in a highly technical and scientific subject matter which nowadays cover patent, trade secret, copy right or plant varieties. Although there are some special courts in some countries, however it is more efficient to submit the case to a tribunal with at least one specialist in the area concerned.¹⁵⁵

Mediation is a procedure in which a neutral intermediary mediator endeavours, at the request of the parties to a dispute to assist them to reach a mutually satisfactory settlement. WIPO provides two versions of the mediation procedures namely; 1) the mediator plays the role of an evaluator of the issues and makes a

¹⁵³ See WIPO intellectual property handbook, policy, law and use. 4.141 <http://www.wipo.int/about-ip/en/iprm/index.htm>

¹⁵⁴ See, Wipo website general information, http://www.wipo.int/about-wipo/en/gib.htm#P152_21309 (last visited November 16, 2004)

¹⁵⁵ See WIPO intellectual property handbook, policy, law and use. 4.152 <http://www.wipo.int/about-ip/en/iprm/index.htm>

decision, 2) the mediator acts as a moderator /consultant in order to facilitate the dispute resolution of the parties themselves.

The WIPO arbitration centre offers services in four-dispute settlement procedures namely; mediation, arbitration, a combination of mediation and arbitration, and expedited arbitration which can be applied on small-scale disputes.

Basically WIPO provides two types of services regarding these procedures; first WIPO provides the instruments for the resolution of a dispute pursuant to one of the procedures. Second WIPO provides the rules of conduct for each of the procedures, such as, the WIPO Arbitration rules, the WIPO expedited Arbitration rules, the WIPO Mediation Rules, and the rules for the combined procedures.

10.3 WIPO Internet domain name dispute resolution

The popularity of the internet and the commercial application of internet domain names¹⁵⁶ and conflicts of these names with the trademarks and other intellectual property rights encouraged the WIPO to enter into the matter actively, as a result of this policy, the WIPO arbitration and mediation centre was the first centre which provided a dispute resolution service under the uniform Domain name Dispute resolution policy (UDRP), adopted by the Internet Cooperation for Assigned Names and Numbers (ICANN). On the basis of the recommendation made by WIPO in the report on the WIPO internet domain name process, the uniform Domain name Dispute resolution policy (UDRP) provides holders of trademark rights with an administrative mechanism for the efficient resolution of disputes arising out of the registration and use by third parties in bad faith of domain names corresponding to those trademark rights. However the procedure is optional for the trademark right holder, they can choose to go to court instead of taking the dispute to the UDRP.

The WIPO arbitration and mediation centre has provided services especially designed for the submission and conduct of UDRP cases. It has adopted supplemental Rules related to such aspects as the applicable fees. The centres

¹⁵⁶ “Domain names are the user friendly form of internet addresses that generally end with .com, .org, .net or with a country code. These names also have a secondary use as identifiers of businesses or their products and services on the net. Domain names are usually registered, with minimal procedures, on a first-come –first-serve basis. Famous and well-known marks are particularly target of “cyber squatting” and misleading use. These problems are found even in developing countries that have begun their use of internet more recently.” See;Watal Jayashree., Centre for International Development ,Harvard University ;Intellectual property Rights in The WTO and Developing Countries ,Kluwer Law International, The Hague /London/Boston ,2001,page 394

website provides parties with an efficient on line infrastructure for WIPOs domain name dispute resolution services.¹⁵⁷

11 Recent development in pharmaceutical access for DCs and LDCs

11.1 Doha ministerial declaration (2001) in regards DCs and LDCs

The DCs and specifically LDCs are amongst the poorest countries in the world. These countries do not generally have the capability of producing the essential pharmaceutical drugs. They depend on the industrialized countries in this regards. During the negotiations of the TRIPS agreement the problem of access to pharmaceutical was a main concern for DCs and LDCs. However the DCs and LDCs attempts resulted in some exceptions being made to the patent protection standard in TRIPS agreement. In general, TRIPS agreement in its preamble states that; “recognizing the special needs of the least-developed country members in respect of maximum flexibility in the domestic implementation of laws and regulation in order to enable them to create a sound and viable technological base”. The TRIPS agreement also considers the right of the member countries to adopt measures necessary to protect public health. Articles 8 and 27 of the TRIPS agreement allows a country to exclude products from patent protection where necessary to protect public health and the environment. Therefore the discussion of pharmaceutical access was continued after the conclusion of the TRIPS agreement and it was more emphasized by crises of epidemic of deadly disease such as HIV/AIDS especially in the least developed countries.

From the WTO point of view, the last development of the intellectual property rights, regarding the TRIPS agreement and assistance to DCs and LDCs emerged in the fourth ministerial conference at Doha in Qatar in 2001, resulting in two declarations namely, Doha (ministerial declaration adopted 14 November 2001) and declaration on TRIPS agreement and public health. (Adopted November 14 2001)

The achievements of this conference are in the light of the needs of DCs and LDCs, which are faced with many problems in order to implement the TRIPS agreement, specifically in the light of the crisis of epidemic diseases and the access to medicine and the public health questions. In addition to DCs and LDCs request, these problems have been highlighted and emphasised by the

¹⁵⁷ See WIPO intellectual property hand book, policy, law and use. 4.171 <http://www.wipo.int/about-ip/en/iprm/index.htm>

international civil societies, NGOs and the other activist in concerned area calling for a solution.¹⁵⁸

These concerns were further emphasised in special sessions of the TRIPS council on the basis of a proposal, which was submitted by a group of developing countries. The core of this proposal was the “re-balancing rights and obligations in favour of the public interest.” The other important subject matters of the proposal included;

Allowances for compulsory licensing without prior attempts to obtain authorization from the rights holder in cases of national emergency or extreme urgency;

To refrain from threatening or imposing sanctions on developing countries and LDCs when they act within the TRIPS Agreement to promote and protect public health, extending the transitional period, and most importantly reaffirming the language of the objectives and principles outlined in Articles 7 and 8 of the TRIPS agreement.¹⁵⁹,¹⁶⁰

Generally the developing countries concerned that, all of the TRIPS provisions must be interpreted in the light of articles 7 and 8 of the agreement, for example the rights of patent holders and the rights of developing countries must be defined with due regard to the public interest.

Among the concerns of developing countries, it seems that the Doha ministerial conference has confined itself to declare and reaffirm the principles of the WTO agreement and Marrakech negotiations.

Although the declaration deals with the matters of trade related aspect of intellectual property in some paragraphs, for example paragraph 17 on trade related aspects of intellectual property stresses that “implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health”, or paragraph 19 which states that “the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and

¹⁵⁸Doha ministerial declaration (adopted 14 November 2001);document; WT/MIN (01)/DEC/1 20 November 2001,WTO

¹⁵⁹ Article 7 of TRIPS agreement, *objectives*, states, that; The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

¹⁶⁰ Article 8 of TRIPS agreement, *Principles*; 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.

folklore, and other relevant new developments raised by Members pursuant to Article 71.1 in undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimensions” or paragraph 37 which provides that “We agree to an examination in a Working Group under the auspices of the General Council, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination”.

And paragraph 38 concerning the technical cooperation and capacity building, which mostly repeats the principles of TRIPS agreement and the affirmation of the past negotiations. The only substantive issue addressed with regard to the TRIPS agreement at this conference appears to be public health concerns for which members adopted a separate Declaration, which is called the Declaration on the TRIPS agreement and Public Health.¹⁶¹

11.2 The Declaration on TRIPS agreement and public health (adopted on November 2001)

The forth-ministerial conference of WTO members, which was held on November 2001, in Doha, unanimously adopted a declaration on the TRIPS agreement and Public health. The declaration was adopted due an urgent health cries in the DCs and LDCs, followed by an international call to find solution. The reality was that millions of poor people in DCs and LDCs were infected by HIV/AIDS and other severe epidemic disease. The activities of a wide range of the international organizations, governmental or none governmental required a reform, and a new interpretation of TRIPS regulations, in the light of public interest. Some of the most important provisions of the declaration are as follows. Paragraph 1 states that, “We recognize the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics”. Paragraph 4 states that “we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all”. Paragraph 5(A) reads as “In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.”

Most importantly according paragraph 5(c) each member states has the right to determine what constitute a national emergency. In this regard “public health crisis such as HIV/AIDS and tuberculosis and malaria can represent national

¹⁶¹ See; Tully, Danielle, prospects for progress :the TRIPS agreement and developing countries after The Doha conference ,Boston college, international and comparative law review; winter 2003

emergency or other circumstances of extreme urgency in order to use compulsory licences”.

Finally according paragraph 7 of the declaration, the least developed countries obligation of implementation of sections 5 and 7 of part II of TRIPS agreement in regards the pharmaceutical product was extended up to January 2016.

There is a discussion about the legal significance of the declaration on TRIPS and public health. It has been argued that; the legal status of this declaration can be interpreted in three ways; first it is a subsequent agreement between the WTO member countries. Second, “it represents the beginning of subsequent practice which evidences the members' understanding with respect to the interpretation of the TRIPS Agreement.” Third, it is only a declaration, thus is not legally enforceable. However according to the international customary law every treaty must be interpreted on the basis of good faith with regard to both objective and purpose of the treaty.¹⁶²

12 The future of cooperation

The future of WIPO –WTO cooperation depends on the future of the TRIPS agreement, and depends on what the development of the IPRs. The post TRIPS development of IPRs shows that, each of the organizations has a role to play dependently on its capabilities and strengths. The TRIPS agreement is an integral part of the establishing agreement of WTO. The dispute settlement mechanism of WTO covers the TRIPS, and it is binding upon all of the members. However a fully implementation of the TRIPS agreement needs to be given to such instruments, which do not exist in WTO but are available in WIPO framework. WIPO has the experiences of years and a lot of human and financial resources to assist the DCs and LDCs for the implementation of the TRIPS. As previously explained in the preceding chapters, WIPO has been in close cooperation with WTO, and has done enormous amount of activities. It was mutually agreed that most of assistance would be handled by WIPO.

¹⁶² See; Jiang ,Peng.Fighting the AIDS epidemic :china’s option under the WTO agreement,Albany law journal of science and technology,2002,comments

A comprehensive IP system in DCs and LDCs and modernizing their existing IP systems needs a well understanding of the international treaties and the current issues of IPRs. WIPO can have a great effect both on the implementation of the TRIPS agreement, and post TRIPS international IP treaties, through providing the legislative advice, law drafts and the interpretation of the WIPO administered agreements, which are principally incorporated in TRIPS agreement.

The most useful factor for the developing countries for a comprehensive implementation of the TRIPS is to study the laws, regulations and jurisprudence of developed countries specifically through the review of implementation process and find the best way for their implementations. To this end no other organization than WIPO is better suited to fulfil this role.

For Some reasons during the Uruguay round negotiations and the TRIPS agreement conclusion, a belief emerged that the active role in the intellectual property rights issues, was shifted from WIPO to WTO. This idea generally originated in the fact that, first, the role of WIPO in the conclusion of the TRIPS was marginal, WIPO had only an observer position in the TRIPS negotiations and its representatives only took part in official negotiations, Second, the attempt to accord a new patent regulation within WIPO had failed, and was delayed to 2000 when the WIPO patent treaty was concluded. Third attempt to lodge TRIPS within WIPO with an independent dispute settlement mechanism failed; WTO dispute resolution was included in the TRIPS agreement as an effective dispute settlement mechanism for the future development of intellectual property rights law.

But only a few years following the conclusion of TRIPS, the activities of WIPO increased in relation with TRIPS. The WIPO administered treaties membership increased largely due to the wide range of activities in technical and legal assistance to developing country members. The activities under the WIPO –WTO agreement, the conclusion of post TRIPS treaties¹⁶³ all together made the unique role of WIPO clear, and made it a forum for the future of IPRs.

Given the historic opposition of north and south, the challenges between developed countries and developing countries, and the pure commercial and political characteristics of WTO, it seems that, the WIPO will be the proper forum for the future development of IPRs, specifically with regard to the identification of new areas of IPRs such as traditional knowledge, folklore.

WIPO has been successful in some areas of intellectual property rights, such as copyright and related rights. This reaffirms the key role of WIPO in the development of intellectual property rights.

But one should consider that the controversial matters in the TRIPS that have been the areas of conflict between the north and the south most likely would be solved in the WTO context because of their economic and political characteristics.

¹⁶³ see; WIPO Copyright Treaty (WCT) and Patent Law Treaty (PLT) WIPO website <http://www.wipo.int/treaties/en/ip/index.html>

Thus the future of WIPO will be dealing with complex and technical issues relating to new technologies, registration activities, and the matters, which need high expertise as well as traditional knowledge and folklore.¹⁶⁴

13 Conclusion

The inclusion of the TRIPS agreement as an integral part of the agreement establishing WTO was a turning point in the development of intellectual property rights. However this was not achieved easily. From the starting point in Punta Del Este Uruguay in 1986 to the conclusion of the final act in Marrakech in 1994, there was a north –south challenge, which finally resulted in the surrender of the south and the conclusion of the TRIPS agreement.

The main promoters of the establishment of TRIPS agreement, were well aware of the economical, legal and, socio cultural deficiencies of the DCs and LDCs. A large number of the WTO members were the DCs and LDCs, which were not able to implement the provisions of the TRIPS agreement, because of their weak economic and legislative infrastructure. Therefore some preferential provisions have been provided for such countries to facilitate the implementation of the TRIPS agreement. The most important feature of these preferential provisions was the transitional arrangements. Under the transitional arrangements of the TRIPS agreement, DCs were entitled for a four years period of delay until January 1,2000 and a ten years period of delay was provided for LDCs until January 1,2006 as well.

It was clear that The DCs and LDCs needed a large amount of technical assistance, to meet their obligations under the TRIPS agreement. WTO, which was newly established, and originally an organization for coordination and facilitation of fair trade and the flows of goods in international trade, did not have the capacity and proper instrument to provide assistance necessary to DCs and LDCs. Instead WIPO as an UN specialized agency, and a unique administrator of the international intellectual property conventions, with a great amount of

¹⁶⁴ see; Watal Jayashree., Centre for International Development ,Harvard University ;Intellectual property Rights in The WTO and Developing Countries ,Kluwer Law International, The Hague /London/Boston ,2001,chapterXII ,future issues related to IPRs in the WTO.

financial and human resources and expertise, which had an, ongoing programme of assistance to developing countries was the best organization to carry out this needed assistance.

Therefore the provisions of cooperation between the two organisations and the technical assistance to developing countries initially endorsed in the TRIPS agreement and resulted in the conclusion of the WIPO- WTO agreement in 1995.¹⁶⁵

The DCs and LDCs which are accustomed to refer to WIPO for assistance have referred many requests to it. WIPO while continuing its development program started a large number of activities for the assistance of DCs and LDCs in the implementation of TRIPS agreement. These activities included, Legislative assistance, Awareness Building and Human Resource Development, Institution Building and Modernization of the Intellectual Property System and carrying out Studies and Publications on the Implication of the TRIPS agreement, establishing several seminars, workshops, symposiums, and importantly two joint initiatives. The joint initiative (July 1999) for technical assistance to developing countries to meet their obligation under TRIPS in 2000 and joint initiative (June 2001) to assist LDCs to meet their obligation of implementation for 2006 deadline.

During the Uruguay round of GATT negotiations, and after the adoption of the TRIPS agreement, some ideas emerged that the main role of management and development of intellectual property had shifted from WIPO to WTO. However the years after the conclusion of TRIPS have showed that, these ideas were far from reality, in fact TRIPS itself implicitly acknowledged the continuing importance of WIPO as a forum for negotiating treaties, particularly those embodying higher levels of protection of intellectual property rights.

The inclusion of a comprehensive intellectual property rights agreement (TRIPS) within a multilateral trade system, established by incorporating WIPO treaties has increased the growth of intellectual property protection standards, and marshaled in a new role for WIPO and its member states with regard to the number of activities, and in negotiating and adopting new treaties. The continuing importance of WIPO in this context.

Two recent examples of treaties negotiated after the adoption of the TRIPS agreement include the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). These treaties contain basic rules updating the international protection of copyright and related rights to the Internet age and came into force in 2002.

Whereas the WTO emphasized implementation, enforcement, and dispute settlement, WIPO focused on generating new forms of intellectual property protection, administering existing intellectual property treaties, and providing technical assistance to developing countries.

¹⁶⁵ Article 68 of TRIPS agreement;

WIPO thus continues to function as an important forum for intellectual property lawmaking by all of its member states in a post-TRIPS environment.

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