

Re-thinking the trips agreement: History and analysis

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ABSTRACT

Since when the TRIPs agreement came into operation in 1995, it has become an item in most international fora because the agreement itself did dominate the administration of intellectual property law in both domestic and international levels, while the developed countries are so very much comfortable with the TRIPs agreement, it seems most developing countries are not. As beautiful as the TRIPs agreement is and indeed a much better avenue for the betterment and development of the application of intellectual property the world over, it is of great importance to appreciate the fact that many scholars and practitioners did make interesting commentaries on the TRIPs agreement. However, most disturbing is the conclusion by these commentators that the TRIPs agreement will not as they observed assist the developing countries in their quest for faster development. They view certain areas of its provisions as anti-development in competitive terms. This work intends to look at the TRIPs agreement in its broad form, its history and general analysis of same. However, the most fascinating aspect of the work is to analyse why a rethink of the TRIPs agreement is desirable.

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Key Words : Re-thinking, TRIPS, History, Analysis

INTRODUCTION

The TRIPS Agreement, which is one of the major international intellectual property agreements, came into force in 1995. The Agreement can be said to be the most controversial component of the World Trade Organization's "package deal" struck in 1994¹.

The few years since it entered into force have seen nothing less than an explosion of interest in intellectual property issues in international fora not previously concerned with the products of human creativity or innovation. Intellectual property is now at or near the top of the agenda in intergovernmental organizations such as the World Health Organization (WHO) and the Food and Agriculture Organization (FAO), in international negotiating fora such as the Convention on Biological Diversity's Conference of the Parties and the Commission on Genetic Resources for Food and Agriculture, and in

expert and political bodies such as the United Nations Commission on Human Rights and its Sub-Commission on the Protection and Promotion of Human Rights².

We can therefore say that the Agreement had a lot of impact, both positive and negative, and has received many different commentaries. It has however received more negative commentary than positive, as several inherent problems have been noticed, such as there is already "a clamouring" by some parties for the agreement to be reviewed³.

Some of the issues that have been raised⁴ related to the patentability of biological inventions⁵, transfer of technology to developing countries, access of developing countries to certain drugs or pharmaceutical products and many more. Will the problem(s) noticed be solved by a mere review of the TRIPs agreement? Or do the problems with the agreement go deeper than the provisions, and relate more to the history of the agreement? Do we not

1. Reichman J. H., Taking the Medicine, with Angst: An Economist's View of the TRIPS Agreement, *Journal of International Economic Law*, (2001), Vol. 4, p. 795.
2. Helfer R. L., "Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking". (2004) *Yale Journal of International Law*, Vol. 29, p. 1. Available at <http://www.ssrn.com> (visited 6 April 2011)
3. For instance, there is already a Protocol adopted on 6th December 2005, as an amendment of the TRIPs Agreement. Available at http://www.wto.org/tratop_e/trips_e (visited 4 April 2011)
4. See generally, Correa C.M., *Reviewing the TRIPs Agreement: Fostering the Transfer of Technology to Developing Countries*. (2001). A Third World Network Publication. Available at <http://www.twinside.org.sg/index.TRIPS.htm> (visited 4 April 2011)
5. A problem with Article 27.3.b of the Agreement. Full text of the TRIPs Agreement. Available at http://www.wto.int/english/docs_e/legal_e/27-trips.pdf (visited 6 May 2011)