

An Introduction to TRIPS and Status of Ethiopia

Presented at the Workshop on the WTO Intellectual Property Rights Regime organized by The WTO Accession Plus Project of the United States Agency for International Development (USAID) and the ICT Association of Ethiopia, 19 October 2011, Addis Ababa, Ethiopia

By

Getachew Mengistie Alemu

Intellectual Property Law Consultant and Attorney

Outline of presentation

- What is intellectual property?
- What is TRIPS?
- Objectives of the TRIPS agreement
- Basic principles of TRIPS
- Main Features of the TRIPS agreement
- Minimum Standards of Patent protection
- Enforcement of IPR
- Dispute prevention and settlement
- Flexibilities and safeguards to cater for public interest
- Provisions relating to Least developed countries
- Status of Ethiopia

What is Intellectual Property?

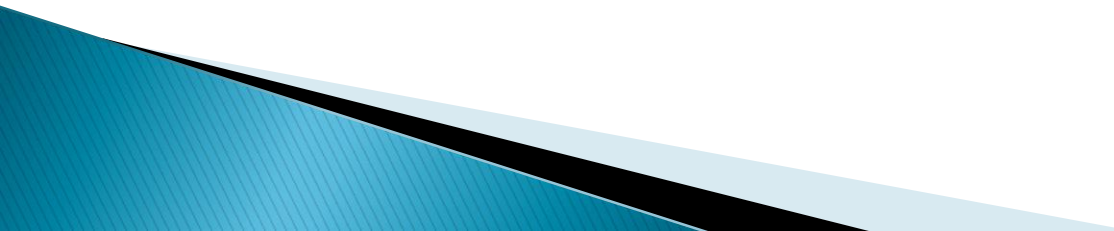
- Intellectual property relates to legal rights over the creations of the mind such as inventions, artistic and literary works etc.,
- IP consists of :
 - ✓ Copyright
 - ✓ Patents
 - ✓ Industrial designs
 - ✓ Service and trade marks
 - ✓ Geographical indications
 - ✓ Plant variety protection
 - ✓ Lay out design
 - ✓ Trade secrets etc
- IP is governed by national and International IP systems

.

What is TRIPS?

- ▶ Is one of the 14 agreements concluded after the Uruguay round and administered by WTO , which for the first time made IP part of multilateral trade agreement
- ▶ Signed on April 15, 1994 in Marrakech, Morocco, and came into effect on January 1, 1995
- ▶ Is the most comprehensive agreement concluded in the field of IP
 - ✓ deals with copyright and related rights , trademarks including service marks; geographical indications, industrial designs; patents ;layout-designs of integrated circuits; undisclosed information and Control of Anti-Competitive Practices in Contractual Licences
 - ✓ Incorporates main provisions of earlier conventions-Paris Convention (1967), Berne Convention(1971), Rome Convention (1961) and Washington Treaty on IP in Respect of Integrated Circuits (1989).

Objectives of TRIPS

- To reduce distortion and impediments to international trade
 - To promote effective and adequate protection of intellectual property rights
 - To ensure that measure and procedures to enforce intellectual property rights do not themselves become barrier to legitimate trade
- 

Basic Principles

- ▶ National Treatment (Article 3)- each Member shall **accord to the nationals of other Members treatment no less favourable than** it accords to its own nationals with regard to the protection of intellectual property
- ▶ Most Favored Nation (Article 4)- **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

Basic Principles

- ▶ **IP protection should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users and in a manner conducive to social and economic welfare, and to a balance of rights and obligations (Article 7)**

Main Features of the Agreement

- ▶ Sets minimum standards of protection
 - ✓ subject matter to be protected
 - ✓ rights to be conferred and permissible exceptions or limitations
 - ✓ minimum period of protection (will be highlighted taking patents as example)
- ▶ Ensures effective enforcement of IPRs
 - ✓ Provisions for domestic procedure and remedies for the enforcement of the IPRs
 - ✓ Includes general principle applicable to IPR enforcement procedure apart from administrative, civil and criminal procedure available for enforcement of rights of the right holder
- ▶ Provides mechanisms for settlement of disputes among member states
- ▶ Attempts to strike a balance- provides for flexibilities and safeguards to cater for public interest

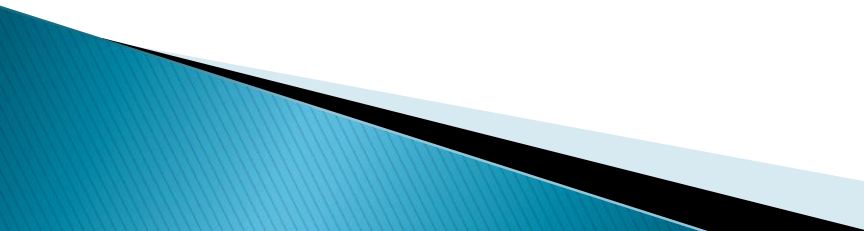
Standards for patent protection

- ▶ Patents available for any inventions, whether products or processes, in all fields of technology (article 27 (1))
- ▶ Invention must be new, involve inventive step and industrial applicability (article 27 (1))
- ▶ Provide for grounds of exclusions of inventions from patentability (Article 27 (2) and (3))
 - ✓ protect public order and morality, human, animal or plant life or health or to avoid serious prejudice to the environment

Standards for patent protection

- ✓ diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- ✓ Plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.

Standards for patent protection

- ▶ Defines exclusive rights conferred by a patent including the right to assign, or transfer by succession and to conclude licensing contracts(Article 28)
 - ▶ Specifies grounds for limitation of exclusive right (articles 30 &31)
 - ▶ Imposes an obligation on member states to require patent applicants to **disclose the invention** in a manner sufficiently clear and complete for the invention to be carried out by a **person skilled** in the art (article 29)
 - ▶ Provides for the duration of patent protection- 20 years beginning from filing date (article 33)
- 

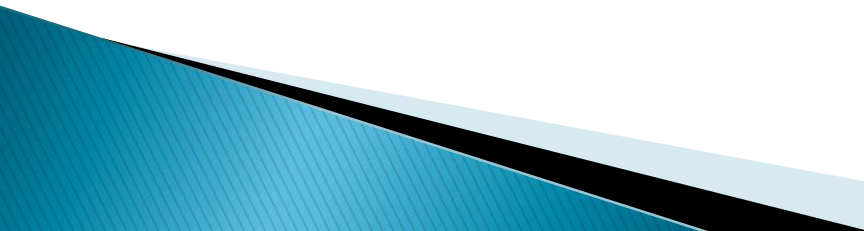
Enforcement of IPRs

- ▶ Has detailed provisions that lay down principle, specify procedures and available remedies (Articles 41 to 60)
- ▶ enforcement procedures must
 - ✓ be available;
 - ✓ include expeditious and deterrent remedies;
 - ✓ be fair and equitable; and
 - ✓ not be unnecessarily complicated or costly or entail unwarranted delays
- ▶ possibility must exist for judicial review of final administrative decisions

Enforcement of IPRs

- ▶ Remedies against infringement of IPR include
 - ✓ Provisional measures to prevent infringement of right or entry of infringing goods in to channel of commerce and preserve evidence
 - ✓ Civil remedies including compensation for damage suffered and injunction;
 - ✓ Criminal remedies at least in cases of wilful trademark counterfeiting and copyright piracy on a commercial scale including imprisonment and or fine and when appropriate seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence ;
 - ✓ Border measures
- ▶ Judicial authorities may have the power to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Dispute Prevention and Settlement mechanisms

- ▶ Disputes prevention through provisions on transparency – Article 63
 - ▶ Disputes will be settled through panel procedures and decisions and trade sanctions in case decisions are not adhered to (article 64)
 - ▶ The dispute settlement process involve consultation, panel reports, possible recourse to Standing Appellate Body, decision of DSB on panel report and suspension of concessions
- 

Flexibilities and Safe guards

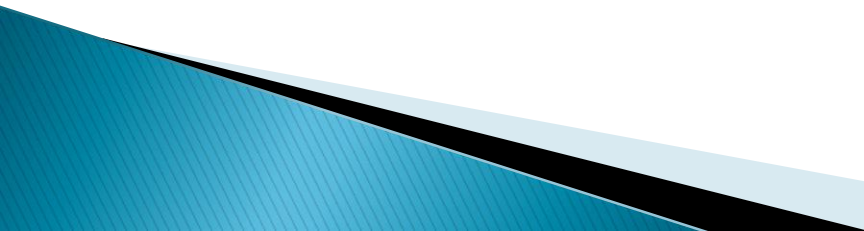
- ▶ Measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to socio-economic and technological development consistent to the provisions of TRIPS and prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology(Article 8)

Flexibilities and Safe guards

- ▶ Definition of requirements- example patentability
- ▶ Exhaustion of IPR – example acts in respect of patented articles which have been put on the market by the owner of the patent or with his consent (Article 6)
- ▶ limitations and exceptions to rights conferred by patents, copyright and other IP rights, such as research exceptions in patent or educational exception in copyrights;
- ▶ compulsory licensing, for example to ensure the supply of medicine, or educational materials at reasonable cost (Article 31)

Provisions relating to least developed countries

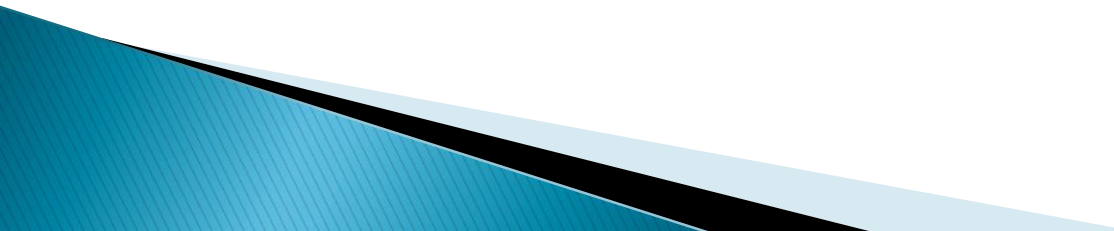
▶ Transitory provisions

- ✓ Until 2013, LDCs are not required to implement the TRIPS agreement except the principles of national and most favoured nations treatment (Article 3) and (Article 4)
 - ✓ Prior to 2016 LDCs are not required to accord patent protection to pharmaceutical inventions
- 

Provisions relating to least developed countries

- ▶ Technical assistance developed countries have obligation to provide
 - ✓ incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base. (Article 66(2)
 - ✓ technical and financial cooperation up on request and on mutually agreed terms and conditions in favour of LDCs to facilitate implementation of the agreement (Article 67)

Status of Ethiopia and its IP legal frame work

- ▶ Observer Status in 1997
 - ▶ Accession request accepted in 2003
 - ▶ Technical and steering committees
 - ▶ Memorandum Memorandum on the Foreign Trade Regime submitted on 2007
 - ▶ Two Working party meetings
- 

Status of Ethiopia and its IP legal frame work

- ▶ Has general and Specific laws dealing with laws dealing with IP
 - ✓ General laws include the Constitution. Criminal code, Civil and Criminal procedures
 - ✓ Copyright and related rights
 - ✓ Trademarks
 - ✓ Patents and industrial designs
 - ✓ Plant variety protection
 - ✓ Unfair trade practice
 - ✓ Border measures – Copyright , trademark and customs laws.

Status of Ethiopia and its IP legal frame work

- ▶ There is need to:
 - ✓ revise existing laws to comply with the TRIPS agreement
 - ✓ Enact new laws dealing with elements of IP governed under TRIPS such as geographical indications, lay out designs and undisclosed information
 - ✓ Take advantage of the flexibilities and the provisions dealing with LDCs in revising the laws and enacting new ones
 - ✓ draw lessons from the countries that acceded WTO and TRIPs

Thank You for your Attention !! Comments and questions are most welcome

Contact address:

Getachew Mengistie Alemu

Intellectual Property Law Consultant & Attorney

Po.box 4706, Addis Ababa, Ethiopia

Tel-+251-11-6183571(office),Fax-+251-11-

6183563,+251-913-939685 (mobile), 251-11-6462553

(home)

e-mail:-getachewal@gmail.com