



WORLD TRADE ORGANIZATION  
ORGANISATION MONDIALE DU COMMERCE  
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**WTO-ESCAP-IIUM REGIONAL WORKSHOP ON INTELLECTUAL PROPERTY  
AND PUBLIC HEALTH AND ENVIRONMENT POLICY  
FOR ASIA AND THE PACIFIC REGION  
IIUM, Kuala Lumpur, 10-12 July 2012**

# **Compliance Issues in the Context of Public Health**

## **The WTO context: TRIPS and Enforcement Provisions; Discussions and Work**

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# Outline

- General observations
- TRIPS provisions on enforcement
- Discussion and work
  - In the TRIPS Council
  - In other fora and contexts
- Dispute settlement

# General observations

- Tokyo Round 1978: trade in counterfeit goods.
  - (Draft Agreement on measures to Discourage the Importation of Counterfeit Goods)
- Punta del Este Declaration in 1986
- TRIPS (Trade-related Aspects of Intellectual Property Rights) = first international treaty with detailed section on enforcement
- Addresses action against IPR infringement in general, with some mandatory provisions specifically applying to counterfeiting and piracy

# Objectives of TRIPS Part III (enforcement)

- *Make available* (→ private rights) effective tools to guarantee **application of substantive rules**, including:
  - Expeditious remedies to **prevent** infringements
  - Remedies constituting a **deterrent** to further infringements
- Protect **against abuse**: built-in safeguards
- Avoid **new barriers to legitimate trade**
- Preserve balance between different interests

# Application of basic principles

- **Minimum level of protection**, but not harmonisation at multilateral level
  - higher level of protection possible as long as TRIPS obligations, including safeguards, are respected
  - but: is there a limit to higher standards?
- Freedom to determine appropriate method of implementation within WTO Members' own legal system and practice (art. 1.1)
- Subject to non-discrimination rules and WTO dispute settlement
- p.m.: LDC transition periods apply (2013/2016)

# Other Principles Regarding Enforcement

- Taking into account of:
  - different legal systems (common/civil law)
  - WTO Members' resource constraints:
    - no obligation to establish distinct judicial system to enforce IPRs
    - TRIPS enforcement rules are not to affect Members' capacity to ensure law enforcement in general
    - no obligation relating to distribution of resources for enforcement of IPRs and law in general
- Recognition of judicial discretion
- Different types of provisions:
  - Mandatory (“shall”)
  - Optional (“may”)
  - Mandatory but with discretion for authorities (“...shall have the authority”)

# All Types of IPR Infringements

- General obligations:
    - Effective enforcement
    - Procedures not to become barriers to legitimate trade
    - Fair and equitable procedures
    - Decisions on the merits of a case
    - Opportunity for review by a judicial authority
  - Civil and administrative procedures/remedies:
    - Fair and equitable procedures
    - Evidence
    - Remedies: injunctions, damages, other
    - Right of information
    - Indemnification of the defendant
  - Prompt and effective provisional measures (to prevent infringement / entry into channels of commerce and to preserve evidence)
- demonstrates search for a balanced regime

# Counterfeiting and Piracy (1)

asures required

asures for “Counterfeit trademark and pirated  
s”

release by customs authorities

s / safeguards

e evidence

description of the goods

or equivalent assurance

fication

s

f suspension

ng days to initiate proceedings leading to decision on merits

nspection and information

destruction / disposal of infringing goods outside  
of commerce

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