

International Trade and Intellectual Property Rights

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Overview

- Linkage between International Trade and Intellectual Property Rights
- Types of International Trade Agreements and Issues Concerning IPRs
- Specific Case Examples

International Trade & Intellectual Property

- Pre-WTO: WIPO Treaties; NAFTA
- WTO TRIPs Agreement
- Post-WTO: TRIPs-plus provisions in RTAs, bilateral FTAs
- BITs & ISDS

Pre-WTO International Trade & IP

- WIPO treaties: Paris & Berne Conventions
- Problem with WIPO Treaties:
 - Insufficient provisions
 - Ineffective enforcement
 - Inability to agree
- Consequences:
 - Organizational paralysis
 - Unilateral enforcement action/self-help (eg. Omnibus Trade & Competitiveness Act, US)

NAFTA

- Largest free-trade regional agreement pre-EU
- First regional free trade agreement to include an IP chapter
- Precursor for subsequent IP chapters in FTAs

WTO TRIPs Agreement

- Minimum standards (Harmonization?)
 - DS28, 42, 79, 114, 160, 199, etc.
- Enforcement provisions & border measures including customs seizures
 - DS362, 372, 408
- Dispute resolution process
- Balancing interests: Doha Declaration
- Use of flexibilities (eg. Novartis v Union of India)
- Undermining sovereignty? DS434, et al.

Post-WTO International Trade & IP

- TRIPs-plus provisions in FTAs & RTAs (eg. TPP)
- Enhanced regulatory rights equivalent to IPRs
- Stronger enforcement and border measures (eg. ACTA)
- More recently, use of investor-state arbitration against governments for IPR infringement:
 - Philip Morris v Commonwealth of Australia
 - Eli Lilly v Government of Canada

Questions?

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