



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO



Trade Related Intellectual Property Rights (TRIPS)

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ITTC, WTO

What are intellectual property rights?

- Intellectual Property (IP) rights constitute a unique form of **intangible property**, representing non-physical assets derived from human intellect. They are generally recognized as **private rights**, meaning that right owners—rather than the state—are responsible for obtaining, maintaining, and enforcing their IP.
- Key characteristics include:
 - **Negative Rights:** IP rights are often deemed "negative rights" or rights of exclusion. They empower the owner to prevent third parties from unauthorized use, manufacturing, selling, or importing protected intellectual goods, rather than granting the owner an absolute right to use the IP themselves.
 - **Territorial Rights:** IP protection is based on the principle of territoriality, meaning rights are created, registered, protected, and enforced within the borders of a specific country or region. A patent or trademark registered in one country does not automatically provide protection in another.

Intellectual property rights are customarily divided into two main areas:

(i) Copyright and rights related to copyright. The rights of authors of literary and artistic works are protected by copyright, for a minimum period of 50 years after the death of the author. Also protected through copyright and related (sometimes referred to as “neighbouring”) rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations.

And

(ii) Industrial property can usefully be divided into two main areas:

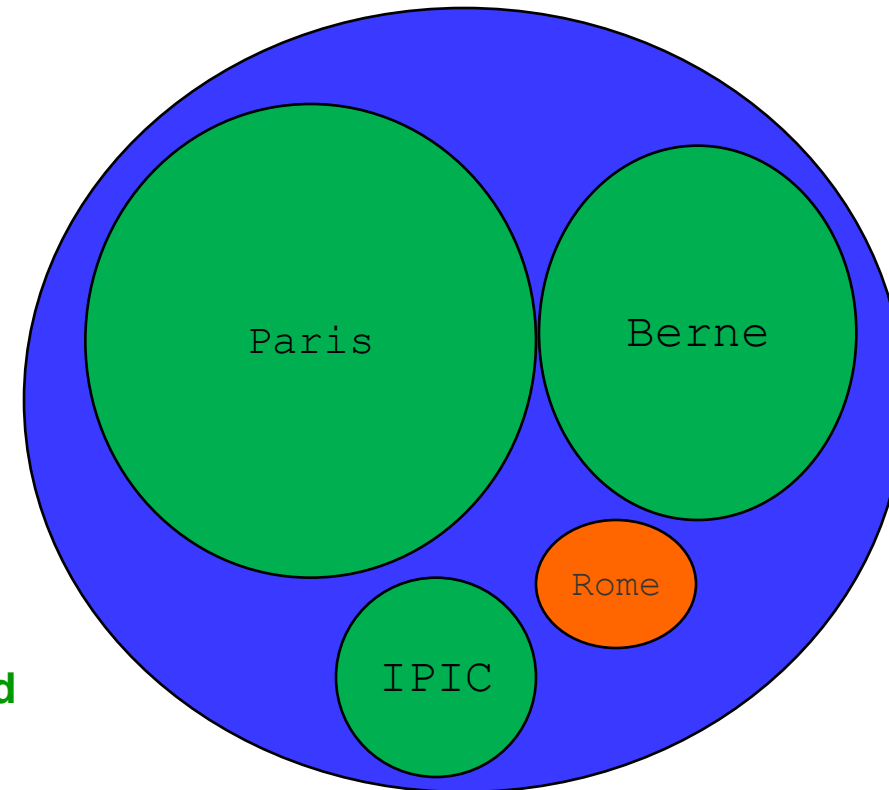
- One area can be characterized as the protection of distinctive signs, in particular **trademarks** (which distinguish the goods or services of one undertaking from those of other undertakings) and **geographical indications** (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin). The protection may last indefinitely, provided the sign in question continues to be distinctive.
- Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by **patents**), **industrial designs** and **trade secrets**. These provide an incentive and means to finance research and development activities. The protection is usually given for a finite term (typically 20 years in the case of patents).
- **Finding the right balance** between rights holders and users is important.
 - The exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders and of users.

TRIPS Agreement

- The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated during the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time.
 - The WTO's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected and enforced around the world, and to bring them under common international rules. It establishes **minimum standards of protection and enforcement** that each government has to give to the intellectual property held by nationals of fellow WTO members.
- Coverage of TRIPS
 - most comprehensive multilateral agreement on intellectual property to date
 - incorporating substantive provisions of:
 - Paris Convention for the Protection of Industrial Property (patents, industrial designs, etc) (1967)
 - Berne Convention for the Protection of Literary and Artistic Works (copyright) (1971)
 - Rome Convention (1961)
 - Treaty on IP in Respect of Integrated Circuits (1989)

"Incorporation" Technique

- Existing conventions
- To avoid re-opening of existing texts
- To concentrate on negotiating the "plus" elements
- To have a short but comprehensive text



Conventions almost „fully“ incorporated

Conventions referred to

Berne/Paris *Plus* elements



Structure of the Agreement

PART I	GENERAL PROVISIONS AND BASIC PRINCIPLES
PART II	STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS
	<ol style="list-style-type: none">1. Copyright and Related Rights2. Trademarks3. Geographical Indications4. Industrial Designs5. Patents6. Layout-Designs (Topographies) of Integrated Circuits7. Protection of Undisclosed Information8. Control of Anti-Competitive Practices in Contractual Licences
PART III	ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS
	<ol style="list-style-type: none">1. General Obligations2. Civil and Administrative Procedures and Remedies3. Provisional Measures4. Special Requirements Related to Border Measures5. Criminal Procedures
PART IV	ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED <i>INTER-PARTES</i> PROCEDURES
PART V	DISPUTE PREVENTION AND SETTLEMENT
PART VI	TRANSITIONAL ARRANGEMENTS
PART VII	INSTITUTIONAL ARRANGEMENTS: FINAL PROVISIONS

TRIPS Agreement: PART I

Objectives and Principles (Articles 7 & 8)

- Overall objective: balance of rights and obligations, between innovation incentives and use of existing inventions/creations
- Right to take TRIPS-consistent measures necessary to protect public health, to promote public interest and to prevent abuse of IPRs
- Doha Declaration: each TRIPS provision to be read in light of the agreement's object and purpose
- → General flexibility to adapt protection at domestic level to meet social & developmental goals

General Provisions and Basic Principles (Articles 1 to 6)

- **Minimum rights agreement** (Art. 1): Freedom to go beyond TRIPS level
- **Freedom to determine appropriate method of implementation:** No harmonization at global level
- **Incorporation of existing WIPO conventions**
- **Non-discrimination:**
 - national treatment (Art. 3)
 - most-favoured-nation treatment (Art. 4)
- **Exhaustion (Art. 6):** Freedom to apply regime of national, regional or international exhaustion

Exhaustion

Basically

A limitation on the exclusive rights of IP holders –a way to prevent IP holders from getting “a second bite at the apple”

Generally

The sale of an IP-protected Good exhausts the right holder’s exclusive right to control distribution

Types

1. International
2. Regional
3. National

Where the sale must take place in order to exhaust the right holder’s right to control distribution determines the type of exhaustion a country has

Exhaustion of IP rights

National/regional	International
Rights cease upon first domestic/regional sale	Rights cease upon first sale anywhere
Favours market differentiation, tiered pricing	Favours product / pricing/marketing uniformity
Parallel imports ILLEGAL	Parallel imports LEGAL

Members are free to choose

TRIPS Agreement: PART II Substantive Standards

- **Typical Structure of each Section**
 - Reference to the **incorporated treaty**, if any
 - When ever possible, **definition of the subject-matter**
 - **Conditions for protection**
 - **Exclusiverights; limitations and exceptions**
 - **Minimum term of protection**
 - Other provisions

TRIPS - Transitional arrangements

- 1 January 1995: entry into force
- 1 January 1996: developed countries
- 1 January 2000: developing countries
- 1 January 2005: developing countries extend product patent protection to areas of technology not previously covered
- **1 July 2034**: least-developed countries
- **1 January 2033**: least-developed countries provide pharmaceutical patents
- Other provisions
 - non-backsliding provision
 - special transitional arrangements in certain cases
 - mail-box and exclusive marketing rights

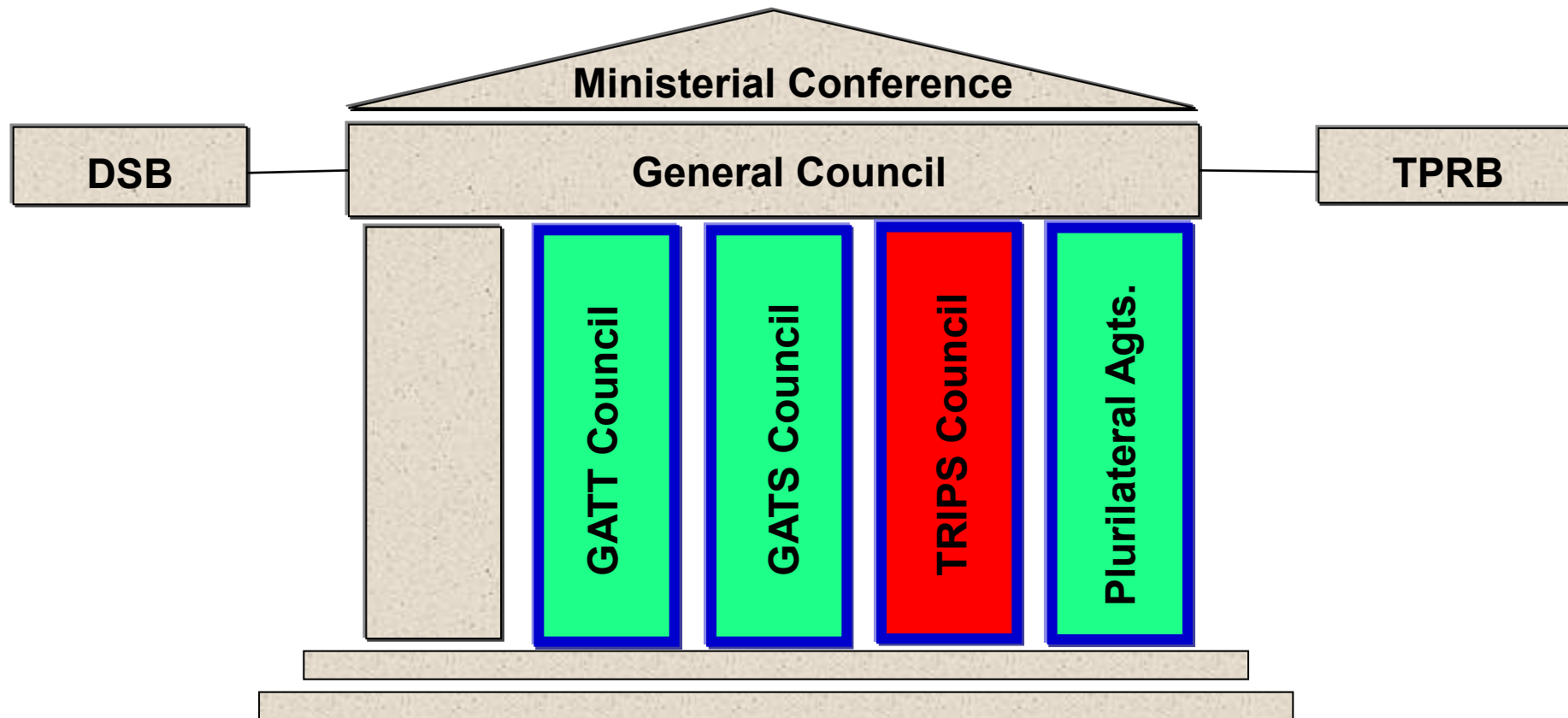
Enforcement

- The TRIPS Agreement is the only international agreement that describes **intellectual property rights enforcement** in detail, including rules for
 - obtaining evidence,
 - provisional measures,
 - injunctions,
 - damages and other penalties.
- It says courts must have the right, under certain conditions, to order the **disposal or destruction of goods** infringing intellectual property rights. Wilful trademark counterfeiting or copyright piracy on a commercial scale must be subject to **criminal offences**.
- Governments also have to make sure that intellectual property rights owners can receive the **assistance of customs authorities** to prevent imports of counterfeit and pirated goods.

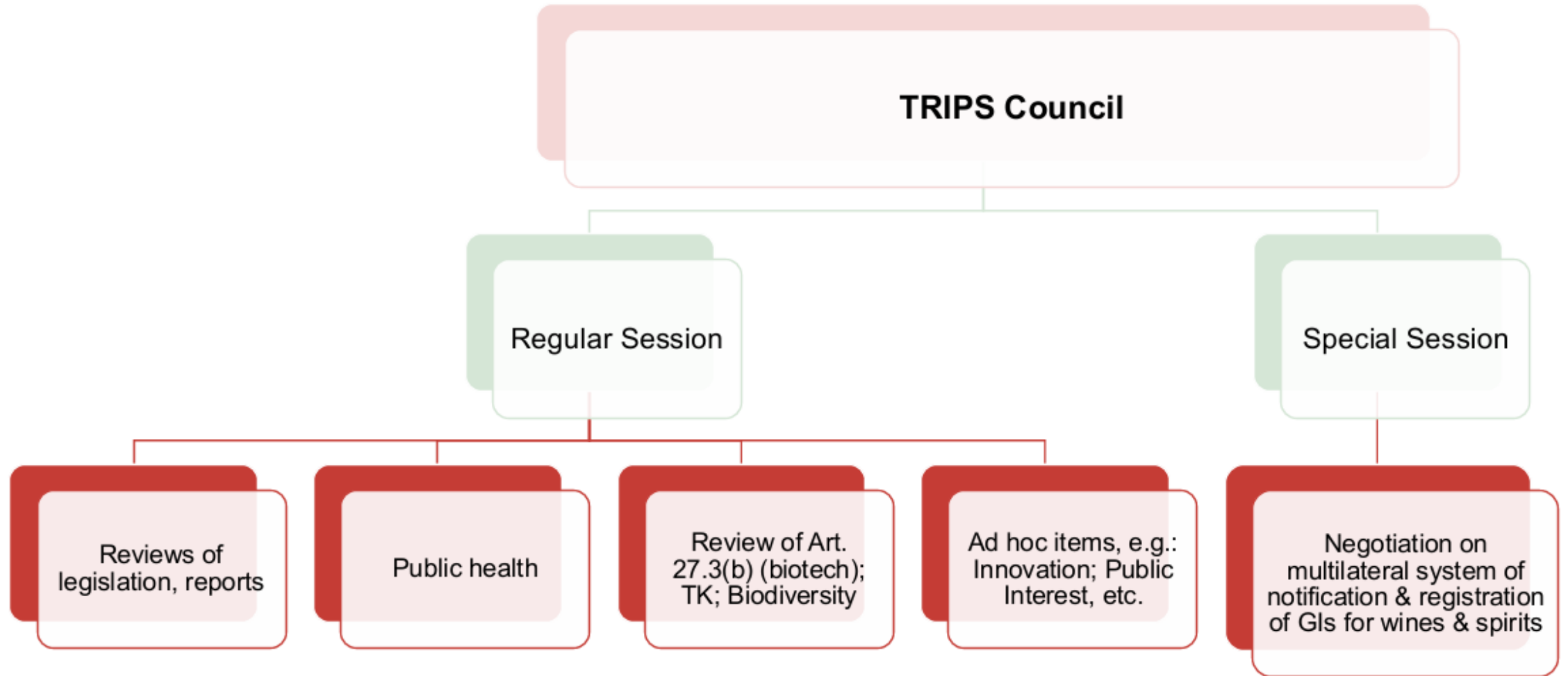
Enforcement

Border Measures (Art.51)	Criminal procedures (Art.61)
Scope: <u>import</u> of <u>counterfeit</u> trademark / pirated <u>copyright</u> goods	Scope: <u>counterfeiting</u> and <u>piracy</u>
Conditions/safeguards <ul style="list-style-type: none"> • adequate evidence • detailed description of the goods • security or equivalent assurance • indemnification 	Conditions: <ul style="list-style-type: none"> (i) wilful act (ii) of trademark counterfeiting or copyright piracy (iii) on a commercial scale
Procedures <ul style="list-style-type: none"> • notice of suspension • 10 working days to initiate proceedings • right of inspection and information 	
Remedies: <ul style="list-style-type: none"> • destruction • disposal of infringing goods outside channels of commerce 	Remedies: <ul style="list-style-type: none"> • imprisonment and/or • monetary fines sufficient to provide a deterrent

Structure of the WTO



TRIPS Council

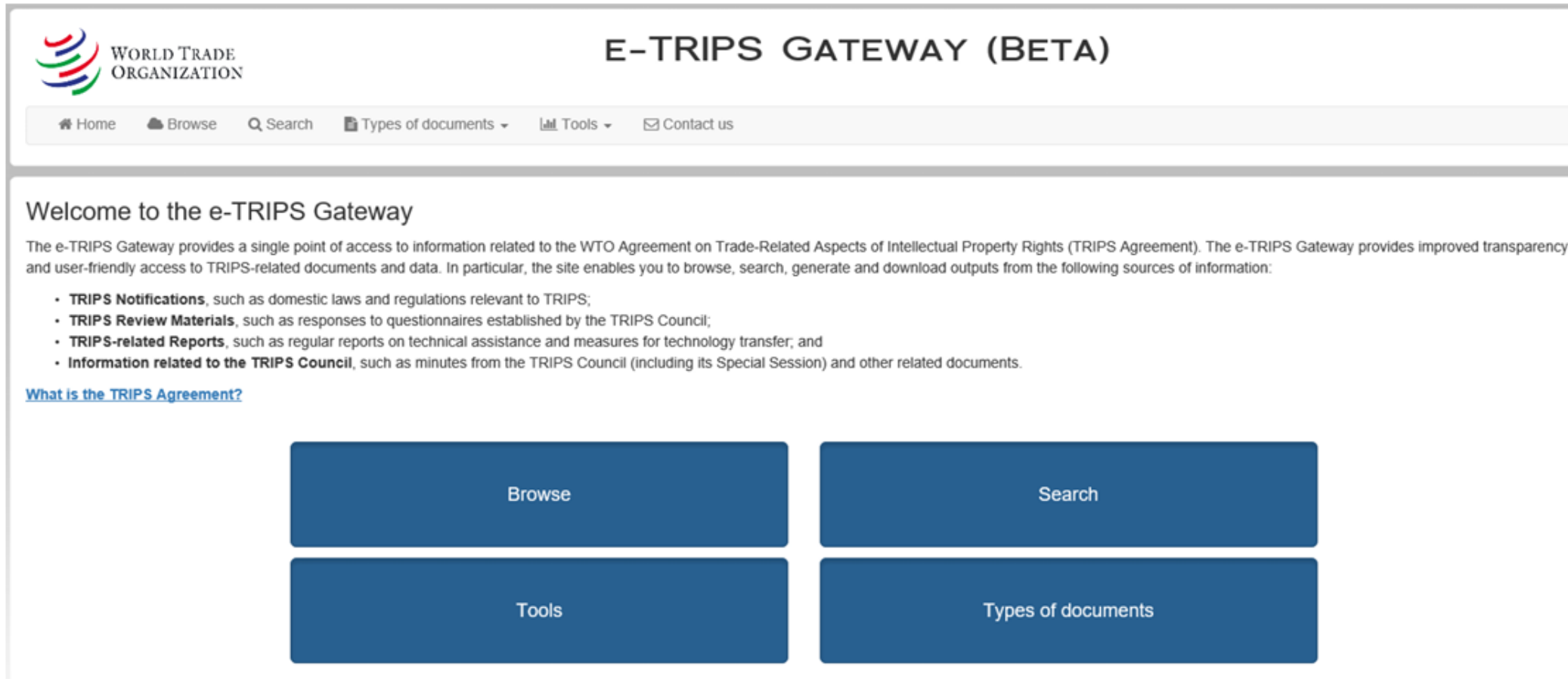


Notifications

- Under Art 63.2 and the TRIPS Council decisions of 21 November 1995 ([IP/C/2](#) and [IP/C/4](#)) Members are required to **notify laws and regulations** pertaining to TRIPS Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights), as well as any subsequent amendments/updates to these.
-
- Under Art 69 TRIPS Council decisions of 20 October 1995 (IP/C/M/3) Members are required to **notify contact points** for, among other things, exchanging information on trade in goods infringing intellectual property rights, including changes to previously notified contact points.
- Under Art 63.2 and the TRIPS Council decisions of 21 November 1995 ([IP/C/2](#) and [IP/C/4](#)) Members are required to **notify their responses to the Checklist of Issues on Enforcement**
- Members can and are encouraged to submit most notifications, reports and review materials using the **e-TRIPS Submission System**. The e-TRIPS Submission System is an optional online tool for the submission of TRIPS notifications, review materials and reports.

Resources

<https://e-trips.wto.org>



The screenshot shows the E-TRIPS Gateway (BETA) website. At the top left is the World Trade Organization logo. The main title is "E-TRIPS GATEWAY (BETA)". Below the title is a navigation bar with links for Home, Browse, Search, Types of documents, Tools, and Contact us. The main content area starts with a "Welcome to the e-TRIPS Gateway" heading, followed by a paragraph explaining the gateway's purpose. Below this is a bulleted list of information sources. A link "What is the TRIPS Agreement?" is provided. At the bottom, there are four large blue buttons labeled "Browse", "Search", "Tools", and "Types of documents".

WORLD TRADE ORGANIZATION

E-TRIPS GATEWAY (BETA)

Home Browse Search Types of documents Tools Contact us

Welcome to the e-TRIPS Gateway

The e-TRIPS Gateway provides a single point of access to information related to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The e-TRIPS Gateway provides improved transparency and user-friendly access to TRIPS-related documents and data. In particular, the site enables you to browse, search, generate and download outputs from the following sources of information:

- **TRIPS Notifications**, such as domestic laws and regulations relevant to TRIPS;
- **TRIPS Review Materials**, such as responses to questionnaires established by the TRIPS Council;
- **TRIPS-related Reports**, such as regular reports on technical assistance and measures for technology transfer; and
- **Information related to the TRIPS Council**, such as minutes from the TRIPS Council (including its Special Session) and other related documents.

[What is the TRIPS Agreement?](#)

Browse Search

Tools Types of documents

Summary and Key Takeaways

- TRIPS has a comprehensive nature.
- Incorporation of WIPO Treaties.
- Minimum standards of protection and enforcement.
- Most-Favoured-Nation Treatment.
- Explicit public policy objectives- Arts. 7 and 8.
- Extension of patentable subject matter to “all fields of technology”, microorganisms, microbiological processes.
- Inclusion of geographical indications and undisclosed information as IPRs.
- The availability of the WTO dispute settlement system- 44 disputes partly or wholly on TRIPS.

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