

Bad TRIPs

What the WTO Treaty on intellectual property did in Hongkong and what that means for us

Since the founding of the WTO (World Trade Organization) in 1995 all WTO members are also parties to the TRIPS agreement on intellectual property. The TRIPS (*Trade-Related Aspects of Intellectual Property Rights*) regulates minimum standards of intellectual monopoly rights for all its members. These standards go far beyond what was common in most developing countries before the agreement, so that they are forced – after different transition periods - to enshrine the privatisation of knowledge and bio diversity in national law. In 2005, India, for example, had to enact a patent law that allows the patenting of pharmacological agents. This is overviewed by WTO-panels, threatening of million-dollar punitive tariffs.

Where is the Problem?

The TRIPS-Agreement enforces the strengthening of intellectual monopoly rights one sided towards knowledge-production and breeding. Beyond that it practises a massive privatisation of knowledge, mostly into the hands of corporations of the global north. On the other hand, other possibilities of research, breeding and development are obstructed by the TRIPS, as stronger intellectual monopoly rights interfere with exchange and transfer of knowledge.

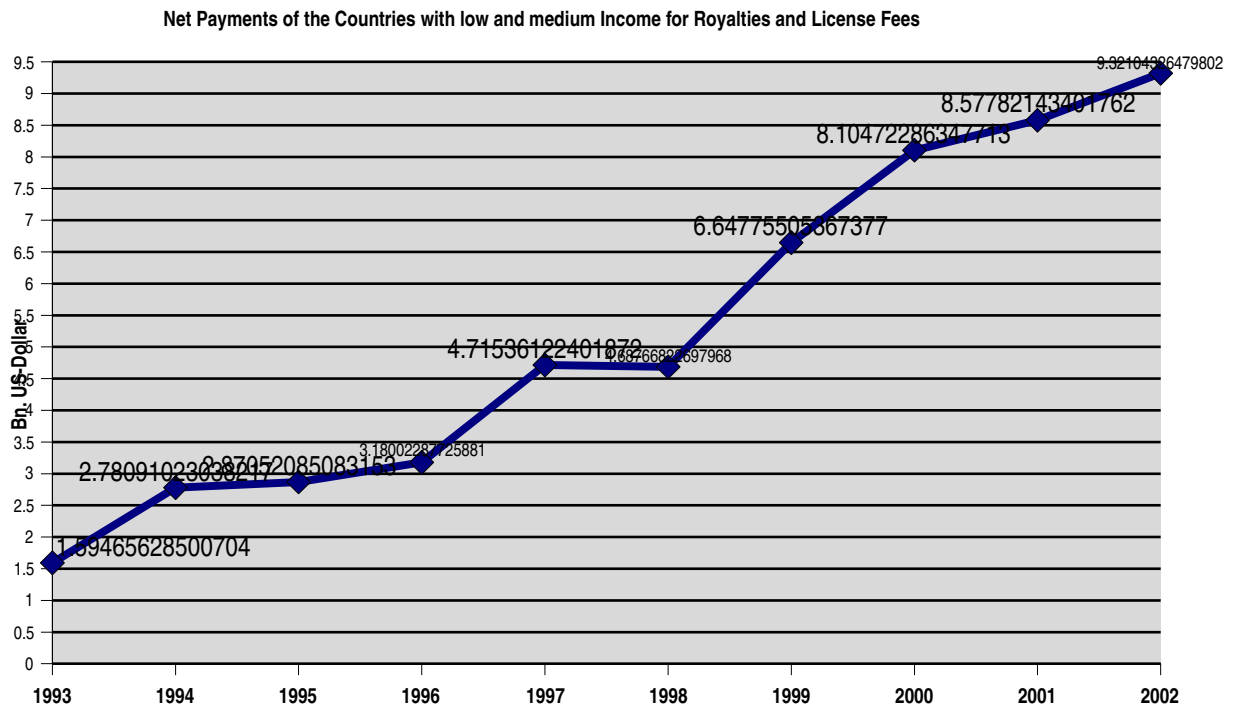


Fig. 1 The effects of strong patent protection are measurable with licensing fees and royalties: According to world bank data, in 2002 the poorer countries had to pay 9.3 Bn Dollars more fees towards countries with higher income than they received.

The TRIPS is especially harmful for the Global South: technology transfer into the south is more complicated. This obstructs local development processes. For many industrial countries today the reproduction of technical products was an important method in order to catch up with technological development. Neither Japan nor Korea, Germany or the USA could have reached the technological standards they have now with today's patent law conditions.

TRIPS also regulates copyright laws: the minimum term of copyright lasts until 50 years after the death of the author. It also regulates the limitations of copyright such as fair use. This is especially problematic for developing countries struggling to provide access to knowledge for their citizens, such as school books.

The history of TRIPS always applied double standards. While thousands of people had to die of AIDS in south Africa due to a year-long lawsuit of US-American and European pharmaceutical corporations, the US reacted quite quickly, facing a possible Anthrax-epidemic with the threat to break Bayer's patent on Ciprofloxacin, referring to the state of emergency regulations.

The impact of a strong patent protection are particularly evident when it comes to pharmaceuticals. Patented medicine is not affordable for most of the people in the south. Even though the TRIPS-agreement offers the possibility to produce cheap generics under certain circumstances, this is only possible in emerging nations that have their own pharmaceutical industry capable of producing these drugs.

Therefore this hits the poorest countries especially hard, as they have to import these generics. The debate on how and when countries without an own pharmaceutical industry (e.g. Ruanda) are allowed to import generics is still going on. In 2003 a declaration was adopted that theoretically allows the import of such generics, though the threshold for this procedure is so high that it hasn't been used since. The contract text itself hasn't been changed.

Farmers are also affected by the TRIPS: A hard seed protection for plants is now also dictated on developing countries. The TRIPS pressurizes countries to allow the patenting of genetically modified seeds. Patents further restrict the usage of seeds. For example the Canadian farmer Percy Schmeiser was convicted because genetically modified seeds were found on his land. The patents for these seeds belong to the US Corporation Monsanto and he hadn't paid licensing fees, as the seeds were blown from neighboring fields onto Schmeiser's own by the wind and against his will.

In the last decades the lobbies of corporations have successfully extended the patenting possibilities so that it is nowadays possible to patent genetic sequences and micro organisms. Lobbies also tried to make the patenting of algorithms and business practises possible with the so-called software patenting directive. One of the main arguments of the organisations lobbying for the directive was the TRIPS that regulates the patenting of technical inventions. However, this is fortunately not right: The TRIPS does not mention software patents and it is a common opinion that Software does not fall under technological inventions. If the EU adopts software patents, this might change though: The EU could possibly impose its opinion on TRIPS towards developing and emerging countries, forcing them to also adopt software patenting laws. (Which India, for example, so far refused to do.)

But TRIPS also patronises such things as so-called bio-piracy, meaning that corporations acquire genetic resources and traditional knowledge that has been used for centuries in southern

countries. Some examples for the attempts of bio piracy are the patent applications on Basmati and Jasmine Rice, the Neem-Tree (for the extraction of anti-biotics), Cupuacu, Mexican Corn (with a very high percentage of oil) and the Hoodia Cactus for slimming products. (As seen in your favorite spam-mail).

What did the WTO effect through TRIPS?

Bio diversity and knowledge are transferred from a public into a private good through the TRIPS-Agreement. Human rights are subordinated under an agreement which benefits mainly transnational corporations whose power are strengthened and whose profits are increased. In the 1994 WTO and TRIPS negotiations industrial countries used their economic and political power of to impose strong intellectual monopoly rights onto developing and emerging countries. Now, ten years later, more and more parts of the TRIPS agreement have to be enacted into national law in emerging an developing countries, and especially the larger emerging countries such as Brazil and India are starting to demand their rights back. The TRIPS is (fortunately) becoming a more and more controversial agreement a lot of states were fooled into.

Therefore many NGOs demand:

- The abolishment of the TRIPS-agreement. Every country must be able to determine its own standards for intellectual monopoly rights independent from the WTO
- No patents on life
- Free access to seeds and medicine in the countries of the Global South.
- The development of alternative international agreements to support innovation and breeding.

TRIPS in Hong Kong

Just a few days before the 22C3 congress the TRIPS agreement (and weeks after the printing of this paper) was part of the WTO meeting in Hong Kong.

Two of the most important issues that are likely to be discussed in Hong Kong are:

Import of pharmaceuticals

Especially African countries demand easier possibilities to import generics. They also demand this to be put into the text of the agreement. The USA, EU, Canada and especially Germany oppose to this proposition.

Bio piracy

India and other countries demand that patents can only be granted if the origin of the plants and animals leading to an invention are clearly disclosed. This would make it much easier to fight against bio-piracy-patents. The EU and the USA are against this proposition.

Extension of the transition periods

Zambia demands the extension of the transition periods towards the introduction of the TRIPS in the least developed countries (LDCs) up to 2020. The current development looks as they might reach a decision, where an extension until 2013 might be decided. (With patents on drugs being compulsory after 2016 in the LDCs.)

Unfortunately, a complete overhaul of TRIPS to get an agreement that is more friendly towards development and the knowledge commons is not very likely to occur in the official negotiations in Hong Kong. NGOs and activists however will be pushing this agenda and discuss it during many of the side events during the counter summit in Hong Kong.