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Edited by Antony Taubman, Hannu Wager and Jayashree Watal

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A HANDBOOK ON THE WTO TRIPS AGREEMENT

This handbook describes the historical and legal background to the TRIPS Agreement, its role in the World Trade Organization (WTO) and its institutional framework, and reviews the following areas: general provisions and basic principles; copyright and related rights; trademarks; geographical indications; patents; industrial designs, layout-designs, undisclosed information and anti-competitive practices; enforcement of intellectual property rights; dispute settlement in the context of the TRIPS Agreement; TRIPS and public health; and current TRIPS issues. It contains a guide to TRIPS notifications by WTO Members and describes how to access and make use of the official documentation relating to the TRIPS Agreement and connected issues. Furthermore, it includes the legal texts of the TRIPS Agreement and the relevant provisions of the WIPO conventions referred to in it, as well as subsequent relevant WTO instruments.

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PREFACE

At the heart of the World Trade Organization (WTO), as an international organization, is a set of rules that regulate trade between nations: a body of agreements which have been negotiated and signed by governments of the majority of the world's trading nations, with the aim of promoting transparency, predictability and non-discrimination in trading relations. These agreements, covering trade in goods, trade in services and trade-related aspects of intellectual property rights, help to define and inform the multiple roles of the WTO, in administering the trade agreements, providing a forum for trade negotiations, handling trade disputes, monitoring national trade policies, providing technical assistance and capacity building for developing countries, and cooperating with other international organizations. Understanding these agreements and their practical, policy and legal contexts therefore provides significant insights into the WTO as an institution, its activities and international role, its partnerships with other organizations, and the way in which WTO Member governments identify and pursue their national interests through this intergovernmental forum.

When, in 1994, at the end of the Uruguay Round of trade negotiations, governments settled on the cluster of agreements that created and defined the WTO, the Agreement on Trade-Related Aspects of Intellectual Property Rights, or the TRIPS Agreement, was part of the package. The TRIPS Agreement was not negotiated as a stand-alone treaty, and did not enter into legal force on its own, but is one of the multilateral trade agreements (MTAs) that are integral to the overarching Marrakesh Agreement Establishing the World Trade Organization. This status means that when the TRIPS Agreement entered into force in 1995, it was as part of a composite set of trade agreements that are together binding on countries that choose to join the WTO as Members. The WTO Agreement also made disputes between Members about trade and intellectual property subject to the same dispute settlement mechanism as is used for a wide range of trade issues. But the TRIPS

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Agreement also incorporated significant elements of the established multilateral intellectual property agreements administered by the UN specialized agency for intellectual property, the World Intellectual Property Organization (WIPO). Hence the TRIPS Agreement has a dual character – an important element of international trade law, it also draws heavily on, and builds upon, the established heritage of international intellectual property (IP) law.

The TRIPS Agreement has also come to the fore in a wide range of international policy discussions – ranging over public health, biodiversity, the environment, and human rights, and other debates concerning policy settings for innovation, knowledge-based economic growth and technology diffusion. The need for a practical knowledge of TRIPS, its provisions and its institutional context therefore extends beyond the traditional circle of trade negotiators and IP lawyers, and this *Handbook* has been prepared to serve the needs of this wider community of legislators, diplomats, policy-makers, other government officials, representatives of civil society and industry, practitioners, journalists, students and other interested parties in the general public.

This publication is the latest in a series of WTO *Handbooks*, aimed at providing a non-technical overview of key elements of the WTO system. As a *Handbook* on the TRIPS Agreement, it provides a general account of the Agreement itself, and describes its objectives, principles and other provisions. The TRIPS Agreement has not been a static document since its entry into force in 1995, and the *Handbook* reflects the evolving context of TRIPS, in particular:

- While the *Handbook* is not a legal textbook, and it does not explore questions of legal interpretation, it does describe some of the experience in analysing and interpreting the TRIPS Agreement in the context of dispute settlement.
- The *Handbook* provides an overview of the institutional framework within the WTO that administers the TRIPS Agreement, in particular the TRIPS Council.
- And the *Handbook* gives an update of some of the key developments, such as the Doha Declaration on the TRIPS Agreement and Public Health and the ensuing amendment to TRIPS, and ongoing negotiations and policy discussions within the WTO.

The *Handbook* is up to date at the time of writing, but readers should be aware that some of the processes it describes are dynamic, and several

passages have been highlighted as areas where further developments may potentially have occurred since mid-2011.

For reasons of space and brevity, the *Handbook* concentrates on the text of the TRIPS Agreement and on TRIPS-related developments within the WTO itself and does not describe in detail the important discussions and debates in other international policy processes and organizations that have dealt with TRIPS; a very brief description is provided to assist the reader to understand this broader context of TRIPS, but this is not intended to give authoritative guidance, which can instead be obtained from the organizations concerned.

Prospective readers should not pick up this *Handbook* expecting close legal analysis of TRIPS provisions, nor authoritative statements about the implications or impact of the TRIPS Agreement, nor extensive descriptions of the complex policy debates that surround the TRIPS Agreement. There is a vast academic, policy and legal literature concerning the TRIPS Agreement, its interpretation, and these related issues; this *Handbook* does not venture into this territory that has been widely explored and mapped by many expert authors. Instead, this *Handbook* seeks to give the reader an accessible, non-technical overview of the Agreement, and describes how to access and make use of some of the key official documentation that relates to the TRIPS Agreement and related issues. The initiative to publish this *Handbook* responds to the practical feedback received from countless active participants in technical cooperation, and readers are encouraged to provide further feedback to the address ipd@wto.org for possible use should there be a future decision to produce a revised and updated edition.

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DISCLAIMER This publication provides a general, non-technical introduction to the TRIPS Agreement, and to the related work of the World Trade Organization, to assist in promoting general understanding and awareness, including for training courses and educational activities. It should not be viewed as advancing any form of legal interpretation or any policy position, and no views or analysis in this publication should be attributed to the World Trade Organization, its Secretariat or its Members.

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ACRONYMS AND ABBREVIATIONS

AOC	appellation d'origine contrôlée
AOP	appellation d'origine protégée
BATF	Bureau of Alcohol, Tobacco and Firearms
CBD	Convention on Biological Diversity
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CMO	collective management organization
CTM	Community trademark
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
FDI	foreign direct investment
FTA	free trade area
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GI	geographical indication
GSPOA	Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property
ICESCR	International Covenant on Economic, Social and Cultural Rights
INAO	Institut National d'Origine et de la Qualité
IP	intellectual property
IPIC	Intellectual Property in Respect of Integrated Circuits
IPR	intellectual property right
LDC	least-developed country
MFN	most-favoured-nation
MTA	multilateral trade agreements
MTO	Multilateral Trade Organization
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
R&D	research and development
RTA	regional trade agreement
TK	traditional knowledge
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development

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LIST OF ACRONYMS AND ABBREVIATIONS

UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Social and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UPOV	International Union for the Protection of New Plant Varieties
WCT	WIPO Copyright Treaty
WGTCP	Working Group on the Interaction between Trade and Competition Policy
WHA	World Health Assembly
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization