TRADE IN KNOWLEDGE

Technological change has transformed the ways knowledge is developed and shared internationally. Accordingly, in the quarter-century since the WTO was established, and since its Agreement on Trade-Related Aspects of Intellectual Property Rights came into force, both the knowledge dimension of trade and the functioning of the IP system have been radically transformed. The need to understand and respond to this change has placed knowledge at the centre of policy debates about economic and social development. Recognizing the need for modern analytical tools to support policymakers and analysts, this publication draws together contributions from a diverse range of scholars and analysts. Together, they offer a fresh understanding of what it means to trade in knowledge in today’s technological and commercial environment. The publication offers insights into the prospects for knowledge-based development and ideas for updated systems of governance that promote the creation and sharing of the benefits of knowledge.

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TRADE IN KNOWLEDGE

Intellectual Property, Trade and Development in a Transformed Global Economy

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It is now more than 25 years since the WTO TRIPS Agreement entered into force, setting intellectual property (IP) standards at the centre of multilateral trade rules. The quarter-century since then has seen a fundamental transformation in the scale, diversity and very nature of cross-border commercial transactions in knowledge and knowledge products. An array of technological, economic, social and policy factors has driven this transformation and diversification. The disruptive impact of technological change – the prospects that it brings for sustainable development and for a more equitable world, along with concerns about its potential to displace and disenfranchise, and to entrench inequities – has placed it at the centre of policy debates and practical initiatives about economic and social development, and indeed a host of wider public policy issues today. The framing of the United Nations Sustainable Development Goals (SDGs) in 2015 – a blueprint for international cooperation and national action towards an ambitious set of targets in 2030 – was striking for the high degree of recognition of the need for the development and implementation of new technologies to address fundamental development needs. Innovation, as such, was recognized as a development goal in itself.

As international officials charged with providing policy support to developing country members of the WTO, we have been increasingly struck by the demand from a wide range of policymakers and officials for a fresh, up to date and inclusive information platform to support a truly contemporary discussion and practically relevant planning of technical cooperation that reflects the current understanding of the economic, legal and policy aspects of trade in knowledge today. The TRIPS Agreement was concluded in the absence of any understanding of the dramatic impact of the development of the Internet and increasing global access to digital networks. Indeed, it is a piquant historical irony that Tim Berners-Lee was in the process of inventing the World Wide Web at CERN, in Geneva, a few minutes away from the negotiating rooms where the text of the TRIPS Agreement was being hammered out at exactly the
same time. Yet TRIPS did not account for the revolutionary upheaval in the way knowledge would be created, disseminated and traded once the Web had reached the wider community; its negotiating roots could be found in attempts in the 1970s and 1980s to develop a code on counterfeit trade, with a concentration on IP as part of the added value in traded physical goods, rather than as a tradable good in itself. As an agreement on ‘trade-related aspects’ of intellectual property rights, TRIPS set the stage for the impending fundamental transformation of the relationship between IP and trade.

The volume is intended to serve as a conceptual and empirical foundation for a renewed set of policy discussions, capacity building and technical assistance for governments seeking to engage with the knowledge economy for development, through new trade, business and employment opportunities. It seeks to review the legal character and economic implications of international transactions that facilitate the transfer or diffusion of new knowledge and intangible content, through traditional trade channels and new forms of business and knowledge transfer. To provide a complete picture, we have aimed to include legal, policy and economic analysis in a coherent manner. Thus we sought accounts of how knowledge crosses international borders in different ways, and how to measure these flows, as well as the analysis of legal and policy scholars reviewing the evolving laws, regulations and policies that govern such trade, and analysing the legal character of knowledge transactions in today’s international economy.

In a call for papers, we set out several broad research questions:

1. How can we measure different forms of global cross-border flows of knowledge and knowledge products, including digital content? What can we say from the relevant data about the scale, and geographical and time trends (for example, pre-TRIPS and post-TRIPS) of such flows?
2. What legal and policy questions are raised by current trends in cross-border knowledge flows?
3. What can we say about the effects of knowledge flows on economic development, growth and productivity; domestic innovation; technology transfer; trade, especially high-tech trade and trade in digital content; and the development opportunities afforded by new avenues for trade and employment?
4. What is the relationship of such knowledge flows to improved creation of and access to global public goods, especially technologies for agriculture, health and climate change, and (information and communication technology) ICT?

5. What can we say about the legal and economic character of trade in digital content covered by intellectual property rights (IPRs), including issues arising from global or regional regulatory frameworks, new business models for content distribution, and cross-border licensing and enforcement?

6. What is the current experience in specific sectors, and in markets for IPRs as such, and what insights does this experience offer policymakers?

We were delighted at the strong, positive response elicited by this call for essays, and the willingness of the leading international scholars whom we invited to contribute. While we cannot expect this broad and ambitious set of questions to have been definitively answered, we believe that the scholarly work collected in this volume should establish a stronger and more up-to-date empirical, theoretical and methodological basis for a vital continuing international conversation centred on these questions. We hope that policymakers and scholars will continue to return to these questions, armed with greater insights and greater curiosity sparked by an encounter with this book.

The book project was greatly enhanced by several peer-review sessions, in particular the Seminar on Intellectual Property and Knowledge Flows in a Digital Era, convened at the WTO in November 2018, as a follow up to the call for papers. This Seminar drew together over 40 policymakers from developing and least developed countries around the world, who were joined by 20 internationally renowned economist lawyers and policymakers. Their discussions on how to map and assess the impact of knowledge flows across borders and charting their legal, economic and policy dimensions helped inform and consolidate the scheme for this book and served to strengthen and make more practical and relevant the contributions that are now gathered together in this collection. The Seminar considered five broad themes that in turn helped to shape this book: mapping the interface between trade, intellectual property rules and knowledge flows; measuring trade in knowledge; the impact of knowledge flows on trade and development; policy, regulatory and legislative frameworks; and the way forward on trade rules and economic implications for cross-border knowledge flows.
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Addressing the Seminar, the WTO Deputy Director General responsible for this field, Mr Xiaozhun Yi, remarked that

The TRIPS Agreement was a landmark recognition of the importance of the knowledge component of trade. Yet in the years since conclusion, digital disruption has utterly transformed the interplay between trade and knowledge. This radical transformation creates a compelling need to update our understanding of the context for TRIPS rules and the intellectual property system within the framework of trade and development policy. We need to fundamentally update both our theoretical understanding, and the empirical, factual base we work from.

This is important, too, because in this period, development policy has laid increasing emphasis on the knowledge component of trade, and has raised practical questions of how developing economies can make best use of the opportunities provided by the knowledge economy: SDG 9, notably, identifies innovation as such as a goal for sustainable development.

The WTO’s technical assistance activities have sought to respond to evolving demand from developing country Members for capacity building in these areas, but in a relatively ad hoc way, largely as an adjunct to existing programme structures, and these activities have demonstrated the unmet demand and practical need for more systematic capacity building on an updated base of information.¹

This demand follows the disruptive effect of technological change which has impacted significantly on the area of trade involving IP rights, and the exercise of policy options under the TRIPS Agreement, opening up new avenues for development as IP in itself becomes a tradable good and IP plays a pivotal role in dispersed international production chains and in facilitating knowledge transfer. Policymakers therefore confront an entirely new set of challenges integrating TRIPS measures into trade policies that respond to a digitally transformed knowledge economy; these challenges extend to basic capacity to measure and to map the IP dimension of trade, and thus to develop an integrated understanding of how the IP system, and new forms of trading in knowledge, can function in the contemporary international economy to service diverse national development priorities.

Recognizing the need for this initiative to retool and rebase the WTO’s technical assistance in the TRIPS area, responding to the fundamentally transformed technological and trade landscape, the themes of this book were also the subject of a focused session at the WTO’s Aid for Trade Global Review 2019. Hence the initiative for this book was elaborated in

¹ See www.wto.org/english/news_e/news18_e/trip_08nov18_e.htm.
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Dialogue with policymakers and officials from across the developing world and is intended to provide a scholarly, but practical and forward-looking, resource as the foundation for a new generation of technical assistance and policy dialogue.

This collaborative and consultative background, but more importantly the remarkable quality, timeliness and cross-disciplinary character of the authors’ contributions, inspires hope that this volume – and the associated resources at www.wto.org/trade-in-knowledge – will indeed help to catalyse a fresh, contemporary approach to policy development and technical assistance in the complex, but critical, area of today’s trade in knowledge, where the IP system and knowledge flows interact in ever more diverse ways.

We are profoundly grateful to the authors who have so generously devoted their time and efforts to produce invaluable new scholarship and policy insights. Our opening chapter seeks to outline each of their contributions and to set them into the broader framework of this book and the aspirations we have for it, and we trust that this will encourage the reader to explore their work in full, beyond the chapters contained here, as among the roll of authors are many who have made a major contribution to scholarship and policy development. We count ourselves as most fortunate to have among these authors invaluable colleagues who are also new or long-established friends, and we thank them for their support and their patience as this project moved forwards.

For his encouragement and support, we thank Deputy Director-General Yi, and also record our warm thanks to our colleagues, Anthony Martin and Heather Sapey-Pertin of the WTO’s Information and External Relations Division for their advice, support and patience, Karyn Russell who provided cheerful and efficient administrative support throughout the editorial process and Giovanni Bertinelli and Francesco Hernandez Fernandez for their scrupulous attention to final editorial corrections.

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