INDEX

acceding countries, 25
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). See also unfair competition
abuse of intellectual property rights, 143
anti-competitive licensing practices, 144
compulsory licensing, 144
IP and competition policy current issues, 144
anti-competitive practices. See unfair competition
appellations of origin, 90
Australia – Tobacco Plain Packaging, 66, 77–80, 195
beneficiaries, 15–17, 34
Berne Convention, 12, 34
beneficiaries, 16
copyright. See copyright and related rights
enforcement. See enforcement exceptions to national treatment and MFN treatment, 17
moral rights, 12, 40, 49
rule of retroactivity, 26
and TRIPS Agreement, 12, 16, 40–2
TRIPS Agreement as 'Berne-plus', 40
biodiversity, 216, 226–31. See also traditional knowledge and folklore
biotechnology patenting, 113, 216, 227
border measures, 157–62
procedural requirements and safeguards against abuse, 159–61
application, including evidence and description of goods, 159
duration of suspension, 160
notice of suspension, 160
posting of security/payment of compensation, 160
remedies and orders for destruction/disposal, 161–2
right of inspection and information, 161
scope and coverage, 157–9
mandatory coverage of pirated copyright/counterfeit trademark goods, 157–8
optional coverage, 158–9
special rules for ex officio action, 162
suspension of release, 14, 157
broadcasting organizations, related rights, 17, 18. See also related rights
Canada – Pharmaceutical Patents, 117, 119–20, 178
Canada – Term of Patent Protection, 25, 178
certification marks, 63, 86, 91
China – Intellectual Property Rights, 162, 164, 195
collective management organizations, 48
collective marks and certification marks, 63, 86, 91, 94
competition law and policy. See unfair competition
### Index

- 'competition law and policy,' meaning of, 142
- compulsory licences
  - developing countries/LDCs, 51
  - medicines. See TRIPS and public health
- emergency situations, 122, 201
- grounds when normal requirements for compulsory licensing do not apply, 122, 201
- layout-designs of integrated circuits, 135
- meaning of, 121
- medicines and pharmaceuticals. See TRIPS and public health
- no compulsory licensing of trademarks permitted, 81–4
- patents, 116–17, 121–4
  - applications to be considered on individual merits, 122
  - conditions to be met in case of dependent patents, 123
  - conditions to be respected in the grant of compulsory licences, 121–4
  - decisions on grant/remuneration subject to judicial/independent review, 123
  - licences predominantly for supply of domestic market, 122, 144, 204, 206
  - licences to be non-exclusive, 122
  - remediying anti-competitive practices, 122, 144
  - right holder, adequate remuneration for, 123, 144, 204, 206
  - scope and duration to be limited to purposes for which granted, 122
  - unsuccessful attempt first to obtain a voluntary licence, 122
- pharmaceuticals. See Paragraph 6 System
- semi-conductor technology, 135
- computer programs, 42, 47, 54, 55
- confidential information. See undisclosed information

| Convention on Biological Diversity (CBD), 114 |
| and TRIPS Agreement and protecting traditional knowledge/folklore, 114, 216, 220, 229–31, 232 |
| current issues, 216, 220, 229–32 |
| copyright and related rights, 2, 39–57 |
| authors’ general rights, 46–7 |
| beneficiaries, 16 |
| Berne Convention and copyright, 39, 40 |
| copyright including related or ‘neighbouring rights’, 40 |
| copyright or ‘authors’ rights’, 39 |
| definition of, 39–40 |
| limitations and exceptions to exclusive rights of authors, 49–53 |
| fair use or fair dealing, 50 |
| free use, 50 |
| minor exceptions, 50 |
| non-voluntary licences, 50, 51 |
| three-step test, 51 |
| pre-existing works and phonograms, 26 |
| principles governing eligibility for copyright protection, 44–6 |
| automatic protection, 45 |
| idea/expression dichotomy, 44 |
| independence of protection, 46 |
| originality, 45 |
| purpose of protection of copyright and related rights, 3, 40 |
| related rights. See related rights relationship of TRIPS Agreement with Berne and Rome Conventions, 40–2 |
| rights to be conferred on authors, 46–9 |
| authors’ general rights, 46–7 |
| economic rights, 46 |
| moral rights, 12, 40, 46, 49 |
| rental right, 47 |
| reproduction right, 47 |
| rights of public performance, broadcasting and communication to public, 48 |
copyright and related rights (cont.)
rights of translation and adaptation, 49
subject matter to be protected, 42–6
certain other categories of works, 44
derivative works, 43
literary and artistic works. See literary and artistic works
principles governing eligibility for copyright protection, 44–6
translations and adaptations, 43, 49
TRIPS provisions on copyright, 42–54
minimum term of protection, 53–4
permissible limitations and exceptions, 49–53
rights to be conferred on authors, 46–9
subject matter to be protected, 42–6
Copyright Treaty, WIPO, 41, 236
counterfeiting, copying and piracy. See also enforcement
border measures, 157–8
concerns about counterfeiting and piracy, 146
copyright piracy, 54, 146, 148, 155, 157–8, 162
deﬁnition of, 158
counterfeiting, 128, 146
international trade in, 148
trademark counterfeiting, 148, 154, 155, 157–8, 161, 162
deﬁnition of, 157
criminal procedures and penalties, 164.
See also enforcement remedies, 164
scope and coverage, 162
current TRIPS issues, 32, 35, 216–53
climate change, 237–8
competition policy, 240–1
current issues, 216, 221–37
 electronic commerce, 217, 236–7
geographical indications, 216, 221–6
LDCs, 217, 233–5
non-violation complaints, 217, 232
transfer of technology, 217, 235–6
the ‘triplets’: biotech, traditional knowledge and biodiversity, 216, 226–31
geographical indications, 216, 221–6
background, 221–2
higher-level protection for non-wine/spirits products, 218–21, 222, 225–6
notification/registration system for GIs for wines/spirits, 218, 221, 222–5
innovation, support for, 238–9
mandates for work on the TRIPS issues, 218–21
bases for ongoing work, 218
debate over nature of mandates, 220, 225
whether issues should be linked or handled separately, 220
non-violation complaints, 217, 232
TRIPS Council examining scope and modalities, 217
debates on issues outside the WTO, 216–18
development issues, 248–50
environmental agreements, 251–3
human rights, 242–4
IP and competition policy, 144, 250–1
public health beyond the WTO, 244–8
INDEX

clarifications of TRIPS Agreement in dispute settlement, 30
description of dispute settlement procedures, 173–7
adoption of Panel/Appellate report(s) and implementation, 175–7
Appellate review, 175
consultations between the parties, 173
Panel examination, 174–5
retaliation and cross-retaliation, 176
dispute prevention and review of national implementing legislation. See also TRIPS Council
dispute settlement, 168–73
general overview of system, 168–71
grounds for complaints, 170
member governments initiating dispute settlement procedures, 168, 169
non-violation and situation complaints, 171–3
private parties, 169
and review of national implementing legislation, 167–8
third parties, 169, 173
violation complaints, 170
Dispute Settlement Body (DSB), 170, 174, 176
DSU, 10, 169
exhaustion of IPRs, 21, 202
general statements, 200
guide to resources, 195–7
non-violation and situation complaints, 171–3
current issues, 217, 232
moratorium on application of complaints, 8, 170, 172
TRIPS Council examining scope and modalities, 172, 217
and objectives/principles of TRIPS Agreement, 14
as TRIPS Agreement key feature, 166
TRIPS-related cases, 177–97
dispute prevention and settlement, 13, 166–97
transition periods, 23
developing countries
assistance and technical cooperation from developed countries, 27–8, 217, 234
assistance from WIPO/WTO technical cooperation and assistance, 37
translation of laws/regulations, 36
compulsory licensing, medicines educational purposes, 51
medicines. See TRIPS and public health
copyright, 41
current TRIPS issues on development, 248–50
Paragraph 6 System. See also Paragraph 6 System
generic producers, 204, 212
re-exporting pharmaceutical products and regional trade agreements, 212
review of System’s functioning, 214
textile design protection, 128
transition periods, 23–4
TRIPS negotiations, 7
outstanding implementation issues, 218

Cambridge University Press
Edited by Antony Taubman, Hannu Wager, Jayashree Watal
Index
More Information

databases, 43
Denmark and Sweden — Measures Affecting the Enforcement of IPRs, 195
derivative works, 43
developed countries
assisting developing countries current issues, 235–6
monitoring obligations on technology transfer, 235
technical cooperation, 27–8, 217, 234
assisting LDCs, 24
technical cooperation, 27–8, 234
technology transfer, 26–7, 203, 217, 233
transition periods, 23
developing countries
assistance and technical cooperation from developed countries, 27–8, 217, 234
assistance from WIPO/WTO technical cooperation and assistance, 37
translation of laws/regulations, 36
compulsory licensing, medicines educational purposes, 51
medicines. See TRIPS and public health
copyright, 41
current TRIPS issues on development, 248–50
Paragraph 6 System. See also Paragraph 6 System
generic producers, 204, 212
re-exporting pharmaceutical products and regional trade agreements, 212
review of System’s functioning, 214
textile design protection, 128
transition periods, 23–4
TRIPS negotiations, 7
outstanding implementation issues, 218
dispute prevention and settlement, 13, 166–97
distinctive signs, 61–3. See also geographical indications (GIs); trademarks

Doha Declaration on the TRIPS Agreement and Public Health, 21, 35, 198, 216, 236 clarification of flexibilities, 201–2 compulsory licences, 121, 122, 201 concerns that triggered discussions, 199–200 emergency situations, 122, 201 follow-up, 203 general statements, 200–1 interpreting TRIPS Agreement, 14 LDCs and pharmaceutical product patents, 24, 233 scope of application, 200 transfer of technology, 203

Doha Development Agenda, 10, 218

Doha Ministerial Declaration, 21, 32, 35, 100, 114 current TRIPS issues, 218–21, 222, 226

EC – Bananas III, 177

EC – Trademarks and Geographical Indications, 81–3, 178

electronic commerce, 217, 236–7 complexity of IP issues, 236 no customs duties on electronic transmissions, 236

TRIPS Council, 237

enforcement, 13, 146–65 application of basic principles, 148 background, 146 border measures. See border measures civil and administrative procedures and remedies, 151–5 evidence, 151, 152, 155, 159 fair and equitable procedures, 150, 151 cooperation and contact points contact points, 165 cooperation between members, 165 current issues, 217 decisions on merits of case, 151

effects of infringement, 147 general obligations, 149–51 basic principles of due process, 151 indemnification of defendant, 154–5, 156, 160 IPR enforcement described, 147–8 relationship of TRIPS Agreement with other pre-existing treaty provisions, 146, 149 remedies, 152–4 damages, 153–4 injunctions, 153, 155 other remedies and orders for destruction/removal, 154 right of appeal, 151 right of information, 154 environmental agreements, 251–3 EU trademarks, 72–4

European Communities and Portugal – Enforcement of IPRs in Motion Pictures and Television Programs, 195

exclusive rights, 1, 178 developing countries/economies in transition and exclusive marketing rights, 24 LDCs and marketing rights, 24, 31, 203

exhaustion, 20 international exhaustion regimes, 20, 202 layout-designs of integrated circuits, 135 meaning of, 20 national exhaustion regimes, 20, 202 and parallel importation, 20 regional exhaustion regimes, 21

free riding. See unfair competition

General Agreement on Tariffs and Trade (GATT)

GATT (1947), 4, 5

GATT (1994), 5, 167, 169

Tokyo Round, 6, 146

Uruguay Round, 5, 218 counterfeit goods, 146, 148
TRIPS negotiations, 14, 21, 40, 60, 85, 98

general provisions and basic principles of TRIPS Agreement, 14

beneficiaries, 15–17

exhaustion. See exhaustion minimum standards agreement, 15

national/MFN treatment. See national treatment and MFN treatment

objectives and principles, 14

generic producers, 204, 212

geographical indications (GIs), 2, 85–104

additional protection for GIs for wines and spirits (Article 23), 98–101

homonymous GIs for wines (Article 23.3), 100

negotiation of a multilateral register of GIs for wines (Article 23.4), 100

protection against use as a trademark (Article 23.2), 100

protection against use by others (Article 23.1), 99

background, 85–6

collective marks, 63, 91, 94

current issues, 216, 221–6

background, 221–2

higher-level protection for products other than wine/spirits, 218, 225–6

notification/registration system for GIs for wines/spirits, 218, 221, 222–5

definition of, 85, 87

elements of Article 22.1 definition 78–80

function of identification, 88

geographical origin identified by GI, 88

quality, reputation or other characteristics due to geographical origin, 89

subject matter of identification, 88

exceptions, 101–4

generic terms (Article 24.6), 101

GIs not protected in country of origin/fallen into disuse (Article 24.9), 103

prior trademark rights (Article 24.5), 102

prior use of GI (Article 24.4), 102

time limit to challenge trademarks under Articles 22.3 and 23.2 (Article 24.7), 103

use by a person of his name (Article 24.8), 103

GIs, indications of source, rules and appellations of origin, trademarks

geographical indications and appellations of origin, 90

geographical indications and indications of source, 90

gеographical indications and rules of origin, 90

gеographical indications, trademarks and certification marks, 91

indefinite protection, 2

indications of source, rules and appellations of origin, trademarks, 89–94

international negotiations, review and standstill, 104

international negotiations (Article 24.1), 104

standstill (Article 24.3), 104

notification/registration system for GIs for wines/spirits, 218, 221, 222–5

and Paris Convention, 85, 86

relationship of TRIPS Agreement with pre-existing provisions, 86

protection and rights conferred for geographical indications for all goods, 95–101

factually true but misleading use (Article 22.4), 98

protection against use by others (Article 22.2), 95–7

protection against uses as a trademark (Article 22.3), 97

purposes of GI protection, 4
geographical indications (GIs) (cont.)
subject matter to be protected 78–84
definition of, 85
definition of GIs, 87
elements of Article 22.1
definition, 87–9
examples of GIs and logos or symbols, 92–4
indications of source, rules and appellations of origin, trademarks, 89–94
right holders and eligible users, 91
trademarks, 70
TRIPS provisions on geographical indications, 87–104
conditions for getting protection, 94
subject matter to be protected, 87–91

Handbook on the WTO Dispute Settlement System (WTO Secretariat), 196
health
public health. See TRIPS Agreement and public health
historical and legal background to TRIPS, 4–8
TRIPS negotiations, 6–8
human rights and the TRIPS Agreement, 242–4

India – Patents I and II, 24, 178
indigenous peoples
traditional knowledge and folklore. See traditional knowledge and folklore
industrial designs, 2, 44, 126–30
definition of, 127
general formalities for protection, 128
general formalities for protection of industrial designs
formalities, 128
priority, 128
minimum term of protection, 130
permitted exceptions to rights conferred, 130

INDEX

rights to be conferred, 129–30
rights to be conferred on owners of a protected industrial design, protection not including forfeiture, 129
subject matter to be protected, 127–9
general formalities for protection, 128
protection for new or original designs and independently created designs, 127
textile designs, 128–9
industrial property, 2, 44
beneficiaries, 15
distinctive signs. See geographical indications (GIs); trademarks
inventions/new technologies. See industrial designs; patents
innovation
current issues in support for, 238–9
recognizing and stimulating, 3, 106
institutional arrangements, 13, 28–38
Council for TRIPS. See TRIPS Council
WTO Agreement. See World Trade Organization (WTO)
integrated circuits. See layout-designs (topographies) of integrated circuits
intellectual property (IP) system
intellectual property rights. See intellectual property rights (IPRs)
public policy tool, 3–4
Intellectual Property in Respect of Integrated Circuits (IPIC) Treaty, 12, 22, 131
beneficiaries, 15
layout-designs. See layout-designs (topographies) of integrated circuits
national treatment and MFN treatment, 17, 18
intellectual property rights (IPRs), 1–3
acquisition and maintenance of IPRs, 13, 22
copyright. See copyright and related rights
current TRIPS issues as to competition policy, 250–1
enforcement. See enforcement exclusive rights. See exclusive rights industrial property. See industrial property
nature of, 1
and public interest, 240
standards for availability, scope and use of, 11–12
territorial rights, 2, 60
International Union for the Protection of New Plant Varieties (UPOV Convention), 113
Internet, 236
WIPO Internet treaties, 41

Japan – Measures Concerning Sound Recordings, 26, 178
layout-designs (topographies) of integrated circuits, 131–5
definition of, 131–2
limitations and exceptions to rights conferred, 133–5
compulsory licensing, 135
exhaustion, 135
innocent infringement, 134
parallel creation, 134
reproduction for private or research purposes, 133
minimum term of protection, 135
rights to be conferred, 135
subject matter to be protected, 132–3
originality and not commonplace requirements, 132
least-developed countries (LDCs). See also developing countries
assistance and technical cooperation Joint Initiative on Technical Cooperation for Least-Developed Countries, 234
Swedish International Development Cooperation Agency report (2013), 234
from WIPO/WTO, 37, 234

assistance and technology transfer from developed countries, 24
technical cooperation, 27–8, 234
technology transfer, 26–7, 203, 217, 233, 235–6
compulsory licensing, current TRIPS issues, 233–5
helping LDCs to implement TRIPS, 234
Paragraph 6 System, 208
deemed insufficient or no manufacturing capacity, 209
re-exporting and regional trade agreements, 212
transition periods, 24–5, 233
extension for pharmaceutical products, 31, 203, 233
waiver of obligations concerning exclusive marketing rights, 24, 31, 203
licences. See anti-competitive practices in contractual licences, control of; compulsory licences
literary and artistic works, 42–3
computer programs, 42
databases, 43

Madrid Agreement and Madrid Protocol, 19, 94
Marrakesh Agreement, 5, 8, 55, 169
medicines and pharmaceutical products. See TRIPS and public health
MFN treatment. See national treatment and MFN treatment
minimum standards agreement, 15
moral rights, 12, 40, 49
Multilateral Trade Organization, 8

national law, 15, 32
anti-competitive practices, 142
competition law and policy. See competition law and policy copyright, 39, 44
limitations and exceptions. See copyright and related rights
objectives and principles of TRIPS Agreement, 14
ordre public. See security interests

Pakistan – Patent Protection for Pharmaceutical and Agricultural Chemical Products, 178
Paragraph 6 System, 204–15
Chairman’s statement, 212–13
description of, 205–12
avoidance of double remuneration, 211
eligible importing members, 208
exporting members, 209
notifications, 209–10
regional trade agreements as special cases, 211–12
safeguards against diversion, 210–11
scope and coverage, 208
establishment of, 203, 204–5
legal basis of, 206
national implementing legislation, 213
in a nutshell, 207–8
reason for, 204
review of functioning of, 214–15
use of, 214
parallel imports, 20, 158, 202
Paris Convention, 12, 22, 40
beneficiaries, 15
enforcement, 146
GIs. See geographical indications (GIs)
national emblem protection, 37, 70
national treatment and MFN, 17
patents. See patents
trademarks. See trademarks
and TRIPS Agreement, 12, 15, 60, 86, 106
unfair competition, 136
patents, 2, 105–25. See also industrial designs
conditions inventions must meet to be eligible for patent protection, 108–14
‘best mode’ requirement, 110

national law (cont.)
differences in national legal systems to be taken into account, 147, 148
enforcement, 147, 148
GIs, 86, 88, 94, 96, 98, 104
industrial designs, 127, 129
layout-designs of integrated circuits, 132
monitoring of members’ compliance with obligations. See TRIPS Council notiﬁcations. See notiﬁcations of ﬁscal texts, 44
patents, 105, 111, 113, 226
public health, 198, 200, 201, 205, 213
publication of laws, regulations and judicial decisions, 167
related rights, 55
review of national laws and regulations. See TRIPS Council supply of information on laws and judicial decisions to other Members, 168
trademarks, 58, 63, 64, 66, 71, 76
permisssible exceptions. See trademarks
national treatment and MFN treatment, 17–19, 21, 23
enforcement procedures and remedies, 148
exceptions, 17, 18–19
GIs, 85
MFN, 17, 18–19, 34
national treatment, 17–19, 34
exceptions nationality, 15, 16
non-discrimination. See national treatment and MFN treatment non-violation. See dispute prevention and settlement
notiﬁcations, 33–4, 167
cooperation between WTO and WIPO, 36–8
Paragraph 6 System, 209–10
review of national laws and regulations, 35
<table>
<thead>
<tr>
<th><strong>INDEX</strong></th>
<th>425</th>
</tr>
</thead>
<tbody>
<tr>
<td>formal conditions, 105, 108, 111</td>
<td>methods of treatment, 112</td>
</tr>
<tr>
<td>non-discrimination, 111, 116–17, 120</td>
<td>ordre public or morality, 112</td>
</tr>
<tr>
<td>novelty, inventive step and industrial applicability, 108–10</td>
<td>plants and animals, 113, 226</td>
</tr>
<tr>
<td>permissible exclusions from patentable subject matter, 111–13</td>
<td>prior art, 23, 108, 109, 110</td>
</tr>
<tr>
<td>priority, 110</td>
<td>process patents, rights to be conferred on owners of, 115–16</td>
</tr>
<tr>
<td>relationship between TRIPS Agreement/CBD/traditional knowledge, 114</td>
<td>burden of proof, 115–16</td>
</tr>
<tr>
<td>review of Article 27.3(b), 113, 226</td>
<td>rights of process patent owners, 115–16</td>
</tr>
<tr>
<td>substantive conditions, 108</td>
<td>purposes of patent protection, 4, 14, 106, 110</td>
</tr>
<tr>
<td>current issues, 216, 226–31</td>
<td>relationship of TRIPS Agreement with Paris Convention pre-existing provisions, 106</td>
</tr>
<tr>
<td>Article 27.3(b) review, 227–8</td>
<td>revocation, 125–5</td>
</tr>
<tr>
<td>relationship between TRIPS Agreement and CBD, 229–31</td>
<td>rights to be conferred on patent owners, 114–17</td>
</tr>
<tr>
<td>traditional knowledge and folklore, 228–9</td>
<td>assignment, transfer and licensing of patents, 117</td>
</tr>
<tr>
<td>definition of, 105–6</td>
<td>non-discrimination with respect to availability and enjoyment of patent rights, 111, 116–17, 120</td>
</tr>
<tr>
<td>dependent patents, 123</td>
<td>other rights of patent owners, 117</td>
</tr>
<tr>
<td>developing countries and transitional arrangements, 23–4</td>
<td>rights to be conferred on owners of process patents, 115–16</td>
</tr>
<tr>
<td>exceptions that WTO members can allow to patent rights, 117–24</td>
<td>rights to be conferred on owners of product patents, 115</td>
</tr>
<tr>
<td>compulsory licences. See compulsory licences</td>
<td>subject matter to be protected by patents, 107–14</td>
</tr>
<tr>
<td>limited exceptions, 118–20</td>
<td>areas in which inventions must be eligible for protection, 107</td>
</tr>
<tr>
<td>fees, 124</td>
<td>conditions inventions must meet to be eligible for patent protection, 108–14</td>
</tr>
<tr>
<td>‘invention,’ definition of, 105</td>
<td>three-step test, 118</td>
</tr>
<tr>
<td>LDCs and transitional arrangements, 24–5, 203</td>
<td>traditional knowledge and folklore, 114, 228–9</td>
</tr>
<tr>
<td>medicines and pharmaceutical products. See TRIPS and public health</td>
<td>minimum period of protection to be accorded, 124</td>
</tr>
<tr>
<td>minimum period of protection to be accorded, 124</td>
<td>term of protection, 2, 124</td>
</tr>
<tr>
<td>novelty, inventive step and industrial applicability, 108–10</td>
<td>industrial applicability/utility, 109, 112</td>
</tr>
<tr>
<td>industrial applicability/utility, 109, 112</td>
<td>inventive step/non-obviousness, 109</td>
</tr>
<tr>
<td>novelty, 108</td>
<td>permissible exclusions from patentable subject matter, 111–13</td>
</tr>
<tr>
<td>waiver of members’ obligations, 31</td>
<td></td>
</tr>
</tbody>
</table>
Performances and Phonograms Treaty, WIPO, 41, 236
performers. See related rights
pharmaceutical exports, compulsory licencing system. See Paragraph 6 System
pharmaceutical products. See TRIPS and public health
phonogram producers. See related rights
phonogram producers, related rights, 16, 18
piracy. See counterfeiting, copying and piracy
plant new varieties
provisional measures, 155–6
procedural requirements and safeguards against abuse, 156
why and what type of, 155–6
public goods, 3
public health. See TRIPS and public health
related rights, 2, 39–40. See also copyright and related rights
broadcasting organizations, 17, 54, 56
national treatment, 18
performers, 16, 54, 55, 56
protection of existing subject matter, 26
phonogram producers, 16, 26, 54, 55, 56
national treatment, 18
protection of existing subject matter, 26
purpose of protection of copyright and related rights, 3, 40
and Rome Convention, 12, 39, 41, 54, 56
TRIPS provisions on related rights, 54–7
copyright, 55–6
limitations and exceptions, 56
minimum term of protection, 56
Rome Convention, 12, 34
broadcasting organizations, 17, 41
national treatment and MFN treatment, 17
performers, 16, 41
phonogram producers, 16, 41
related rights. See related rights and TRIPS Agreement, 16, 40–2
security interests, 28
compulsory licensing, 122
ordre public, 112
special compulsory licencing system for pharmaceutical exports. See Paragraph 6 System
spirits, protection for. See geographical indications (GIs)
Swedish International Development Cooperation Agency, 234
technology transfer and dissemination current issues, 217, 235–6
Doha Declaration, 203
electronic commerce, 236
LDCs. See least-developed countries (LDCs)
ojective of IP protection, 4, 14, 26
transitional arrangements, 26–7
textile designs, 128–9, 147
trade names, 63
Trade Negotiations Committee, 10, 219, 220, 224, 226, 231
Trade Policy Review Mechanism, 10, 33
trade secrets. See undisclosed information
trademarks, 2, 58–84
conditions for registration as a trademark, 64–70
priority, 64
publishing requirement, 64
reasons which may constitute grounds for refusal of registrations, 67
reasons which may not constitute grounds for refusal of registrations, 65–7
reasons which must constitute grounds for refusal of registrations, 70
EU trademarks, 72–4
indefinite protection, 2, 84
on the Internet, 236
and Paris Convention, 58, 59, 60
relationship of TRIPS Agreement with pre-existing provisions, 60
permissible exceptions to trademark rights, 81–4
no compulsory licensing permitted, 81–4
permitted exceptions, 81–3
purposes of trademark protection, 4, 59
reasons which may not constitute grounds for refusal of registrations, 65–7
actual use of trademark at time of registration, 67
failure to register in country of origin/independence of protection, 65
form of mark, if already registered in other member countries, 65–6
nature of goods/services identified by trademark, 66–7
reasons which must constitute grounds for refusal of registrations, 70
geographical indications, 70, 97, 100
state emblems and official hallmarks, 37, 70
well-known marks, 70
rights to be conferred on trademark owners, 71–80
general rights, 71
licensing and assignment of rights, 76
rights with respect to well-known trademarks, 74–6
trademark rights, 71–4
‘twinning’ requirements, 77–80
role of trademarks, 58–60
acquisition of trademark rights, 60
protection of service marks as well as trademarks for goods, 59
trademarks with respect to certain products, 59
subject matter of trademark protection, 61–4
collective marks and certification marks, 63, 91, 94
distinctive signs, 61–3
trade names, 63
trademark rights, 71–4
TRIPS provisions on trademarks, 61–84
permissible exceptions to trademark rights, 81–4
rights to be conferred on trademark owners, 71–80
subject matter to be protected and conditions for registration, 61–70
term of protection, 2, 84
well-known trademarks, 70, 74–6
WIPO treaties on registration, 60
traditional knowledge and folklore CBD, 114, 229–31
current issues, 228–9
patents, 114, 228–9
WIPO Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore, 229
transfer of technology. See technology transfer and dissemination
transitional arrangements and other matters, 13, 22–8
protection of existing subject matter, 25–6
additional requirements in respect of pre-existing works and phonograms, 26
application of rules, 25
security exceptions, 28
technical cooperation, 27–8
transfer of technology. See technology transfer and dissemination
transition periods, 8, 22–5
acceding countries, 25
transitional arrangements (cont.)
developed countries and non-discrimination, 23
developing countries and economies in transition, 23–4
LDCs, 24–5, 203, 233
Treaty on Intellectual Property in Respect of Integrated Circuits. See IPIC Treaty
TRIPS Agreement
amending, 31
current TRIPS issues. See current TRIPS issues
dispute prevention and settlement. See dispute prevention and settlement
enforcement. See enforcement
exceptions to national treatment and MFN treatment, 18
general provisions. See general provisions and basic principles of TRIPS Agreement
historical and legal background to TRIPS, 4–8, 17
and human rights. See human rights and the TRIPS Agreement
intellectual property rights. See intellectual property rights (IPRs)
and other Conventions. See Berne Convention; Convention on Biological Diversity (CBD);
Paris Convention; Rome Convention
overview of TRIPS provisions, 10–13
place of TRIPS in the WTO, 8–10
TRIPS Agreement administered by TRIPS Council. See TRIPS Council
and public health. See TRIPS Agreement and public health
transitional arrangements. See transitional arrangements and other matters
TRIPS Agreement as integral part of WTO Agreement, 8
waiver of members’ obligations, 31
TRIPS Agreement and public health, 198–215
access to medicines, broader picture of, 198, 216, 244–8
balancing incentives for research/development and accessibility to drugs, 198, 201
'Bolar' provision, 118
compulsory licences for medicines/pharmaceutical products, 121
emergency situations/public health crises, 122, 201
export to countries lacking domestic manufacturing capacity, 122, 204, 208, 209
members free to decide grounds on which licences granted, 201
Paragraph 6 System. See Paragraph 6 System
right holder, adequate remuneration for, 123, 204, 206
current TRIPS issues, 244–8
Doha Declaration. See Doha Declaration on the TRIPS Agreement and Public Health
undisclosed test and other data, 138–40
waiver decisions, 24, 31, 203, 204–5
amendment to the TRIPS Agreement, 31
TRIPS Council, 32–8
administering TRIPS Agreement, 8, 10, 32
consultations, 35
current TRIPS issues. See current TRIPS issues
electronic commerce, 237
forum for further negotiation or review, 35–6
GIs, 104
monitoring members’ compliance with obligations, 167–8
non-violation and situation complaints, scope and modalities of, 172, 217
notifications, 33–4
public health, further work on, 203
INDEX

review of Paragraph 6 System’s functioning, 214–15
review of national laws and regulations, 35, 167–8, 177
WTO and WIPO cooperation, 25, 36–8

Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). See dispute prevention and settlement
undisclosed information, 136–45
trade secrets and confidential information, 2, 137–8
information made subject to reasonable steps to keep it secret, 138
information that has commercial value because it is secret, 137
information that is secret, 137
length of protection, 2, 138
protecting trade secrets in enforcement proceedings, 152
undisclosed test and other data, 138–40
unfair competition, 2, 87, 96, 136, 140–2
anti-competitive practices
control generally, 142–3
TRIPS provisions, 143–5
current TRIPS issues as to competition law, 240–1
free riding, 59, 96

United Nations Conference on Trade and Development (UNCTAD), 234
Uruguay Round. See General Agreement on Tariffs and Trade (GATT)
US – Gambling, 177
US – Section 110(5) Copyright Act, 41, 48, 50, 51–3, 178
summary of key Panel finding, 52–3
US – Section 211 Omnibus Appropriations Act, 66, 68, 195
US – Upland Cotton, 177
utility models, 2, 132

waiver of members’ obligations under TRIPS Agreement, 31
and public health. See TRIPS and public health
well-known trademarks, 70, 74–6
wines and spirits, protection for. See geographical indications (GIs)
World Health Organization (WHO), 28
cooperation with WIPO and WTO, 234
World Intellectual Property Organization (WIPO), 12, 28, 105, 195
cooperaion with WHO and WTO, 234
cooperaion with WTO. See World Trade Organization (WTO)
Copyright Treaty, 41, 236
electronic commerce, 236
Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore, 229
Performances and Phonograms Treaty, 41, 236
trademarks. See trademarks
World Trade Organization (WTO), 4
cooperation with UNCTAD, 234
cooperaion with WHO and WIPO, 234
cooperaion with WIPO, 36–8, 234
Joint Initiative on Technical Cooperation for Least-Developed Countries, 234
Council for Trade in Goods, 10
Council for Trade in Services, 10
Dispute Settlement Body (DSB), 10
forum for negotiations among members, 35–6
GATT. See General Agreement on Tariffs and Trade (GATT)
General Council, 10, 172
decision-making procedures, 29–32
IP and competition policy current issues, 144
Ministerial Conference, 10, 172
World Trade Organization (cont.)

decision-making procedures, 29–32
non-discrimination as key principle, 17
Trade Negotiations Committee, 10, 219, 220, 224, 226, 231
TRIPS. See TRIPS Agreement
WTO Agreement, 5, 8, 10, 28–32, 169

amendment of multilateral trade agreements, 31, 205
authoritative interpretations, 29
decision-making procedures, 29–32
scope of WTO Agreement, 28
Trade Policy Review Mechanism 8–9, 33
voting and consensus, 29
waiver of members’ obligations, 31
WTO Analytical Index, 196