

INDEX

acceding countries, 25 application, including evidence Agreement on Trade-Related Aspects and description of of Intellectual Property Rights goods, 159 (TRIPS). See also unfair duration of suspension, competition abuse of intellectual property notice of suspension, 160 rights, 143 posting of security/payment of anti-competitive licensing compensation, 160 practices, 144 remedies and orders for destruction/ compulsory licensing, 144 disposal, 161-2 IP and competition policy current right of inspection and information, 161 issues, 144 anti-competitive practices. See unfair scope and coverage, 157-9 mandatory coverage of pirated competition appellations of origin, 90 copyright/counterfeit Australia - Tobacco Plain Packaging, trademark goods, 157-8 66, 77-80, 195 optional coverage, 158-9 special rules for ex officio beneficiaries, 15-17, 34 action, 162 Berne Convention, 12, 34 suspension of release, 14, 157 beneficiaries, 16 broadcasting organizations, related copyright. See copyright and related rights, 17, 18. See also related rights rights enforcement. See enforcement exceptions to national treatment and Canada – Pharmaceutical Patents, 117, MFN treatment, 17 119-20, 178 Canada - Term of Patent Protection, moral rights, 12, 40, 49 rule of retroactivity, 26 25, 178 certification marks, 63, 86, 91 and TRIPS Agreement, 12, 16, 40-2 TRIPS Agreement as China - Intellectual Property Rights, 'Berne-plus', 40 162, 164, 195 biodiversity, 216, 226-31. See also climate change, current TRIPS issues, traditional knowledge and 237 - 8folklore collective management biotechnology patenting, 113, 216, 227 organizations, 48 collective marks and certification border measures, 157-62 procedural requirements and marks, 63, 86, 91, 94 safeguards against abuse, competition law and policy. See unfair

competition

159-61



INDEX 417

'competition law and policy,' meaning of, 142 compulsory licences developing countries/LDCs educational purposes, 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 - 4decisions 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 remedying 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 pharmaceutical exports. 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



418 INDEX

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 - 54minimum 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 - 6LDCs, 217, 233-5

non-violation complaints, 217, 232 transfer of technology, 217, 235 - 6the 'triplets': biotech, traditional knowledge and biodiversity, 216, 226-31 geographical indications, 216, 221 - 6background, 221-2 higher-level protection for nonwine/spirits products, 218-21, 222, 225-6notification/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 transfer of technology, 235-6 the 'triplets': biotech, traditional knowledge and biodiversity, 216, 226-31 Article 27.3(b) review, 227-8 relationship between the TRIPS Agreement and the CBD, 229-31 traditional knowledge and folklore, 229-31 TRIPS Agreement in other multilateral policy processes, 242 - 53debates on issues outside the WTO, 216-18 development issues, 248-50 environmental agreements, 251-3 human rights, 242-4 IP and competition policy, 144, public health beyond the WTO, 244 - 8



INDEX 419

databases, 43	clarification
Denmark and Sweden - Measures	dispute
Affecting the Enforcement of	description
IPRs, 195	proced
derivative works, 43	adoption
developed countries	report(
assisting developing countries	175–7
current issues, 235–6	Appellate
monitoring obligations on	consultat
technology transfer, 235	parties
technical cooperation, 27-8,	Panel exa
217, 234	retaliation
assisting LDCs, 24	176
technical cooperation, 27-8, 234	dispute prev
technology transfer, 26-7, 203,	nation
217, 233	legislat
transition periods, 23	Counc
developing countries	dispute sett
assistance and technical cooperation	general over
from developed countries, 27–8,	grounds for
217, 234	member go
assistance from WIPO/WTO	dispute
technical cooperation and	168, 16
assistance, 37	non-violatio
translation of laws/regulations,	compla
36	private part
compulsory licensing, medicines	and review
educational purposes, 51	legislat
medicines. See TRIPS and public	third parties
health	violation co
copyright, 41	Dispute Settle
current TRIPS issues on	174, 17
development, 248-50	DSU, 10, 16
Paragraph 6 System. See also	exhaustion
Paragraph 6 System	general state
generic producers, 204, 212	guide to res
re-exporting pharmaceutical	non-violatio
products and regional trade	compla
agreements, 212	current is
review of System's	moratori
functioning, 214	compla
textile design protection, 128	TRIPS Co
transition periods, 23-4	and me
TRIPS negotiations, 7	and objectiv
outstanding implementation	Agreer
issues, 218	as TRIPS A
dispute prevention and settlement, 13,	166
166–97	TRIPS-relat

s of TRIPS Agreement in e settlement, 30 of dispute settlement lures, 173-7 of Panel/Appellate (s) and implementation, e review, 175 ions between the , 173 amination, 174–5 n and cross-retaliation. vention and review of al implementing tion. *See also* TRIPS lement, 168-73 rview of system, 168-71 complaints, 170 vernments initiating e settlement procedures, on and situation aints, 171–3 ies, 169 of national implementing tion, 167–8 s, 169, 173 mplaints, 170 ment Body (DSB), 170, of IPRs, 21, 202 ements, 200 sources, 195-7 on and situation aints, 171-3 ssues, 217, 232 um on application of aints, 8, 170, 172 ouncil examining scope odalities, 172, 217 ves/principles of TRIPS ment, 14 greement key feature, TRIPS-related cases, 177-97



420

INDEX

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



INDEX 421

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 - 80function 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 geographical indications and rules of origin, 90 geographical 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, 2.2.2 - 5and 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



422

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

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,

14, 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



INDEX 423

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, 133 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



424 INDEX

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 official 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, permissible 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

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 - 11scope 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



INDEX 425

formal conditions, 105, 108, 111 non-discrimination, 111, 116-17, 120 novelty, inventive step and industrial applicability, 108-10 permissible exclusions from patentable subject matter, 111-13 priority, 110 relationship between TRIPS Agreement/CBD/traditional knowledge, 114 review of Article 27.3(b), 113, 226 substantive conditions, 108 current issues, 216, 226-31 Article 27.3(b) review, 227-8 relationship between TRIPS Agreement and CBD, 229-31 traditional knowledge and folklore, 228-9 definition of, 105-6 dependent patents, 123 developing countries and transitional arrangements, 23-4 exceptions that WTO members can allow to patent rights, 117-24 compulsory licences. See compulsory licences limited exceptions, 118-20 'invention,' definition of, 105 LDCs and transitional arrangements, 24-5,203medicines and pharmaceutical products. See TRIPS and public health minimum period of protection to be accorded, 124 term of protection, 2, 124 novelty, inventive step and industrial applicability, 108-10 industrial applicability/utility, 109, 112 inventive step/non-obviousness, 109 novelty, 108 permissible exclusions from patentable subject matter, 111 - 13

methods of treatment, 112 ordre public or morality, 112 plants and animals, 113, 226 prior art, 23, 108, 109, 110 process patents, rights to be conferred on owners of, 115-16 burden of proof, 115-16 rights of process patent owners, 115–16 purposes of patent protection, 4, 14, 106, 110 relationship of TRIPS Agreement with Paris Convention preexisting provisions, 106 revocation, 125-5 rights to be conferred on patent owners, 114-17 assignment, transfer and licensing of patents, 117 non-discrimination with respect to availability and enjoyment of patent rights, 111, 116-17, 120 other rights of patent owners, 117 rights to be conferred on owners of process patents, 115-16 rights to be conferred on owners of product patents, 115 subject matter to be protected by patents, 107-14 areas in which inventions must be eligible for protection, 107 conditions inventions must meet to be eligible for patent protection, 108-14 three-step test, 118 traditional knowledge and folklore, 114, 228-9 TRIPS provisions on patents, 106-25 exceptions that WTO members can allow to patent rights, 117 - 24minimum period of protection to be accorded, 124 rights to be conferred on patent owners, 114-17 subject matter to be protected by patents, 107-14 waiver of members' obligations, 31



426 INDEX

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 protection for, 113 review of Article 27.3(b), 113 prior art, 23, 108, 109, 110 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 national treatment, 18 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

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) objective 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

limitations and exceptions, 56



INDEX 427

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 - 84permissible 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 - 70term 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



428

INDEX

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

TRIPS Agreement and public health, 198 - 215access 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, 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,

waiver of members' obligations, 31



INDEX 429

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,

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

52 - 3

US – Section 110(5) Copyright Act, 41, 48, 50, 51–3, 178 summary of key Panel finding,

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

cooperation with WHO and WTO, 234

cooperation 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 cooperation with WHO and WIPO, 234

WIPO, 234
cooperation with WIPO, 36–8, 234
Joint Initiative on Technical
Cooperation for LeastDeveloped 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



430

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

INDEX

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