

Abstract

Intellectual Property, Trade and Sustainable Development: North-South Experiences and Perspectives

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In assessing the effectiveness of international economic law, the protection of intellectual property offers interesting insights into conditions and requirements of successful implementation and application of international treaty law. While an important part of international law since the late 19th Century – much more developed than international law relating to real estate and property –, protection of intellectual property witnessed a change of paradigm in 1995 with the advent of the TRIPs Agreement and thus the incorporation of intellectual property protection into the WTO.

Rules were substantially reinforced both in terms of substantive and procedural provisions. The linkage to WTO dispute settlement and cross-retaliation opened new avenues. Enforcement of international law in the present field was revolutionized. The system has worked well in its first years among industrialized countries.

It mainly faces difficulties in relation to developing countries. For a long time, they had generally considered the protection of intellectual property detrimental to their interests. Now, they are faced with high standards of protection and enforcement. The paper addresses the impact of these standards. It reports about recent economic research on intellectual property. The results allow distinguishing short-term, middle and long-term implications. While the TRIPs Agreement does not respond to short-term needs of many developing and all the least developed countries, it is considered favorable in a long-term perspective of supporting conditions for market economies and good governance. The challenge therefore lies in shaping rules and norms that are able to combine short-term and long-term interest in different sectors of the economy in a better way than present regulatory techniques of special and differential treatment.

Moreover, it is important to rebalance the TRIPs Agreement by seeking enhanced benefits of intellectual property protection in areas of interest to developing countries, in particular in the field of agricultural products. In this vein, the paper supports efforts to reinforce geographical indications and the protection of traditional knowledge. It also suggests reinforcing international law relating to the allocation and protection of real property. From the point of view of enhancing the effectiveness of international law, it recommends closer cooperation with other legal disciplines and economics. It is only through an integrated analysis that conditions of effectiveness of international economic law can be advanced.