



# How Minimum Is The Minimum Standard Of Protection Under TRIPS

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## Abstract

The TRIPS Agreement plays a foundational role in shaping modern intellectual property law across the world. At its core, TRIPS establishes a baseline of protections that all WTO Member States must implement within their domestic legal systems. These are minimum standards, meaning that countries cannot offer weaker IP protection than what TRIPS mandates, but they are free to adopt stronger protections if they choose, provided this does not conflict with the obligations of the treaty.

Under TRIPS, the minimum standards cover several key dimensions: the subject matter to be protected, the exact rights conferred to IP holders, permissible exceptions to these rights, and the minimum duration of protection in each category. For example, patents must be made available for any invention in all fields of technology and protected for at least 20 years from the filing date. Copyright protection must align with the substantive provisions of the Berne Convention, often translated in practice into terms of at least 50 years. Trademarks must be registrable and renewable, and rights holders must have effective remedies against infringement.

Importantly, while TRIPS sets these floors, it also acknowledges that legal traditions and developmental priorities differ across countries. Thus, it allows flexibility in implementation-Member States determine how to embed these minimum standards in their laws, balancing public interest and economic welfare with the

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core obligations of the agreement. This balance ensures that the minimum standards are meaningful but not rigidly uniform, recognizing the diverse legal and social contexts of WTO Members.

**Key Words:** TRIPS, minimum standards, intellectual property protection, WTO Member obligations, flexibility, implementation, patents, copyright, trademarks.

## Introduction

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement is a landmark international treaty that sets a global floor for the protection and enforcement of intellectual property rights. It emerged from the Uruguay Round negotiations and was incorporated into the World Trade Organization framework from 1 January 1995. TRIPS do not prescribe identical intellectual property laws for every country, but it does require all WTO Members to adopt and maintain minimum standards of protection in areas such as patents, copyrights, trademarks, industrial designs, and trade secrets. These standards are designed to reduce barriers to trade created by widely divergent national IP laws while allowing members the flexibility to shape their own legal systems and practices.

## SCOPE

This work focuses on:

Briefly on:

- Concept of Minimum Standard of protection
- TRIPS provisions and its birth through Berne and Paris Conventions.
- Vacuum under TRIPS to deal with Minimum standard of protection.

Majorly on:

Merits of Minimum Standard of protection provided Under TRIPS, Its Nature, Similarities and Dissimilarities across Nations and its impact upon economy of Countries. Secondly to focus on actual benchmark for that How minimum is this Standard of Protection.

## STATEMENT OF PROBLEMS

1. Minimum Standard of protection under TRIPS does not provide for a benchmark standard as to stick and follow universally for entire member nations.
2. There is a scope of ambiguity for Minimum Standards of protection between Nations.
3. Concept of Minimum Standard of Protection though puts a positive obligation upon nations to comply with the provisions but it also left a sideway for following their own system of protection, this tends to create a bypass for Nations.

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- 4. Concept of Minimum Standard of Protection is not helping developing and least developing countries and its against their economies.

## RESEARCH OBJECTIVES

- 1. To understand the concept of IP Rights and its Minimum standard of Protection under TRIPS.
- 2. To elucidate the role of TRIPS in protecting Intellectual Property Rights across globe along with its efficacy.
- 3. To compare Intellectual Property protection laws in different developed and least developed countries, and to bring out the impact of these laws on these countries.
- 4. To briefly analyse the efficacy of system in place and its impact upon economy of developing and least developing(LCD) countries.
- 5. To Come up with a possible solution to eradicate this ambiguity in standard of protection.

## RESEARCH QUESTIONS-

- 1. Whether TRIPS covers Minimum standard of protection? If yes, analyse the relevant provisions.
- 2. Whether the role of TRIPS in relation to minimum standard of protection is adequate for all of the signatories at large?
- 3. Whether Minimum standard of protection is universally accepted and same for all countries?
- 4. Whether a relatively stringent IPR regime (as embodied by TRIPS) will best encourage economic growth in all countries,
  - (i) If yes how it varies across countries?
  - (ii) If No whether a more flexible one may be more appropriate for some of them?
- 5. Whether there is any efficient machinery in place for protection of IP Rights?

## RESEARCH METHODOLOGY

The Project is based on the doctrinal research methodology. The primary sources include law books, journals, conventions, Articles etc. while the secondary resources include will be based on doctrinal research methodology. Entire material will be screened to differentiate the most authoritative from the least authoritative based on either the quality or relevancy of the material to the research issue.

## LITERATURE REVIEW

- 1. *Abdelgawad, W (2012), 'The Bt Brinjal Case : The first Legal Action Against Monsanto and its Indian Collaborators for Biopiracy', Biotechnology Law Report 31 (2), pp136-139*

Since the US does not segregate GM products from non-GM ones, almost all processed food products contain traces of GMOs. This is also the main reason why they persistently oppose labeling. Ironically, while goods imported into the US have to meet the most stringent specification, whenever any US exporter is directed to follow the same procedures by the importing country, it is termed as a trade barrier. When similar tactics failed with India, the US turned to the WTO, over India's Bt. Brinjal the ambiguity was due to different labeling standards.

2. *Agrawal K.C (2002), Global Biodiversity: Conservation, Indigenous Rights and Biopiracy, ( New Delhi: Nidhi Publishers)*

Developing countries say that TRIPS is the most conflicting agreement and it is for the developed countries not for developing countries.

3. *Chang, H.J (2001), 'Intellectual Property Rights and Economic Development. Historical Lessons and Emerging issues', Journal of Human Development 2 (2), pp287-309*

Many developing countries are concerned about the presumed flexibility of TRIPS and worry that the provisions are vague and subject to narrow or restrictive interpretation which can leave them vulnerable to dispute settlement proceedings and or legal suits which are not only protracted and costly but often tend to delay the implementation of measures necessary to remedy public health problems.

4. *Chang, H.J (2008), Bad Samaritans: the Myth of Free Trade and the Secret History of Capitalism, (New York: Bloomsbury Press)*

HE suggested that some of the indigenous communities and traditional knowledge holder in favour of universalize of IPR system in order to better protection for indigenous knowledge and traditional knowledge. This does not seem fair. After all, if indigenous peoples in WTO member states are required to accept the existence of patents that they are economically prevented from availing themselves of, why should their own knowledge-related customary regimes including property rules not be respected by others?

5. *Deere, C (2009), The implementation Game. The TRIPS Agreement and the Global Politics of Intellectual Property. Reform in Developing Countries, (New York : Oxford University Press)*

In fact, the Doha Declaration goes beyond merely confirming the relevance of Articles 7 and 8 for the interpretation of the TRIPS Agreement. It provides an understanding about the purpose of the TRIPS Agreement in relation to public health issues, which should guide any future rulings by panels and the Appellate Body dealing with such issues

6. Drahos, P (2002a), 'Developing Countries and International Intellectual Property Standards-Setting', *The Journal of World Intellectual Property* 5 (5), pp765-789.

It proposed that the developed countries have imposed such restrictions on developing countries and LDC's which they would have not followed in their previous stages. It also claimed that IP rights and inventions are followed by TRIPS unfairly to the deterrent of TK in favour of western IP rights.

7. Lall, S; Albaladejo, M, WP 03/02 , "Indicators of the relative importance of IPR's in developing countries", *Oxford Intellectual Property Research Centre, Working Paper Series, January 2002*

TRIPS sets out the minimum standards to be followed by each member country in respect of each area of IP. Each and every area is defined related to IP i.e the subject matter, main elements of protection is defined, rights are conferred and their restrictions also, and the duration of each IP. These minimum standards are set in respect of WIPO.

8. Wang, Y. J., *Further Protection of Intellectual Property Rights in the WTO Linking Transfer of Technology with Foreign Direct Investment*, *THE JOURNAL OF WORLD INTELLECTUAL PROPERTY*, PP.797–806.(2005)

### **Concept and Structure of Minimum Standards**

TRIPS minimum standards operate on two main axes: (a) incorporation of earlier IP conventions (Paris, Berne, Rome, etc.) and (b) additional obligations and enforcement disciplines. Members must comply with the substantive provisions of these earlier conventions (with certain exceptions) and also adopt new TRIPS-specific rules on subject matter, scope of rights, duration, and enforcement.

Article 1.1 clarifies that Members are free to determine the appropriate method of implementing TRIPS within their own legal system and practice, emphasising minimum obligations rather than a detailed legislative blueprint. However, in practice, minimum standards become relatively detailed because TRIPS defines what must be patentable (Article 27), the minimum patent term (20 years), the basic content of trademark and copyright protection, and minimum enforcement standards, reducing the room for states to experiment with weaker protection.

### **Objectives, Principles and Flexibilities**

Articles 7 and 8 of TRIPS embed articulated objectives and principles, suggesting that IP protection should contribute to technological innovation, transfer and dissemination of technology, and social and economic welfare, and should permit measures to protect public health and prevent abuse of IP rights. Scholarly commentary argues that these provisions can and should guide interpretation of specific TRIPS obligations in a manner that preserves regulatory flexibility for Members.

Flexibilities recognised under TRIPS and later reaffirmed or clarified, including in the Doha Declaration on the TRIPS Agreement and Public Health, encompass measures such as compulsory licensing, parallel importation (based on exhaustion regimes), limitations and exceptions, and transition periods for developing countries and LDCs. These mechanisms formally dilute the rigidity of minimum standards, but their practical use depends heavily on domestic capacity, political economy and pressure from trading partners.

### **Substantive Standards: How “Minimum” Are They?**

Across core IP categories, TRIPS sets quantitatively and qualitatively demanding baselines. For example, patents must be available for any inventions in all fields of technology, without discrimination as to the place of invention, subject only to limited exclusions such as diagnostic, therapeutic and surgical methods and certain plants and animals. The minimum patent term of 20 years from filing, coupled with broad exclusive rights, effectively prevents states from adopting much shorter terms or excluding most pharmaceuticals from patentability, as many did pre-TRIPS.

In copyright, TRIPS requires a minimum term of protection of life of the author plus 50 years, and it incorporates core Berne Convention standards on rights and limitations, again constraining states that previously adopted significantly shorter terms. For trademarks and geographical indications, minimum standards govern registrability, scope of exclusive rights, and minimum periods of protection (for example, initial trademark registration for at least seven years with indefinite renewals), ensuring that Members cannot drastically reduce trademark protection below this level.

### **Enforcement and Dispute Settlement**

Beyond substantive standards, TRIPS devotes an entire part to enforcement, requiring Members to provide civil, administrative, and criminal procedures and remedies that are effective, proportionate and deterrent. This includes requirements on injunctions, damages, border measures, and criminal penalties for wilful trademark counterfeiting and copyright piracy on a commercial scale.

The availability of WTO dispute settlement for TRIPS obligations further transforms what might otherwise be soft minimum standards into hard, enforceable commitments, as violations can trigger state-to-state disputes and trade sanctions. Commentators point out that this level of enforcement discipline was unprecedented in the IP field and shifts leverage towards rights-holding states and industries, especially in the Global North.

## Developing Countries and Policy Space

Economic and development analyses indicate that the TRIPS protection standards often approximate the levels prevailing in advanced industrial economies, even though theoretical models of North–South IP standards predict that strong global harmonisation can impose welfare losses on technology-importing developing countries. Many developing countries had to overhaul their IP regimes—introducing or strengthening patent protection for pharmaceuticals, biotechnology, plant varieties and other technologies—within tight transitional periods, straining institutional capacity.

The promised counterbalance of technology transfer and capacity-building, notably through Article 66.2 obligations on developed countries to provide incentives for technology transfer to LDCs, has been criticised as weakly implemented and poorly enforced. As a result, scholars and policy institutions argue that TRIPS has generated significant transfers of wealth from technology-importing to technology-exporting countries, with one World Bank estimate suggesting short-term annual transfers of around 20 billion USD from developing to developed countries.

## Access to Medicines and Public Health

The access-to-medicines controversy illustrates how “minimum” standards can have high social costs when not carefully balanced with public-health flexibilities. Before TRIPS, many states either did not recognise product patents for pharmaceuticals or provided weaker protection, which facilitated generic competition and lower prices. TRIPS’ requirement that patents be available in all fields of technology, including pharmaceuticals, and for a minimum 20-year term, significantly strengthened exclusive rights over medicines.

The Doha Declaration on TRIPS and Public Health and subsequent decisions (including the 30 August 2003 Decision and its amendment) affirmed that TRIPS should be interpreted in a manner supportive of Members’ right to protect public health and to promote access to medicines for all, especially through compulsory licensing and parallel importation. Nonetheless, the political and technical hurdles to using these mechanisms, along with pressure to adopt TRIPS-plus constraints in bilateral and regional agreements, mean that the practical room to lower protection below TRIPS minimums is often limited.

## TRIPS-Plus Commitments and the Ceiling Question

Although TRIPS is formally a minimum standards agreement, many states have entered into free trade agreements (FTAs) or investment treaties containing “TRIPS-plus” provisions, such as longer patent terms, data exclusivity, limits on compulsory licensing, or restrictions on parallel imports. These commitments raise protection above TRIPS but do not alter the baseline nature of TRIPS itself; however, they effectively transform the TRIPS floor into a stepping stone for progressively higher global standards.

From a normative perspective, the absence of an explicit ceiling in TRIPS, combined with asymmetries in bargaining power, can result in an upward ratchet of IP protection that is misaligned with the developmental objectives articulated in Articles 7 and 8. WIPO and UNCTAD guidance on TRIPS flexibilities stresses the importance of preserving policy space and avoiding unnecessary TRIPS-plus measures, particularly for developing countries.

### **Traditional Knowledge, Biopiracy and Incomplete Protection**

Another dimension of the “minimum standard” debate concerns what TRIPS leaves out. The agreement provides no comprehensive, dedicated regime for traditional knowledge, genetic resources or folklore, despite the importance of these assets for many developing and indigenous communities. Instances of patents over resources or knowledge such as neem, turmeric and basmati rice have been criticised as biopiracy, raising concerns that TRIPS-style IP standards favour formal inventive activity in developed countries while inadequately recognising or protecting pre-existing traditional knowledge systems.

This omission suggests that while TRIPS minimums are high and detailed for conventional, Western-style IP categories, they are minimal or non-existent where developing countries might seek stronger international disciplines to protect their own interests. The asymmetry reinforces critiques that TRIPS is “minimum” only in form, but substantively skewed in favour of certain actors and subject matter.

### **Assessment: How “Minimum” is Minimum?**

Synthesising the above, the following points emerge:

- TRIPS sets detailed, binding and enforceable standards for core IP rights that in many cases approximate, rather than minimally approximate, the pre-existing laws of advanced industrial states.
- While Articles 7 and 8 and associated flexibilities provide interpretive tools and legal mechanisms for balancing public interest, their use is constrained by political economy, institutional capacity and external pressure, especially in the context of medicines and technology-intensive sectors.
- The absence of a ceiling and the proliferation of TRIPS-plus agreements encourage upward harmonisation, which may undermine the developmental objectives of TRIPS and erode national policy space.
- For areas such as traditional knowledge, TRIPS offers no effective minimum standard, revealing a selective and asymmetrical design that maps more closely onto the interests of technology-exporting countries.

On this basis, the paper argues that the “minimum standard” under TRIPS is minimum only in a formal sense. Substantively, it constitutes a relatively high, rigid and enforceable floor that both constrains downward deviations and invites higher, TRIPS-plus standards, thereby raising questions of equity, development and legitimacy in the global IP regime.

## Conclusion

The TRIPS Agreement reconfigured IP law as a matter of trade, embedding relatively strong and uniform minimum standards into the WTO framework and making compliance justiciable through dispute settlement. Although its text and interpretive instruments preserve certain flexibilities and articulate developmental objectives, the overall design and subsequent practice have often constrained the ability of developing countries to tailor IP protection to local technological, social and public-health needs.

Consequently, the central normative challenge is to re-read and, where possible, reform TRIPS so that its minimum standards genuinely function as flexible baselines rather than as rigid templates for maximal protection, thereby better aligning the global IP system with broader goals of access, equity and sustainable development.

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