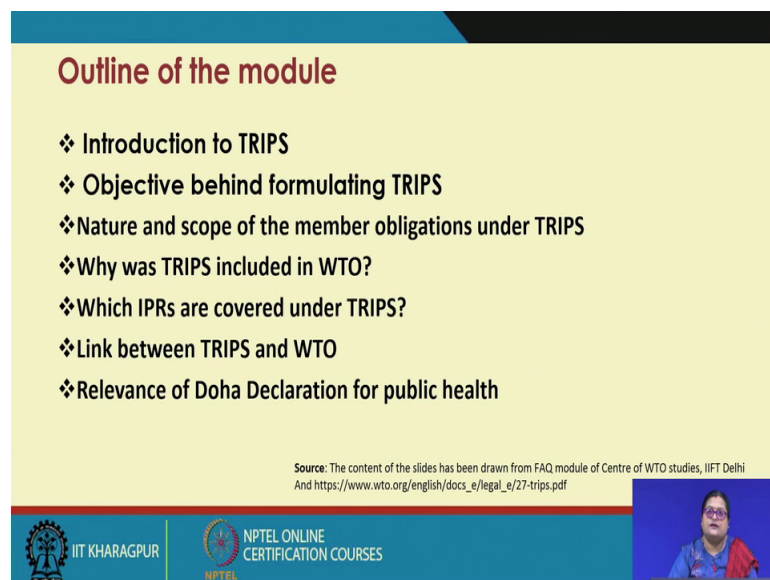


Ethics in Engineering Practice
Prof. Susmita Mukhopadhyay
Vinod Gupta School of Management
Indian Institute of Technology, Kharagpur

Lecture – 14
Trade related Intellectual Property Rights

Welcome back. In today's module, we are going to discuss about the Trade related aspects of Intellectual Property Rights. Let us see, what is there in the outline of the discussion.

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Outline of the module

- ❖ Introduction to TRIPS
- ❖ Objective behind formulating TRIPS
- ❖ Nature and scope of the member obligations under TRIPS
- ❖ Why was TRIPS included in WTO?
- ❖ Which IPRs are covered under TRIPS?
- ❖ Link between TRIPS and WTO
- ❖ Relevance of Doha Declaration for public health

Source: The content of the slides has been drawn from FAQ module of Centre of WTO studies, IIFT Delhi
And https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

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The outline of the module discusses about introduction to trade related Intellectual Property Rights, objective behind the formulation of TRIPS, nature and scope of the member obligations and the TRIPS, why was TRIPS included in WTO? Which IPRs are covered under TRIPS? Link between TRIPS and WTO, relevance of Doha declaration for public health.

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TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

The Agreement on Trade related Aspects of Intellectual Property Rights of the World Trade Organization is commonly known as the TRIPS Agreement or just TRIPS.

It is one of the main agreements of the World Trade Organization which was negotiated as was negotiated as part of the eighth round of multilateral trade negotiations in the period 1986-94 under General Agreement on Tariffs and Trade (GATT) commonly referred to as the Uruguay Round extending from 1986 to 1994.

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And then we will move forward with this trade related aspects of Intellectual Property Rights. Now what is this? The agreement on trade related aspects of Intellectual Property Rights of the World Trade Organization is commonly known as TRIPS Agreement or just TRIPS. Trade related aspects of Intellectual Property Rights in short form is known as TRIPS, it is one of the main agreements of the WTO which was negotiated and was negotiated as a part of the eighth round of multilateral trade negotiations in the period 1986 to 94 under the General Agreement of Tariffs and Trades; commonly referred to as the Uruguay round extending from 1986 to 1994.

Now, if you want to understand; what is the importance of this trade related aspects of Intellectual Property Rights? Why it is important? Then week 1, we can see like in the General Agreements on Tariffs and Trade wherein it becomes open for multilateral trade negotiations, then we can understand with the improvement of technology and the sharing of information increase in trade practices. There could be many intangible assets as we saw which comes under the intellectual properties could be exchanged between the 2-3 member countries.

So, how to deal with those things, to what extent to protect it and like what all to protect for? Becomes important issues discussion and TRIPS is related to that.

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It appears as Annex 1 C of the Marrakesh Agreement which is the name for the main WTO Agreement.

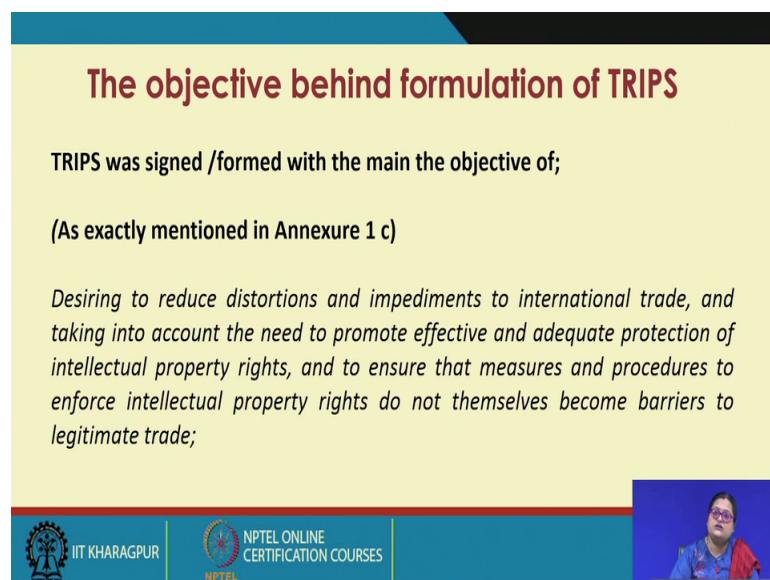
The Uruguay Round introduced Intellectual Property Rights into the multilateral trading system for the first time. The uniqueness of the TRIPS lies in the fact that it applies to all the members mandatorily.

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It appears at Annex 1 C of the Marrakesh agreement which is the name for the main WTO agreement. The Uruguay Round introduced Intellectual Property Rights into the multilateral trading system for the first time. The uniqueness of the TRIPS lies, in the fact, this appears or it applies to all the members mandatory, you cannot like just say we will not be following it.

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The objective behind formulation of TRIPS

TRIPS was signed /formed with the main the objective of;

(As exactly mentioned in Annexure 1 c)

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

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Now, as we were already discussing what are the objectives behind formulation of TRIPS. Let us see what are the objectives? TRIPS were signed or formed with the main

objective of and it is exactly as mentioned in Annexure 1 C desiring to reduce distortions and impediments to international trade and taking into account the need to promote effective and adequate protection of Intellectual Property Rights and to ensure that measures and procedures to enforce Intellectual Property Rights do not themselves become barriers to legitimate trade.

So, this is a very important part where we have to see it like, this is actually an act of balance when you talking of and that is why we are discussing this under ethics is ethics is a sense of balance of where we are like just to the all the stakeholders who are connected to it. So, as you can see from the objectives of the TRIPS, it is in one side protecting the Intellectual Property Rights; so that we are not like encroaching on others intellectual properties.

But also at the same time to ensure to balance that it should not be so much restricted that it becomes barriers to legitimate trade. So, again the question comes here is how to balance between the protection of the rights and also to ensure like the legitimate trades happens and this protection does not act as a barrier to the legitimate trade.

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Recognizing, to this end, the need for new rules and disciplines concerning:

- (a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;
- (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
- (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

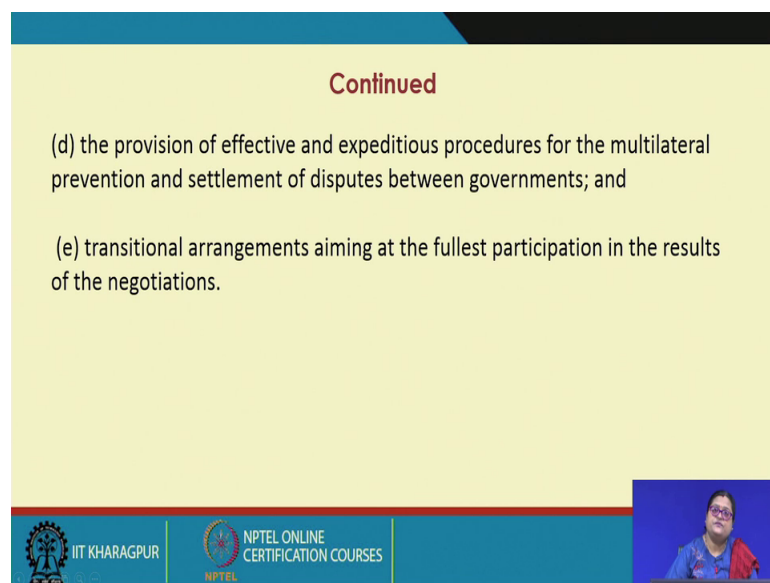
The slide footer contains the IIT Kharagpur logo, the NPTEL Online Certification Courses logo, and a small video inset of a speaker.

Recognizing to this end, the need for new rules and disciplines concerning: the applicability of the basic principles of GATT 1994 and a relevant Intellectual Property Agreements or conventions. The provision of adequate standards and principles concerning the availability scope and use of trade related Intellectual Property Rights.

The provision of effective and appropriate means of enforcement of trade related Intellectual Property Rights, taking into account differences in national legal system.

So, we can see like it is the 3 steps which involves first 3 steps applicability of the basic principles of GATT 1994 and other relevant intellectual property agreements; so conventions. So, second is the provision for adequate standards and principles and third is provisions for effective and appropriate means for the enforcement of trade related Intellectual Property Rights which is practical in the sense, it takes into account differences in the national legal system. So, this is more practical oriented which takes into account the differences which are there in the national legal systems and taking those into consideration; how this can be applied point d; what we find the provision and of effective and expeditious procedures for the multilateral prevention.

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(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations.

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And settlement of disputes between the government and e transitional agreements aiming at the fullest participation in the results of the negotiation; so, what we find it is not only how it can be implemented, but how if some disputes arise what is the effective measures to solve it in an expedited, it in a fast way and a transitional arrangements aiming at the fullest participation of the results of negotiation.

So, after the negotiations have happened then how again to apply it and implement it. So, it is a action oriented steps taken starting from knowing the principles finding out what are the basic standards, it can be applied finding out again like what are the processes has

to be done, then how it disputes arise, then how it can be solved quickly and after the whatever agreement is done; how it can be again applied very quickly to the concerned the member nations.

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Nature and Scope of member countries

As mentioned in Article 1;

Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement.

Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

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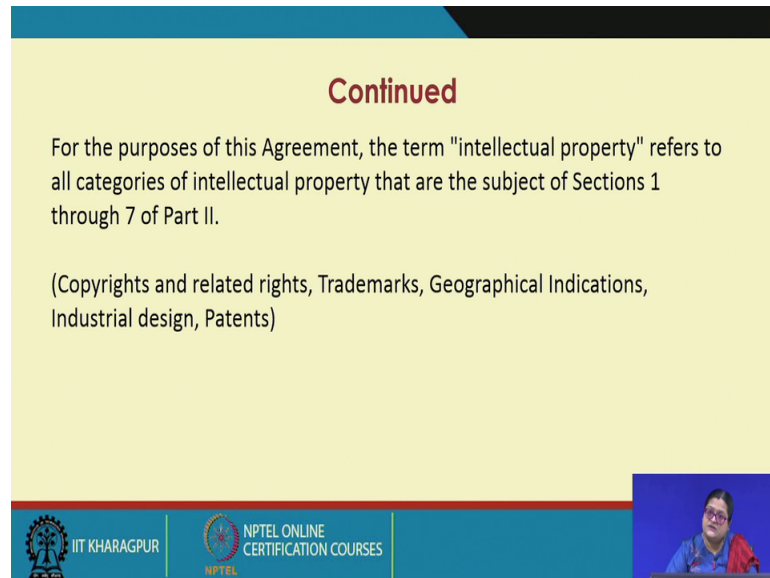
So, now we will see what is the nature and scope of the member countries and we will see like as mentioned in Article 1, here we have in this discussion we are putting forth exactly what is mentioned in the agreement. Members shall give effect to the provisions of this agreement. Members may, but shall not be obliged to implement in the law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement.

So, what we see like whatever is determined by the agreement members have to give effect to this agreement, they may or may not give more extensive protection that is required than that is required by the agreement and the more protection, if given if some member can criticize to give it should not be contravene, should not be contrasting or should not like block the provision of this agreement as we were discussing because should not be hampering the balancing act of this agreement.

So, that legitimate trade also takes place with the other countries. Member shall be free to determine the appropriate method of implementing the provisions of this agreement within their own legal system and practice. So, something generally stated in the

agreement, but how to apply it? How to implement it? What is the how to like execution of that plan of the agreement? Will depends on their own legal systems and practices.

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For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

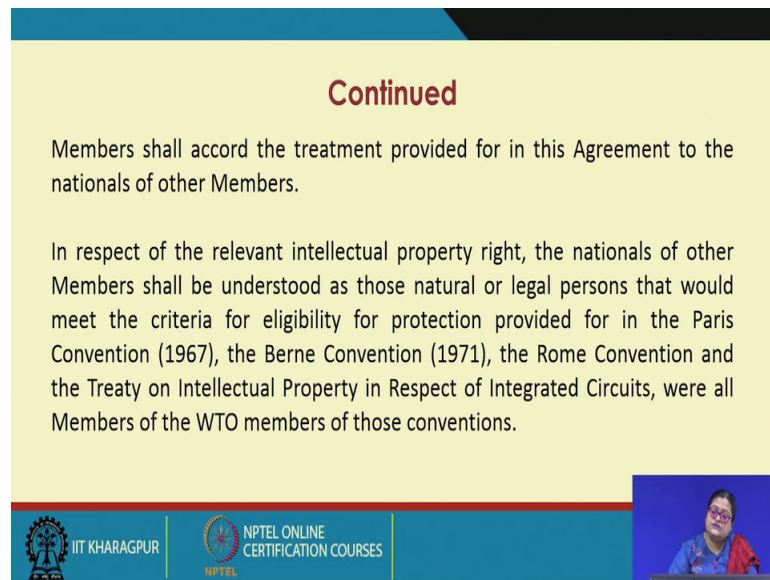
(Copyrights and related rights, Trademarks, Geographical Indications, Industrial design, Patents)

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For the purpose of this agreement, the term intellectual property refers to all categories of the intellectual property that are the subject of sections one through seven of part 2; Copyrights and related rights, Trademarks, Geographical Indications, Industrial designs and Patents.

In the last discussion, we have already discussed about these in details about the details of these intellectual properties and there characteristics and how they are different from each other.

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Members shall accord the treatment provided for in this Agreement to the nationals of other Members.

In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.

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Members shall accord the treatment provided for in this agreement to the nations of other members. So, in respect of the relevant intellectual property right, the nationals of other members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris convention, the Berne convention, the Rome convention and the Treaty of the Intellectual Property in respect of integrated circuits were all members of the WTO members of those conventions.

So, in this Paris convention, Berne convention and the Rome convention have given certain criteria for eligibility of protection and the other members of other nationals other members should like meet those criteria; eligibility criteria and are will be considered as those natural or legal persons who meet these eligibility criteria for protection as provided in these 3 conventions.

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Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

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Any member availing itself of the possibilities provided in paragraph 3 of the Article 5 or paragraph 2 of the Article 6 of the Rome convention shall make a notification as foreseen on those provisions to the council for trade related aspects of Intellectual Property Rights. Why was then TRIPS included in WTO?

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Why was TRIPS included in WTO?

GATT (General Agreement on Tariffs and Trade) which was a precursor to the WTO had already resulted in low tariffs and increasing trade among nations. Due to which even domestic policies of the nations came into focus of trading nations. Developed countries, including the United States started facing increasing competition in manufactured exports from Newly Industrializing Countries (NICs) of Asia.

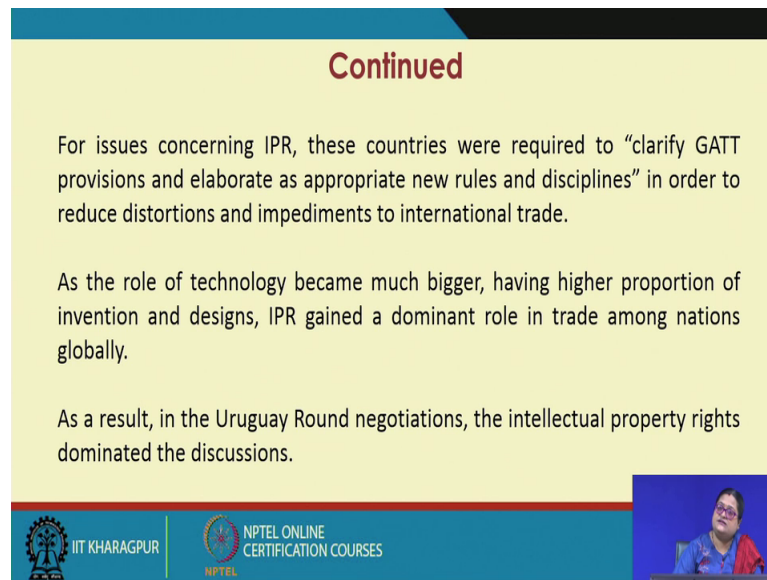
Developed countries, including the United States started facing increasing competition in manufactured exports from Newly Industrializing Countries (NICs) of Asia.

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So, why it got included? What is the idea behind inclusion of this? Let us visit that General Agreement on Tariffs and Trade which was a precursor to the WTO had already resulted in low tariffs and increasing trade among nations due to which even domestic

policies of the nations came into focus of trading nations. Developed countries including the United States started facing increasing competition in manufactured exports from Newly Industrializing Countries of Asia.

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For issues concerning IPR, these countries were required to “clarify GATT provisions and elaborate as appropriate new rules and disciplines” in order to reduce distortions and impediments to international trade.

As the role of technology became much bigger, having higher proportion of invention and designs, IPR gained a dominant role in trade among nations globally.

As a result, in the Uruguay Round negotiations, the intellectual property rights dominated the discussions.

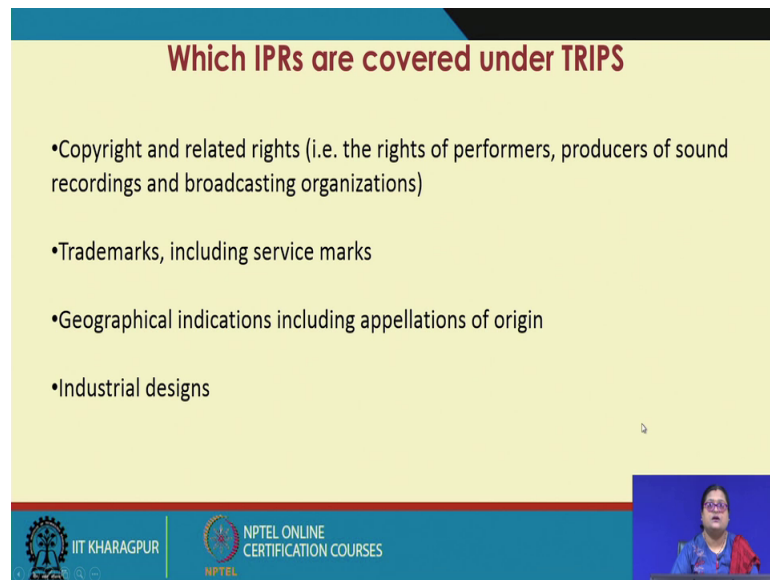
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Developed countries as they were facing, this increasing competition, then for issues concerning Intellectual Property Rights. These countries were required to clarify GATT provisions and elaborate as a appropriate new rules and disciplines in order to reduce distortions and impediments to international trade. As the role of technology became much bigger having higher proportion of inventions and designs, IPR gained the dominant role in the trade among nations globally.

As a result in the Uruguay, Round of Negotiations the Intellectual Property Rights dominated the discussions. As we in the understand there is more trade happening its becoming open, others are coming to know about us, we are going to know coming to know about others in what happens, then and due to this more inventions taking place more designs coming into platform. So, I the Intellectual Property Rights and its protection becomes very dominant discussion in this platform.

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Which IPRs are covered under TRIPS

- Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations)
- Trademarks, including service marks
- Geographical indications including appellations of origin
- Industrial designs

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Now, we have to understand which Intellectual Property Rights are covered under TRIPS because can we protect every Intellectual Property if we can protect to what extent will we give the protection. So, that the barriers are trade does not happen. So, how to balance for this what all products should be given the IPR and all is a discussion ongoing discussion with pros and cons for each and we are focusing on that now.

So, what we find copyrights and related rights that is the rights of performers, producers of sound recordings and broadcasting organizations. Trademarks, including service marks; Geographical indications including appellations of origin and industrial designs are the IPS which are covered under TRIPS.

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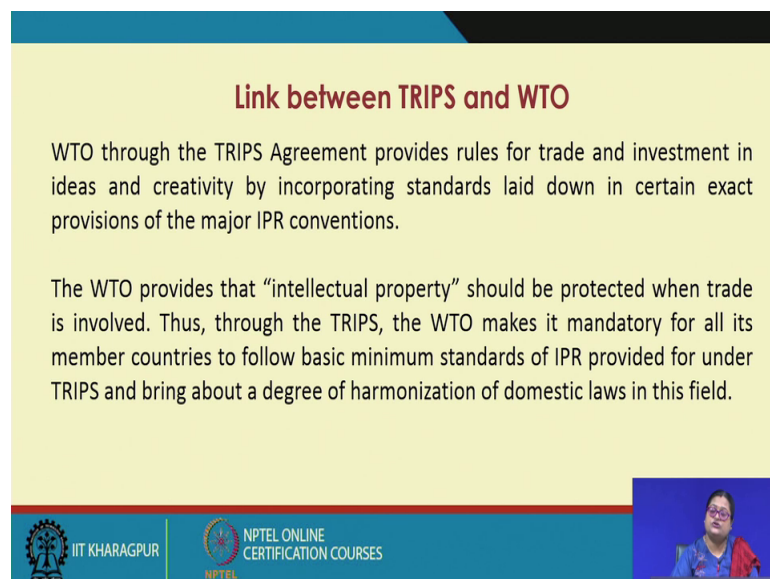
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- Patents including the protection of new varieties of plants
- Layout-designs (topographies) of integrated circuits
- Undisclosed information, including trade secrets and test data

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Also the patents including the protection of new varieties of plants, layout designs topographic of integrated circuits, undisclosed information including trade secrets at test data.

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Link between TRIPS and WTO

WTO through the TRIPS Agreement provides rules for trade and investment in ideas and creativity by incorporating standards laid down in certain exact provisions of the major IPR conventions.

The WTO provides that “intellectual property” should be protected when trade is involved. Thus, through the TRIPS, the WTO makes it mandatory for all its member countries to follow basic minimum standards of IPR provided for under TRIPS and bring about a degree of harmonization of domestic laws in this field.

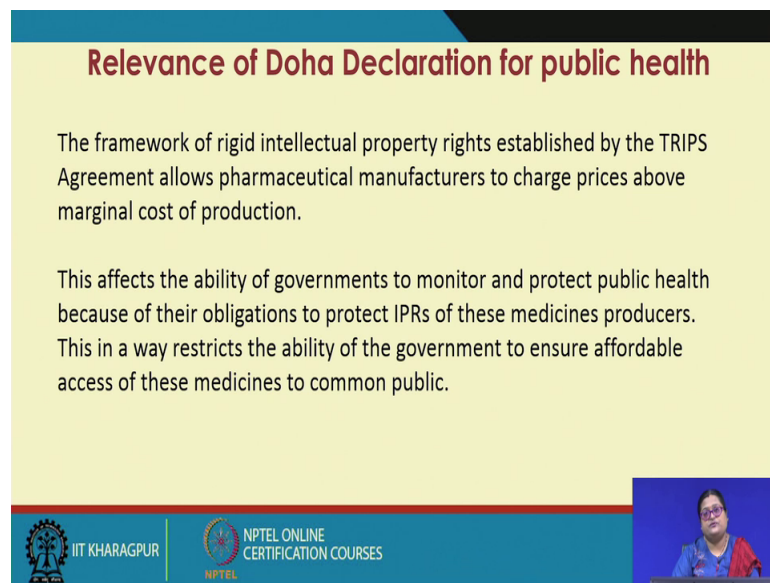
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What is the link now between the TRIPS and WTO? WTO through the TRIPS agreement provides rules for trade and investment in the ideas and creativity by incorporating standards laid down in certain exact provision of the major IPR conventions. The WTO provides the intellectual property should be protected when trade is involved thus

through the TRIPS the WTO makes it mandatory for all its member countries to follow basic minimum standards of IPR provided for under TRIPS and bring about a degree of harmonization of domestic laws in this field.

So, centrally when you are it becomes mandatory to follow something, then whatever local differences are there somewhere, it comes to be like balanced in a common platform; so that exchange of intellectual properties and trades can happen.

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Relevance of Doha Declaration for public health

The framework of rigid intellectual property rights established by the TRIPS Agreement allows pharmaceutical manufacturers to charge prices above marginal cost of production.

This affects the ability of governments to monitor and protect public health because of their obligations to protect IPRs of these medicines producers. This in a way restricts the ability of the government to ensure affordable access of these medicines to common public.

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(A small video inset of a woman speaking is visible in the bottom right corner of the slide.)

Now, we will discuss about one of the important declaration which is the Doha Declaration which is for public health it is a very very important declaration which is like when we are talking off on one side having Intellectual Property Rights and protection of it and at the other side looking at the public health and greater interest of the public at large. The Doha Declaration is very important in that respect.

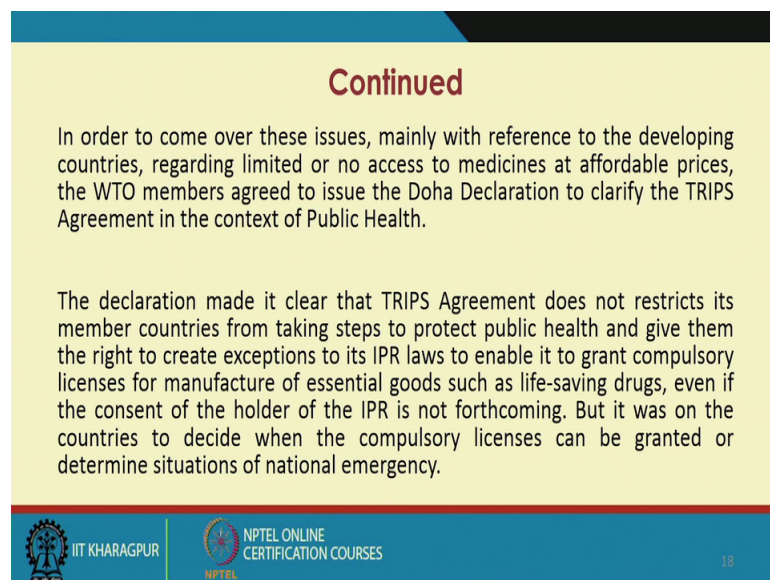
The framework of the rigid Intellectual Property Rights established by the TRIPS agreement allows pharmaceutical manufacturers to charge prices above marginal cost of production. These affects the ability of the governments to monitor and protect public health because of their obligations to protect of the IPRs of these medicines producers.

So, on the one we like they are allowed to charge prices above which is marginal cost of production and because that right is given to the pharmaceutical companies; the

government like is not someone gets restricted in their ability to monitor the and protect the public health because of their obligation to protect IPRs of this medicines producers.

So, it becomes a sort of like conflict of interest like should I be more focused towards the public health and its concern or should I focus towards the protection of the IPR of the medicine producers. This in a way restricts the ability of the government to ensure affordable access of these medicines to common public. This becomes more important in case of like maybe very important or crucial diseases. If the drugs become high priced then people suffering from those diseases may not be able to access those things.

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In order to come over these issues, mainly with reference to the developing countries, regarding limited or no access to medicines at affordable prices, the WTO members agreed to issue the Doha Declaration to clarify the TRIPS Agreement in the context of Public Health.

The declaration made it clear that TRIPS Agreement does not restricts its member countries from taking steps to protect public health and give them the right to create exceptions to its IPR laws to enable it to grant compulsory licenses for manufacture of essential goods such as life-saving drugs, even if the consent of the holder of the IPR is not forthcoming. But it was on the countries to decide when the compulsory licenses can be granted or determine situations of national emergency.

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In order to come over these issues mainly with reference to the developing countries regarding limited or no access to medicines for affordable prices, the WTO members agreed to issue the Doha Declaration to clarify the TRIPS Agreement in the context of Public Health. So, this were this is where we see may be when we have already discussed about utilitarian aspects in our past discussions which talks of the greater good of the greater number.

And maybe somewhere not we are looking into a collective good and somewhere not looking into the may be the good or the right of a particular individual or the group of individuals. This is where we see the interplay of these two theories whether right of a particular medicine company is more important or whether it is a good of the society at large is more important these two comes like important points of discussion over here.

The declaration made it clear that TRIPS Agreement does not restricts its member countries to for taking steps from protecting to protect public health and give them the right to create exceptions to its IPR laws to enable to grant compulsory licenses for manufacture of essential goods such as life saving drugs. Even if the consent of the holder of the IPR is not forthcoming, but it was in the countries to decide when the compulsory licenses can be granted or determined situations of national emergency.

So, what we find over here like when it comes to the decision about the greater public at large public health at large. So, here the right is given to the countries member countries to give manufacturing licenses to other companies even if the consent has not it come from the company who is holding the IPR. So, these are important in case of life saving drugs.

However, it depends on the companies in the countries to when to give the licenses and it had been granted or to determine like if it is a situation of national emergency, then how quickly it can be done. So, how to enforce it? How to practice it? How to execute it depends on the particular country? Where this is for the discussion?

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Member states were also allowed to grant a compulsory license for limited export and import of medicines where the receiving country lacks manufacturing capacity, this was decided based on the decision taken by WTO in 2003.

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Member states were also allowed to grant a compulsory license for limited export and import of medicines where the receiving countries lacks manufacturing capacity, this was decided based on the decision taken by WTO in 2003.

So, this is also an important step where we find like if the receiving country does not have a manufacturing capacity for the life saving drugs and another country has it, then member states were also allowed to grant a compulsory license for limited export or import of medicines; where they are receiving countries lacks manufacturing capacity, why? The major concern is the safety of the and the safety and health issues of the public at large.

So, in this discussion, we have focused on the trade related aspects of the IPR in general and why it is important to have a IPR and how IPR can be used in a prudent way to keep a balance between the rights of the members who are the producers of these intellectual properties also, we survey to balance the major concern of regarding public health and other things where it needs to be like open accessible to the public at large specifically in case of public health where we have discussed about the Doha Declaration. In the next session, we are going to discuss about the application of TRIPS in India.

Thank you.