

## Chapter 15

# Intellectual Property, TRIPS and Development

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[T]he law of intellectual property has a pivotal role in providing both incentive and security for those engaging and investing in the innovative process.<sup>1</sup>

Intellectual property is crucial to the promotion of innovation. It provides an incentive to innovate as well as security for investment in innovation. The industries of the 21st century—information technology, biotechnology, pharmaceuticals, communications, education and entertainment—are all knowledge-based. The WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* (the TRIPS Agreement),<sup>2</sup> adopted in 1994 at the conclusion of the Uruguay Round of trade negotiations, requires all WTO Member countries to provide for the protection and enforcement of intellectual property rights. Having forged a link for the first time between intellectual property rights and the international trading system, the adoption of TRIPS means that any country that aims to participate fully in the global economy needs to understand the role of intellectual property and align its intellectual property laws and practices with the international minimum standards prescribed by TRIPS. However, for developing and least-developed countries, the implementation of intellectual property systems and enforcement mechanisms raises questions and challenges. Does recognition and enforcement of intellectual property serve their development needs and objectives? Does TRIPS encourage or hinder the transfer of technologies to developing and least-developed countries, particularly those that meet urgent needs in areas such as public health, food security, water and energy? What is the effect of TRIPS on developing countries' access to knowledge and information? Is there scope for flexibility in implementation of TRIPS in pursuit of development strategies?

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1 S Ricketson, 'The Future of Australian Intellectual Property Law Reform and Administration' *Australian Intellectual Property Journal* 3 (1992): 1 at 3, 5.

2 Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Annex 1C of the Marrakesh Agreement Establishing the World Trade Organisation, 15 April 1994; see <[http://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm)>.

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