

# Industrial Property Protection Under Trips Agreement: Bangladesh Perspective

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## Abstract

*The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets comprehensive standards for industrial property rights. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into existence 1995 January 1 in the hope to increase a knowledge-based economy, setting minimum international standards, and reducing knowledge-based trade barriers. Bangladesh is growing rapidly as an economic boom country; the protection of industrial property rights has become a necessary one. Bangladesh has been fairly very weak traditional implementation of industrial property protection. Implementation and execution of laws related to industrial property have always been a major issue in Bangladesh. This research paper will try to find out for and against arguments of the industrial property under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), understand the Bangladesh situation, and recommend the best possible solutions.*

**Keywords:** *TRIPS agreement, industrial property rights, intellectual property rights, knowledge-based economy.*

## 1. Prologue

The People's Republic of Bangladesh is located in South Asia. It was a part of the British Colony widely known as Greater India till 1947. Bangladesh inherited the intellectual property legal framework from the British Regime in Greater India. After that, it was counted as East Pakistan, province of Pakistan on 14 August 1947. In this period no major development has happened in the intellectual property law system. Bangladesh has become an independent sovereign nation in the year of 1971, December 16 under the great leadership of Bangabandhu Sheikh Mujibur Rahman. Bangladesh currently has the following acts to secure the industrial property act: The Patents and Designs Act, 1911(amended in 2003, May 13); The Trademarks Act, 2009; The Competition Act, 2012 and The Geographical Indications of Goods (Registration and Protection) Act, 2013. According to Article 1.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) state that members shall give effect to the provision of the agreement<sup>1</sup>. The obligation of the member country towards the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) has been shown.

## 2. Industrial Property

Industrial property means is a branch of intellectual property except for copyright, it is available in various forms: patents, industrial designs, trademarks, service marks, layout design of integrated circuits, geographical indications, protection against unfair competition, commercial

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<sup>1</sup> 'Agreement on Trade-Related Aspects of Intellectual Property Rights' (World Trade Organization 1995)  
<[https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.html](https://www.wto.org/english/tratop_e/trips_e/intel2_e.html)> accessed 28 August 2021

names, and designations.<sup>2</sup> The term “industrial property” gets its admiration from the Paris Convention for the Protection of Industrial Property which was adopted in 1883. Various countries generally have laws to protect industrial property for the following reasons:

- To give security and statutory expression to the innovators and creators.
- To make a balance between the public interest in accessing, creations and innovations.
- To promote innovation and creativity.
- To improve economic and social development.
- To create a safe commercial and industrial environment.

### **3. Brief History of Industrial Property in Bangladesh:**

The first legislation related to industrial property was The Patents, Designs and Trademarks Act of 1883, Bangladesh was part of the British Regime in Greater India. It was repealed by the new enactment of The Patents and Designs Act, 1911, and Trade Marks Act, 1940. In the year 2003, The Patents and Designs Act, 1911, and Trade Marks Act, 1940 were amended; Industrial property rights are dealt with by the Department of Patents, Designs, and Trademarks (DPDT) under the Ministry of Industry (MOI) from the same year. Bangladesh has enacted a new act on trademarks in the year of 2009, which is known as the Trademarks Act, 2009. The Competition Act, 2012 and the Geographical Indication of Goods (Registration and Protection) Act, 2013 are strengthening industrial property rights in Bangladesh. In addition, The Penal Code of Bangladesh, 1860 also gave some rights against industrial property rights violations. In the year 1985, May 11 Bangladesh participated in the convention of establishing the World Intellectual Property Organization (WIPO). Bangladesh become a member of the Paris Convention for the Protection of Industrial Property in 1991.<sup>3</sup> Bangladesh is also a signatory member of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO), which come into existence on 1995 January 1.<sup>4</sup> Bangladesh is currently a member of the Least Developed Countries (LDCs) enjoying the extended transition period to comply with Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) rules.<sup>5</sup>

### **4. Present Situation of Industrial Property Administration in Bangladesh:**

The administrator of industrial property is The Department of Patents, Designs, and Trademarks (DPDT) under the Ministry of Industry (MOI) in Bangladesh. The Department of Patents, Designs, and Trademarks (DPDT) is affiliated with the World Intellectual Property Organization (WIPO). Bangladesh Competition Commission tries to give protection against unfair competition for the betterment of the industrial property.

#### **4.1 Trademark:**

Trademark is a symbol that generally presents a product or company. In modern times trademark may be word, name, picture, sound, three-dimensional mark, package, design, symbol, slogan, and many more forms. According to Section 2(8) of the Trademarks Act, 2009, a registered trademark or a mark used to concern goods to indicate a connection in the course of trade between the goods and the person having the right as the proprietor to use the mark

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<sup>2</sup> (WIPO) W, *Understanding Industrial Property* (2nd edn, World Intellectual Property Organization (WIPO) 2005)

<sup>3</sup> 'World Intellectual Property Organization' (*wipo.int*, 1990)

<[https://www.wipo.int/treaties/en/notifications/paris/treaty\\_paris\\_122.html](https://www.wipo.int/treaties/en/notifications/paris/treaty_paris_122.html)> accessed 28 August 2021

<sup>4</sup> 'Bangladesh And The WTO' (*wto.org*) <[https://www.wto.org/english/thewto\\_e/countries\\_e/bangladesh\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/bangladesh_e.htm)> accessed 28 August 2021

<sup>5</sup> 'Least Developed Country Category: Bangladesh Profile' (*un.org*)

<<https://www.un.org/development/desa/dpad/least-developed-country-category-bangladesh.html>> accessed 28 August 2021

and service mark too. After successful registration of a trademark or service mark firstly enjoyed seven years and for each renewal ten years more. The functions of the Department of Patents, Designs, and Trademarks (DPDT) are: dealing with the local and foreign applicant, maintaining an index card and a class of the product, examining the marks, distinguishing between similarity and dissimilar marks, accepting or rejecting the marks, publishing approved marks in the trademark journal, amend the application after hearing, issue or renewal of the trademark certificate, to make an edit in the trademark file, make promotion and mass awareness, maintaining the records of the register, assist government with the trademark-related issue, protect ownership of the owner, following international agreements like Trade-related Aspects of Intellectual Property Rights (TRIPS), Paris Convention for the Industrial Property, etc<sup>6</sup>.

#### **4.2. Patent:**

A patent is a form of intellectual property rights that gives the owner exclusive legal rights to the inventor. So patent is a right which is given for new invention. According to Section 2(8) of The Patents and Designs Act, 1911 (amended in 2003, May 13), inventions mean any manner of new manufacture and include an improvement and an alleged invention. But the patent is more complex than other sources of intellectual property rights because a patent application should include one or more claims for getting a wider scope of protection. Novelty, non-obviousness, and usefulness is the requirement for getting the patent. The patent protection period is sixteen years comparably much low than other countries The functions of the Department of Patents, Designs, and Trademarks (DPDT) are: to grant patents for new inventions, try to promote innovations and maintain them, help technology transfer, to assist and help the law enforcing agency, to create mass awareness, to attract foreign investment, to assist research and development activities, etc.

#### **4.3. Industrial Design:**

An industrial design may consist of three or two-dimensional features. Industrial design is an exclusive right to make, sell and use the protected design. According to Section 43(1), The Patents and Designs Act, 1911 (amended in 2003, May 13) only new and original designs may get the design status. Industrial design protection is given for five years and it could be renewed two times for five years each. The functions of the Department of Patents, Designs, and Trademarks (DPDT) are: to grant industrial design for the new and original design, to give registration, contribute to product development, to assist and help law enforcement agencies, etc.

#### **4.4. Geographical Indication:**

A product sign which includes the geographical origin and possesses qualities for the origin is a known geographical indication. Geographical indication product has a very distinctive quality, reputation, and signature of the place of origin. According to the Section 2(9) of the Geographical Indication of Goods (Registration and Protection) Act, 2013, geographical indication of goods means a geographical indication of agricultural or natural or manufactured goods which identifies its originating country or territory, or a region or locality of that country or territory, where any specific quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin and in the case where such goods are manufactured goods, one of the activities of either production or processing or preparation of the goods concerned conceivably takes place in such territory, region, or locality as the case

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<sup>6</sup> (DPDT), D., 2016. *Department of Patents, Designs, and Trademarks Mission and Vision*. [online] Department of Patents, Designs, and Trademarks (DPDT). Available at: <<http://www.dpdt.gov.bd/site/page/c86d2480-67f8-4c59-807a-5f12abe4acb1/>> Accessed 23 February 2022

may be. The functions of the Department of Patents, Designs, and Trademarks (DPDT) are: to protect cultural heritage, to protect the commercial interest, to promote rural development, to promote traditional knowledge and traditional cultural expression, to get the status of geographical indications, to create mass awareness, etc.

#### **4.5. Protection against Unfair Competition:**

Competition law tries to ensure the free-market economy which promotes, sustains, and maintains optimal market competition, tries to block down anti-competitive work like a cartel, price-fixing, abuse of dominance position, etc. Bangladesh Competition Commission (BCC) is the Quasi-Judicial body of the Bangladesh government for encouraging healthy competition in the market<sup>7</sup>. In the preamble of The Competition Act, 2012, in the context of gradual economic development of the country, it has been stated that it is expedient and necessary to make provisions to promote and ensure an amenable atmosphere for the competition in trade. It will help to prevent, control, and eradicate collusion, monopoly, or oligopoly, combination, or abuse of dominant position or activities adverse to the competition. Functions of the Bangladesh Competition Commission are: to eliminate the adverse effect, to promote competition, to create a sustainable market, to protect the consumer rights protection, to inquire complaints, to inquire about other offenses, to create mass awareness, to promote intellectual property work and innovation, to make rules, policy, instruction and plan of actions, etc.

### **5. Strengthening the Industrial Property through Intellectual Property Rights**

Bangladesh has old law in industrial property namely The Patents and Designs Act, 1911 (amended in 2003, May 13) because of enjoying the extended transition period to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and no acts on the integrated circuit, utility model, and trade secret or undisclosed information. To create consistency and compliance with Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other international agreements, treaties, and protocol Bangladesh government going to bring the following acts in near future:

#### **5.1. Patent:**

The Patents and Designs Act, 1911 (amended in 2003, May 13) is inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in various ways such as the definition of the novelty, inventive step and industrial applicability, the subject matter of eligibility, discloser requirement, duration of protection only 16 years not the required 20 years, parallel import, compulsory licensing, protection for the animal and plant varieties, etc. As a result, being Least Developed Country Bangladesh can produce so-called generic, patented, or non-branded patented products without first asking patent holders. Under the waiver, Bangladesh can export those generic versions of patented drugs to any country where drugs are not covered by patents. These types of exports can boost the economy as well as the establishment. Weak intellectual property protection helps to build a technological base of reverse engineering of foreign technology. Bangladesh will graduate from Least Developed Countries (LDCs) in the year 2024, it is understandable that the new patent act will not come into effect before it for the extra benefit of the extended transition period. Intellectual Property Rights Projects (IPR Project) of the Bangladesh government has already drafted the new Patent Act, 2011 and World Intellectual Property Organization (WIPO) has expressed its opinion on it. The new patent act will make consistent with the Agreement on Trade-Related Aspects of

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<sup>7</sup> BCC, B., 2019. About Competition Commission. [online] Bangladesh Competition Commission. Available at: <<http://www.ccb.gov.bd/site/page/bab76c90-2146-48fc-82e7-51f6d7f6c383/->> [Accessed 23 February 2022].

Intellectual Property Rights (TRIPS), which will vastly secure the patent holder rights tightly with international standards and reduce knowledge-based trade barriers.

### ***5.2. Industrial Design:***

The Patents and Designs Act, 1911 (amended in 2003, May 13) is also an existing act of industrial design. Intellectual Property Rights Projects (IPR Project) of the Bangladesh government trying to modernize and enact a new act the Design Act. The Design Act, 2011, has already been drafted by the Law Consultants.

### ***5.3. Integrated Circuit:***

Intellectual Property Rights Projects (IPR Project) of the Bangladesh government take initiative to make a draft act on the Layout Design (Topographies) Integrated Circuit Law, 2011. Bangladesh will try to safeguard the industrial circuit at least for ten years by way of protection of layout design, integrated circuit, or related article, which will prevent the unfair use for commercial purposes.

### ***5.4. Utility Model:***

The Law Consultants of the Intellectual Property Rights Projects (IPR Project) of the Bangladesh government trying to make a draft act on Utility Model Law, 2011. Though the duration of protection of the utility model varies from one country to another, Bangladesh should try to safeguard the duration for at least 6-10 years.

### ***5.5. Trade Secret or Undisclosed Information:***

Trade secret protection is hugely inestimable for businesses of all sizes. Intellectual Property Rights Projects (IPR Project) of the Bangladesh government also took to prepare a draft on the Protection of Undisclosed Information Law.

### ***5.6. Protection against Unfair Competition:***

However, protection against unfair competition is not included in the Intellectual Property Rights Project (IPR project) of the government of Bangladesh. Bangladesh will soon need to upgrade the Competition Act, 2012 with consistent with the new industrial property act.

## **6. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is known as the first international agreement including all types of intellectual property with numerous substantive provisions. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) deals with various intellectual property rights and comprehensive new framework prescribing the standards of intellectual property rights for patents, industrial designs, trademarks, copyright and related rights, layout design of integrated circuits, geographical indications, trade secrets and plant varieties protection. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into effect on 1995, January 1. It is regarded as the most widespread multilateral agreement on intellectual property.

### **Industrial Property related features of the TRIPS Agreement**

Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides standards concerning the scope and use of industrial property rights. The basic features are summarized as follows:

#### ***6.1. Trademarks:***

The basic definition and rule for trademark are contained in Article 15. Registration depends on the use contained under Article 15.3. According to Articles 15.1, 16.2, and 16.3 service marks are also given the same status as marks of distinguishing goods. The exclusive right is given to the owner of the trademark by Article 16.1. Besides, Article 16.2 and 16.3 contains a certain provision on well-known marks. Limited exceptions are related to Article 17. Initial registration for not less than 7 years and renewability are discussed in Article 18. Cancellation of a mark on the grounds of non-use cannot take place before three years of uninterrupted non-use is related to Article 19. The trademark will follow justifiable conditions by Article 20.

### ***6.2. Geographical Indications:***

Geographical indications are defined under Article 22.1. According to Article 22.2 interested parties must have legal means to prevent the use of indications. If trademark misuse geographical indications for misleads the public must be refused under Article 22.3. Article 23 gives more protection regarding wines and spirits. Article 24 contains a several exceptions to the protection of geographical indications.

### ***6.3. Industrial Designs:***

Article 25.1 defines the basic rule for industrial design and 25.2 deals with design related to the textile sector. Article 26.1 dealt with the absolute rights of the owner, Article 26.2 is related to limited expectations, and a minimum of 10 years of duration is related to Article 26.3.

### ***6.4. Patents:***

The patentable subject matter is related is with Article 27. Rights conferred are dealt with by Article 28, conditions of a patent application are related to Article 29. The exception to rights conferred is related to Article 30. Unauthorized use-related provisions dealt with Article 31. Revocation dealt with Article 32, the term of protection related to Article 33, and the burden of proof for the process is related to Article 34.

### ***6.5. Layout-Design of Integrated Circuits:***

The scope of the protection of integrated circuits is related to Article 36, authorization of the right holder is dealt with Article 37 and the term of protection is related to Article 38. The term of protection varies from countries to countries but members must provide for minimum protection of at least ten years.

### ***6.6. Protection of Undisclosed Information:***

Article 39 is dealt with the protection of undisclosed information.

### ***6.7. Control of Anti-Competitive Practices in Contractual Licenses:***

Article 40 recognizes some licensing practices or conditions about intellectual property rights.

## **7. Advantages of the TRIPS Regime**

The standard set up by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) granted as a contemporary significance of the knowledge economy and intellectual property. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for the first time has put a global minimum standard for intellectual property protection. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) brings the following changes in intellectual property trade and policymaking:

### ***7.1. Increasing Intellectual Property Trade:***

In the year of 1995, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into existence, which gives legal recognition of the significance of intellectual property and trade, which ultimately transform the world of intellectual property. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) creates huge impacts on a domestic and international level. Due to the harmonization industrial property trade also increase very rapidly. Extra benefits are given to the developing economies which leads them to enhance their capability for creativity and innovations capacity.

### ***7.2. Setting Minimum Standards:***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) ensures the minimum protection for intellectual and industrial property. Rather than having a mandatory effect on the least developed countries and developing countries, this agreement has given more time to apply the TRIPS standard to their legal system.

### ***7.3. Bringing Transparency:***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) signatory members need to inform the World Trade Organization (WTO) about laws, regulations, policy, and enforcement arrangements in the field of intellectual property. At present time, the legislation and policy of the member countries need to follow the TRIPS standard by harmonizing with the national priorities which will lead to technological, social, and commercial changes.

### ***7.4. Setting International Standard:***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) introduced intellectual property standards to international trade. Paris Conventions, Berne Conventions, the Patent Cooperation Treaty, Madrid Protocol System of Trademark Protection have given huge popularity to the World Intellectual Property Organization (WIPO).

### ***7.5. Reducing Trade Tensions:***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) ensures minimum protection which ultimately reduces the trade tensions over the intellectual property issue. The main ambition of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was to create a rules-based transparent process for settling disputes.

### ***7. 6. Bring Stability in Intellectual Property Trade:***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) brings dramatic changes in trade-related knowledge products. TRIPS standard brings a stable framework for the domestic and international market for intellectual property trade.

### ***7.7. Top-Notch Rise of the Patent Application:***

Being an industrial property patent got its significance importance after the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In the year 1995, only 1 million patent applications were filled by World Trade Organization (WTO) members' but it dramatically improved in the year 2013 to 2.5 million. Chinese government patent office has now become the busiest patent office in the world.

### ***7.8. Diverse Trademarks Activity:***

Trademark registration gets more diversified with local and international jurisdiction. Madrid Protocol System of Trademark Protection brings new lights to the field of registration of trademarks in various members countries.

## **8. Disadvantages of the TRIPS Regime**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has some disadvantages also. It is sometimes in favor of the powerful country. Limitations of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are given below:

### ***8.1 Not suitable:***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets a very high standard for the industrial property rights for many least developed countries. Due to their economic incapability, the year extension facility will not boost its intellectual and industrial property rights.

### ***8.2. Gains Reaped by Developed Countries:***

By the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) developed countries get much more benefit than developing countries because a higher pedestal naturally follows higher benefits.

### ***8.3. Injuries More Than Advantages:***

Year extension facility of TRIPS agreement seems like a great deal for the limited time, but in the long run least developed countries will suffer in the long run if they cannot boost their intellectual and industrial potentiality.

### ***8.4. Reduction of Local Inventions:***

The untrapped industrial property trade may hamper the local inventions. Administrative and financial incapability of the local inventions may face great loss by untrapped industrial property trade.

### ***8.5. Technological Base:***

To get the highest benefits from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the technological base is the foremost one. Many least developed countries technological basement pretty low in standard, shortly becoming dangerous to them.

### ***8.6. Administrative Capabilities:***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is vastly dependent on administrative capabilities. For many developing and least developing countries, it is still a major challenge to improve the administrative capabilities in a short time.

## **9. To Be or Not to Be Part of the TRIPS Agreement**

From the above discussion, it is very clear; the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has some for and against arguments for it.

At present of globalization, Bangladesh needs to step up gear in the knowledge-based economy. To ensure the smooth running of a knowledge-based economy there is no suitable alternative or option available without the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Bangladesh government has taken the necessary steps to harmonize and adhere to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Bangladesh government has shown the capability to move forward to strengthen industrial property rights. Intellectual Property Rights Projects (IPR Project) of the Bangladesh government brings new hope to industrial property protection.

## **10. Recommendations**

From the above discussion, the recommendations are proposed below:

- Separate laws need to be enacted for the protection of patents, industrial designs, layout design of integrated circuits, and trade secrets.
- The Trademarks Act, 2009 has the inability of regulating issues arising out of e-commerce and passing off action for unregistered trademarks. So, the Trademarks Act needs urgent amendments.
- For the protection of geographical indications post-grant quality surveillance system should include in the Geographical Indication of Goods (Registration and Protection) Act, 2013.
- Corpus Juris development of intellectual rights will lead to including traditional knowledge and prevention cross-cutting intellectual property rights. Bangladesh government needs to be proactive about these rights also.
- To create a better administrative and technical situation and efficiency should be improved of the administrative body. Increased manpower with adequate training will help to improve the better situation.
- Try to improve dispute resolution situations to ensure fast and cost-effectiveness.
- Try to install intellectual property courts or tribunals for better justice and promote innovation.
- Create mass awareness for the protection of industrial property.

## **11. Conclusion**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) harmonization with the Bangladeshi intellectual property system is mainly based on proper enactment which will inherit the TRIPS standard and effective law enforcement mechanism. Collective responsibilities are essential to improve the present situation. The government should take proper steps by way of up-gradation and enactment of the necessary provisions; strengthen the intellectual property services and enhance them. The stakeholders of intellectual property rights need to play a vital role also.