



INSTITUTE OF EUROPEAN STUDIES OF MACAU
澳門歐洲研究學會
INSTITUTO DE ESTUDOS EUROPEUS DE MACAU

The 19th IEEM Intellectual Property Seminar

25 Years of TRIPS Agreement

Grand Lapa Hotel

Macau 4 and 5 November 2019

When the TRIPS agreement was negotiated in the context of a comprehensive multilateral free trade agreement, this marked a new era for intellectual property rights. First, it brought intellectual property law within the ambit of international trade, which arguably meant a shift in paradigm: Intellectual property rights not as obstacles to, but as a precondition of international trade. Second, the agreement overcame the impasse that had been reached with the Paris and Berne Conventions a reform of which could not be achieved. Based upon the principles of Berne and Paris, the TRIPS Agreement required comprehensive minimum standards in all fields of IP law, added a chapter on enforcement standards and as part of the WTO Agreement provided for a dispute resolution procedure in case of non-compliance. Many countries signed up to the agreement in the belief that it would bring an end to unilateral threats of sanctions, and to the demands of developed countries for an adequate level of IP protection.

The presentations look at the developments in the direct ambit of the TRIPS Agreement (namely panel decisions under the dispute resolution scheme), at the wider picture such as IP developments in the context of international organisations (WIPO, OECD, UN, WHO etc.), under domestic law, and under bilateral or multilateral trade or IP agreements. In doing so, the presentations compare the framework of intellectual property rights as it was pre-TRIPS, where we are now, and, most importantly, what the future of intellectual property rights – within the context of TRIPS and beyond - will be, taking into account changes in technology, society and politics.

Schedule and Contents

Monday
4 Nov 2019

Morning

09:00 Registration

09:30 **Welcome Address**

José Luís de Sales Marques, IEEM President

Gonçalo Cabral, Legal advisor to the Secretary for Economy and Finance, Macau – Seminar Convenor

09:45 **The Political Promise of TRIPS as the Agreement to end all IP Agreements**

Jens Hillebrand Pohl, Maastricht University, The Netherlands

When TRIPS was concluded, many understood the agreement to embody a new gold standard of IP protection that made not only reforms to the Paris and Berne Conventions, but also further IP agreements unnecessary. The ubiquitous sprawling of specific IP agreements and especially the inclusion of IP chapters in bilateral and multilateral free trade agreements has proven this wrong. Obligations to protect IP rights can now be found in bilateral and multilateral trade agreements, and can be enforced before domestic courts, the WTO and before investor-state tribunals. IP has become far more pervasive in society than ever before. For good, better, or worse?

10: 30 Q&A followed by Coffee Break

11:00 **TRIPS in the Context of International Law**

Anselm Kamperman Sanders, Maastricht University, The Netherlands

TRIPS has led to a number of issues in the context of international law: The relationship between GATT and TRIPS (e.g. freedom of transit), the relationship between the Paris and Berne Conventions with TRIPS (whether rights specified under Paris and Berne were actionable by way of WTO dispute resolution; what the MFN obligation meant in the context of Berne and Paris), the relationship between the WTO and WIPO (settle by way of an agreement), the direct applicability of TRIPS (not uniformly answered). These issues were partly dealt with by agreements, partly by DS decisions and partly by decisions of national courts.

Discussant: Peter van den Bossche, World Trade Institute, Switzerland

12:00 **TRIPS in the Field of Copyrights**

Marketa Trimble, University of Nevada, Las Vegas

Copyright law has been the IP field with the highest number of dispute settlement proceedings. Outside the WTO context, a number of subsequent copyright agreements have been concluded under the auspices of WIPO, and domestic legislation responded to internet-related challenges with the introduction of new rights such as communication to the public. Both technology related to the use of copyrighted works and the way copyrighted works are consumed have changed beyond recognition over the last 25 years and will keep changing.

Discussant: Jens Hillebrand Pohl, Maastricht University, The Netherlands

Monday
4 Nov 2019

13:00 Q&A followed by Lunch

Afternoon

14:30 TRIPS in the Field of Trade Marks

Guy Tritton, Hogarth Chambers, London

While trade marks have only become a TRIPS issue in the recent dispute resolution on plain packaging, the agreement as such has confirmed the notion of trade marks as proprietary rights that can find protection even beyond confusion. Approaches to further strengthen trade mark rights seem to have come from elsewhere, e.g. the CJEU, though. Will trade mark rights irretrievably move beyond the concept of origin confusion and towards the exclusive right of determining image and perception? And how has technology (AI, internet, social media) changed the traditional concepts of trade mark law?

Discussant: T.B.C

15:30 Q&A followed by Coffee Break

16:00 TRIPS in the Field of Geographical Indications

Natale Rampazzo, CNR - IRISS National Research Council, Naples, Italy

The protection of geographical indications has been a controversial issue between the old and new world from the beginning. DS 174 concerns the conflict between trade marks and geographical indications. Starting in 1992 with the EU-Australia Wine Agreement, a rising number of bilateral agreements between the EU and third countries have now mandated protection of specifically listed indications, and also the successful conclusion of the Geneva Act to the Lisbon Agreement has given a new impetus towards world-wide protection, but also towards renewed conflicts. And while the EU claims to champion GIs in negotiations with third countries, there may be an internal movement to water down the quality requirements of GIs in order to accommodate producers at the expense of consumers.

Discussant: Anselm Kamperman Sanders, Maastricht University, The Netherlands

17:00 Q&A & Closure

19:30 Dinner

Tuesday
5 Nov 2019

Morning

9:00 TRIPS in the Field of Patents – A System on Autopilot?
 T.B.C

The introduction of minimum standards and the reduction of flexibilities in patent policy was arguably the most controversial issue in the TRIPS negotiations. Although some DS proceedings focussed on issues of legal construction (e.g. stockpiling), most of the patent discussion took place in the political arena (allowability of parallel imports; possibility of discrimination against foreign production; compulsory licensing; inventive step requirements for pharmaceuticals). The Doha Declaration somewhat eased these political tensions. Against this background, the presentation will look at whether the future of the patent system will continue on a technology-driven autopilot or whether societal interests (Arts. 7, 8) will play a greater role in interpreting the system of patent rights and/or how technological developments such as AI will require changes to the system.

Discussant: Heinz Goddar, Boehmert & Boehmert, Munich, Germany

10:00 Q&A followed by Coffee Break

10:30 TRIPS in the Field of Enforcement
 Xavier Seuba, University of Strasbourg, France

The enforcement chapter in the TRIPS Agreement finds no precedent in previous IP Agreements. Different from the chapters on substantive law, most provisions are worded as recommendations rather than obligations. No dispute settlement has dealt with enforcement issues. Yet even the soft law character of the enforcement provisions may have led to changes in domestic law: The EU Directives on Enforcement and Border Enforcement, domestic attempts to improve evidence collection, the protection of trade secrets in court proceedings, increased damage awards and the multitude of jurisdictions that set up specialised courts or court divisions dedicated to IP are evidence thereof. But has increased enforcement also, as Hugh Laddie once put it, become an instrument of oppression? Has it led to an over-zealous spill over in the private sphere, to extortion rackets and to patent trolls?

Discussant: Guy Tritton, Hogarth Chambers, London

11:30 The Dispute Resolution Scheme under WTO/TRIPS and its Uncertain Future
 Peter van den Bossche, World Trade Institute, Switzerland

The Dispute Resolution Scheme as introduced under the WTO Agreement meant a significant departure from previous, rather incomplete mechanisms to secure compliance. Under the two-tier mechanism of first-instance ad hoc panels and a permanent appeal board, a high number of cases in all fields of WTO have been decided in the last 25 years. Yet the future of this core feature of the WTO Agreement is uncertain due to a political impasse over the appointment of appeal board judges. The presentation looks into the history and procedure of the Dispute Resolution Mechanism, compliance of Member States with its rulings and its viability for the future.

Discussant: Marketa Trimble, University of Nevada, Las Vegas



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Tuesday 5 Nov 2019	12:30 Q&A followed by Lunch <i>Afternoon</i> 14:15 Mock Trial 17:00 Closure followed by drinks



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