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TRIPS-PLUS AS A TOOL FOR ENFORCING INTELLECTUAL PROPERTY RIGHTS: IMPLICATIONS FOR DEVELOPING COUNTRIES

Abstract

An enormous proliferation of Free Trade Agreements (FTAs) has been explicitly evident in recent years especially due to a reaction to the slow and disruptive process of trade negotiations in the multilateral forum i.e., the World Trade Organization (WTO). These FTAs now adopt Trade Related Intellectual Property Rights (TRIPS)-Plus provisions that include new areas of Intellectual Property (IP) rights protection and implementation of more extensive levels of IP standards beyond WTO TRIPS's requirements, particularly in terms of elimination of options and flexibilities available under the WTO TRIPS. TRIPS-Plus provisions are conceived as stringent IP provisions aiming to harmonise global IP standards and enforce IP rights. Given the disparities and lack of progress regarding the implementation of IP protection, developed and industrial countries have pursued for stronger IP protections through entering into bilateral FTAs with the developing countries. In exchange of stronger IP protections, developed nations bilaterally offer greater market access for developing ones while the FTAs demand extensive adoption, amendment and invocation of intellectual property rights laws, institutions and enforcement mechanism. In this context, this paper attempts to analyse factors behind the adoption of TRIPS-Plus agreements and their impact on developing countries. The central research questions of this paper are: why does world community need TRIPS-Plus agreement? Does TRIPS-Plus agreement help to enforce Intellectual Property rights? Obviously opportunities like greater market access are lucrative from the developing country perspective; however, implementation of TRIPS-Plus provisions is squeezing TRIPS flexibilities available for them. Therefore, developing countries should adopt cautious measures during the negotiation phase with developed nations in order to continue to enjoy WTO TRIPS flexibilities particularly in the fields of pharmaceuticals and agriculture.

1. Introduction

The adoption of Trade Related Agreement on Intellectual Property Rights (TRIPS) by the World Trade Organization (WTO) member countries in 1994 was an important tool of ensuring minimum standards of Intellectual Property (IP) protections. However, recent trend shows that, countries are moving ahead in the pursuit of stronger IP protections. The notion of stronger IP protections is now mainly promoted by the industrialised and

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developed countries through entering into bilateral Free Trade Agreements (FTAs) with the developing ones. While entering into bilateral FTAs, developing countries have to recognise and include more IP subject matters viz., broader and extensive coverage, increased harmonisation of IP laws, stronger enforcement mechanisms, and stepping away from using flexibilities and special and differential treatments which have been granted by the WTO TRIPS agreement. As these measures under the FTAs are seeking higher standards of IP protections beyond TRIPS, these are widely known as TRIPS-Plus provisions.[1] Developing countries, which are still lagging behind in the implementation of their obligations under the TRIPS, are now compelled to implement higher standards of IP protections under bilateral FTAs with developed countries.

The issue of TRIPS-Plus has surfaced in international trade negotiations since 2000, followed by the slow progress of multilateral trade negotiations under WTO framework. From developed countries' perspective achieving extensive coverage of IP subject matters and their stringent implementation mechanisms are difficult to achieve in developing countries through multilateral negotiations in WTO. Developed countries, therefore, have initiated bilateral trade negotiations with developing nations outside the multilateral forum of WTO. Through FTAs developed nations offer concessions to developing countries in core trade areas of agriculture, textile and other market access preferences.[2] In return, developing countries are asked to implement labour standards, environmental protection measures and also IP provisions to the extent of TRIPS-Plus standards. The costs and benefits of TRIPs-Plus for developing countries are always an issue of controversy. In general, entering into a TRIPS-Plus agreement can bring benefits for developing countries as this will increase their international trade volume and foreign direct investment. This agreement can also establish IP standards in developing countries beyond measures which have been adopted in TRIPS and other international intellectual property agreements. TRIPS-Plus agreement seeks to strengthen laws and procedures to enforce IP rights and provides credible deterrent measures against IP infringements.

The opposite view is that TRIPS-Plus generates social and economic costs for developing countries and shrinks their abilities to use TRIPS related flexibilities in dealing with intellectual properties granted under WTO. TRIPS-Plus for them is creating policy constraints at national level i.e., protecting interests of local companies and sectors like public health, agriculture and education.

In this context, this paper attempts to analyse factors behind the adoption of TRIPS-Plus agreements and its impact on developing countries. The central research

[1] Bryan Mercurio, "TRIPS-Plus Provisions in FTAs: Recent Trends", in Lorand Bartels and Federico Ortino (eds.), *Regional Trade Agreements and the WTO Legal System*, Oxford: Oxford University Press, 2006, pp. 215-237, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=947767, accessed on 21 October 2013.
[2] Jakkrit Kuanpoth, "TRIPS-PLUS Rules under Free Trade Agreements: An Asian Perspective", in C. Heath & A. Kamperman Sanders (eds.), *Intellectual Property & Free Trade Agreements*, United Kingdom: Hart Publishing, 2007, p. 28.

questions of this paper are: why does world community need TRIPS-Plus agreement? Do TRIPS-Plus provisions help to enforce IP rights? The paper will also look at the impacts of TRIPS-Plus provisions on the developing countries and what they can do in minimising the impacts i.e., the way forward. The paper is divided into six sections including introduction and conclusion. Section two analyses the factors behind the adoption of TRIPS-Plus agreement. Roles of TRIPS-Plus in enforcing IPs are discussed in section three. Section four focuses on the impacts of TRIPS-Plus on developing countries especially in the pharmaceuticals and agricultural sectors and, section five highlights the way forward for the developing countries. Section six concludes the paper.

2. Factors behind the Adoption of TRIPS-Plus Provisions in FTAs

Many factors contributed to the adoption of TRIPS-Plus provisions in bilateral FTAs between developed and developing countries. The recent rise of bilateralism in international trade negotiations is an important factor giving rise to TRIPS-Plus provisions in FTAs. The changing nature of the multilateral forum in terms of developing countries gaining prominence as well as creating hurdles for the developed ones to pursue their IP related agenda at the multilateral level are also significant contributors. Moreover, ratcheting up of IP protections in developing countries is also highlighted by the developed ones as a rationale behind adoption of TRIPS-Plus provisions in bilateral FTAs.

2.1 *Bilateralism and TRIPS-Plus Agreement*

The history of intellectual property rights protection under international trade has always been revolving around the cycles of bilateralism, regionalism and multilateralism. Nations have been swinging between bilateralism and multilateralism according to their own interests. Before international agreements on trade and intellectual property rights, nations have granted trade concessions and sought IP protections at their national levels according to their own needs and performed in discriminatory manners to protect and promote their local industries and export volumes.

This system was inefficient as the IP protection was highly dependent on the discretionary power of the sovereign state some of which incurred trade imbalances. Realising this inefficiency, nations wanted to develop multilateral framework and adopted the Most Favoured Nation (MFN) and National Treatment (NT) principles. Countries had agreed upon multilateral treaties in order to develop general principles for IP protections and appropriate trade concessions. Notably in the 18th century, several multilateral treaties were adopted by the nation states viz., the Paris Convention for the Protection of Industrial Property (1883) (covering patents,

trademarks, and industrial designs) and the Berne Convention for the Protection of Literary and Artistic Works (1886) (covering the issue of copyright). According to these multilateral agreements, countries had agreed to provide minimum protection to intellectual properties and developed general principles and mechanisms applicable for all member countries. Following the Second World War (WWII), General Agreement on Tariffs and Trade (GATT) was adopted and subsequently, World Intellectual Property Organization (WIPO) was established. The decolonisation process after the WWII heralded the inclusion of newly independent developing countries in the multilateral socio-economic and political organisations which created imbalance of power between developed and developing countries. Developing countries had only agreed to implement minimum standards of IP protection through international agreements and treaties. Moreover, they differed widely in a number of important areas of IP protections.[3]

GATT and other United Nations' (UN) bodies, however, emerged as developing countries' platform where developed nations were becoming incapable of pushing through for stronger IP protections. Therefore, GATT and other trade related forum became less acceptable to the developed countries. These countries realised that they had already gained comparative advantages on IP related trade of goods and services over developing countries. Again there have been massive IP infringements, counterfeiting and imitations undergoing in developing countries. In such context, developed nations started to initiate bilateral talks with developing ones in which they included IP protection measures as one of the components of international trade negotiations. Therefore, bilateral and unilateral approaches have been adopted in the beginning of 1980s. For instance, the United States (US) adopted a process of naming transgressor developing countries and designating them under priority watch list in the annual Unites States Trade Representative (USTR) National Trade Estimates Report to put pressure on them. The United States also granted Generalized System of Preferences (GSP) to the developing countries to allow preferential access to US market on the ground that they should pay respect to IP protections. The most important initiative was the signing of the North American Free Trade Agreement (NAFTA) in 1994 in which the US successfully linked intellectual property protection measures with the treaty provisions that were obligatory for all signatory countries to follow.

On the other hand, the existing GATT system lacked significant enforcement mechanism for all its member countries as far as IP protections were concerned. A large scale IP counterfeiting had been going on despite GATT. Therefore, developed countries wanted to develop a uniform system and notion of IP. The uniform system is aimed at providing more protections along with effective dispute settlement mechanism to resolve dispute between nation states on IP counterfeiting and infringements. Developed countries also wanted to extend the coverage of intellectual property. Therefore, the treaty of TRIPS signed in 1994 included several subject matters

[3] Bryan Mercurio, "TRIPS, Patents and Access to Life-Saving Drugs in the Developing World", *Marquette Intellectual Property Law Review*, Vol. 8, No. 2, 2004, p. 216.

of IP i.e., copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits, and protection of undisclosed information. TRIPS agreement is also based on MFN and NT principles.

According to NT principle of TRIPS, member states are obliged to accord to the nationals of other member's treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property. [4] On the other hand, the MFN of TRIPS stipulated that, "with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by member of the nationals of any other country shall be accorded immediately and unconditionally to nationals of all other members".[5] Based on this principle when a developing country as member state of the WTO agrees to a higher standard of intellectual property protection under FTA, then it is also obliged to extend those standards 'immediately and unconditionally' to the nationals of other WTO members. TRIPS also established minimum levels of protection that each member must provide and grant to other nations. Importantly, members can also seek policies for higher level of IP protection given that the principles of MFN and NT are respected.

Facing continuous pressure and unilateral action of withdrawing trade concessions and foreign aid by developed countries, developing countries have agreed to the inclusion of IPs in the TRIPS agreement. However, they have negotiated to agree upon such inclusion in exchange for concessions in other areas i.e. agriculture and textile. Developing countries also succeeded in the inclusion of several flexibilities into TRIPS. Notable among these are gaining time-bar for implementing TRIPS obligations. Developing countries also succeeded in Doha round of WTO Ministerial Conference in 2000 to include more flexibilities under TRIPS i.e. public health and access to medicine. Article 4 of the Doha declaration confirmed that "the TRIPS agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all". Doha declaration thus confirmed parallel importation and compulsory licensing for medicines in developing countries for the purpose of protection of public health. The most concerning issue in this declaration for developed nations was that it also allowed third parties to exploit a patented medicine without patentee's authorisation. Frustrations grew among developed nations as they failed to ensure strong IP protections because of the constant resistances from the group of developing countries. Multilateral trade negotiations thus gained very little for them in the face of large number of varied opinions and interests from the group of developing countries. Achieving consensus was very difficult in WTO where every member can use the veto power in the consensus based decision-making process to derail entire negotiation process. In such a situation, the interests of a developed nation or lobbyist of industries like pharmaceuticals and computer hardware and

[4] Article No. 3 of TRIPS, WIPO, "Agreement on Trade Related Aspects of Intellectual Property Rights, 1994", 2012, p. 17.
[5] Article No. 4 of TRIPS, *ibid.*, p. 18.

software have been difficult to maximise in WTO. Therefore, the United States and other developed countries have again shifted its negotiation focus and sought to use bilateralism to increase IP protections in collaborations with FTA partners through: (a) inclusion of new areas of IP rights protection; (b) implementation of more extensive levels or standards of IP protections beyond TRIPS; and (c) elimination of options or flexibilities available under TRIPS.[6]

2.2 *Changing Forum and Number of Counterparts*

An important reason of policy shift to bilateralism is to change the forum composition and numbers of adversaries which usually exist in multilateral trade negotiations. Granting trade concessions to Least Developed Countries (LDCs) and developing countries in bilateral agreements can secure allies within the forum of LDCs and developing countries. In the process, developed countries gain supports from the group of LDCs and take advantageous position in bargaining with regard to IP negotiations. Followed by the emergence of Group of 20 this idea has been floated among the developed countries' policy makers. G20 emerged particularly to the opposition of developed countries in the Cancun Ministerial Conference. G20, dominated by Brazil, China, South Africa and India has been conceived by the developed world as new power house within the WTO multilateral trade negotiations. In response to such development, developed nations started to increase their bilateral FTAs with developing countries in order to dismantle their alliance. The objective is to bypass one-country veto power under WTO multilateral trade negotiation framework. They used combination of unilateral pressure and bilateral trade negotiation agreements to pressurise developing countries to distance themselves from the G20 agenda. Shortly after Cancun, several Latin American countries including Costa Rica, Colombia and Peru, announced they were no longer members of this group.[7] One reason was that the United States has refused to include Costa Rica and Guatemala in the US-CAFTA (Central America Free Trade Agreement) negotiations unless they back out of their support for the group of G20.

Moreover, there is a difference in the league of developing countries. Bigger developing countries like Brazil and Argentina do not agree to FTA provisions. The Free Trade Area of the Americas (FTAA), the US-Andean FTA, and the US-SACU (Southern African Customs Union) FTA are currently at a standstill because of their resistance. On the other hand, middle power countries like Australia and ASEAN leaders like Singapore tactically supported bilateral trade negotiations and FTAs to project incentives to the weaker developing countries to follow them.

[6] Bryan Mercurio, "TRIPS-Plus Provisions in FTAs: Recent Trends", *op. cit.*, p. 219.
[7] Ruth Mayne, "Regionalism, Bilateralism, and 'TRIPS Plus' Agreements: The Threat to Developing Countries", Human Development Report Office, 2005, available at http://hdr.undp.org/en/reports/global/hdr2005/papers/HDR2005_Mayne_Ruth_18.pdf, accessed on 23 October 2013, p. 5.

From Table 1, it is apparent that the strategy of developed countries encompasses 'dividing' developing country coalitions and negotiating with those nations willing to compromise to implement stringent IP protections. It needs to be noted that many developing countries do not hesitate to trade-off IPs in exchange for market access.[8] In fact, some of them believe that bilateral agreement offers real gains instead of symbolic victories under multilateral trade negotiations.

Table 1: List of Developing Countries' Membership with G20 and US's FTA

Developing country	G20	Ex-G20	Cairns Group	FTA with USA
Argentina	Y		Y	
Bolivia	Y		Y	Proposed
Brazil	Y		Y	
Chile	Y		Y	Y
China	Y			
Colombia		Y	Y	Proposed
Costa Rica		Y	Y	Y(CAFTA)
Cuba	Y			
Ecuador		Y		Proposed
Egypt	Y			
El-Salvador		Y		Y (CAFTA)
Guatemala		Y	Y	Y (CAFTA)
Honduras				Y (CAFTA)
India	Y			
Indonesia	Y		Y	
Malaysia			Y	Proposed
Mexico	Y			Y (NAFTA)
Nicaragua		Y		Y (CAFTA)
Nigeria	Y			
Paraguay	Y		Y	
Pakistan	Y			
Peru		Y		Proposed
Philippines	Y		Y	
South Africa	Y		Y	Y (SACU)
Tanzania	Y			
Thailand	Y		Y	Y
Uruguay			Y	
Venezuela	Y			
Zimbabwe	Y			

Source: Peter Drahos, Thomas Faunce, Martyn Goddard, and David Henry, *The FTA and the PBS*, A submission to the Senate Select Committee on the US-Australia Free Trade Agreement, 2004, available at https://www.anu.edu.au/fellows/pdrahos/reports/pdfs/2004ftapbssubmission.pdf, accessed on 25 October 2013.

[8] C. Freund, "Reciprocity in Free Trade Agreements", World Bank, 2003, available at econ.worldbank.org/files/26994 wps3061.pdf, accessed on 25 October 2013.

2.3 *Ratcheting up IP Standards by Using International Standards*

TRIPS-Plus under bilateral FTAs is also aimed for scaling up international standards through bilateralism. Bilateral FTAs are also based on MFN principle like TRIPS. To illustrate, if a developed and a developing country member negotiate an FTA, MFN will force the developing nation to make the same IP standards it accepted in the FTA, available to all nations. This provision clearly serves the objective of developed nations to 'ratchet up' international IP protection mechanisms. Therefore, when any FTA contains TRIPS-Plus provisions then these provisions will essentially become the new minimum standards of intellectual property rights. These new standards then are the start-up point for any future WTO trade negotiation. At this point, therefore, it is important to discuss how far TRIPS-Plus provisions under FTAs are contributing in promoting IP rights standards.

3. Role of TRIPS-Plus in Promoting Intellectual Property Rights Standards

The NAFTA concluded in 1994 is considered as the first free trade agreement which contains extensive IP provisions for its signatory countries. In the same year, under the aegis of the US, the European Union (EU) and Switzerland, the GATT members, for the first time, also agreed upon concluding an agreement called TRIPS which links IP norm setting to international trade disciplines. However, developed states have been constantly pursuing greater IP coverage and extensive IP protection through their bilateral trade agreements. Therefore, the purpose of this section is to provide an in-depth discussion about the role of TRIPS-Plus for promoting IP rights protection globally.

3.1 *TRIPS-Plus as Tool of Seeking Higher IP Standards*

The proponents of TRIPS-Plus wanted to pursue strict policy guidelines to push for higher standards of IP in their partner countries. The purpose is to make developing countries comply with extended coverage and higher levels of IP standards and also to limit the use of TRIPS flexibilities. The following table clearly reflects the fact that under bilateral free trade agreement, developing countries are obliged to implement extended coverage as well as higher standards of IP protections in their own jurisdiction in comparison to WTO TRIPS requirements.

Table 2: TRIPS-Plus Provisions in FTAs and their Comparison with WTO TRIPS		
In US-Peru FTA	**In US, Peru and Colombia FTAs**	**WTO TRIPS Provisions**
Seeking Adherence to International Intellectual Property Treaties and Agreements		
Ratification of various WIPO[9] treaties and UPOV[10] signed in 1991	Ratification of various WIPO treaties	Developing countries under FTA oblige to join a specific international agreement/ treaty on IP which is not part of TRIPS to meet additional demands of developed nations for IP protections beyond TRIPS.
Geographical Indications (GIs) and Trademarks		
No visual perceptibility requirement for trademark registration	May adopt visual perceptibility requirement for trademark registration	Under TRIPS (Art. 1.1) members including LDCs and developing countries have flexibilities to adhere and implement provisions of TRIPS and other international treaties related to IP within their own legal system and practice.
Provisions on GI application procedures	Definition of GIs and list of established GIs	
GI protection refusal: when likely to cause confusion with a trademark	Protection Refusal: when likely to mislead in light of a well-known trademark	
Copyright		
Seek WCT[11] and WPPT[12] standards in national IP policies	Seek WCT and WPPT standards in national IP policies	Technological Protection Measures (TPM)-circumvention is allowed under TRIPS but developing countries can enjoy flexibility under TRIPS to exempt from adopting circumvention measures in their national copyright law.
Seek protection of Encrypted Satellite Signals	Seek protection of Encrypted Satellite Signals	
Limitations of liabilities of internet service providers	-	
Not less than 70 years of protection	70 years of protection	Not less than 50 years.

[9] World Intellectual Property Organization (WIPO).
[10] International Convention for the Protection of New Varieties of Plants originally adopted on 02 December 1961, and later raised at Geneva in 1972, 1978 and 1991.

Patents and Undisclosed Information		
Standards on novelty and grace period, inventiveness and industrial application	-	TRIPS (Art. 27.3) provides patent exceptions for (a) diagnostic, therapeutic and surgical methods; and (b) plants and animals other than micro-organisms. Article 30, provides for limited exceptions to the exclusive rights conferred by a patent. Article 39(3) of TRIPS provides protection for test data but no time limit is specified.
Amendment of patent application	-	
Extend terms of patent, other than pharmaceutical patent	May provide for patent term extension for pharmaceutical patents	
10 years for agricultural test data exclusivity	10 years for agricultural test data exclusivity	
Normally 5 years for pharmaceutical test data	Normally 5 years for pharmaceutical test data	
Enforcement		
Damage, discovery and evidence	Damage, discovery (right of information) and evidence	TRIPS (Art. 41.2) stipulates that procedures of enforcement of IP rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
Ex officio border measures with respect to goods in transit	Border measures by both right holders and *ex officio* authority to include goods in transit	

Source: UNCTAD and ICTSD, 2011.

As is evident from Table 2, developed countries tend to use bilateral FTAs as leverage for motivating developing countries to adopt stricter IP policies at their national levels. They also use FTA bindings to ensure effective enforcement mechanism in the developing countries for IP rights protections. Without the prospect of implementing and enforcing IP rights at the domestic level, it would be difficult to bring any positive change in intellectual property rights enforcements. FTA provisions, therefore, also cover domestic enforcement mechanisms to protect internationally traded goods and services.

3.2 *Opportunity of Adopting Different Implementation Strategy*

An important objective of TRIPS-Plus is to secure the implementation of IP standards and to seek compliance from the developing countries. TRIPS-Plus provisions under FTA offer more opportunities to develop new implementation strategies for the

[11] WIPO Copyright Treaty of 1996.
[12] WIPO Performance and Phonograms Treaty in 1996.

developing countries which are difficult to achieve through multilateral agreement. The notion of 'one-size fits for all' system in multilateral agreement does not consider country specific context and realities. Contrary to that, FTA offers prospects for further negotiations between the developed and developing countries for durable amendments of rules and regulations for enforcements of Intellectual Property rights provisions.

3.3 *Expanding Coverage of Intellectual Property Rights*

TRIPS-Plus provisions in the FTA also provide leverage to extend coverage of IP rights. Many countries now try to implement their own regulatory preferences in their partner countries. A clear example is the case of Geographical Indication (GI). The issue of extending GI has been basically patronised by the EU, as EU conceived it as a means of promoting sustainability of small farming and rural communities. GI protections preserve the income-profit of small firms as well as promoting rural economy. EU had been successful to include inclusion of wines and spirits under GI protection in TRIPS agreement. Article 23 of the TRIPS agreement stipulates for recognising wines and spirit as GI product which all member countries had agreed upon. Moreover, Article 24 and Article 23 reveal exception; the member states can negotiate to increase the protection of individual geographical indication. In light of this, EU and many developing countries opted for ongoing negotiation within the TRIPS council in seeking additional protection of GI. They promoted multilateral registration systems to other products under the purview of the concept of additional protection of GI which is one of the essential elements of the TRIPS agreement. They have been advocating for extending GI protection on agricultural products, food stuff, and handicrafts which have originated in a specific place and possess qualities, reputation, traditional know-how or other characteristics that are essentially attributable to that place of origin. For example, during December 1998 TRIPS council meeting, both developed and developing countries submitted many of their products for inclusion under GI, some of which are noted below[13]:

Table 3: List of Products Submitted in TRIPS Council for GI Protection

Name of Country	GI Products
Bulgaria	Bulgarian yoghurt, Traminer from Khan Kroum (wine), Merlou from Sakar (wine)
Canada	Canadian Rye Whisky, Canadian Whisky, Fraser Valley, Okanagan Valley, Similkameen Valley, Vancouver Island
Czech Republic	Pilsen and Budweis (beers), Various Wines, Liqueurs, Saaz hops, Auscha hops, Jablonec Jewellery, Bohemia Crystal, Vamberk Lace

[13] *WTO News*, available at http://www.wto.org/english/news_e/news98_e/pu_e.htm#Top, accessed on 25 October 2013.

European Communities	Champagne, Sherry, Porto, Chianti, Samos, Rheinhessen, Moselle Luxembourgeoise, Mittleburgenland (all wines); Cognac, Brandy de Jerez, Grappa di Barolo, Berliner Kümmel, Genièvre Flandres Artois, Scotch Whisky, Irish Whiskey, Tsikoudia (from Crete) (all spirits); and a range of other products, such as Newcastle brown ale, Scottish beef, Orkney beef, Orkney lamb, Jersey Royal potatoes, Cornish Clotted Cream, Cabrales, Roquefort, Gorgonzola, Aziete de Moura, Olive de Kalamata, Opperdoezer Ronde, Wachauer Marille, Danablu, Lübecker Marzipan, Svecia, Queijo do Pico, Coquille Saint Jacques des Côtes-d'Amour, Jamón de Huelva, Lamme jordsgulerod
Hungary	Eger (wine), Szatrademarkar (plum)
Liechtenstein	Malbuner (meat products), Balzer (Hi-tech products)
Slovak Republic	Korytnická minerálna voda (mineral water), Karpatská perla (wine), Modranská majolica (hand-painted pottery), Piešťanské bahno (healing mud)
United States	Idaho (potatoes and onions), Real California Cheese, Napa Valley Reserve (still and sparkling wines), Pride of New York (agricultural products), Ohio River Valley (viticulture area)

This proposal was opposed by the members led by the United States. Interestingly, some developing countries also supported the United States. The negotiation derailed in TRIPS council and also later in Doha Ministerial Conference in 2000. Clause 2 of the Doha instrument only recognised the need for all peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. This statement in fact justified that the industry-specific TRIPS protection is untenable for developing countries.

Given this deadlock situation in TRIPS council and no ready solution for further harmonisation of 'global notion' of GI, EU in 2005 submitted a radical TRIPS-Plus proposal to amend the TRIPS agreement in favour of mandatory multilateral system for all products. They advocated that this proposal would also meet the need of developing countries as they have successfully established their rights on agricultural products. The following table shows some examples of GI products in developing countries.[14]

[14] Daniele Giovannucci, Tim Josling, William Kerr, Bernard O'Connor, and May T. Yeung, *Guide to Geographical Indications: Linking Products and Their Origins*, Geneva: International Trade Centre, 2009, available at www.intracen.org/WorkArea/DownloadAsset.aspx?id=37595, accessed on 26 October 2013, p. 2.

Table 4: Most Prominent GI Products in Developing Countries	
Name of Country	**Name of GI Products**
Guatemala	Antigua Coffee
India	Darjeeling Tea
Mongolia	Gobi Desert Camel Wool
Jamaica	Blue Mountain Coffee
Hawaii	Kona Coffee
Mexico	Mezcal and Tequila
Colombia	Café Naino

EU as the leading proponent of GI has adopted two different TRIPS-Plus initiatives i.e., specific Stand Alone Agreement on GIs as for example with China and, secondly, entering into a Free Trade Agreement.[15] The EU has concluded a series of FTAs which contain important levels of protection for GI. For example, EU and Chile concluded an association agreement in 2000 which included an FTA that entered into force in 2003. In this agreement both sides mutually agreed to extend protection of GI of their products.[16] In October 2009, EU and South Korea signed FTA agreement, according to which both countries agreed to offer high levels of protection of GI products including protection for EU GIs such as Champagne, Feta Cheese, and Scotch Whiskey.[17]

Like many developing countries, Bangladesh also supports the initiative to extend GI protection for food items under TRIPS. The country can benefit from extending GI protection to food items. GI extends protection which is relatively impersonal that means the protected subject matter is related to the product itself and is therefore not dependent on a specific right holder. Therefore, GI offers protections and opportunities for local communities to control the productions, branding and marketing of their products. Bangladesh has diverse agricultural products and is also rich in crafts, cultural heritage, and traditional knowledge and so on. Bangladesh has enacted Geographical Indication (Registration and Protection) Act in November 2013. So far, Bangladesh included 73 products under GI in which 52 are food products and remaining 21 are

[15] European Commission (EC), *Geographical Indication*, Directorate General for Trade, available at http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/, accessed on 26 October 2013.

[16] Raymond J. Ahearn, *Europe's Preferential Trade Agreements: Status, Content, and Implications*, Congressional Research Service, R41143, 2011, available at www.fas.org/sgp/crs/row/R41143.pdf, accessed on 26 October 2013, p. 11.

[17] "USTR Releases Preliminary Analysis of Korea-EU Free Trade Agreement", *Press Release* by the Office of the United States Trade Representative (USTR), 21 October 2009, available at http://www.ustr.gov/about-us/press office/press-releases/2009/october/ustr-releases-preliminary-analysis-korea-eu-free-t, accessed on 01 November 2013.

non-food products. Food products include three fish items, 12 fruits, 15 processed foods and sweets, 14 agricultural products and eight types of vegetables.[18]

3.4 *Limiting Free Riding and Extending Bargaining Trade-off*

The TRIPS-Plus provisions under bilateral FTAs reduce the possibility of free-riding of countries available under the multilateral agreement. These provisions are targeted to amend local policies and regulations in exchange of access to the markets of the developed nations. TRIPS-Plus seems more effective as it shows credible retaliation measures other than withdrawing trade concessions and imposing trade barriers. For example, the unilateral action of withdrawing trade concession under the GSP or the Special Act no. 301 of US is not effective. In many instances it has been proved that the Special Act no. 301 measures have not deterred countries from counterfeiting of IP. On the other hand, from the developing country perspectives, TRIPS-Plus under FTA provides them bargaining opportunities to cover the liberalisation of goods and service sectors, trading concessions and greater market access. Most importantly, developing countries can also use TRIPS-Plus as a bargaining chip for gaining technical assistance from the developed countries.

3.5 *TRIPS-Plus as Capacity Development Tool*

TRIPS-Plus provisions in FTA also offer non-binding measures for the developing countries. The purpose of this is to develop mechanism in the developing countries which can contribute to the implementation and enforcement of IP in future. In this regard, the central focus is on capacity building of the institutions and regulatory cooperation between agreeing parties. Such capacity building activities develop effective and credible mechanism for enforcing IP by exchanging information, notifying partner members about the progress of new regulations adoptions, monitoring of enforcement, arranging consultations and provisions for amendment of regulations and laws regarding IP rights.

3.6 *Accelerating Harmonisation of IP Standards*

TRIPS-Plus provisions also accelerate the process of harmonising IP standards in many developing countries. In this regard, adoption or modification of laws and adherence to international IP conventions are discussed as follows:

[18] FAO, "Rural Development and Agri-food Product Quality Linked to Geographical Origin in Asia", Proceedings from the Technical Consultation, 8–10 June 2009, Bangkok, available at http://www.foodqualityorigin.org/Bangkok/programme.html, accessed on 23 March 2014, p. 43.

3.6.1 *Adoption or Modification of Laws*

Empirical evidence shows that developing countries which agreed upon TRIPS-Plus have modified their laws to harmonise IP standards with the developed world. For example, under CAFTA, Costa Rica amended several major domestic IP laws i.e., the laws on patents, designs, industrial designs and utility models, trademarks and other distinctive signs, copyright and related rights, undisclosed information, and enforcement laws. In March 2006, Nicaragua approved laws reforming the protection of copyright and related rights, programme-carrying satellite signals, patents, utility models and industrial designs, and trademarks and other distinctive signs. Chile and Morocco introduced a number of important changes to their IP legislative frameworks in order to comply with their Preferential Trade Agreement with the US, signed in 2003 and 2004 respectively. Therefore, TRIPS-Plus triggered extensive domestic legislative reforms for the protection of IP in developing countries. The European Union has agreement on the protection of GIs with Chile, Mexico and South Africa. Under the TRIPS- Plus provision of bilateral FTAs, these countries have to phase out or de-register trademarks that conflict with terms describing European GIs, in exchange for tariff free export to the EU market.

3.6.2 *Adherence to the International IP Conventions and Treaties*

An important aspect of TRIPS-Plus FTA is the promotion of adherence to second generation multilateral treaties developed at WIPO. Under FTA, the developing countries are invited to ratify international IP conventions, particularly WIPO treaties and the International Convention for the Protection of New Varieties of Plants 1991 (UPOV 1991). For example, under US-Chile FTA, Chile has to undertake efforts to ratify or accede to Patent Law Treaty (PLT, 2000), the Hague Agreement Concerning the International Registration of Industrial Designs (Hague Agreement, 1999) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989) in a manner consistent with its domestic law. Chile is also encouraged to classify goods and services according to the classification of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement, 1979). On the other hand, Nicaragua and Panama are obliged to accede to UPOV 1991 under their FTA with the United States.

4. Impacts of TRIPS-Plus on Developing Countries

The proliferation of FTA has been increasing in number since 2000. Developed nations have been eager to conclude FTA agreement with the developing countries to achieve gains in trade in goods and services which appeared difficult to gain under the WTO framework. The purpose of this section is to explore impacts of TRIPS-Plus on developing countries. To this end, this section focuses on the effects of TRIPS-Plus in pharmaceutical and agricultural sectors of developing countries.

4.1 *Impacts on Access to Medicine*

There has been growing concerns among the world leading medicine manufacturing companies regarding the absence of patent protection in the developing countries. TRIPS agreement provides minimum patent protection mechanism which all member countries of WTO should oblige. Developing countries as member of WTO adhered to the international principles of intellectual property protection. But given the exclusivity of patent, developing countries raised the issue of granting patents to medicines and drugs which may cause high prices of medicines. Bangladesh as a developing country will face challenges to ensure public access to medicines after the expiry of TRIPS extension. TRIPS-Plus provisions erode TRIPS extension and under the new term patent extension on pharmaceuticals for developing and LDCs will expire by 2016. Therefore, Bangladesh will have to provide protection to the foreign pharmaceutical companies which may raise the cost of patented drugs. Bangladeshi companies will not be allowed to produce generic drugs at all in future.

The experience regarding access to patented drugs in South Africa, Brazil, and Thailand led to the adoption of Doha declaration on the TRIPS Agreement and Public Health.[19] The Doha declaration affirms the right of WTO member countries to protect public health especially in those least and underdeveloped countries which are adversely affected by HIV/AIDS, tuberculosis, malaria and other critical epidemics. In this context, member countries have been given rights to use TRIPS flexibilities with regard to granting patents to medicines and drugs. Member countries can use Article 31(f) and (h) of the TRIPS agreement to grant compulsory licensing for production in return for adequate remuneration to the patent holder. The Doha deceleration also adopted the following options for the developing countries to use TRIPS flexibilities. These are:

- Adoption of the principle of the international exhaustion of rights so as to facilitate parallel importation of cheaper drugs. The issue is left to the TRIPS member countries to decide upon the level of exhaustion of patent rights in Article 6 of TRIPS.

- Exclusion of certain biotechnology inventions, as well as medical methods for the treatment of humans and animals. This option has been confirmed on the basis of patentable subject matter of patented goods stipulated in Article 27 of TRIPS.

- Providing limited exceptions to the developing countries to use patented medicines for limited experimentation, and prior user's rights etc. The provision of limited exception has been articulated in Article 30 of TRIPS.

[19] WTO Ministerial Conference, 4th Session, Doha, 9-14 November 2001, WT/MIN(01)/Dec/2, 20 November 2001.

- Providing rights to developing countries to use compulsory licenses for making available patented drugs.

The TRIPS-Plus initiatives by the developed countries can be seen as an attempt to circumvent the flexibilities and options granted by TRIPS and Doha declaration. Following discussion reveals how TRIPS-Plus can reduce a developing country's options for using TRIPS flexibilities especially in the public health sector.

4.1.1 *Patentable Subject Matter*

Some TRIPS-Plus provisions in bilateral FTAs require that effective and adequate protection must be given to inventions in all technological fields including plants and animals that are under the TRIPS Article 27.3 can be excluded from patentability. TRIPS also restricts member countries to grant patent on medical practices such as diagnostics, therapy and surgery of human or animal body on the ground of morality and ethics to prevent monopoly privileges in the public health sector. However, in many FTAs, attempt has been made to seek compliance from developing countries to avoid these flexibilities. For example, under the FTA with the United States, Thailand has to grant patents to the plants and animals as well as diagnostic, therapeutic, and surgical procedures for the treatments of humans and animals. TRIPS-Plus provision in FTA also demands granting patent to the second use of invention. On the contrary, TRIPS does not require its members granting patent to second use invention. Second use of invention is very common in pharmaceutical sector. For example, an agro-chemical substance can be used as a pharmaceutical product or a well known drug can be used as new therapeutic application. Such second use may be claimed for patent by the patent holding companies. The second use of patent invention limits the freedom of developing countries to determine what should be protected under product and process patents as provided by TRIPS. Medicines that are no longer patented as products can be patented as a second use, new dosages of existing drugs, or new combinations of existing drugs. Patents for subsequent use of a known drug would thereby unnecessarily prolong the monopoly and deprive consumers of essential drugs.

4.1.2 *Compulsory Licensing*

Compulsory licensing is a TRIPS provided flexibility which allows a country to override patent right temporarily and issues third party to perform acts covered by the patent exclusive rights i.e. manufacturing, selling, or importing patented medicines. Compulsory license also authorise the production of generic version of patented products.[20] The experiences in many countries including US, Canada,

[20] For more on compulsory licensing, see C. Correa, "Intellectual Property Rights and the Use of Compulsory Licenses: Options for Developing Countries", *South Centre Working Paper No. 5*, 1999, available at http://www.iatp.org/files/Intellectual_Property_Rights_and_the_Use_of_Co.pdf, accessed on 01 November 2013.

Brazil[21] and South Africa have shown that compulsory licensing is an effective mechanism to limit abusive practices of the patent holder and help to force prices down. Brazil has the 9th largest market of pharmaceutical in the world in 2007 with the sale totalling US$ 5.7 billion.[22] There are four main actors of Brazilian pharmaceutical sector. These are foreign based companies (controls 70 per cent of total production), government funded lab (18 in number), local private companies producing generic medicines and local pharma-chemical companies producing raw materials. Brazil was the first country to use TRIPS flexibilities after the enactment of Patent law in 1996. Brazil based on its new patent law started to issue compulsory licensing to drive down the price of medicines. By allowing other producers to enter the market, the legal device allows state to remove exclusivity right of patent holder to set monopoly prices.[23] The compulsory license provision in the patent law of Brazil gives local pharmaceutical companies opportunities to produce generic versions of eight of twelve drugs that compose the AIDS cocktail at a cost that is 70 per cent lower than the current market price. The Brazilian government practises this right by asserting to Article 30 of the TRIPS agreement which allows countries to issue compulsory license during the time of national emergency. In this regard, the issue of limiting the right of the country to use compulsory licensing is one of the main TRIPS-Plus objectives of bilateral FTAs. TRIPS-Plus agreement tries to impose more stringent conditions than TRIPS to grant compulsory license and override patent rights. In many bilateral FTAs, compulsory license can only be granted as remedy to anti-competitive practices, in the case of public non-commercial use and only in the situation of national emergency or other circumstances of extreme urgency. Therefore, issuing a compulsory license on the ground of non-working or insufficient working of patent which is included in Brazilian patent act is thereby usually prohibited under bilateral FTAs. Some FTAs also adopt provisions of restricting the transferring of undisclosed information or the disclosure of know-how through issuing compulsory licensing to the third party for producing generic medicines. The restriction of know-how under the TRIPS-Plus is pursued because know-how enables the compulsory license to make efficient use of the patent. Without access to 'know how', the commercial value of access to a patent is less worthy than licensee. Therefore, TRIPS-Plus provision attempts to limit compulsory licensing to certain situations and make the procedures for issuing licensee intricate and prolonged. Obviously, such activity imposes constraints on developing countries to pursue affordable drugs and access to medicines.

[21] Under the Brazilian patent law, patent protection is provided on condition that the patent holder produces at least part of the patented goods within Brazil. If the patentee fails to satisfy this 'local working' requirement, its patent rights may be subject to a compulsory license, which may be an issue to Brazilian pharmaceutical companies so that they may produce generic copies of the drugs to supply to the local market. See Naomi A Bass, "Implications of the TRIPS Agreement for Developing Countries: Pharmaceutical Patent Laws in Brazil and South Africa in the 21st Century", *George Washington International Law Review*, Vol. 34, No. 1, 2002, p. 191.

[22] IMS Health, 2008, available at www.imshealth.com, accessed on 04 November 2013.

[23] Kenneth C. Shadlen, Samira Guennif, Alenka Guzmán, and N. Lalitha (eds.), *Intellectual Property, Pharmaceutical and Public Health: Access to Drugs in Developing Countries*, United Kingdom: Edward Elgar Publishing Ltd., 2011, p. 149.

4.1.3 *Limiting Parallel Importation*

Parallel Importation is a situation when the patent holder sells a product to a buyer who exports the product to a second buyer in another country.[24] Such situation arises when the price of imported medicine or good is lower than the price of the same product or medicine legally made or imported into that country. This is possible under the TRIPS provision of exhaustion of rights. Intellectual property rights are exhausted once a product is sold or once placed in a market anywhere in the world. Therefore, the initial sale ends the IP holders' rights and control over what can be done with that product. Article 6 of TRIPS states that member countries are free to choose any system of exhaustion of IP rights. Currently, three kinds of exhaustion are available i.e., national, regional and international. If any country adopts international exhaustion of patent rights then a right owner cannot use IP rights to prevent this country from importing patented goods from anywhere in the world, where the patent holder placed patented product for commercial use. Therefore, there is no such measure to prevent importing nation that can acquire pharmaceuticals at reduced prices from any place in the world. In this context, in many FTAs, TRIPS-Plus provision requires to adopt only the national exhaustion and prohibiting international exhaustion. For example, the US' FTAs with Morocco (Article 15(9) (4)[25]) and Australia (Article 17(9) (4)[26]) prohibit parallel importation. From the developing countries perspectives, prohibition of international exhaustion and parallel importation can block opportunities to import cheap medicines and other goods from outside the national market.

4.1.4 *Extending Patent Term Protection*

Patent term protection is always a critical issue as it grants monopoly exclusive right to the patent holder. In the TRIPS agreement of 1994, the minimum term of protection has been set at 20 years. But some products such as pharmaceuticals and agro-chemicals require lengthy period of test and regulatory approval. This requires lots of time just to get entry into the market of the country. Therefore, TRIPS-Plus provisions include a proposal to extend the term of protection to these products to provide compensation for unreasonable delays in issuing the patents. The main rationale behind the proposal of extending patent protection is that patent holders can secure their economic benefits which are not possible to obtain during the period of testing and gaining approval from the regulatory authorities. In the Central

[24] For more information, see "Health Care and Intellectual Property: Parallel Imports", available at www.cptech.org/ip/fsd/health-pi.html, accessed on 10 November 2013.

[25] Each Party shall provide that the exclusive right of the patent owner to prevent importation of a patented product, or a product that results from patented process, without the consent of the patent owner shall not be limited by the sale or distribution of that product outside its territory. Available at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/morocco/asset_upload_file797_3849.pdf, accessed on 09 November 2013.

[26] *Ibid.*

American Free Trade Agreement-CAFTA-DR, extension of patent term protection has been made. Article 15 (9) (6) of the CAFTA-DR states that:[27]

> Each party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the Party, or three years after a request for examination of the application has been made, whichever is later.

Critics have argued that the TRIPS-Plus provision regarding extension of patent term would allow multinational pharmaceutical companies to practice monopoly for a longer period of time. Extension of patent term delays the potential introduction of affordable generic medicines and therefore, patent holding company could gain benefits from charging higher price.

4.2 *Impacts on Agriculture*

Countries still differ about the patentability of biological materials and methods. Different countries have different rules in this regard. For example, patent laws of EU still exclude some form of biotechnological inventions i.e., plant and animal varieties from patent protection. In many bilateral FTAs, there has been increasing demand for granting patent to all kinds of life forms including plants, animals, biological processes, the by-product of generic engineering and biotechnological methods, genes and gene sequences. If patenting of life was granted through FTA, then there would be considerable effects on the agricultural sector of developing countries. If developing countries grant patents to genes it will cause a power shift in agriculture towards large biotechnological companies. It will then disrupt the access to essential products such as seeds or foodstuffs. The patent on genes would give monopoly power to the companies to control over production chain of crops and foods. Some argued that gene patenting would have detrimental effect on the research environment and prevent innovation process. As pointed out by Heller and Eisenberg, the patenting of biological products and processes is regarded as 'anti-commons', in which individual put fences around the people's private property and destroys the commons. This could impede discovery and innovation in the fastest-growing field of technology.[28]

For protection of plant varieties (genes), article 27.3 of TRIPS gives member states options to protect plant varieties by patents or by an effective sui-generis

[27] Bryan Mercurio, "TRIPS-Plus Provisions in FTAs: Recent Trends", *op. cit.*, p. 230.
[28] M Heller and R. Eisenberg, "Can Patent Deter Innovation?: The Anti-commons in Biomedical Research", 1998, available at http://www.sciencemag.org/content/280/5364/698.full, accessed on 12 November 2013, pp. 698-701.

system. The term effective sui-generis system in TRIPS is a bit ambiguous which allows developing countries to avoid developing full intellectual property law covering plant varieties. For example, India and Thailand have flexibly implemented the TRIPS provisions by incorporating the farmer's right[29] and Access and Benefit Sharing System (ABS) under the convention on Biological Diversity into their national legislation. But patent protection of plant varieties under TRIPS-Plus provisions can act as barrier to the access to agricultural product and transfer of technology to the developing countries. Multinational bio-tech companies will have opportunity to dominate farming sector as well as exploit abundant biological processes of the developing countries.

5. The Way Forward

Preceding discussion demonstrates that TRIPS-Plus provisions can impose strict mechanisms for implementing intellectual property rights in developing countries. Therefore, measures can be taken beyond the strict implementation of the provisions of bilateral FTAs. Two of such measures are as follows:

5.1 *Issuance of Side Letter*

In order to ensure freedom of developing countries to take appropriate measures recognised by the Doha Declaration on TRIPS and Public health, TRIPS-Plus provisions under FTA should issue side-letter to recognise this safeguard mechanism for developing countries. This kind of side letter has been issuing in many FTAs. As for example, in the US-CAFTA-DR FTA,[30] the side letter recognises that the obligations set forth in the FTA do not affect the ability of either party to take necessary measures to protect public health by promoting access to medicines for all. Measures to protect public health thus cannot be prevented in FTAs in special cases such as HIV/AIDS, tuberculosis, malaria and other epidemics, as well as circumstances of extreme urgency or national emergency. Therefore, by gaining side letter developing countries can create compatible environment between TRIPS safeguard and TRIPS-Plus obligations.

5.2 *Inclusion of Provision of Capacity Building and Technical Assistance*

Developing countries can negotiate for introducing provisions for capacity building and technical assistance under the TRIPS-Plus FTA. This is highly important for developing countries to develop administrative, institutional and technical capacities to administer and enforce IP rights. Some developing countries have already

[29] The concept of Farmer's Right adopted by the Food and Agriculture Organizations (FAO) for the aim of compensating farmers who have been conserving plant genetic resources for the past centuries thereby have contributed to the development of plant varieties. Available at http://www.fao.org/righttofood/our-work/current-projects/rtf-global-regional-level/itpgrfa/en/, accessed on 12 November 2013.

[30] The United States-Dominican Republic-Central American Free Trade Agreement.

succeeded to include this kind of provision in their FTAs with the developed nations. For example, in the US-Chile FTA, Article 17.1 (14) defines means by which the parties will cooperate in order to strengthen the development and protection of IP, including through education and dissemination projects and training courses[31]. Under CAFTA developing countries secure commitments from their developed partners to support capacity building in trade. The FTA under EU also includes the provision of providing technical cooperation with respect to IPs. These are providing legislative advice, capacity building training and supporting building up institutional structures.

6. Conclusion

This paper begins by pointing out the importance of TRIPS agreement to implement global standards of intellectual property rights. It is considered to be one of the most successful multilateral agreements which is legally binding for all the signatory countries. However, the IP implementation landscape is not as smooth as it was conceived by the drafters of TRIPS. There has been significant gap between a country's international commitment and actual domestic implementation with regard to intellectual property rights. TRIPS flexibilities subject to national interpretations caused problems for harmonising IP standards at the global level. Countries are also very much indifferent to accede to the international treaties covering various areas of IP rights.

The inclusion of TRIPS-Plus provisions in Free Trade Agreements, therefore, can be seen as a reaction to the prevailing disparities and as an attempt to limit TRIPS related flexibilities. TRIPS-Plus thus is a process of recalculating the IP standards bilaterally with the developing countries. The paper also shows that developing countries have been constrained under TRIPS-Plus provisions to enjoy flexibilities in certain sectors. The pharmaceutical and agricultural sectors of developing countries are going to be affected the most by TRIPS-Plus IP provisions. However, developing countries still have opportunity to bargain with their developed counterparts to ensure their rights of using flexibilities in certain sectors. It cannot be denied that despite some criticism, the TRIPS-Plus initiatives are clearly crucial drivers of significant reforms in developing countries towards harmonising intellectual property standards all over the world.

[31] Ermias Tekeste Biadgleng and Jean-Christophe Maur, "The Influence of Preferential Trade Agreements on the Implementation of Intellectual Property Rights in Developing Countries: A First Look", *ICTSD Issue Paper No. 33*, 2011, available at http://unctad.org/en/Docs/iteipc2011d01_en.pdf, accessed on 14 November 2013, p. 24.