

The TRIPS Agreement: Ready or not, Maldives went for it

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ABSTRACT *This article provides an overview of how the TRIPS Agreement came into being, and uses this as a background context to the Maldives' Membership of the WTO by which Maldives also became a contracting party to the Agreement. The objective of the article is to shed light on the readiness of Maldives for obligations that the Agreement creates and to what extent the country has been able to meet those obligations thus far. The article is largely based on the review and analyses of literature, discussions and the experience of the author's own involvement in the process of the Maldives' Membership of the WTO. The article finds that Maldives is encountering daunting challenges in implementing the Agreement.*

Keywords: Intellectual property rights, TRIPS Agreement, legal implementation, technical assistance, Maldives

Maldives became a Member (unless otherwise stated, the reference to “Members” or “Membership” (i.e., with the first letter capitalised) in this article refers to WTO Members and WTO) Membership respectively. of the World Trade Organisation (WTO) in 1995 by accepting the Marrakesh Agreement Establishing the World Trade Organisation (the Marrakesh Agreement). The Maldives' membership of the WTO took effect on 31 May 1995. Thus, Maldives automatically became a contracting party to the annexes to the Marrakesh Agreement, including Annex 1C, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The principle that when a Member accepts the Marrakesh Agreement (one undertaking), it automatically accepts the Agreement's annexes (which are practically all WTO multilateral agreements) is known as the single undertaking principle. There are also plurilateral agreements under the auspices of WTO. But these agreements are not subject to the single undertaking principle. Therefore, countries are free to choose to become party to those plurilateral agreements or remain non-party to them.

Since the TRIPS Agreement requires Members to implement and apply the provisions of the Agreement within the relevant transition periods applicable to them as given in the Agreement, this article seeks to ascertain to what extent Maldives has been able to meet those obligations thus far.

Following the entry into force of the TRIPS Agreement, the WTO became the second international organisation that has a global mandate over intellectual property rights (IPRs). The only other international organisation with international mandate over IPRs that pre-existed the TRIPS Agreement is the World Intellectual

Property Organisation (WIPO), established by the WIPO Convention that entered into force in 1970.

The predecessor to the WTO was the General Agreement on Tariffs and Trade (GATT) Secretariat which, together with the agreements administered by it, was collectively known as the world trading system, the system of rules, procedures and the apparatus that evolved under the GATT 1947 (therefore also referred to as the GATT system. The system now falls within the WTO system, comprising the WTO secretariat, the multilateral and plurilateral agreements and understandings it administers and the whole apparatus, also including the Dispute Settlement Mechanism. Intellectual property (IP), a non-trade matter, was not originally a domain of the multilateral trading system because IP was not an original subject matter of the GATT 1947. While IP-related provisions did exist in the GATT 1947, they were viewed as exceptions to free trade in Article XX(d) of the GATT 1947 (UNCTAD and ICTSD, 2005, p. 81).

The question then, is how did IP end up as also a matter for the world trading system? The following discussion sheds some light on this question.

Push for Intellectual Property Rights as a Trade-Related Matter

In developing a case for the introduction of IP as a matter for the multilateral trading system, an “Anti-Counterfeiting Coalition” of 100 multinational corporations from developed countries led by U.S. multinationals argued that trade in counterfeit goods (that were trademarked as their original goods) was on the increase and that this affected their business interests (Matthews, 2002). Their governments accepted the case and a draft “Agreement on Measures to Discourage the Importation of Counterfeit Goods” articulated with inputs from the Anti-Counterfeiting Coalition was proposed for negotiation during the Tokyo Round of Multilateral Trade Negotiations. The multilateral trading system evolve(s/d) on the outcomes of successive rounds of trade negotiations. These included, inter alia, the Tokyo Round, the Uruguay Round, etc. The WTO Agreement is one of the results of the Uruguay Round.

According to Matthews, a key argument against them during the negotiations was that there was insufficient evidence that counterfeiting was seriously prejudicial to the proponents’ business interests. Because of such contentions, no consensus was reached for the draft at the end of the Tokyo Round due to a lack of widespread support from other national governments.

Earlier, an attempt was made to get the issue of trade in counterfeit goods addressed under the WIPO-administered treaties. The proponents believed that the root problem was due to a lack of enforcement at national level in developing countries. Gervais (1999) wrote that the two most fundamental perceived flaws in the Paris and Berne Conventions were the lack of enforcement provisions and the absence of a dispute settlement mechanism under them. Several other authors (e.g. Debroy, 2001, p. 17; Matthews, 2002, p. 11; Sell, 2003, p. 14; May, 2004, p. 822) reached similar conclusions.

Because the WIPO-administered treaties did not contain provisions to enforce IPRs in contracting states, an attempt was also made to revise the treaties so that enforcement can also be addressed under them. According to Matthews (2002), opponents of this move argued that any such revision must be based on evidence

they were expecting from a report that was being produced by the United Nations Conference on Trade and Development (UNCTAD). The report, when completed, found only five countries (the U.S., Germany, France, Switzerland and the UK) owned 84 per cent of patents issued in developing countries and only 1% was owned by nationals of developing countries within their own states.

This motivated developing countries to argue for a revision of the Paris Convention to enable them to retain compulsory licensing under it. Developed countries opposed this and the resulting polarisation led to the abandonment of attempts to revise the Paris Convention.

It was then that the Anti-Counterfeiting Coalition began to push for the matter to be addressed within the multilateral trading system. Their failure at World Intellectual Property Organization (WIPO) only appeared to renew their resolve, for their next move was getting their governments to propose the matter for negotiation during the Uruguay Round. However, a number of developing countries, led by Brazil and India, opposed the move, but such opposition did not stop the matter being made a new subject matter for negotiation during the Uruguay Round.

The Punta del Este Ministerial Declaration of 1986 launched a new round of multilateral trade negotiations including, inter alia, negotiations on IPRs. The Punta del Este Declaration carried a heading entitled “Trade-related aspects of intellectual property rights, including trade in counterfeit goods”. However, not everyone was convinced that IP was a trade issue. According to Jackson (1997, p. 310), the reason for the emphasis on “trade-related aspects” was “to make it more plausible that the agreement be negotiated and placed in the context of the GATT trading system (and now WTO).”

The Anti-Counterfeiting Coalition and their governments began to see that chances of success in their new approach were higher because the world trading system already had an effective dispute settlement mechanism. Therefore, what needed to be done was to push the subject matter of IP into the world trading system which already had two key elements they desired – enforcement and dispute settlement.

Matthews (2002) concluded that the TRIPS Agreement came into being because of the U.S. lobbying power. He wrote: “it is widely recognised that the TRIPS Agreement was largely the result of pressure from U.S. business.”

Given the overwhelming technical, negotiating, financial and soft power that the Anti-Counterfeiting Coalition used, the broadening of the multilateral trading system’s mandate to cover IP was to be an inevitable result of the Uruguay Round.

The next question is about what TRIPS Agreement’s contents are and what obligations and benefits arise from it that are of particular importance to the Maldives in particular and to other less-IP-intensive countries (LIPICs).

The TRIPS Agreement

The TRIPS Agreement is divided into seven parts (Table 1). In Part I, Article 3 of the Agreement provides a key principle of the multilateral trading system that is provided in all WTO agreements: Members must not discriminate between foreign and domestic right-holders (this is known as the national treatment principle). This is one of the most important principles on which the world trading

system has evolved. If a Member provides a certain IP-right in its own jurisdiction to its own nationals, the same right must also be made available to nationals of other Members.

Another basic principle that is ubiquitously found in all WTO Agreements is provided in Article 4 of the Agreement: Members must not discriminate against other Members (the most-favoured nation (MFN) principle). Under this principle, a Member country of the WTO must not discriminate between their trading partners, whether the partner is a WTO Member or not. If a Member grants another country a particular treatment outside a WTO-recognized exception to the MFN principle in an area of WTO mandate, regardless of whether the target country of that treatment is a WTO Member or not, the Member that grants that particular treatment must provide the same treatment also to all other WTO Members.

Table 1
Structure of the TRIPS Agreement

Part	Coverage
Part I	General provisions and basic principles
Part II	Standards concerning the availability, scope and use of IPRs
Part III	Rules for enforcement of IPRs
Part IV	Acquisition and maintenance of IPRs and related inter-parte procedures
Part V	Dispute prevention and settlement
Part VI	Transitional arrangements
Part VII	Institutional arrangements

Source: WTO, the TRIPS Agreement 1995

In Part II, Members are required to have enacted legislation for the scope and use of IPRs in eight specific types of IP: copyright and related rights; trademarks; geographical indications; industrial designs; patents; new plant varieties; layout-designs (topographies of integrated circuits); undisclosed information (including trade secrets and test data); and, anti-competitive practices in contractual licences. Similarly, Members are required to have legal bases and power to carry out the obligations laid down elsewhere in the Agreement including on rules for enforcement, acquisition and maintenance of IPRs and related inter-parte procedures, dispute prevention and settlement, and institutional arrangements.

In relation to the WIPO-administered treaties, Article 2.1 of the Agreement provides that “In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967), the provisions of which apply to all areas of industrial property.

IP may be divided into two branches: copyright and copyright-related rights; and, industrial property, which includes: (i) distinctive signs, in particular trademarks that distinguish goods or services of one organisation from those of other organisations, and geographical indications that identify a good as originating in a geographical location where a particular characteristic of that good is essentially attributable to its geographical origin; and, (ii) inventions (protected by patents), industrial designs and trade secrets, etc., that are protected primarily to stimulate innovation, design and the creation of technology.

In relation to the Berne Convention, Article 9.1 of the Agreement provides that “Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.”

The above gives an indication of the numerous obligations that a Member is required to undertake under the TRIPS Agreement. For a country that has had no prior experience of maintaining an IP regime, the TRIPS Agreement obligations would appear daunting and raise questions regarding its capabilities of shouldering such obligations.

Transition periods

Following the entry into force of the TRIPS Agreement on 1 January 1995 (as Annex 1C of the Marrakesh Agreement), Member countries of the WTO were required to have fully implemented the TRIPS Agreement within the transition periods provided in it. According to UNCTAD-ICTSD, “in the context of TRIPS, transition periods basically constitute the amount of time available for a WTO Member (developed, developing or least-developed) to bring itself into full conformity with the obligations of the Agreement” (UNCTAD-ICTSD, 2005, p. 706). Developed country Members had to comply with all the provisions of the TRIPS Agreement by 1 January 1996, one year after the entry into force of the Agreement. All Members that are transition economies and developing countries other than LDCs had to have the Agreement fully implemented by the year 2000 (Article 65.2 of the TRIPS Agreement).

Other than the provisions of Article 65 (Transitional Arrangements), Article 66 (Least-Developed Country Members), and Article 67 (Technical Cooperation), the TRIPS Agreement is applicable to all WTO Member countries equally.

Articles 65, 66 and 67, however, indicate a recognition in the Agreement that capabilities among Members to attend to matters arising from the Agreement’s provisions may vary from country to country. In Article 65, this recognition is reflected by the varying lengths of duration provided to apply the provisions (for general implementation) of the Agreement: one year for developed countries (Article 65.1); five years for developing countries (65.2); and for “any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations” (65.3). These countries are understood to be “economies in transition” (also known as transition economies) as defined by the UN (United Nations, 2021). In Article 66, LDC Members were originally given 10 years with extensions of this period allowed (66.1).

Article 65 also provided “an additional period of five years” (until 1 January 2005) for a developing country Member to start the application of the provisions on product patents of Section 5 of Part II of the Agreement to areas of technology (e.g. pharmaceutical chemicals, biotechnological inventions) where such protection was not so protectable in its territory on 1st January 1995, the general date of application of the Agreement (as defined in Article 65.2) for that Member (Article 65.4). However, such countries were required to make available from 1 January 1995 exclusive marketing rights (EMRs) for eligible pharmaceutical and agricultural

chemical product inventions for five years from the date of the marketing approval, or less if the patent decision was made earlier.

For LDCs the general date of application in the original text of the Agreement was 1 January 2006 but the Agreement allows the TRIPS Council to accord extensions upon duly motivated requests by an LDC Member (Article 66.1). This is the Council for Trade-Related Aspects of Intellectual Property Rights established under Article 68 of the Agreement. The TRIPS Council is mandated to monitor the operation of the Agreement and, in particular, Members' compliance with their obligations under the Agreement, and it must afford Members the opportunity of consulting on matters relating to trade-related aspects of intellectual property rights. It must carry out such other responsibilities as assigned to it by the Members, and it must, in particular, provide any assistance requested by Members in the context of dispute settlement procedures. In carrying out its functions, the TRIPS Council may consult with and seek information from any source it deems appropriate. Invoking Article 66.1, LDCs – acting as a group – sought and were granted extensions twice. The first extension gave LDCs until 1 July 2013 to apply the Agreement (WTO Document, IP/C/40, 30 November 2005), and the second until 1 July 2021 (WTO Document, IP/C/64, 12 June 2013). A third extension agreed on 29 June 2021 gives LDCs 13 years, until 1 July 2034, to fully implement the TRIPS Agreement (announced on the WTO Web site on 29 June 2021).

UNCTAD-ICTSD summed up the importance of transition periods to developing countries and LDCs as follows:

“Considering the enormous adaptation efforts that need to be made in order to implement the TRIPS obligations in developing and least-developed countries, transitional periods are of vital importance to those Members. If a transition period of five years in the case of developing countries or even 10 or 20 years (for pharmaceuticals) in the case of LDCs seems long at first sight, it needs to be noted that these countries very often do not have a culture of IP protection like their industrialized country counterparts (UNCTAD-ICTSD, 2002, p. 724.).”

The Maldives had the benefit of the transition period allowance for LDCs until its graduation as an LDC in 2011. Records do not appear to show that a provision has been made for the Maldives to be given additional implementation time beyond the date of its graduation.

Legal Implementation by the Maldives

The Maldives was not a member of the WIPO at the entry into force of the Marrakesh Agreement, nor a contracting party to any of the treaties administered by the WIPO. Therefore, there was neither legislative protection of IPRs nor an administration system for maintenance of such protection in the country. This was, in part, a reflection of a lack of public demand for protection of IPRs. Indeed, the Maldives is a small, open economy and a net importer. It has a narrow and shallow knowledge base and limited industrial and innovative capabilities compared to IP-intensive countries (IPICs).

One may therefore ask if the Maldives would have accepted the TRIPS Agreement in the absence of the single undertaking principle explained above. The

answer to this question may be gleaned as “probably no” from the country’s non-participation in the WIPO-administered IP treaties. Had it been possible for the Maldives to not be a contracting party to the TRIPS Agreement, like many other countries in similar situations as that of the Maldives, it would have elected to not accept the Agreement. But why did Maldives decide to join the WTO in the first place?

Prior to the coming into being of the WTO, the Maldives was a contracting party to the General Agreement on Tariffs and Trade (GATT) of 1947, having accepted it in 1983 (Maldives signed the GATT 1947 on 19 April 1983). Reasons for the decision to accede to the GATT 1947 remain unclear. The understanding among bureaucrats was that the GATT membership ‘would be beneficial to the country.’ It does not appear that any assessment was made.

Despite being a contracting party to the GATT 1947, Maldives did not have any representation in Geneva. It was never a participant at the Uruguay Round or earlier negotiations. Records of negotiations do not appear to show any involvement of the Maldives during the Uruguay Round. Therefore, it was not aware of the background and details of issues discussed, positions taken individually or collectively by negotiators in negotiating groups, and outcomes and their implications for the Maldives as an individual party to the multilateral trading system.

Therefore, the motivation to seek Membership of the WTO for Maldives does not appear to be very clear either. If there was a process that led to the decision, records of it do not appear to have been disclosed to the public. Anecdotal evidence suggests that there was no assessment made. But one of the points that was known to have often been mentioned within the relevant circles of administration at the government department with mandate over trade policy was that it was better to be in the system than to be outside it. In one respect this was true because the WTO’s most-favoured nation (MFN) principle prevents any Member from discriminating against any other Member without due process under the WTO law. Another point known to have been made in favour of the case for Membership was that it would enhance investor confidence.

As an existing contracting party to the GATT 1947, Maldives was automatically eligible to accept the Marrakesh Agreement at the time it entered into force, i.e. 1 January 1995. However, the Maldives’ WTO Membership became effective five months later. This delay was due to a combination of the absence of Maldives representation in Geneva to participate in the process, technical capability constraints in Maldives and perhaps also the WTO Secretariat’s preoccupation with matters of its transition to its new organisational form and those related to the bigger countries involved in the process.

Regardless of whether the decision to accept the WTO Agreement was sufficiently considered or not, the Maldives’ Membership of the WTO obligates the country to protect IPRs in accordance with the provisions of the TRIPS Agreement that are applicable equally to all WTO Members, irrespective of their level of development, capability for innovation and generation of IP, or capability and capacity for administration of IP matters.

As Maldives was not a contracting party to any international IP treaties before its Membership of the WTO, obligations arising from the TRIPS Agreement are all new to it. Therefore, implementation was always going to be a challenge.

Implementation progress, or lack of it

The main source used in this article for ascertaining progress in implementation (or lack of it) is the Trade Policy Reviews (TPRs).

The WTO periodically monitors trade policies of its Members which is mandated under a Trade Policy Review Mechanism (TPRM) provided in Annex 3 of the Marrakesh Agreement. The overarching objective of the TPRM is “to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements”. The TPRM entrusts a Trade Policy Review Body (TPRB) to carry out TPR, periodically. Each Member must submit a government report for its TPR, and the Secretariat of the WTO also has to do the same. It is expected that Members make progress in the implementation and maintenance of the WTO Agreements and such progress be reflected in the TPRs. The TPRs are a way of transparency in this regard as it is also intended in the TPRM.

As at the time of writing, there have been three TPRs of Maldives, in 2003, 2009 and 2016.

In the first TPR, the Secretariat reported that no IPR legislation existed, but that Maldives intended to comply with the TRIPS Agreement by the end of 2005, and that it was preparing a draft copyright law with WIPO’s assistance (Table 2). The Secretariat commented that there was an urgent need to develop and implement TRIPS-consistent legislation and to provide effective enforcement, through training of customs and police officials. The Secretariat report also said that the authorities had expressed an interest in registering ‘Maldivian Fish’ as a geographical indication. The report also informed the TPRB that in 2003 Maldives communicated to the WTO Secretariat the need to establish a comprehensive IP system and requested the Secretariat for technical assistance (WTO, 2003).

During the second quarter of 2002, the President established the National WTO Committee (NWTOC) aimed at improving the formulation and implementation of trade and trade-related policies. The Committee had the mandate to discuss all WTO-related legislations or regulatory measures. NWTOC would serve to improve the inter-sectoral coordination in policy formulation in WTO-related issues (Government of Maldives, 2002).

Since Maldives did not have any representation in Geneva, due mainly to financial and human resource constraints, participation in the WTO activities was limited to those funded by the WTO, e.g. Geneva Week, Ministerial Conferences, and technical assistance opportunities such as training workshops, seminars, etc. (Government of Maldives, 2002).

In the second TPR of Maldives, the Secretariat reported that Maldives had no IP legislation, however, that laws on copyright, trademarks, patents and geographical indications were either being drafted, or have been drafted and were awaiting enactment by the People’s Majlis, the parliament (WTOa, 2009).

For its part, the government stated in its report that Maldives became a member of the WIPO in 2004, and confirmed that no IP laws were enacted at the time of the TPR. But the government said that it was working with the WIPO to set up an IP regime before the country’s graduation as an LDC. The government reported that an IP law together with an action plan had been drafted (WTOb, 2009).

The report went on to describe that a copyright law was drafted while laws on trademarks, patents and geographical indications were also being drafted, and that

the copyright legislation was expected to come into force in 2010, while the rest were expected to come into force in 2013 (WTOb, 2009).

In the third TPR, the Secretariat reported that the passing of a Copyright and Related Rights Act in 2010 (Act 23/2010) was a major development while the preparation of draft legislation on patents, industrial designs, trademarks and geographical indications was under way. The Secretariat noted that protection enforcement was weak, and that Maldives remained a non-signatory to any of the treaties administered by the WIPO (WTOa, 2016).

In the Government Report for the third TPR, Maldives stated that an IP function was set up at the Ministry of Economic Development in 2007. The report also mentioned that a main activity at the time was aimed at establishing “a modern IP regime ... to protect local industries and to lay out an IP legal regime to attract FDI”, and that a regulation (Regulation 2011/R-16) to register copyright and related rights was in place since 2011 (WTOb, 2016).

The Government Report also said that the government, with the help of the WIPO, had drafted bills on trademarks and geographical indications which were being translated into Dhivehi, the national language which is the official language for legislation. The bills were expected to be submitted to the Majlis during the first half of 2016 (WTO(b), 2016).

The Government Report also stated that foreign trademarks were neither registered nor protected in the Maldives, but that owners of foreign trademarks advertised, in domestic newspapers, cautionary notices on protection of their marks.

The above descriptions and analyses suggest that the first reported actual implementation milestone was the enactment of the Copyright and Related Rights Act 2010. This came in after two TPRs, the first in 2003 and the second in 2009. No further legislative progress was reported to the third TPR in 2016. There does not appear to be any further progress in terms of domestic legislation towards the implementation of the Agreement.

Outside the TPR, two years on after the second TPR, Maldives made an intervention in 2011 on implementation when a representative made a statement at a meeting of the TRIPS Council. The following points were made (WTO document, IP/C/M/65, 5 October 2011):

1. The Maldives was no longer an LDC as of 1 January 2011 and [therefore no longer] a beneficiary of special and differential treatment accorded to the LDCs [under the TRIPS Agreement].
2. The IP regime of the Maldives was still in the process of development, although IP protection had been an explicit policy goal of the Government in the past few years.
3. Various technical assistance programmes had been sought from WIPO, including technical advice on the establishment of a modern Intellectual Property Office in January 2004.
4. WIPO had recommended to formulate a national IP strategy based on a careful identification and selection of IP policy options that would best serve the social and economic development needs of the Maldives.

5. IP remained a novel field for policy makers, the business community and for the general public. The Maldives needed sufficient analytical capacity to help its policy makers to discuss IP issues and link related opportunities to developmental policies.
6. The Maldives had passed a law governing copyright and related rights in October 2010, which was available in Dhivehi language.
7. An Industrial Property Act had been drafted in English, and was being translated into the official language, Dhivehi, for debate in Parliament.
8. The Maldives and WIPO had agreed on a work programme, the specific aim of which was to fully comply with TRIPS Agreement obligations.
9. The graduation from LDC status had brought new challenges, which the Maldives was dealing with in spite of its vulnerability and lack of capacity while it had been undergoing a democratic transition for the past few years that had included the formulation of a new Constitution in 2008 and relevant laws.
10. The on-going work on the legislative agenda had put a heavy burden on the Parliament.
11. The Maldives remained committed to its TRIPS Agreement obligations and willing to work with relevant organisations and its development partners, including with WIPO.

It does not appear that much progress in terms of actual implementation by enactment of legislation has been made since this statement and the third TPR in 2016 as at the time of this statement in 2011, the only IPR legislation enacted was the Copyright and Related Rights Act 2010, and there was no more enactment reported at the third TPR.

Legislation for trademarks, geographical indications, industrial designs, patents, new plant varieties, layout-designs (topographies of integrated circuits), undisclosed information (including trade secrets and test data), and, anti-competitive practices in contractual licences remain to be enacted.

Table 2
The Maldives' implementation efforts as reported in successive TPRs

Government Report	Secretariat Report
<p>First TPR 2003</p> <p>26. During the second quarter of 2002, the President established the National WTO Committee (NWTOC) aimed at improving formulation and implementation of trade and trade-related policies. The Committee has the mandate to discuss all WTO-related legislations or regulatory measures. NWTOC will serve to improve the inter-sectoral coordination in policy formulation in WTO-related issues.</p> <p>27. Since the Maldives does not have any representation in Geneva, due mainly to financial constraints, participation in the WTO activities is limited to those financed by WTO, e.g. Geneva Week, Ministerial Conferences, and technical assistance opportunities such as training workshops, seminars, etc.</p>	<p>66. The Maldives lacks the legal and institutional framework for protecting intellectual property rights, but it intends to comply with the WTO TRIPS requirements by the end of 2005. It is interested in registering "Maldivian Fish" as a geographical indication. With assistance from WIPO, it is drafting copyright legislation. The Maldives has notified to the WTO the Ministry of Trade and Industries as the contact point under TRIPS (WTO, 2001).</p>
<p>Second TPR 2009</p> <p>84. Maldives became a member of World Intellectual Property Organization (WIPO) in 2004. There are currently no Intellectual Property (IP) laws in the Maldives. The Government is working with WIPO to set up an IP regime before graduation. An IP law together with an action plan has been drafted.</p> <p>85. The Government set up an IP function in the MED in 2007. Currently its main function is to work towards the establishment</p>	<p>54. At present, there are no laws or regulations to protect intellectual property rights (IPR) in the Maldives. However, copyright legislation has been drafted and is expected to enter into force in 2010, while trademark, patent and geographical indication legislation is expected to be in force in 2013. Intellectual property (IP) protection is under the purview of various ministries and departments; trade mark registration takes place in the Ministry of Economic Development (MED);</p>

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of a modern IP regime in the Maldives and be ready for the time when the country graduates out of LDC status.

86. Copyright law is drafted while laws on Trademarks, Patents and Geographical Indications are also in the drafting process. The copyright legislation is expected to come into force in 2010, while the rest are expected to come into force in 2013.

87. At present Copyrights are registered by the National Bureau of Classification (NBC). Prior to the registration, the work needs to be verified by a Committee to confirm its originality. The works eligible for such protection are: stories, computer programs, speech, drama, audiovisual work, artistic creations, illustration, photographic works, sketch work, songs, lyrics, musical drama, stage shows etc.

88. Though International Trademarks are not registered or protected in the Maldives, foreign advertisers print advertisements in local newspapers through local agents to give Cautionary Notices on protection of their Trademarks.

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between 2002 and 2008, 424 local trade marks were registered (WTO, 2005). Currently, international trademarks are not registered or protected in the Maldives; however, foreign advertisements are printed in the local newspapers as cautionary notices on protection of their trademarks through local agents. The absence of any intellectual property legislation also constitutes a possible deterrent to inward foreign investment.

The National Bureau of Classification is responsible for copyright registration. Before registering, a committee within the Bureau verifies the originality of the work. There is no legislation or ministry responsible for patent protection or for geographical indications.

55. Government initiatives to enhance IP protection include the establishment of an Intellectual Property Unit in MED in December 2007 (WTO Document, IP/C/64, 12 June 2013), several awareness programmes focused on copyright infringements, and capacity-building programmes for IP staff. Foreign donors have expressed an interest in helping to strengthen IP protection in the Maldives by providing technical assistance. These include WIPO, India, the United States, and Singapore. The police, Customs, and the judiciary are involved in IPR enforcement but in the absence of any legislation to back them up, they have limited powers.

Data provided by the authorities (WTO, 2005.).

The Unit is currently working with WIPO to establish an

independent modern intellectual property office (WTO Document, IP/C/40, 30 November 2005).

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Intellectual Property Rights

3.108. Maldives acceded to the WIPO Convention in 2004. However, it is not a signatory to any of the treaties administered by WIPO. The authorities indicated that the country would join once the national legislation is in place. The country is receiving technical assistance from WIPO in this regard.

3.109. Intellectual property-related works are under the responsibility of the Intellectual Property Unit (IPU) of the MED. Its mandate includes the registration and protection of IP rights related to logos, trademarks, business names, copyright, and geographical indications. Since its establishment in 2007, the IPU has launched several campaigns to educate businesses, investors, entrepreneurs, the general public, and other stakeholders on aspects of IP rights. The Unit faces many challenges, including a shortage of expertise and a relatively high staff turnover.

3.110. Maldives has benefited from the WTO decision to extend the transition period for LDCs to provide protection for IP under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement until 1 July 2013. The Council for TRIPS reviewed Maldives' legislation in this area at its meeting on 5 June 2012, and took note of steps taken to comply with the TRIPS Agreement, which include the establishment of the IPU,

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Third TPR 2016

3.76. Maldives became a member of World Intellectual Property Organization (WIPO) in 2004. The Government set up an IP function in the MED in 2007. Currently its main function is to work towards the establishment of a modern IP regime in the Maldives, to protect local industries and to lay out an IP legal regime to attract FDIs.

3.77. Law on Copyright and Related Rights was enacted during the review period in 2010 (Law No. 2010/23). Regulation on the registration of Copyright and related rights have been in place since 2011 (Regulation No. 2011/R16-).

3.78. The Government of Maldives with the help of World Intellectual Property Organization has drafted a Trademark Bill and a Geographical Indication Bill and is now in the process of translating the texts into the local language Dhivehi. The two bills are expected to be submitted to the Parliament in the first half of 2016.

3.79. Though International Trademarks are not registered or protected in the Maldives, foreign advertisers, in their print advertisements in local newspapers give Cautionary Notices on protection of their Trademarks.

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public awareness campaigns, and the ratification of the copyright law.⁴³

Industrial Property

3.111. Maldives does not have any specific law related to the protection of patents and trademarks. A trademark bill and an industrial property bill were drafted with the assistance of WIPO. The authorities indicated that these bills are being translated into the local language before submission to Parliament. In the meantime, registration of patents is on a first-in-time, first-in-right basis. The authorities indicated that cautionary notices are not required.

3.112. Maldives is not a signatory to the Paris Convention for the Protection of Industrial Property. Maldives is not a signatory to the Patent Cooperation Treaty.

3.113. There is no legislation on the protection of geographical indications (GI). According to the authorities, there is a particular interest in the protection of the Maldives fish (*hikikandumas*) as a GI. A GI bill is in the process of translation into the local language by the Attorney General's Office.

3.114. The Maldives does not have any legislation on new plant varieties, layout-designs of integrated circuits, or undisclosed information/trade secrets.

Copyright and Related Rights

3.115. In October 2010, the Parliament passed the Copyright and

Related Rights Act⁴³, providing for the protection of literary and artistic works, and the establishment of a registration system for them. Implementing regulations were adopted in April 2011. Under the legislation, works are protected by the sole fact of their creation. Rights are protected during the life of the author and for 50 years after his death (or that of the last surviving author). The legislation also covers works that are eligible for protection in accordance with any international convention or agreement to which the Maldives is party to. The authorities indicated that there is currently no such convention. There is a fee of Rf 1,000 for the initial registration of copyright. Monthly fees of Rf 60 are applicable to trademarks and logos.

3.116. The legislation provides for the establishment of a collective society but it has not yet been established. A draft Collective Management Organization Regulation is being finalised.

Enforcement

3.117. The institutional framework for IP protection in Maldives remains weak. According to the authorities, violation of copyright and trademarks remains prevalent. With the establishment of the IPU, several awareness programmes focused on copyright infringements, and capacity-building programmes have been developed. The authorities indicated that lack of awareness and resources for enforcement are the main challenges in the area. Technical assistance in raising general awareness, introducing IP

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into the education system, would be needed.

42 WTO document IP/C/M/1 ,70 October 2012.

43 Copyright and Related Rights Act No. 2010/23.

Sources:

WTO document WT/TPR/G/13 , 110 December 2002;

WTO document WT/TPR/S/13 , 110 December 2002;

WTO document WT/TPR/G/22 , 221 September 2009;

WTO document WT/TPR/S/22 , 221 September 2009;

WTO document WT/TPR/G/15 , 332 February 2016;

WTO document WT/TPR/S/332/Rev.24 ,1 May 2016

Conclusion

While all transitional periods provided for in the TRIPS Agreement for its implementation have long expired except those for LDCs, the Maldives, now a developing country, also a LIPIC, is yet to fully implement the Agreement. In the context of transition periods under the TRIPS Agreement, the Maldives currently appears to be in the status of a country that has not fully implemented the TRIPS Agreement albeit it does not have the benefit of an additional transition period.

Reasons for this may include a lack of substantial public demand for protection and enforcement – a reflection of a dearth of IP generating capability – and a lack of technical, human resource and financial capability, among many others.

One may add that thanks to all the above, for politicians, the protection of IPRs appears to have been a non-priority area of public administration. For the Maldives to fully implement the Agreement in good faith, senior public officials need to muster the will to make this a priority.

Such prioritisation will need to be accompanied by a significant amount of technical and financial assistance to enable the country to build technical capability for the administration of an IP system, litigation, adjudication as well as for creating greater public awareness.

References

- Debroy, B. (2001). The compulsory licensing anomaly. In E. A. Roger Bate, *TRIPS and healthcare: Rethinking the debate* (p. 17). London: International Policy Network.
- Gervais, D. (1999). The TRIPS Agreement: Interpretation and implementation. *European Intellectual Property Review*, 21(3), 156-162.
- Government of Maldives. (2002). *Trade Policy Review - Maldives: Report by the Government*. Geneva: WTO.
- Jackson, J. (1997). *The World Trading System: Law and Policy of International Economic Relations* (2 ed.). Cambridge: Massachusetts Institute of Technology Press.
- Matthews, D. (2002). *Globalising intellectual property rights*. London: Routledge.
- May, C. (2004). Capacity building and the (re)production of intellectual property rights. *Third World Quarterly*, 25(5), pp. 821–837.
- Najeeb, F. (2011). IP-related technical assistance: Lessons for developing countries. (Unpublished doctoral thesis). London: Queen Mary University of London.
- Sell, S. (2003). *Private power, public law*. Cambridge: Cambridge University Press.
- UNCTAD and ICTSD. (2005). *Resource book on TRIPS and development*. Cambridge: Cambridge University Press.
- World Intellectual Property Organisation. (1967). Paris Convention for the protection of industrial property. Geneva: World Intellectual Property Organisation.

WTO. (2003). *Trade Policy Review - Maldives: Report by the Secretariat*. Geneva: World Trade Organisation.

WTO. (2004, August 16). Request from Maldives for an Extension of the Transition Period. *TRIPS Council document, IP/C/W/425*. Geneva: WTO. Retrieved from World Trade Organisation: <https://docs.wto.org/>

WTO. (2009a). *Trade Policy Review - Maldives: Report by the Secretariat*. Geneva: WTO.

WTO. (2016a). *Trade Policy Review - Maldives: Report by the Secretariat*. Geneva: WTO.

WTO. (2009b). *Trade Policy Review - Maldives: Report by the Government*. Geneva: WTO.

WTO. (2016b). *Trade Policy Review - Maldives: Report by the Government*. Geneva: WTO.