

TRADE ORGANIZATION AGREEMENTS: THE MAIN PRINCIPLES OF TRIPS

AGREEMENT

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Annotation

This article deals with the issues of agreements and treaties of the WTO, especially TRIPS. The operation of the basic principles of the WTO generally corresponds to the operation of the basic principles of general international law, but with two additional conditions. First, WTO principles apply only to the field of international trade. Second, these principles apply only to member countries.

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The TRIPS agreement has many unique features. But before proceeding to the direct review of the principles of the TRIPS Agreement, it is necessary to briefly touch on the main principles of the WTO [1]. The operation of the basic principles of the WTO generally corresponds to the operation of the basic principles of general international law, but with two additional conditions. First, WTO principles apply only to the field of international trade. Second, these principles apply only to member countries. Liberalization of world trade can be cited as one of the main principles of the WTO system. In particular, in Article 2 of the Moroccan Declaration (1994), "the ministers express their determination to resist any protectionist tendencies, and in their opinion, the strict rules agreed upon in the Uruguay Round of negotiations will lead to the freedom and openness of trade [2]."

The two most important principles of the WTO legal system are the national regime and the convenience regime, which are called the principles of non-discrimination. These principles provide for the prohibition of discrimination between similar goods and services of different participating countries. In other words, each member state of the WTO grants to another member state immediately and unconditionally any concessions granted to a third country. These provisions are directly reflected in Article 1 of GATT [3], Article 2 of GATS [4] and Article 4 of TRIPS [5]. The TRIPS agreement, with some exceptions, includes additional requirements for the provision of national treatment and preferential treatment by WTO members and protection of intellectual property.

Based on the principle of national treatment provided for in Article 3 of the TRIPS Agreement, each member state shall provide for the citizens of other member states, with the exception of

the exceptions provided for in the Paris Convention, the Berne Convention, the Rome Convention and the Washington Treaty, a procedure no less than that provided to its own citizens related to the protection of intellectual property rights. should provide. However, Member States may make use of the exceptions permitted in judicial and administrative procedures involving the choice of address for correspondence or the appointment of an agent within the jurisdiction of the Member [6]. A prerequisite is that these exceptions are necessary to comply with laws and regulations that are not inconsistent with the TRIPS Agreement and that such procedures do not covertly restrict trade.

Such exceptions can also be found directly in the Paris Convention. In particular, according to Article 2 of this document, the citizens of each country that is a member of the convention on the protection of industrial property have the right to use all the benefits provided for their citizens in another country of the convention. Based on this, the rights to intellectual property of citizens of each country participating in the convention and foreign citizens are considered equal [7]. But the conditions for the presence of a place of residence or a production enterprise cannot be a requirement for the use of industrial property rights. The Washington The following section of the Article provides an explanation of these exceptions: Members may make exceptions to judicial and administrative procedures permitted in Section 1 only where such exceptions are necessary to comply with laws and regulations and may use such procedures provided they are not applied in a manner that constitutes a disguised restraint of trade[8].

Thus, the application of exceptions provided for in other treaties is limited to two conditions. First, it can be concluded from the text of Article 3, Part 2 of the TRIPS Agreement that the application of exceptions to the national regime is possible only procedurally. Second, the object must be the implementation of a law or regulation that does not conflict with the TRIPS Agreement, as well as WTO agreements and principles in general. Provision of the national regime is traditional for all international agreements in the field of protection of intellectual property rights.

As mentioned above, this principle is a WTO norm and is one of the main principles in the system of rules. Officially, it aims to prevent discrimination of any member states and is considered to apply to all areas of regulation that fall under the jurisdiction of the WTO [9]. In this way, the principle of the obligation of countries to provide each other with the most favorable treatment is included in the TRIPS agreement not as a mere article on the protection of intellectual property, but as an agreement within the framework of the WTO. Its essence is that if a WTO member state provides a special preferential regime for the protection of intellectual property rights to another member state and its citizens, then the same regime should be provided to other states and their citizens.

Article 4 of the TRIPS Agreement provides for four exceptions to the most favorable treatment obligation. In the first case, a WTO member state is exempted from the obligation to provide this regime if one of the states ensures the enforcement of a law of a general nature not related to intellectual property protection or applies preferential conditions (preference, immunity and privilege) arising from international agreements on judicial assistance. The second exception applies to cases where benefits are granted under the Berne and Rome Conventions under a regime provided in another country rather than a national regime. The application of the third exception to the rights of performers, phonogram producers and broadcasting organizations concerns benefits not provided for in the TRIPS Agreement. The TRIPS Agreement focuses on economic rights. The fourth exception relates to benefits arising from international agreements related to the protection of intellectual property that were in force before the entry into force of the WTO Agreement. The main condition here is that the TRIPS Council is informed about the agreements and citizens of other members should not be discriminated against unjustly and arbitrarily[10].

In addition to the above principles such as MFN and national treatment, Article 8 of the TRIPS Agreement provides several principles. Based on this article, the WTO member states may take necessary measures in developing or amending their laws and regulations to protect public interests in public health and nutrition, as well as in sectors vital for socio-economic and technical development, which do not conflict with the objectives of the Agreement.

At this point, it should be noted that the legislation of Uzbekistan contains a number of procedures that contradict the principle of the national regime. One of these procedures is the legislation on state duty. The essence of the conflict is that in the Law of the Republic of Uzbekistan "On State Duties" the amounts of state duty rates for the implementation of intellectual property rights are defined differently for residents and non-residents. In this case, sharp differences between the amounts of state duty rates will further intensify the existing conflict. For example, for applications for recognition of a well-known trademark in the republic, if residents are charged a state fee of 4 times the BHM, these figures are 68 times the BHM for non-residents. This means that a non-resident pays 17 times more (!) than a resident for the same public service.

In order to provide a national regime, the amounts of state duty rates should be unified[11]. But there are different options for changing the current customs policy. In the first option, the unification of the rate may lead to an increase in the applicable amount for residents. That is, the reduction of the amount of payment for non-residents is balanced by the increase of the amount of payment for residents. In this case, on the one hand, the amount of the single fee establishes the national regime, on the other hand, the increased fee may weaken the interest of residents to formalize their own intellectual property rights. For example, an increase in the amount of payment for a resident for the registration of a trademark to 5 times from 60 percent

of BHM (estimated) may decrease the number of trademark registrations. This, in turn, causes an increase in the weight of counterfeiting. In the second option, the amount of state duty is unified with a low rate. The selection of this option reduces the revenue to the state budget due to the reduction of the payment amount for non-residents, and increases the probability of foreign investment taking over the local market. At the same time, the provision of the national regime increases the investment attractiveness of the state. An increase in the share of foreign investment in the country's economy, in turn, serves to further increase the profit from tax revenue to the state budget[12].

It should be mentioned here that state duties related to intellectual property paid by non-residents in 2021 will amount to 0.05 percent (79.7 billion) of state budget revenues (164.7 trillion) for 2021 (Appendix No. 1). As can be seen from these figures, state duties paid by non-residents do not constitute a significant part of state income (appendix #2).

Summarizing all of the above, we can come to the following conclusion: to provide the most convenient mode [13]. The main principle reflecting the jurisdiction of the WTO should be considered as the principle of granting national regime as the main principle of international agreements in the field of protection of the results of intellectual activity. The TRIPS Agreement, in terms of its agreement within the framework of the WTO, supports the WTO rules system in many ways, together with intellectual property. This agreement is explained by the large number of norms.

It is considered to create conditions for the functioning of the principles of the WTO and to provide protection with the force of the WTO in relation to various objects created at different times. This, in turn, leads to the conclusion that, unlike other international agreements in the field of intellectual property protection, the principle of granting national treatment is not the basis of the TRIPS agreement. The principle of providing the most favorable regime for the entire WTO system is more important because it is more suitable for the implementation of the main principle of the WTO - the liberalization of world trade.

REFERENCES

1. Соглашение по торговым аспектам прав интеллектуальной собственности, URL: <https://tradepol.hse.ru/programme4.6.15>
2. Марокаш декларацияси, URL: <https://docs.cntd.ru/document/902340648>
3. Зенкин И.В. Право Всемирной торговой организации. — М.: Международные отношения, 2003
4. ГАТТ, URL: <http://www.vavt.ru/wto/wto/GATT-1994>
5. ГАТС, URL: http://www.rgwto.com/wto.asp?id=3668&doc_id=2111
6. ТРИПС битими, URL: https://wipolex.res.wipo.int/edocs/lexdocs/treaties/ru/wto01/trt_wto01_001ru.pdf

7. И ЯКУБОВА, О ЯКУБОВ. Шахсий ҳаёт дахлсизлиги масалаларининг Ўзбекистон ҳамда чет эл мамлакатлари қонунчилиги бўйича қиёсий таҳлили. Юрист ахборотномаси 2 (1), 268-276
8. И.Якубова. Понимание коллективного управления авторских прав в историческом контексте. Юрист Ахборотномаси, 2021. 1 (6), 76-80.
9. 13. И.Якубова. Муаллифлик ҳуқуқи бўйича мулкӣ ҳуқуқларни жамоавий бошқарув ташкилотларини такомиллаштириш билан боғлиқ айрим масалалари. Юрист ахборотномаси, 2022. 1 (1), 32-39
10. Белов В., Денисов Г. Из мирового опыта защиты прав интеллектуальной собственности // Российский экономический журнал 1997 г. № 3
11. Никифоров В. А. Основные принципы многосторонних соглашений в области международных торговых отношений
12. Yakubova I. V. A PERSONS RIGHT TO HEALTH, AS HIS NON-PROPERTY RIGHTS // Theoretical & Applied Science. – 2016. – №. 12. – С. 124-126. ений // Вестник РУДН. Серия: Юридические науки. 2009.
13. Жданов В. А. Развитие регулирования международной торговли в области прав на объекты интеллектуальной собственности в праве ГАТТ/ВТО // Актуальные проблемы российского права. 2012.