

# Towards a Development-Oriented TRIPS Review Under Article 71.1

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 **SOUTH  
CENTRE**



# **RESEARCH PAPER**

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## **TOWARDS A DEVELOPMENT-ORIENTED TRIPS REVIEW UNDER ARTICLE 71.1**

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## ABSTRACT

This paper calls for a comprehensive, development-focused review of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) under Article 71.1, a process that has been mandated but never carried out. It critiques the narrow, compliance-driven approach favored by developed countries, which risks sidelining the broader developmental objectives enshrined in Articles 7 and 8 and reaffirmed by the Doha Declaration on the TRIPS Agreement and Public Health. Through a detailed analysis of the political context, procedural history, and legal mandates, the paper argues that the TRIPS review should center on the real-world impact of the Agreement on developing countries—particularly in areas such as public health, access to medicines, technology transfer, and innovation capacity. It proposes an impact assessment framework grounded in empirical indicators to evaluate how TRIPS has influenced public welfare, policy space, and economic development. Ultimately, the paper urges the World Trade organization (WTO) to fulfill its long-overdue obligation to reassess TRIPS not as a compliance checklist but as a living instrument that must align with global equity and development goals.

*Este documento insta a realizar una revisión exhaustiva y centrada en el desarrollo del Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (Acuerdo sobre los ADPIC) en virtud del artículo 71.1, un proceso que se ha encomendado pero que nunca se ha llevado a cabo. Critica el enfoque restrictivo y centrado en el cumplimiento que defienden los países desarrollados, que corre el riesgo de dejar de lado los objetivos de desarrollo más amplios consagrados en los artículos 7 y 8 y reafirmados en la Declaración de Doha sobre el Acuerdo sobre los ADPIC y la salud pública. Mediante un análisis detallado del contexto político, la historia procedimental y los mandatos legales, el documento sostiene que la revisión del Acuerdo sobre los ADPIC debe centrarse en el impacto real del Acuerdo en los países en desarrollo, en particular en ámbitos como la salud pública, el acceso a los medicamentos, la transferencia de tecnología y la capacidad de innovación. Propone un marco de evaluación del impacto basado en indicadores empíricos para evaluar cómo ha influido el Acuerdo sobre los ADPIC en el bienestar público, el margen de maniobra política y el desarrollo económico. El documento insta a la Organización Mundial del Comercio (OMC) a que cumpla con su obligación, largamente pendiente, de reevaluar el Acuerdo sobre los ADPIC, no como una lista de verificación del cumplimiento, sino como un instrumento vivo que debe ajustarse a los objetivos mundiales de equidad y desarrollo.*

*Ce document préconise un examen complet et axé sur le développement de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (Accord sur les ADPIC) au titre de l'article 71.1, un processus qui a été mandaté mais jamais mis en œuvre. Il critique l'approche restrictive axée sur la conformité privilégiée par les pays développés, qui risque de mettre de côté les objectifs de développement plus larges consacrés aux articles 7 et 8 et réaffirmés par la Déclaration de Doha sur l'Accord sur les ADPIC et la santé publique. À travers une analyse détaillée du contexte politique, de l'historique des procédures et des mandats juridiques, le document soutient que la révision de l'Accord sur les ADPIC devrait se concentrer sur l'impact réel de l'Accord sur les pays en développement, en particulier dans des domaines tels que la santé publique, l'accès aux médicaments, le transfert de technologie et la capacité d'innovation. Il propose un cadre d'évaluation d'impact fondé sur des indicateurs empiriques afin d'évaluer l'influence de l'Accord sur les ADPIC sur le bien-être public, la marge de manœuvre politique et le développement économique. Enfin, le document exhorte l'Organisation mondiale du commerce (OMC) à remplir son obligation, attendue depuis longtemps, de réévaluer l'accord ADPIC pas seulement comme une checklist de conformité,*

*mais comme un instrument vivant qui doit s'aligner avec les objectifs mondiaux d'équité et de développement.*

本文呼吁依据《与贸易有关的知识产权协定》（TRIPS协定）第71.1条，开展一项全面、以发展为导向的协定审议，这一程序虽明文规定被却从未实施。本文批判了发达国家推崇的狭隘、以合规为导向的审议模式，这种模式可能使《协定》第7条和第8条所载、并经《关于TRIPS协定与公共卫生问题的多哈宣言》重申的更广泛发展目标被边缘化。通过对政治背景、程序历史及法律授权的深入剖析，本文主张TRIPS审议应聚焦该协定对发展中国家的实际影响——尤其在公共卫生、药品可及性、技术转让及创新能力等领域。文章提出基于实证指标的影响评估框架，以衡量TRIPS协定对公共福利、政策空间及经济发展的实际作用。最终，本文敦促世界贸易组织履行其长期拖延的义务，将TRIPS协定重新评估视为一项必须契合全球公平与发展目标的动态工具，而非单纯的合规清单。

## TABLE OF CONTENTS

I.	INTRODUCTION .....	8
II.	ARTICLE 71.1 MANDATE.....	10
III.	NECESSITY OF REVIEW FROM A DEVELOPMENT LENS.....	12
IV.	RISKS OF A COMPLIANCE-FOCUSED APPROACH.....	14
V.	PROPOSED REVIEW SCOPE.....	16
VI.	CONCLUSION .....	25

## I. INTRODUCTION

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has reached its 30th anniversary, presenting an opportunity to examine its real-world impact and future direction. Article 71.1 mandates that the TRIPS Council periodically review the Agreement, drawing on experience gained and new developments. In 2000, the WTO General Council had agreed that mandated reviews, including the review under Article 71.1 of the TRIPS Agreement, “should address the impact of the agreements concerned on the trade and development prospects of developing countries.”<sup>2</sup> The 2001 Doha Ministerial Declaration on the TRIPS Agreement and Public Health reaffirmed this, emphasizing that “... in pursuing its work programme including ... the review of the implementation of the TRIPS Agreement under Article 71.1 ... the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.”<sup>3</sup> Despite these mandates, the required review has not taken place.

In 2024, Bangladesh, Colombia, Egypt, and India submitted a joint proposal at the 13th World Trade Organization (WTO) Ministerial Conference in Abu Dhabi proposing a “Draft Ministerial Declaration on TRIPS for Development” requesting, *inter alia*, that the TRIPS Council undertake and finalize its first review under Article 71 on the implementation of the TRIPS Agreement, marking its 30th anniversary. It also asked that this work be guided by the objectives and principles in Articles 7 and 8, taking into account development concerns, as reaffirmed in the Doha Ministerial Declaration. Finally, it called for a report on progress, including recommendations, to be presented to Ministers at the 14th Ministerial Conference in 2026.<sup>4</sup> However, this proposal was opposed by developed countries which argued that there were no intellectual property (IP) issues pending review at the WTO and that the place to discuss such issues was the TRIPS Council and not the Ministerial Conference.<sup>5</sup> Thus, in March 2024 this proposal was resubmitted to the TRIPS Council.<sup>6</sup>

Following this joint proposal, Colombia submitted a specific proposal on the review under Article 71.1 calling upon the TRIPS Council to carry out the comprehensive review of the TRIPS Agreement implementation mandated by Article 71.1, stating that:

“A comprehensive review of the implementation of the ... (TRIPS Agreement) is both an unfulfilled commitment and a necessity. Carrying out the review mandated in Article 71, along with the 30th anniversary of the TRIPS Agreement, will provide an opportunity to: i) increase dialogue and transparency on the impact of international rules on intellectual property (IP) issues; ii) start overcoming the existing impasse of the TRIPS discussions and negotiations at the TRIPS Council; iii) support political and technical discussions that are taking place in other forums and settings; and iv) identify/produce relevant metrics to inform better implementation in the future.”<sup>7</sup>

<sup>2</sup> WTO document, WT/GC/M/53, 15 March 2000, paragraph 39. Available from <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/M53.pdf&Open=True>.

<sup>3</sup> World Trade Organization, Ministerial Declaration, 14 November 2001, paragraph 19. Ministerial Conference, Doha, 9-14 November 2001. Available from [https://www.wto.org/english/res\\_e/booksp\\_e/ddec\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/ddec_e.pdf).

<sup>4</sup> WTO document WT/MIN(24)/W/20, 29 February 2024. Available from <https://southcentre.us5.list-manage.com/track/click?u=fa9cf38799136b5660f367ba6&id=98f1ee72a9&e=e7a9144683>

<sup>5</sup> Eduardo Vodanovic Undurraga, “Global review of the TRIPS Agreement on its 30th anniversary: Colombia’s proposal to the TRIPS Council”, SouthNews, No. 509, 1 November 2024. Available from <https://mailchi.mp/southcentre/southnews-global-review-of-the-trips-agreement-on-its-30th-anniversary-colombias-proposal-to-the-trips-council?e=e7a9144683>.

<sup>6</sup> WTO document IP/C/W/708, 8 March 2024. Available from <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W925.pdf&Open=True>.

<sup>7</sup> WTO document IP/C/W/712, 15 April 2024. Available from <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W712.pdf&Open=True>.

Colombia suggested that such a review could foster open, data-driven dialogue that identifies best practices, gaps, and challenges in implementation, improving transparency and informing future policymaking. Colombia suggested that the review process be structured with clear procedures, supported by metrics and data, and that the WTO Secretariat assist in compiling findings and proposals, so Members can learn from each other and adapt the TRIPS framework to current realities.<sup>8</sup>

However, disagreements over process and scope remain unresolved. Following the receipt of the proposals, the Secretariat had circulated a note on review procedures and the Chair of the TRIPS Council distributed questions to gauge Members' expectations. Following this, the Chair held consultations and an informal meeting to gather feedback. Members generally agreed the review should be member-driven, mostly informal, based on Member inputs, proceed at a reasonable pace, and conclude with a factual report. However, opinions differed on topics and scope: developed countries wanted a focus on implementation at the national level, while developing countries favored focusing on impact rather than domestic implementation.

Following months of further informal consultations and revisions, the Chair circulated successive drafts suggesting a process for the TRIPS Article 71.1 Review, proposing to structure the Review section-by-section, share domestic implementation experiences, and ensure the process was not overly burdensome. By November 2024, after extensive discussions and compromises, a clean draft text was agreed upon and circulated as a room document - JOB/IP/79/Rev.3. However, the proposed review process focused narrowly on Members' domestic implementation of TRIPS obligations, rather than evaluating the broader impact of the Agreement on issues like public health and development, which was the original intent of the developing countries that had proposed the Review. This process presented the risk of the Review being turned into a compliance exercise, potentially exposing developing countries to scrutiny or pressure to strengthen the implementation of TRIPS obligations further. In this context, developing countries recommended focusing submissions on the Agreement's broader economic and social impacts, using the process strategically to highlight challenges, safeguard public interests, and avoid framing it as a compliance review.

The debates over the Article 71.1 review, in summary, revealed a clear divide between developed and developing countries. Developing countries, including Brazil, Colombia, India, and the African Group, advocated for a broad review examining how TRIPS has impacted development, technology transfer, public health, and equity, guided by Articles 7 and 8 and the Doha Declaration's development focus. They argued that simply checking domestic implementation misses the point of the review's mandate. In contrast, developed countries such as the EU, US, UK, Canada, Japan, and Switzerland favored a narrow process focused on national experiences and compliance, expressing concerns that expanding the scope could complicate reaching consensus and overburden Members. This fundamental clash over scope – whether to examine systemic developmental impacts or confine discussion to technical implementation – has stalled progress on launching the review.

In this context, this paper argues for a development-focused review under Article 71.1, one that centers on the lived experiences of developing countries and examines whether TRIPS is meeting its stated public policy objectives including promoting technology transfer, public welfare, while balancing rights and obligations.

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<sup>8</sup> Ibid.

## II. ARTICLE 71.1 MANDATE

Article 71.1 of the TRIPS Agreement states:

The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

The first sentence of Article 71.1 mandates the TRIPS Council to undertake a review of the **implementation** of the TRIPS Agreement after the end of the transitional period referred to under Article 65.2. This transitional period was set at 5 years from the date of entry into force of the TRIPS Agreement, i.e., from 1 January 1995. This review is mandatory.<sup>9</sup>

Furthermore, the second sentence goes beyond the initial review of the implementation of the TRIPS Agreement. It explicitly states that the TRIPS Council shall review the TRIPS Agreement **having regard to the experience gained in its implementation** two years after that date and at **identical** intervals thereafter. This review is not about implementation of the Agreement, but a review of the provisions of the Agreement. This review is also mandatory.<sup>10</sup>

Additionally, the third sentence allows the TRIPS Council to undertake any review, at any time, in the light of any relevant new developments that might warrant the modification or amendment of the TRIPS Agreement. For example, such new developments could emerge during reviews of the Agreement's overall implementation.<sup>11</sup>

Clarifying the scope of the initial review, the General Council in February 2000 had decided that mandated reviews, including under TRIPS Article 71.1, should address the impact of agreements on the trade and development prospects of developing countries.<sup>12</sup> The South Centre had noted in this context that Article 71.1 provides for not just compliance checks, but for a substantive review assessing TRIPS' developmental consequences and alignment with Articles 7 and 8.<sup>13</sup> The General Council apparently adopted a harmonious application of the first and second sentences of Article 71.1 to suggest that the review of **implementation** of the TRIPS Agreement should be focused on an assessment of its implementation as a whole rather than implementation of specific parts, sections or provisions of the Agreement. Such an approach would have enabled subsequent reviews, where the experience gained of the trade and development implications of TRIPS implementation would contribute to an assessment of whether any modification or amendment of TRIPS is warranted in the light of such experience.<sup>14</sup>

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<sup>9</sup> UNCTAD – ICTSD, *Resource Book on TRIPS and Development* (New York: Cambridge University Press, 2005), p. 784. Available from [https://unctad.org/system/files/official-document/ictsd2005d1\\_en.pdf](https://unctad.org/system/files/official-document/ictsd2005d1_en.pdf).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> WTO document, *supra* note 1.

<sup>13</sup> Matthew Stilwell and Catherine Monagle, "Review of TRIPS Agreement under Article 71.1", Trade-Related Agenda Development and Equity (T.R.A.D.E) Occasional Papers 3, South Centre, December 2000.

<sup>14</sup> Matthew Stilwell and Elisabeth Tuerk, "Towards a Full Implementation of the WTO's TRIPS Agreement under Article 71.1", Centre for International Environmental Law, April 2001, p. 2. Available from [https://www.ciel.org/Publications/Assessment\\_Trips\\_Article711.pdf](https://www.ciel.org/Publications/Assessment_Trips_Article711.pdf).

The suggestion that the review of the Agreement in the light of experience gained during its implementation could lead to amendments is supported by the fact that Article 71.1 is part of a provision titled "Review and Amendment."

Moreover, nothing in Article 71.2 lays down a different procedure for amendment of the TRIPS Agreement. It only states that if any amendment leads to adjusting to higher levels of IP protection that is achieved and in force under other multilateral agreements and those agreements are accepted by all WTO members, those amendments may be referred to the Ministerial Conference for action under Article X of the WTO Agreement, based on a consensus proposal from the TRIPS Council. Thus, it is clear from the entire scheme of Article 71 that the expectation of the negotiators was that the first review of implementation of the TRIPS Agreement would contribute to the experience of the impact of its implementation, which could lead to proposals for amendments to the Agreement, based on subsequent periodic reviews of the provisions of the Agreement itself in light of that experience. If the TRIPS Council agrees to such proposals, it can make recommendations to the Ministerial Conference (or the General Council) for a decision in accordance with Article X of the WTO Agreement.<sup>15</sup>

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<sup>15</sup> UNCTAD-ICTSD, *supra* note 8, pp. 789-90.

### III. NECESSITY OF REVIEW FROM A DEVELOPMENT LENS

Building on the mandate outlined in section II, as observed by distinguished scholars, the review under Article 71.1 “has to be read in conjunction with Articles 65.2 and 63.2.”<sup>16</sup> Article 63.2 mandates WTO members to notify the TRIPS Council their laws and regulations that give effect to the subject matter under the TRIPS Agreement. The purpose of these notifications is “... to assist the Council in its review of the operation of this Agreement.” Hence, the notifications under Article 63.2 are clearly linked to the first review mandated under Article 71.1. Thus, it has been suggested that the sequential logic of actions would be for members to submit notifications under Article 63.2 which would then be collectively reviewed under Article 71.1.<sup>17</sup>

The TRIPS Council had started reviewing the notifications submitted by WTO members who no longer benefited from a transitional period at the time i.e., developed countries. Since the end of the transitional period for developing countries, reviews were undertaken for those countries that had delayed notifying their laws and regulations until 2000. These reviews were undertaken in 2000 and 2001. Reviews were undertaken for 65 such countries or territories. These review procedures involved written questions and answers before the meeting, follow-up exchanges during the meeting, and further opportunities at later Council meetings to address any issues that delegations felt remain unresolved. These reviews are available in the records of the TRIPS Council.<sup>18</sup>

All WTO members have submitted notifications under Article 63.2, and these have been reviewed by the TRIPS Council on a country-specific basis. Nevertheless, a collective review of the impact of implementation of the TRIPS Agreement has not taken place under Article 71.1. This implies that if the TRIPS Council agrees, it can still undertake such a collective review of the implementation of the Agreement based on the notifications submitted by members. Such a review, however, should not be a review of how a specific WTO member has implemented the TRIPS obligations, but rather address the trade and development impact of TRIPS implementation on developing countries, as decided by the WTO General Council in 2000.

Moreover, the 2001 Doha Ministerial Declaration had also specifically instructed the TRIPS Council “... to examine other new developments raised by Members pursuant to Article 71.1.”<sup>19</sup> In undertaking this work the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.”<sup>20</sup>

Thus, it is unequivocally clear from the Ministerial Conference’s decisions of the highest body of the WTO that the review under Article 71.1 must fully take into account the trade and development impact, guided by the public policy objectives in Articles 7 and 8 of the TRIPS Agreement, including “technological innovation and the transfer and dissemination of technology, the protection of public health and nutrition, the promotion of public interest in

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<sup>16</sup> Ibid, p. 790.

<sup>17</sup> Ibid, p. 790.

<sup>18</sup> WTO, TRIPS: Review of the implementing legislation. Available from [https://www.wto.org/english/tratop\\_e/trips\\_e/intel8\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel8_e.htm)

<sup>19</sup> UNCTAD-ICTSD, *supra* note 8, p. 792.

<sup>20</sup> WTO document WT/MIN(01)/DEC/1, paragraph 19. Available from [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=37246&CurrentCatalogueIdIndex=0&FullTextSearch=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=37246&CurrentCatalogueIdIndex=0&FullTextSearch=)

sectors of vital importance to socio-economic and technological development, and the control of IPR abuses and other restrictive behavior."<sup>21</sup>

It is clear from Article 71.1 that compliance with national implementing legislations with TRIPS is not an end in itself as far as the review is concerned, but a means of ensuring that national laws and regulations are being implemented in a manner that ensures the attainment of the objectives of TRIPS. "These objectives set the criteria according to which the Council for TRIPS examines national implementing legislation as well as possible amendments to TRIPS."<sup>22</sup> In this regard, what is considered to be the main objective of the TRIPS Agreement will be critical.

It should be noted that the TRIPS Agreement is the result of a political compromise where broadly formulated provisions on technology transfer and other public policy objectives were accommodated in the text to make the Agreement more acceptable to developing countries. However, the Agreement still contains very detailed provisions on procedural and substantive IPR standards in pursuit of the preambular objective of "effective and adequate protection" of IPR. Indeed, the sharp divide between developed and developing countries around the scope of the Review in recent TRIPS Council discussions are framed along these lines.

Given the possibility of alternative interpretations of the objective of the TRIPS Agreement, it is imperative that the objective of the TRIPS Agreement is interpreted on a harmonious construction between the objectives of adequate and efficient protection of IPRs and the realization of the broadly formulated public policy objectives in the Agreement. Such a harmonious construct would mean that "IPR standards in TRIPS should be conceived as a means for the promotion of non-IP public policy objectives, and not as running counter to them. As a result, any review under Article 71 should take account of both public policy goals and the protection of private rights."<sup>23</sup> This would require both an assessment of whether national implementing legislation complies with the TRIPS standards and whether the TRIPS standards provide "sufficient leeway for the realization of certain non-IPR-related objectives."<sup>24</sup>

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<sup>21</sup> UNCTAD-ICTSD, *supra* note 8, p. 793.

<sup>22</sup> UNCTAD-ICTSD, *supra* note 8, p. 793.

<sup>23</sup> UNCTAD-ICTSD, *supra* note 8, p. 794.

<sup>24</sup> *Ibid.*

#### IV. RISKS OF A COMPLIANCE-FOCUSED APPROACH

In the TRIPS Council discussions in December 2024, developing countries, including Brazil, Colombia, India, the African Group, and others, stressed that the TRIPS Article 71.1 review should not merely focus on domestic implementation but must also examine the broader impact of the Agreement on development, technology transfer, public health, and equity, referencing Articles 7 and 8 and the Doha Ministerial Declaration's emphasis on the development dimension. They argued the review should assess how TRIPS has contributed to sustainable development and whether it has achieved its objectives in promoting innovation while balancing rights and public interests. The ambassador of Brazil emphasized that the TRIPS review must be guided by Articles 7 and 8, which establish the objectives and principles of the Agreement, stating: "I find it unacceptable that we cannot mention the objectives and principles of the treaty to launch a review process of the treaty." Brazil rejected the notion of merely reviewing domestic implementation or compliance, insisting instead on examining whether TRIPS has met its broader goals in promoting development, technology transfer, and balancing rights with public interest. Colombia stated that while the current text was "less ambitious" than their initial proposal, they still believed the Doha Ministerial Declaration remains valid and continues to mandate that the review be guided by the objectives and principles in Articles 7 and 8. Colombia urged Members to adopt the document and move forward with the review while keeping this broader perspective in mind. Pakistan stressed that the review should "... guided by, and focused around, the objectives and principles as enunciated in Articles 7 and 8 and other provisions of the TRIPS Agreement." Pakistan also stated that "... the review process should guide the membership in finding answers to the widening gap in technological base of different countries and the challenges they face on the path to sustainable development, considering impact of TRIPS on the global patterns of trade and investment flows in the past 30 years." India also stated that the Review "... should be guided overall by Article 7 and Article 8."

This contrasts with developed countries like the EU Member States, the United States, the United Kingdom, Canada, Japan, and Switzerland, which seek to focus the review on Members' domestic implementation experiences and sharing best practices. Such an exercise would implicitly aim at reinforcing compliance rather than evaluating the impact of TRIPS on development objectives articulated in Articles 7 and 8. Developed countries generally supported a process centered on Members sharing domestic implementation experiences, focusing on practical compliance and best practices rather than re-examining the Agreement's broader impact or questioning its underlying balance, expressing concerns that expanding scope could overburden Members and derail constructive, consensus-based discussions. The EU specifically stressed on the objective of "effective IPR protection" and in this regard specifically proposed that a dedicated implementation review of part 3 of the TRIPS Agreement on enforcement should be carried out.

Building on the preceding analysis of the purpose of Article 71.1 and the need to fully take into account the impact of the TRIPS standards on the development dimension, a compliance-focused approach carries significant risks. First, it reduces the review to a mechanical exercise, ignoring whether TRIPS obligations advance development-oriented public policy goals of technology transfer, promote local innovation, or protect public health. Second, it risks shifting the burden onto developing countries to prove they comply (though ironically, most complaints addressed by WTO panels are related to non-compliance by developed countries), rather than examining whether TRIPS provisions themselves work fairly and effectively. Third, such an approach emboldens developed countries to promote higher standards as 'best practice,' potentially eroding flexibilities crucial to developing countries' socio-economic priorities. Fourth, it entrenches existing power asymmetries, discouraging open debate about reforms. Finally, by neglecting the review's mandate to assess developmental impacts, it misses a rare

chance to rethink how TRIPS can better balance private rights with public interests. Thus, a compliance-based review threatens to undermine both the spirit and purpose of Article 71.1.

## V. PROPOSED REVIEW SCOPE

In line with the concerns raised by developing countries and the mandates reflected in Articles 7 and 8, the TRIPS Council's review under Article 71.1 should be firmly anchored in an impact assessment framework. This framework must focus on how the implementation of TRIPS has affected key economic and social sectors of concern to developing countries.<sup>25</sup> These should include an assessment of the impact of TRIPS including the use of TRIPS flexibilities as instruments of development policy, *inter alia*, on public health, food security, the sustainable use of biodiversity, traditional knowledge, the Right to Development and technology transfer. The following sections address two of these issues.

### V.1 *Public Health and Access to Medicines*

The review under Article 71.1 must rigorously assess the impact of the TRIPS Agreement on access to medicines, particularly in developing countries. A central issue is the role of patent protection in determining drug prices and availability. TRIPS established minimum standards of intellectual property (IP) protection, including pharmaceutical patents, which have contributed to delayed entry of generic medicines and higher prices for essential drugs in many low- and middle-income countries. The review should go beyond formal recognition of TRIPS flexibilities and assess their actual use, obstacles faced in implementing them, and the broader policy environment. It must examine whether TRIPS obligations and their interpretation in practice support or hinder countries' ability to provide affordable medicines and uphold the right to health.

While the Doha Declaration on the TRIPS Agreement and Public Health (2001) reaffirmed the right of WTO members to use TRIPS flexibilities—such as compulsory licensing, parallel importation, and patent exceptions—to protect public health, evidence shows that many developing countries continue to face legal, technical, and political barriers in exercising these rights. The UN Secretary-General's High-Level Panel on Access to Medicines highlighted that “governments must make full use of the policy space available in the TRIPS Agreement” and identified systemic disincentives to the use of these flexibilities. These include undue pressure from trading partners and pharmaceutical companies, lack of legal expertise, and the chilling effect of bilateral trade agreements that impose TRIPS-plus provisions. The Panel emphasized the need for WTO members to refrain from using such measures to prevent other countries from using lawful TRIPS flexibilities.<sup>26</sup> The Article 71.1 review should explicitly evaluate whether such pressures are deterring the use of flexibilities to protect countries' policy space.

Moreover, the review should also focus on whether “solutions” adopted to address constraints to the use of TRIPS flexibilities in relation to article 31(f) - the paragraph 6 system under the Doha Declaration on the TRIPS Agreement and Public Health that has been adopted as article 31 *bis* of the TRIPS Agreement, and the Twelfth WTO Ministerial Decision (TRIPS Decision) providing a limited “waiver” to article 31(f) for COVID-19 vaccines – have been really impactful. It should provide an empirical analysis of the challenges members have faced in implementing these “solutions”.

Furthermore, the High-Level Panel made specific recommendations directed at the WTO that should inform the TRIPS Council's review. It called for WTO members to “ensure that the interpretation and implementation of TRIPS rules do not undermine the right of WTO members

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<sup>25</sup> Ibid.

<sup>26</sup> Report of the United Nations Secretary General's High-Level Panel on Access to Medicines: Promoting innovation and access to health technologies, September 2016. Available from <https://www.unsgaccessmeds.org/final-report>.

to use TRIPS flexibilities.”<sup>27</sup> The review process should examine how WTO jurisprudence, notifications, and enforcement mechanisms have shaped the practice of members, and whether guidance from the TRIPS Council or the General Council is needed to protect the integrity of TRIPS flexibilities. It is also recommended that the WTO monitor and report instances where countries face retaliation or coercive measures for trying to use TRIPS flexibilities. In this regard, instances of political or commercial pressure exerted on developing countries seeking to use these flexibilities—such as the case of Colombia’s attempt to issue a compulsory license for the leukemia drug Imatinib—illustrate the continuing challenges faced by members in exercising their rights under TRIPS. Colombia reportedly faced diplomatic and trade pressures from developed countries and multinational pharmaceutical firms, which discouraged the effective use of this flexibility.<sup>28</sup> A development-oriented review must therefore not only catalogue use of public health safeguards but also assess the systemic conditions under which they are (or are not) used—including technical capacity, transparency of procedures, and the impact of external pressure. Only by addressing these structural issues can the TRIPS review support a truly equitable framework for innovation and access to medicines.

Additionally, the review should consider whether TRIPS has contributed to—or hindered—the development of pharmaceutical research and innovation targeted at diseases disproportionately affecting developing countries. According to the WHO Commission on Intellectual Property Rights, Innovation and Public Health (CIPRH), current global R&D models driven by patent monopolies have failed to deliver meaningful innovation for neglected diseases. The CIPRH report stressed that IP incentives alone are insufficient to stimulate R&D in areas with low market profitability. Instead, it recommended exploring alternative incentive mechanisms, such as public funding, de-linkage models, and open innovation platforms, and consider whether TRIPS rules allow sufficient space for these alternative approaches. This concern is echoed by South Centre analyses, which point to a systematic misalignment between IP-driven R&D incentives and the health priorities of developing countries.<sup>29</sup> The review should assess how TRIPS implementation affects incentivizing innovation towards socially valuable but commercially unattractive research areas, and whether IP regimes have been adapted to support equitable biomedical innovation in low-resource settings.

Equally important is an assessment of how TRIPS has influenced the development of local and regional generic pharmaceutical manufacturing. Patent protection under TRIPS can delay market entry of generics, thereby reducing competition and sustaining high prices.<sup>30</sup> South Centre research shows that many developing countries, particularly in Africa, have faced difficulties in building local manufacturing capacity due to restrictive IP regimes, lack of technology transfer, and dependence on imports of active pharmaceutical ingredients (APIs) from a few countries.<sup>31</sup> The TRIPS review should assess whether countries have been able to

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<sup>27</sup> Ibid.

<sup>28</sup> See WIPO document, SCP/27/6, 20 November 2017.

<sup>29</sup> See generally, German Velásquez, “Rethinking R&D for Pharmaceutical Products after the Novel Coronavirus COVID-19 Shock”, Policy Brief No. 75, South Centre, April 2020. Available from [https://www.southcentre.int/wp-content/uploads/2020/04/PB75\\_Rethinking-RD-for-Pharmaceutical-Products-After-the-Novel-Coronavirus-COVID-19-Shock\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2020/04/PB75_Rethinking-RD-for-Pharmaceutical-Products-After-the-Novel-Coronavirus-COVID-19-Shock_EN.pdf); German Velásquez, “Rethinking the R&D Model for Pharmaceutical Products: A Binding Global Convention”, Policy Brief No. 8, 7 April 2012. Available from [https://www.southcentre.int/wp-content/uploads/2013/06/PB8\\_Binding-Global-Convention\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2013/06/PB8_Binding-Global-Convention_EN.pdf); Nirmalya Syam and Viviana Munoz Tellez, *Innovation and Global Intellectual Property Regulatory Regimes: The Tension between Protection and Access*, Research Paper No. 67 (Geneva: South Centre, 2016). Available from [https://www.southcentre.int/wp-content/uploads/2016/06/RP67\\_Innovation-and-Global-IP-Regulatory-Regimes\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2016/06/RP67_Innovation-and-Global-IP-Regulatory-Regimes_EN.pdf).

<sup>30</sup> See European Commission, “Pharmaceutical Sector Inquiry”, 8 July 2009. Available from [https://competition-policy.ec.europa.eu/system/files/2022-05/pharmaceutical\\_sector\\_inquiry\\_staff\\_working\\_paper\\_part1.pdf](https://competition-policy.ec.europa.eu/system/files/2022-05/pharmaceutical_sector_inquiry_staff_working_paper_part1.pdf).

<sup>31</sup> See, e.g., Carlos M. Correa, *A Response to COVID-19 and Beyond: Expanding African Capacity in Vaccine Production*, Research Paper No. 178 (Geneva: South Centre, 2023). Available from [https://www.southcentre.int/wp-content/uploads/2023/05/RP178\\_A-Response-to-COVID-19-and-Beyond-Expanding-African-Capacity-in-Vaccine-Production\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2023/05/RP178_A-Response-to-COVID-19-and-Beyond-Expanding-African-Capacity-in-Vaccine-Production_EN.pdf); Nirmalya Syam, *Transition Period for TRIPS Implementation for LDCs: Implications for Local Production of Medicines in the East African Community*, Research Paper No. 59 (Geneva: South Centre, 2014).

use exceptions and transitional arrangements (such as those provided under Article 66 for LDCs) to build sustainable pharmaceutical sectors. This includes evaluating the role of regional initiatives, such as pooled procurement and harmonized regulatory frameworks,<sup>32</sup> and how TRIPS implementation has impacted such initiatives. To that end, a set of indicators can help measure progress toward these objectives and identify where TRIPS implementation may have constrained regional or national health and industrial policy goals. The table below suggest some possible indicators.

Thematic Area	Indicator	Purpose / Rationale	Possible Data Sources
<b>1. Use of TRIPS Flexibilities</b>	Number of compulsory licenses issued or implemented	Tracks the operational use of a core TRIPS flexibility for access to medicines.	WTO TRIPS Council notifications; WIPO patent data; national IP office reports
	Number of patent oppositions filed or successful challenges	Reflects active management of patent rights for public health.	National IP registries; WIPO PATENTSCOPE; NGO/legal databases (e.g., KEI, MSF)
	Incorporation of TRIPS flexibilities in national IP law (e.g., Bolar, parallel imports, exceptions)	Measures legal transposition of TRIPS safeguards.	WIPO IP-Law database; WTO TRIPS notifications; national legislation
	Use and duration of LDC transition periods (Art. 66.1)	Assesses strategic use of transitional arrangements to delay pharmaceutical patent enforcement.	WTO TRIPS Council records
<b>2. Local Manufacturing &amp; Technology Transfer</b>	Number and growth rate of domestic pharmaceutical and API manufacturers	Indicates industrial development since TRIPS implementation.	National drug authorities; UNIDO INDSTAT; WHO GMP lists
	Share of essential medicines produced locally	Proxy for self-reliance and sustainability.	WHO/HAI pricing surveys; Ministry of Health data
	Proportion of pharmaceutical R&D financed domestically	Reflects innovation investment capacity.	National innovation statistics; UNESCO Science Report; World Bank
	Number and quality of technology-transfer projects reported under Article 66.2	Tests effectiveness of developed-country obligations.	WTO TRIPS Council annual reports; donor programme evaluations
	Local value-addition ratio (API vs. formulation)	Measures progress toward integrated manufacturing.	UNIDO/UNCTAD industrial statistics; national trade data

Available from [https://www.southcentre.int/wp-content/uploads/2014/12/RP59\\_Transition-Period-for-TRIPS-Implementation-for-LDCs\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2014/12/RP59_Transition-Period-for-TRIPS-Implementation-for-LDCs_EN.pdf).

<sup>32</sup> Nirmalya Syam, *Regional Pooled Procurement of Medicines in the East African Community*, Research Paper No. 53 (Geneva: South Centre, 2014). Available from [https://www.southcentre.int/wp-content/uploads/2014/09/RP53\\_Regional-Pooled-Procurement-of-Medicines-in-EAC\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2014/09/RP53_Regional-Pooled-Procurement-of-Medicines-in-EAC_EN.pdf).

<b>3. Regional Initiatives &amp; Collaboration</b>	Participation in pooled procurement schemes (e.g., EAC, SADC, ECOWAS, PAHO)	Evaluates engagement in regional demand aggregation.	Regional procurement secretariats; WHO Regional Offices
	Adoption of harmonized regulatory frameworks (e.g., African Medicines Agency)	Assesses institutional progress toward regional regulation.	AU/AMA Secretariat; WHO Global Benchmarking Tool
	Volume and value of pharmaceuticals procured regionally	Quantifies the practical impact of cooperation.	Regional procurement agencies; Ministries of Health
<b>4. Access to Medicines &amp; Public-Health Outcomes</b>	Availability and affordability of WHO-listed essential medicines	Links IP and manufacturing outcomes to access.	WHO/HAI surveys; national price monitoring systems
	Medicine price index (pre- and post-TRIPS reform)	Tracks impact of IP protection on affordability.	National statistics offices; WHO/HAI databases
	Share of generic alternatives for key therapeutic areas (HIV, TB, malaria, NCDs)	Reflects competitive supply in priority health sectors.	WHO Global Medicines Database; national formularies
<b>5. Policy Coherence &amp; Institutional Capacity</b>	Existence of national IP–health–industrial policy coordination mechanism	Indicates cross-sectoral alignment.	National policy documents; UNCTAD/WIPO reviews
	Percentage of donor support aligned with pharmaceutical capacity-building goals	Measures external resource alignment with local priorities.	OECD CRS database; WHO country cooperation strategies
	Inclusion of TRIPS flexibilities in national development plans	Tests policy mainstreaming of flexibilities.	National development and industrial policy documents
<b>6. Transparency &amp; Oversight</b>	Frequency and quality of LDC technology-transfer needs reports (Art. 66.2)	Gauges engagement with WTO oversight mechanisms.	WTO TRIPS Council documentation
	Publication of patent data and transparency of examination process	Tests openness and accountability in IP administration.	National IP offices; WIPO databases; Access to Medicines Index

The proposed indicators are designed to guide a policy-oriented review of TRIPS implementation, emphasizing outcomes in public health and industrial capacity. They combine quantitative and qualitative measures to assess whether TRIPS flexibilities and transitional

arrangements—particularly under Article 66.1 for least developed countries (LDCs)—have been effectively used to advance sustainable pharmaceutical sector development.

Quantitative indicators (e.g. number of compulsory licenses, local production shares, Article 66.2 technology-transfer projects) can be drawn from official WTO, WIPO, WHO, and UNIDO data, complemented by national IP office and health-sector reports. These metrics provide an empirical picture of how countries have operationalized policy space for pharmaceutical production, R&D, and access to medicines.

Qualitative indicators (e.g., incorporation of flexibilities into national law, functioning of policy coordination mechanisms, participation in regional pooled procurement and regulatory harmonization initiatives) help capture institutional and governance dimensions often missed by purely numerical assessment. Case studies—such as regional efforts through the African Medicines Agency or EAC's Medicines Regulatory Harmonization initiative—can provide deeper insights into how TRIPS implementation interacts with collective approaches to pharmaceutical resilience.

By combining these dimensions, a TRIPS review can move beyond assessing formal compliance to evaluating whether the IP system has supported or constrained health and pharmaceutical industrial policy objectives in developing countries. This approach aligns with the mandate of Article 7 and 8 of the TRIPS Agreement and the public-interest orientation reaffirmed by the Doha Declaration on TRIPS and Public Health.

## ***V.2 Technology Transfer and Innovation Capacity***

Science and technology play a transformative role in shaping modern societies, especially within developing countries where challenges such as poverty, limited infrastructure, and public health crises persist. While developed countries have leveraged the massive technological advancements that have taken place in the last decades to secure prosperity and resilience, many developing countries face structural barriers to innovation and knowledge production.<sup>33</sup>

Hence, developing countries continue to need to master technologies developed elsewhere through processes of learning, adaptation, and improvement. Building technological capabilities is essential for industrialization and for transforming developing economies from passive users into dynamic innovators.<sup>34</sup> In this context, effective technology transfer (ToT) becomes essential for bridging the innovation gap—enabling developing countries to access, adapt, and apply technologies that they might otherwise be unable to develop indigenously. ToT can not only accelerate industrial learning and diversification but also strengthen local production capacities, enhance value addition in key sectors such as health, agriculture, and energy, and reduce dependence on imported technologies. It can enable developing countries to transform from passive consumers of innovation into active participants in global knowledge creation, thus contributing to sustainable development and economic sovereignty.

30 years after the adoption of the TRIPS Agreement, the technology gap between developed and developing countries have widened. According to UNCTAD, since the first industrial revolution, the technological divide between developed and developing countries has widened

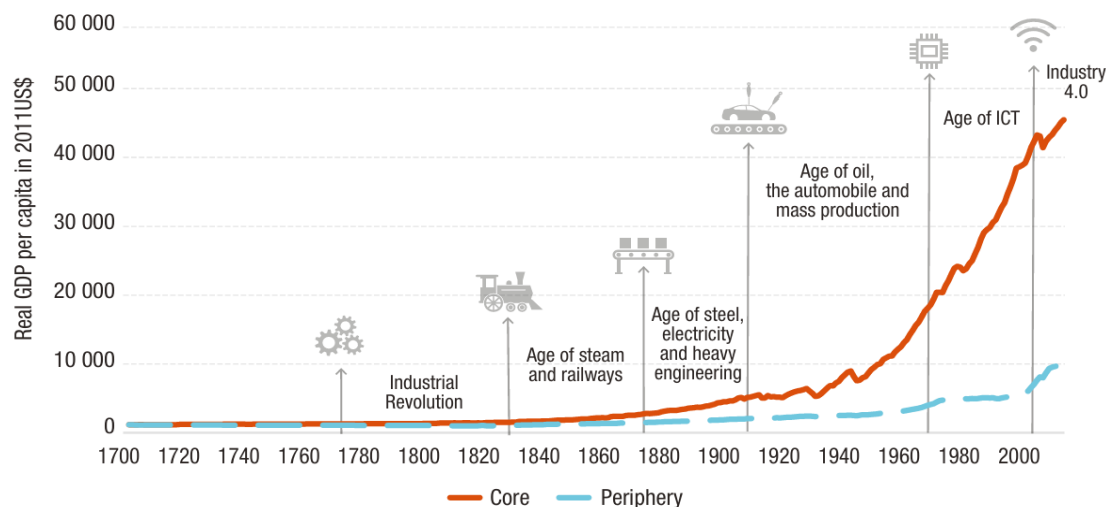
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<sup>33</sup> South Centre, “International Day of Science, Technology and Innovation for the South”, Statement delivered at the G77+China event on the International Day of Science, Technology and Innovation for the South, 16 September 2025. Available from [https://www.southcentre.int/wp-content/uploads/2025/09/SC-Statement-on-RD-Technology-Transfer-and-Innovation\\_16-Sept-2025.pdf](https://www.southcentre.int/wp-content/uploads/2025/09/SC-Statement-on-RD-Technology-Transfer-and-Innovation_16-Sept-2025.pdf).

<sup>34</sup> Sanjaya Lall, “Technological Capabilities and Industrialization”, *World Development*, vol. 20 (no. 2), 1992, pp. 165-86. Available from [https://doi.org/10.1016/0305-750X\(92\)90097-F](https://doi.org/10.1016/0305-750X(92)90097-F).

consistently and significantly with every wave of technological change.<sup>35</sup> As seen in the figure below, the technological divide has become even bigger in the age of information and communications technologies (ICT) and the fourth industrial revolution,<sup>36</sup> coinciding with the post-TRIPS era. As documented in the 2025 UNCTAD Technology and Innovation Report, many developing countries remain stuck in low-technology production systems, with limited progress in moving up the global value chain or transitioning into innovation-led economies. The report shows that while developed countries have surged ahead in critical areas such as artificial intelligence (AI), biotechnology, green energy, and digital infrastructure, most developing countries are lagging behind.<sup>37</sup> It is acknowledged that stringent IP protection could obstruct attempts by developing countries to harness new technological developments to increase productivity, wages, and employment through economic diversification.<sup>38</sup>

Technological change and inequality through the ages



Source: UNCTAD, based on data from Maddison Project Database, version 2018, Bolt et al. (2018), Perez (2002), and Schwab (2013).

The review should examine the impact of TRIPS implementation on the transfer and dissemination of technology to developing least developed countries (LDCs), and the consequent trade and development prospects for such countries.<sup>39</sup> This includes assessing the impact of IP protection on local innovation systems, industrial development, and the ability of developing countries to build domestic research and development capacity. Case studies and data-driven evaluations should be encouraged to document successes and barriers.

Transfer of technology is a core commitment embedded in the TRIPS Agreement. It states that, “The protection and enforcement of intellectual property rights should contribute the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.” Article 8.2 of TRIPS states that “Appropriate measures, provided they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of IP rights by right holders or the resort to practices which ... adversely affect the international transfer of technology.”

<sup>35</sup> See UNCTAD, Technology and Innovation Report. 2021, p. xiii. Available from [https://unctad.org/system/files/official-document/tir2020\\_en.pdf](https://unctad.org/system/files/official-document/tir2020_en.pdf).

<sup>36</sup> Ibid.

<sup>37</sup> UNCTAD, *Technology and Innovation Report: Inclusive Artificial Intelligence for Development* (United Nations: New York, 2025). Available from [https://unctad.org/system/files/official-document/tir2025\\_en.pdf](https://unctad.org/system/files/official-document/tir2025_en.pdf).

<sup>38</sup> UNCTAD, *supra* note 34, p. 45.

<sup>39</sup> Stilwell and Tuerk, *supra* note 13, p. 3.

Apart from reviewing how implementation of the provisions of the TRIPS Agreement have impacted transfer and dissemination of technology to developing countries, the review should also specifically assess the impact of implementation of article 66.2 of the TRIPS Agreement<sup>40</sup> which specifically requires that “Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create and sound and viable technological base.” In practice, however, implementation has been weak. Many developed countries’ annual reports to the TRIPS Council provide only limited or descriptive information, often listing seminars, training courses, study visits, or general development cooperation projects as evidence of compliance. Such activities, while useful for awareness-raising, fall short of the sustained and targeted transfer of technology—through licensing, joint ventures, or local production support—which could be considered incentives envisioned under Article 66.2. The review should therefore evaluate both the adequacy and the qualitative impact of these measures, distinguishing between genuine technology transfer initiatives and routine technical assistance or capacity-building activities that do not result in the creation of a viable technological base in LDCs.

To make the review of TRIPS implementation more evidence-based and forward-looking, it is essential to assess the effectiveness of technology transfer and innovation outcomes in developing countries and LDCs. The following indicative indicators are proposed to help evaluate whether the TRIPS Agreement, including its provisions under Articles 7, 8.2, and 66.2, has facilitated or constrained the transfer and dissemination of technology in a manner conducive to social and economic welfare.

These indicators are structured around key dimensions — such as the utilization of Article 66.2 commitments, domestic innovation capacity, patterns of technology collaboration, and the policy environment for technology transfer. Together, they can help distinguish between formal or symbolic compliance (e.g., training or seminars) and substantive outcomes such as sustained industrial learning, local production capacity, and effective participation of developing countries in global knowledge creation.

Dimension	Indicator	Purpose / Rationale	Possible Data Sources
<b>1. Utilization and Effectiveness of Article 66.2 Commitments</b>	Number of Article 66.2 reports submitted annually by developed countries	Measures compliance with the reporting obligation.	WTO TRIPS Council documentation
	Share of reported activities involving concrete technology transfer (licensing, joint R&D, production partnerships) vs. training/seminars	Distinguishes genuine ToT efforts from general technical assistance.	WTO notifications; analysis of 66.2 reports
	Value or estimated scale of technology-related projects incentivized under Article 66.2	Gauges the magnitude of tangible ToT support.	WTO 66.2 reports; donor programme data

<sup>40</sup> See Suerie Moon, “Does TRIPS Art.66.2 Encourage Technology Transfer to LDCs? An Analysis of Country Submissions to the TRIPS Council (1999-2007)”, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Policy Brief No. 2, December 2008. Available from [https://unctad.org/system/files/official-document/iprs\\_pb20092\\_en.pdf](https://unctad.org/system/files/official-document/iprs_pb20092_en.pdf).

	Evidence of technology absorption outcomes in recipient LDCs (e.g. new production facilities, patent filings, or industrial diversification)	Assesses real impact of reported initiatives.	WIPO; UNIDO; national industrial statistics
<b>2. Domestic Innovation and Absorptive Capacity</b>	R&D expenditure as % of GDP (and share funded domestically)	Measures investment in innovation and learning capacity.	UNESCO Science Report; World Bank data
	Number of researchers and technicians per million people	Reflects human capital base for technology absorption.	UNESCO Institute for Statistics
<b>3. Technology Flow and Collaboration Patterns</b>	Volume and type of foreign licensing agreements signed by domestic firms or research institutions	Indicates access to proprietary technologies.	WIPO Statistics Database; UNCTAD Investment Policy Hub
	Number of international research or industrial collaboration projects involving developing/LDC institutions	Reflects engagement in global knowledge networks.	UNESCO; Horizon/UN research programs
	Share of high- and medium-technology exports in total manufacturing exports	Proxy for structural upgrading and innovation diffusion.	UN Comtrade; UNCTADstat
<b>4. Local Production and Value Addition</b>	Share of domestically produced technology-intensive goods (e.g. pharmaceuticals, electronics, renewable energy components)	Measures internalization of technology capabilities.	UNIDO INDSTAT; national industrial surveys
	Share of value-added from technology-based sectors in GDP	Reflects diversification and technological upgrading.	World Bank; UNCTAD
<b>5. Policy and Legal Environment for Technology Transfer</b>	Existence and use of national laws promoting compulsory licensing, research exemptions, or competition policy to prevent IP abuse	Evaluates whether TRIPS flexibilities are integrated into domestic law to support technology access.	WTO notifications; WIPO IP-Laws database
	Number of initiatives incentivizing joint ventures, technology parks, or South–South cooperation projects	Captures proactive domestic measures to foster learning-by-doing and ToT.	National industrial policies; regional organizations

<b>6. Monitoring and Transparency</b>	Quality and comprehensiveness of developed-country Article 66.2 submissions (measured by level of detail, outcome data, and follow-up mechanisms)	Gauges effectiveness and accountability of reporting.	WTO TRIPS Council Secretariat summaries
	Inclusion of developing/LDC feedback on effectiveness of 66.2 projects	Encourages participatory evaluation and ensures that reported activities meet recipient needs.	TRIPS Council minutes; expert analyses

The indicators above aim to evaluate not only whether developed countries have fulfilled their Article 66.2 obligations, but also whether developing and least developed countries have built the institutional and industrial capacity to absorb and utilize technology effectively. Quantitative indicators—such as the number and type of technology transfer initiatives—should be complemented by qualitative assessments of outcomes, including evidence of industrial learning, innovation system strengthening, and creation of a sustainable technological base.

Together, these indicators can help distinguish symbolic compliance (seminars, study visits, reports) from substantive outcomes (technology adoption, production, and innovation), providing a more meaningful measure of TRIPS' impact on technological progress and economic diversification.

## VI. CONCLUSION

As the TRIPS Agreement enters its fourth decade, its anniversary presents both a symbolic and substantive opportunity to revisit the foundational questions of purpose, equity, and global cooperation in the intellectual property system. The mandatory review under Article 71.1, long overdue, must now be seen not as a procedural exercise, but as an essential process for recalibrating the Agreement in line with the developmental needs of its most affected—developing countries—by the implementation of high standards of protection imposed in an asymmetric negotiation.<sup>41</sup> The discussion in this paper strongly supports the case for a comprehensive, impact-focused, and forward-looking review grounded in the principles enshrined in Articles 7 and 8 of the Agreement and reaffirmed in the 2001 Doha Ministerial Declaration.<sup>42</sup>

Over the past three decades, TRIPS has decisively influenced national laws, global norms, and market structures, often entrenching asymmetries in the distribution of technological, economic, and health benefits. The promised dividends of TRIPS—technology transfer, capacity building, and innovation-driven development—have largely failed to materialize for many developing countries. As highlighted by UNCTAD, the gap in technological readiness and innovation capacity between developed and developing countries continues to widen, fueled by rigid IP regimes that often obstruct access to knowledge and essential technologies. The review must therefore ask the hard questions: has TRIPS facilitated equitable access to innovation? Has it promoted sustainable development, including in areas such as public health, food security and socio-economic empowerment? Or has it cemented structural imbalances in global trade and knowledge governance?

One of the most significant failings has been in the area of public health. Despite the reaffirmation of flexibilities through the Doha Declaration and subsequent WTO decisions, many countries still face legal, political, and practical obstacles when attempting to use these tools. The chilling effect of TRIPS-plus provisions in bilateral and regional agreements, combined with the absence of institutional safeguards against external pressures, has constrained the use of measures like compulsory licensing and parallel importation. This has resulted in continued inequities in access to life-saving medicines and vaccines, as the COVID-19 pandemic starkly revealed. The Article 71.1 review must address not just the legal existence of flexibilities, but their real-world accessibility and usability in diverse contexts, especially by those most in need.

In the field of technology transfer and local innovation, the story is similarly sobering. Provisions such as Article 66.2, which requires developed countries to incentivize technology transfer to LDCs, remain poorly implemented and weakly monitored. Meanwhile, TRIPS has often failed to encourage meaningful support for domestic innovation systems in developing countries. The limitations imposed by strong IP protections, has restricted the diffusion of technologies and hindered local value addition. As the world navigates digital transformation and the shift toward knowledge-intensive economies, the risks of exclusion are even greater. The review should therefore examine not just the failures of the past, but the future viability of TRIPS in an era of AI, digital platforms, green technologies, and genomics. Does TRIPS provide the flexibility and institutional architecture necessary to support inclusive innovation in the Global South?

<sup>41</sup> Carlos M. Correa, “History of the Negotiation of the TRIPS Agreement”, Policy Brief No.145, South Centre, Geneva, September 2025. Available from <https://www.southcentre.int/policy-brief-145-5-september-2025/>.

<sup>42</sup> World Trade Organization, *supra* note 2.

Moreover, the review must take a critical look at how TRIPS has impacted domestic policy space more broadly. Developing countries require the freedom to tailor IP systems to their level of development, public needs, and strategic priorities. Yet in practice, many have adopted more stringent standards under pressure, reducing their ability to promote local industry, ensure public welfare, and pursue structural transformation. A robust Article 71.1 review can help restore policy space by identifying areas where the Agreement, its interpretations, or its implementation have restricted flexibility, and by proposing ways to rebalance rights and obligations. The review must be an honest reckoning with the trade-offs embedded in the Agreement and an opportunity to propose meaningful reforms where warranted.

Importantly, the process of the review matters just as much as its substance. A development-centered review must be inclusive, transparent, and evidence-driven. It should empower developing countries to shape the agenda, share their experiences, and advance their priorities without fear of backlash. The review must avoid becoming a compliance report card, which risks deepening existing asymmetries, and instead serve as a collective stocktaking of whether TRIPS has delivered on its core promises. The WTO Secretariat, the TRIPS Council, and the General Council must ensure that the review is protected from politicization, underpinned by sound research, and aimed at constructive reform.

In conclusion, a comprehensive Article 71.1 review offers a rare and critical opportunity to reimagine the global IP system in a way that serves development, equity, and sustainability. It is an opportunity to reaffirm the developmental aspirations embedded in TRIPS and to realign its implementation with the real-world challenges faced by billions of people in the Global South. Fulfilling this mandate is not only a legal obligation—it is a moral and political imperative. The TRIPS Council must rise to the occasion, not to defend the status quo, but to guide the Agreement into a new era of inclusivity, balance, and shared prosperity.

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