



# The Distinct Nature of the WTO Agreement on Trade-Related Intellectual Property Rights



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## Abstract

However, linking intellectual property to international trade clearly emerged with the creation of the World Trade Organization under the Marrakesh Agreement of 1995, which introduced the WTO Agreement on Trade-Related Intellectual Property Rights (known in English as the TRIPS Agreement). This agreement contains important provisions regarding the nature of intellectual property rights related to trade, set forth in special rules.

This shift reflects an interest in what develops international trade for the benefit of countries whether economically advanced or developing by focusing on progress, technology, and expertise across various fields. Such orientation is explained in the content of the TRIPS Agreement. However, since there exist earlier international agreements on intellectual property rights, a question arises: is the WTO/TRIPS Agreement a completely new and independent agreement compared to these previous conventions, or does it represent a continuation of their work? Answering this requires a pause to determine the general framework of the WTO Agreement concerning trade-related intellectual property (first section), and then to analyze the substance of this agreement (second section).

## Keywords

Intellectual property;  
TRIPS;  
WTO.

## الكلمات المفتاحية

حقوق الملكية الفكرية؛  
اتفاق تريبس؛  
المنظمة العالمية للتجارة.

## الطابع المميز لاتفاق المنظمة العالمية للتجارة الخاص بحقوق الملكية الفكرية المرتبط بالتجارة

## ملخص

إن تنظيم حقوق الملكية الفكرية ليس بالأمر المستجد على المستوى الدولي فقد عرف تنظيمها إبرام الكثير من الاتفاقيات الدولية ناهيك عن وجود منظمة عالمية للملكية الفكرية. إلا أن ربطها بالتجارة الدولية تجلى عند إنشاء المنظمة العالمية للتجارة بموجب اتفاق مراكش لسنة 1995 وهذا بموجب اتفاق المنظمة المتعلق بحقوق الملكية الفكرية المرتبطة بالتجارة والمختصر باللغة الإنجليزية باتفاق TRIPS والذي تضمن أحكاما هامة تتعلق بطبيعة حقوق الملكية الفكرية المرتبطة بالتجارة من قواعد وأحكام خاصة.

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## **Introduction :**

The regulation of intellectual property rights is not new on the international level, as their organization has seen the conclusion of numerous international agreements, not to mention the existence of the World Intellectual Property Organization. However, linking intellectual property to international trade clearly emerged with the creation of the World Trade Organization under the Marrakesh Agreement of 1995, which introduced the WTO Agreement on Trade-Related Intellectual Property Rights (known in English as the TRIPS Agreement). This agreement contains important provisions regarding the nature of intellectual property rights related to trade, set forth in special rules.

This shift reflects an interest in what develops international trade for the benefit of countries whether economically advanced or developing by focusing on progress, technology, and expertise across various fields. Such orientation is explained in the content of the TRIPS Agreement. However, since there exist earlier international agreements on intellectual property rights, a question arises: is the WTO/TRIPS Agreement a completely new and independent agreement compared to these previous conventions, or does it represent a continuation of their work? Answering this requires a pause to determine the general framework of the WTO Agreement concerning trade-related intellectual property (first section), and then to analyze the substance of this agreement (second section).

## **Section One**

### **The WTO Agreement on Trade-Related Intellectual Property Rights: An Agreement with Commercial Dimensions**

The study of the WTO TRIPS Agreement necessitates entering its substance in detail to explain the requirements for establishing such an agreement, as well as to define its exact content so as to precisely clarify the difference between it and previous international intellectual property agreements. It is thus necessary to pause and determine the circumstances and context in which this agreement was crafted (first point), and then to define the agreement itself (second point).

#### **Point One: Requirements for Enacting a Specific Agreement on Intellectual Property Rights at the WTO Level**

The inclusion of a specific agreement at the WTO level related to intellectual property rights was not spontaneous nor accidental; rather, it was imposed by requirements and factors related to major transformations in the global economy, especially in international trade since the late 1980s and early 1990s. In particular, new concepts emerged in international trade unknown before these periods, demanding adaptation and the creation of international frameworks in this direction. Upon reviewing various studies on international trade in general and WTO agreements specifically, as well as examining the reality of international economic and commercial exchanges, the main requirements that led to the establishment of an internal framework agreement within the WTO specific to intellectual property rights can be identified. Most important among these are the interests of multinational corporations (first branch) and the move towards a unified international system for intellectual property (second branch).

#### **Branch One: Serving the Interests of Multinational Corporations**

The establishment of the WTO's specific agreement on intellectual property rights serves the interests of multinational corporations, considering they are the real owners of intellectual property rights, especially industrial rights. These corporations play a leading role in transferring technology at the international level, carrying out a substantial portion of research and development worldwide and typically transferring this technology to their subsidiaries. Notably, the share of foreign direct investment in the global stock in developing countries increased from 25% to 33% between 1990 and 2012 (Summary of the study on international technology transfer: An analysis from the perspective of developing countries, Committee on Development and Intellectual Property, World Intellectual Property Organization, 19 September 2014, available at, 2022).

The basic reason for establishing the agreement within the WTO is the strong desire to protect innovators and inventors, preserve their rights, and safeguard the fruits of their intellectual endeavors from all forms of infringement counterfeiting, imitation, or theft. More specifically, the push came from multinational corporations, pressing hard for the creation of this agreement (Awadallah, 2011). These corporations have consistently expressed dissatisfaction with earlier international mechanisms for intellectual property regulation, despite generally owning various forms of intellectual property, including trademarks and patents. As a result, they lobbied their home countries to intervene during the formation of the WTO and to impose this agreement with greater rigor and effectiveness, in view of the

global nature of the WTO and its comprehensive oversight of everything tied to international commercial exchanges (Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce ADIPIC, , 1995).

This point was underscored in the preamble to the agreement, which explains the reasons for creating the WTO agreement on intellectual property rights, emphasizing that the agreement aims to provide effective and strict protection by eliminating obstacles that hinder smooth international trade exchanges and combating all forms of piracy targeting these rights . The United States, the European Union, and other advanced economies heavily influenced by multinational corporations insisted on the establishment of this agreement to secure their business interests and enforce stronger protection of their intellectual property rights, given their extensive use in investment and international commercial transactions (Salehi, 2000). This happened despite strong opposition from developing countries, which saw this as harming their economic interests due to their lag in the field of intellectual property and the existence of the World Intellectual Property Organization as the body previously handling these issues.

Ultimately, advanced countries under the persistent urging of their multinational corporations considered the TRIPS Agreement an absolute necessity to foster inventions and scientific research, since it would provide enhanced protection for these innovations and research, whereas previous international agreements failed to offer sufficient protection against piracy and theft. From the perspective of developed countries, this would also benefit developing countries, which have long demanded technology and expertise transfers, thus reducing the imbalance in technology ownership provided this is accompanied by the protection of technology and know-how (JACQUET Jean-Michel, 2007).

## **Branch Two: The Move Toward Unifying Rules Governing Intellectual Property Rights**

A further requirement for the establishment of the WTO agreement on intellectual property was the new direction towards creating uniform global rules, binding on all countries, whether developed or developing, and urging the issuance of matching domestic legal texts a process described as the globalization of legal norms organizing every aspect of the economy, enshrined in the laws of all countries without exception, thus consecrating comprehensive globalization of the economy.

The WTO, as the global framework guiding international commercial exchanges based on principles and previously set rules by founding countries, is the appropriate umbrella for a mandatory and applicable agreement on intellectual property. Among the organization's requirements for member countries is that their domestic legislation be fully compatible with the provisions of these agreements, applying the rule that WTO agreements take precedence over national laws. The organization, through its members, utilizes these conditions in negotiations with countries wishing to join; thus, benefiting from its content, especially the advantages it provides, requires adhering to all its requirements.

This was originally the objective behind the existence of these WTO agreements, including TRIPS, which was long dreamed of by the countries that aspired to establish such a framework since the end of World War II. It represents one form of legal globalization organizing international economic exchanges. In summary, the WTO TRIPS Agreement reflects the application of the concept of globalization in general and economic globalization in particular, which began to take shape around 1991, as identified by Ronald Robertson (kahina, 2016).

Globalization, given ongoing technological advances and evolution in the global economy, necessitates precise and effective international regulation, including for international commercial exchanges according to their specific unified rules. Thus, the WTO's agreement on trade-related intellectual property rights as with its other agreements constitutes the global framework for intellectual property rights, differing substantially in terms of organization and application compared to earlier international agreements, as will be demonstrated later (Sami Afif Hatem, 2004).

## **Point Two: The Precise Meaning of the WTO TRIPS Agreement**

Based on the above requirements for the establishment of a specific intellectual property agreement at the WTO level, we discover the importance of the agreement in unifying the global rules for the field, requiring a precise determination of its meaning. A preliminary reading of the WTO's intellectual property agreement shows that it is an annex to the organization's founding agreement, known as the Marrakesh Agreement of 1995. This is evident from the phrases in the founding charter, especially Article II, paragraphs one and two, which explicitly incorporate the annexed agreements as integral and binding components.

In other words, the WTO's agreement on intellectual property rights is a new agreement covering one of the domains of international commercial exchanges namely, trade-related intellectual property rights. This means the

agreement is both innovative and continuing at the same time, as it contains features that are new from a specific perspective (first branch) and, at the same time, continues and diverges from previous international intellectual property agreements (second branch).

### **Branch One: The WTO Agreement as a New Agreement from a Particular Perspective**

In reality, the WTO Agreement on Trade-Related Intellectual Property Rights truly represents a new agreement, considering the existence of several previous international agreements that addressed the organization of intellectual property rights. The WTO agreement's emergence followed the final round of the GATT negotiations the Uruguay Round of 1994 which, for the first time, included intellectual property rights alongside services in its agenda, though discussions were originally focused on the development of commercial exchanges.

Advanced countries' insistence on protecting the intellectual property of their companies influenced the direction of negotiations and ultimately resulted in the creation of an agreement under the WTO's umbrella a novelty and distinctiveness expressed in several ways:

**First**, this WTO-level agreement is new in that it links the protected intellectual property rights to commercial exchanges, specifically rights that are used in trade, whether for goods or services for example, trademarks, patents, copyrights, and neighboring rights. This is reflected in the name itself: "Agreement on Trade-Related Aspects of Intellectual Property Rights," covering rights utilized in trade.

**Second**, the agreement is the first of its kind in terms of scale and comprehensive coverage; it gathers all categories of intellectual property rights literary, artistic, and industrial within unified and consolidated provisions. This level of unification was previously absent; earlier international agreements only addressed one or two types of rights, such as the Berne Copyright Convention (1886), Paris Convention on Patents and Trademarks (1887), Rome Convention on Performers and Producers of Sound Recordings, or Washington Convention on Integrated Circuits (1989). Even though these agreements were monitored by WIPO founded in 1970, significant shortcomings remained most notably, the inability to provide adequate protection for owners against imitation and piracy, especially with the growth of the commercial use of these rights in trade (Barakan, 2009-2010). Those agreements lacked sanctions and a system for the resolution of disputes, which prompted calls for a stricter and more effective international framework (Awadallah, 2011).

**Third**, therefore, the WTO Agreement came to fill these gaps and deficiencies, creating a more inclusive system with broader and stricter protection provisions and enforcement rules. Comparing the WTO TRIPS Agreement with previous conventions, we notice that earlier agreements typically regulated only one or two types of intellectual property, while the TRIPS Agreement brings together multiple rights with clear standards for existence, scope, and utilization.

**Fourth**, the uniqueness of the WTO Agreement also lies in its status as an organized and effective framework. Its permanent nature is ensured by the oversight of a global organization ; the WTO itself giving it binding force and primacy for member states, whether they participated in founding the organization or seek to join later. As emphasized above, WTO agreements have precedence in implementation over domestic legislation; their existence under the WTO's supervision renders them obligatory, with strong enforcement mechanisms, including strict protection and penalties for infringement, and a robust dispute settlement system. This is what advanced countries sought, to safeguard their interests (Mouzawi, 2011)

## **Section Two**

### **The Substance of the WTO Agreement on Trade-Related Intellectual Property Rights:**

#### **Between Organization and Effectiveness**

Upon closely examining all articles of the WTO Agreement on Intellectual Property, we conclude that it contains several provisions explaining and clarifying the importance of organizing intellectual property rights within the framework of the Organization , along with the various rules applied to these rights, especially concerning their protection.

In other words, the Agreement introduces new matters not previously known in former international agreements regarding IP rights.

These revolve mainly around combining all categories of intellectual property rights relevant to international trade transactions (first point), with enhanced effectiveness and stringency in using those rights, preventing any form of infringement (second point).

### **First Point: Gathering All Intellectual Property Rights in Inclusive Provisions**

Since the WTO Agreement on Intellectual Property is an agreement of a special kind, this necessarily requires accurately identifying where its novelty lies.

As previously mentioned, this agreement has gathered and included all categories of intellectual property rights that earlier international agreements individually regulated. Such rights are classified into several types (first subsection), with established controls and rules for their use (second subsection).

### **First Subsection: Accurate Specification of All Intellectual Property Rights Used in International Trade**

Based on the contents of the WTO Agreement on Intellectual Property, there is a precise specification of the intellectual property rights subject to protection and enforcement.

This is emphasized by the second part of the agreement, explicitly addressing the standards for the existence, use, and enforcement of intellectual property rights.

In this context, these rights are divided into a diverse group, namely:

#### **1. Copyright and Related Rights:**

Also called literary and artistic rights, always linked to something material.

These rights are associated with the personality of the author, known as non-material or moral rights (Fadli, 2008).

They are stated in Section 1 of the second part of the agreement, across Articles 9–14. The definition and obligations here refer to the Berne Convention of 1971 for Copyright and Related Rights, specifically Articles 1 and 2.

2. The agreement confirms these cover written works, musical pieces, theatre, cinema, drawings, engravings, sculptures, and computer programs, whether in source or machine language, including rental rights. In other words, the Berne Convention applied here by the WTO Agreement covers published works practically, rather than mere ideas.

#### **3. Industrial and Commercial Trademarks:**

A category of industrial rights, representing various tangible and intangible elements designated for business or industry, allowing the differentiation of one product from another, or one business or factory from another.

These rights are included in Section 2 of Part Two of the agreement, Articles 15–21, and defined as any sign or symbol that distinguishes goods or services produced by one organization from those of another, on condition of registration (Awadallah, 2011).

Whether these symbols are letters, names, shapes, or combinations of colors.

#### **4. Geographical Indications:**

Also industrial rights given their direct connection to industry and commerce.

Geographical indications identify the origin of a product in one of the Organization's member countries, a region, or a particular location in one of them, as per Article 22 in Section 3 of Part Two.

#### **5. Industrial Designs and Models:**

Defined in Article 35 of the WTO IP Agreement, these are the drawings through which the final form of a product or

its packaging is determined, provided they are new and original (Makhloufi, 2007-2008).

6. **Patents:**

Also industrial rights, patents are the document that gives an inventor rights to his innovation.

The inventor's right to exclusive use does not arise just from discovery, but only upon obtaining a patent (Boubeker Nebia, 2018).

TRIPS grants patents between Articles 27 and 34, across all technological fields, in product or process form, if new and industrially applicable.

7. **Layout-Designs of Integrated Circuits:**

These refer to electronic inventions, integrating numerous electronic functions within a small component via three-dimensional arrangement, at least one of which is active, sometimes as connections for programming circuits.

TRIPS includes these rights in Articles 35–38, focusing on usage conditions and the necessity of protection, rather than a definition.

## **Second Subsection: Establishing Comprehensive Uniform Rules for Using Intellectual Property Rights**

What distinguishes the WTO Agreement on IP Rights is its regulation and unification of rules governing intellectual property rights relevant to commerce.

Some principles and rules apply to all fields of trade under the Organization (First), while others are closely linked to intellectual property rights due to their special nature (Second).

### **First: General Principles for All Fields of Trade under the Organization:**

Upon adopting the WTO agreements, a set of principles and rules was established to apply to commercial exchanges, whether in goods, services, or the use of intellectual property rights in trade.

These principles derive from the original General Agreement on Tariffs and Trade (GATT) of 1947 thus; they are universally applied, even as their meaning is tailored to fit each specific area (Al-Huweish, 2005).

They include:

1. **Principle of Equality:**

Also called non-discrimination, a well-known principle in international law.

The founding charter of the United Nations states in Article 2 that members are equal in sovereignty.

This principle extended to international trade by the first agreement regulating trade in goods GATT 1947 retained under the WTO in all regulated fields.

Non-discrimination means granting states the same advantages and preferences, regardless of their level of development, in international trade.

Two conditions were set to achieve this principle:

a. **Most-Favored-Nation Clause:** If a party makes a treaty with another granting favorable treatment and then makes a third treaty with a better deal, all parties benefit from the best treatment.

b. **National Treatment Condition:** This complements MFN, meaning a state gives the same treatment to foreign and domestic actors in protecting intellectual property.

2. In the field of IP, these principles are specified in Part One of the agreement under “General Provisions and Fundamental Principles,” elaborated in Articles 3 and 4 referring to both MFN and national treatment.

For MFN in IP, Article 4 provides that any privilege or favorable treatment extended to one member must be extended to all, with certain exceptions in prior international agreements.

As for national treatment, Article 3 requires members to grant other members' nationals protection no less than their own, including acquisition, scope, maintenance, and use of IP rights.

Exceptions to these principles follow the 1967 Paris Convention, 1971 Berne Convention, and the Rome Convention

on layout-designs for integrated circuits.

### 3. **Principle of Transparency:**

This is a new, crucial principle for international trade under the WTO, requiring internal rules regulating goods, services, and IP rights to be clear and not constitute barriers to trade.

The Marrakesh Charter (Annex 3, Section B) notes the necessity of transparency in domestic decision-making regarding trade, ensuring voluntary cooperation and considering each member's own legal and political context.

In IP, this appears in Article 63 of the agreement, stipulating that member countries' internal laws regulating IP must be easily understood and clearly protect IP rights, including the clarity of court decisions.

This ensures avoidance of abuse that might affect the existence, acquisition, or use of such rights, requiring publication and openness, in accessible language.

Members must send all IP-related legal texts to the WTO's IP Council for review.

## **Second: Specific Principle for Intellectual Property Rights:**

TRIPS emphasizes the maximum protection of all IP rights by:

1. Respecting protection by banning any abuses or excesses in internal laws that might constitute IP infringements, except where public interest or health require adjustment which must not impede scientific and technological development or social/economic progress per Article 7.

2. Setting minimum and maximum periods for IP protection:

- Copyright and related rights: Minimum 50 years from the end of publication year
- Trademarks: Minimum 7 years, renewable
- Industrial designs and integrated circuit layout-designs: Minimum 10 years
- Patents: Minimum 20 years

3. **Preventing unlawful practices in licensing contracts:**

The agreement prohibits license-contract abuses that may negatively affect markets and the transfer of technology, requiring members to enact domestic laws banning such abuse or limiting the exploitation or use of IP rights.

## **Second Point: Granting Effectiveness and Stringency in Using Trade-Related Intellectual Property Rights**

The founding countries of the WTO did not merely textually state these rights and their principles, but explicitly required the enforcement of their provisions by member countries and aspiring member states.

This represents an advancement over previous international agreements and overcomes the deficiency of lacking enforcement by the World Intellectual Property Organization and no deterrence or penalties.

Thus, the WTO Agreement on Trade-Related IP Rights, like its agreements on trade in goods and services, is distinguished by its effectiveness and stringency for achieving its goals: the protection and respect of IP rights to develop knowledge/technology and to promote social and economic progress, balancing rights and responsibilities. Examining the agreement's provisions, this effectiveness and stringency appear :  
by strong protection obligations (first subsection), and a strict dispute-resolution system (second subsection)

### **First Subsection: Subjecting Countries to Strict and Tight Obligations**

Stringency and tightness regarding IP protection obligations are emphasized clearly in the very preamble and specific articles, requiring effective and sufficient protection for IP rights and all necessary measures to ensure respect so long as

this does not hinder lawful trade. Consequently, members are given specific duties and measures, with consequences for non-compliance. To give greater effectiveness and stringency, WTO's TRIPS agreement establishes two ways:

1. **Compelling Countries to Enact Special Measures and Procedures for IP Protection:**

Outlined in Part Three of TRIPS under "Enforcement of IP Rights," Articles 41–47, including:

- Members must enact legislation and regulations to respect IP rights and permit real action against infringement, including rapid corrective measures.
- These actions must not obstruct lawful trade or be excessive.
- Member states must take necessary actions ensuring justice, legitimacy, and fairness, with procedures that are reasonable and not costly, and are written and justified, with the possibility for parties to review and appeal administrative decisions in courts.
- National authorities must notify IP holders about procedures and their reasoning, and IP holders may retain lawyers and present evidence, and request protection of confidential information.
- Judicial authorities may take measures to prevent infringement, including seizure of counterfeited/pirated goods, cooperation with customs officials at borders.

2. **Establishing a System of Sanctions:**

This stringency is reflected in the imposition of non-negotiable obligations, initially as precautions, then as curative measures via penalties:

○ **Judicial and Administrative Penalties:**

Articles 45–49 authorize judicial and administrative penalties against infringers:

- Court intervention for damages to IP holders, legal costs, and other expenses.
- Courts can order seizure of products based on infringement, or disposal of goods and materials used in production, and exclude importation of counterfeit goods.
- Administrative penalties: Preventive measures (by customs and other authorities) to seize and confiscate counterfeited/pirated goods at borders.
- **Criminal Penalties:**

Article 61 requires criminal penalties for counterfeiting trade/service marks and piracy of copyrighted works. Countries have discretion over the form but must ensure they're significant enough to limit infringement, including possible destruction of infringing imported goods.

## **Second Subsection: Establishing a Special System for Dispute Resolution**

To ensure stringency and proper implementation of the Agreement, and responding to criticisms of GATT, a special regime for dispute settlement was established for all WTO agreements including TRIPS. Because WIPO lacked a dispute mechanism, it was crucial for the WTO system to apply to IP disputes. This regime is specified in a special agreement attached to the Marrakesh Charter (Annex 2: Dispute Settlement Memorandum), which covers all fields managed by the WTO (goods, services, IP).

Article 64 explicitly refers TRIPS disputes to this system, with the IP Council overseeing enforcement, and all relevant files proceeding to the Dispute Settlement Body and the Appellate Body whose decisions and recommendations are binding and failure to implement them results in measures against the violator, including suspension of privileges.

Thus, as a result of the WTO's dispute resolution system, concerns of IP holders are addressed through structured and controlled oversight, with settlements supervised by the Organization, and decisions always binding, with enforceable sanctions if not followed just as demanded by IP owners.

## **Conclusion:**

The WTO's TRIPS Agreement emerged from technological, trade, and economic developments in a knowledge-based global economy, necessitating concern for owners of massive technological and knowledge capital dominating most global expertise, at the expense of the majority who lack such technology and knowledge. This explains the reason for the agreement's existence itself:

protecting the private interests of rights-holding companies, using their country's influence, to the detriment of other firms, especially those in developing nations, thus creating a substantial economic gap.

TRIPS, compared to predecessor agreements, is characterized by rules, principles, and obligations that upon careful analysis are the most stringent and effective, with harsh sanctions for non-compliance. In sum, careful study of TRIPS reveals:

1. It is designed mainly to serve the interests of economically advanced countries, influenced by their IP-rights holding corporations, over the interests of developing nations, imposing monopolies and economic domination owing to technological disparity.
2. The agreement embodies universality, comprehensiveness, and globalization of rules governing IP rights in all countries, regardless of their level of development.  
States refusing to apply them are excluded from the world of technology and expertise explaining the rush of national legislatures (like Algeria's 2003 law, in preparation for accession negotiations) to adapt TRIPS' provisions.
3. TRIPS is a binding and deterrent agreement, requiring domestic legislative and institutional compliance, with strict enforcement roles for judicial and administrative authorities.
4. The Organization's dispute system is the final solution to enforcing TRIPS, guaranteeing the rights of owners, even if it contradicts the interests of others a manifestation of the hidden power logic in favor of IP owners against the weaker economies.

## **In light of these conclusions, the following recommendations are made:**

1. It is necessary to conduct negotiations between advanced and developing countries regarding the WTO's IP agreement to try to balance the economic disparities, or at least mitigate the harshness of measures that do not serve the latter's interests.
2. Developing countries should try to benefit from the advantages/favors in TRIPS, especially concerning core principles like national treatment and MFN.
3. Developing countries should seek technology access from multinational firms when allowed use of their IP rights, following the example of countries that benefited from such cooperation, like India and Malaysia.
4. Developing countries must intensify efforts for research and technological development, dedicating larger budgets as practiced in advanced nations with large investments leading to technological giants such as Microsoft.  
They should encourage patents and support inventors to enter international markets.

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