

The Implementation Game: Developing Countries, the TRIPS Agreement and the Global Politics of Intellectual Property

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Part I

- History of IP regulation
 - ‘Contested settlements’
 - Variation within and between countries over time
- North-South debate on TRIPS
- A Contested Agreement

Part 2

Variation in TRIPS Implementation

Examples of variation in timing of TRIPS legislative reforms

Developing country members with most major TRIPS-related legislative reforms completed consistent with their 2000 deadline for TRIPS implementation

Argentina, Bolivia, Brazil, Brunei Darussalam, Cameroon, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Dominica, Dominican Republic, El Salvador, Gabon, Guatemala, Honduras, India, Indonesia, Malaysia, Mexico, Morocco, Singapore, South Korea, Thailand, Trinidad & Tobago

Developing country members with major TRIPS legislative changes outstanding in 2000 despite TRIPS deadline

Antigua and Barbuda, Barbados, Bahrain, Belize, Egypt, Ghana, Grenada, Guyana, Jamaica, Kenya, Maldives, Namibia, Nigeria, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Saint Lucia, Sri Lanka, Surinam, Tunisia, Turkey, United Arab Emirates

LDC members which implemented major legislative changes in advance of mid-2013 TRIPS deadline (originally 2006)

Benin, Burkina Faso, Cambodia, Central African Republic, Chad, Guinea, Guinea Bissau, Mali, Mauritania, Nepal, Senegal, Togo

LDC members still to implement majority of IP laws to meet TRIPS obligations by 2013

Angola, Bangladesh, Burundi, Democratic Republic of Congo, Gambia, Haiti, Rwanda

Choice of Exhaustion Regime

National/Regional	China, Philippines, Sri Lanka, Thailand, Barbados, Belize, Trinidad and Tobago, Brazil, Botswana, Morocco, Nigeria, Tanzania, Zimbabwe, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal and Togo. (Total 29)
International	Brunei, Cambodia, Pakistan, Singapore, Vietnam, Argentina, Nicaragua, Paraguay, Uruguay, Costa Rica, Dominican Republic, Guatemala, Honduras, Chile, Venezuela, Bolivia, Colombia, Ecuador, Peru, Egypt, Ghana, Kenya, Malawi, Mauritius, South Africa, Tunisia, Uganda, Zimbabwe, India, Malaysia, Indonesia (no explicit provision) and Zambia (no explicit provision). (Total 31)

Variation in term of copyright protection

General copyright term – yrs	Country and date of relevant copyright law reform
100	Mexico (2003)
99	Côte d'Ivoire (1996)
80	Colombia (1982)
75	Guatemala (2000), St. Vincent & the Grenadines (2003)
70	Argentina (1997), Brazil (1998), Burkina Faso (1999), Chile (2003), Costa Rica (2000), Dominica (2003), Dominican Republic, Ecuador (1998), El Salvador (2004), Ghana (2005), Korea, Madagascar (1994), Morocco (2002), Mozambique (2001), Nigeria (1990), Paraguay (1998), Peru (1996), Singapore, Turkey, OAPI Countries (2002).
60	India (1999), Venezuela (1993)
50	Algeria (2003), Antigua & Barbuda (2002), Bahrain (1993), Bangladesh, Belize, Bolivia (1992), Bhutan (2001), Botswana (2000), Brunei (1999), Cambodia (2003), Cameroon (2000), China (2001), Egypt, Fiji (1999), Gambia (1956), Guyana (1956), Indonesia (2002), Jamaica (1993), Jordan (1999), Kenya (2001), Kiribati (1956), Kuwait (1999), Lesotho (1956), Malawi (1989), Malaysia (1987), Mali, Mauritius (1997), Mongolia (1993), Morocco (2000), Namibia (1997), Nepal, Niger (1993), Pakistan, Panama (1994), Papua New Guinea (2000), Philippines (1997), South Africa (1995), Sudan (1996), Tanzania (1999), Thailand (1994), Togo (1991), Tunisia (1997), Uruguay, Zambia (1994)
Less than 50	Haiti (1985), Djibouti (1996), Ethiopia (1960)

Examples of variation in approaches to plant variety protection

Member of UPOV 1978 and ratification date	Member of UPOV 1991 and ratification date	UPOV 1991- equivalent legislation	<i>Sui generis</i> approach to plant variety protection
South Africa (1977) Argentina (1994) Uruguay (1994) Chile (1996) Colombia (1996) Ecuador (1997) México (1997) Brazil (1999) Bolivia (1999) China (1999) Kenya (1999) Panama (1999) Trinidad & Tobago (1998)	Korea (2001) Nicaragua (2001) Tunisia (2003) Jordan (2004) Singapore (2004) Tunisia (2005) Morocco (2006) Vietnam (2006) Dominican Republic (2007) Turkey (2007)	Cambodia OAPI countries (2002)	India Pakistan Philippines Sri Lanka Panama Thailand Barbados Andean Community

Incorporation of Bolar provision for 'early working'

Specifically
provided

Jordan, Thailand, China, India, Malaysia, Costa Rica, Dominican Republic, Paraguay, Argentina, Brazil, Nigeria, Egypt, Kenya, Tunisia, and Zimbabwe (Total 15)

No provision or
not allowed

OAPI members, Philippines, Vietnam, Pakistan, Brunei, Cambodia, Indonesia, Guatemala, Honduras, Nicaragua, Barbados, Belize, Chile, Trinidad & Tobago, Mauritius, Morocco, South Africa, Sudan, Botswana, Ghana, Malawi, Tanzania, Uganda, Zambia (Total 39)

Exclusions for second (new uses) of known products

Further use allowed either specifically, through practice or not specifically excluded.	OAPI members, Egypt, Kenya, Malawi, ^[1] Mauritius, Morocco, Nigeria, South Africa, ^[2] Sudan, Tanzania, Uganda, Zambia, ^[3] Zimbabwe, Philippines, ^[4] Sri Lanka, Vietnam, Thailand, Pakistan, Cambodia, Indonesia, Costa Rica, ^[5] Guatemala, Honduras, Nicaragua, Paraguay, Trinidad & Tobago, Argentina, ^[6] Barbados, Belize, Brazil. (Total 45)
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Further use specifically excluded	Andean Community, Argentina, China, India, Malaysia, Dominican Republic, Chile ^[7] and Uruguay. (Total 12)
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Protection for Undisclosed Information

No specific data protection provision

India, Indonesia, Malaysia, Cambodia, Andean countries, Malawi, Tanzania. (Total 7)

Second applicant can rely on previously submitted data

Argentina

Ability of second applicant to rely on previously submitted data curtailed either in patent or other national laws (such as Trade Secrets Acts), sometimes for a specific period of time

Andean Community, China^[1], Pakistan, Philippines,^[2] Thailand, Vietnam, Barbados, Nicaragua, Trinidad & Tobago, Uruguay, Brazil, Chile, Costa Rica, Guatemala, Honduras, Dominican Republic, OAPI members, Egypt, Ghana, Kenya, Mauritius, Tunisia. (Total 41)

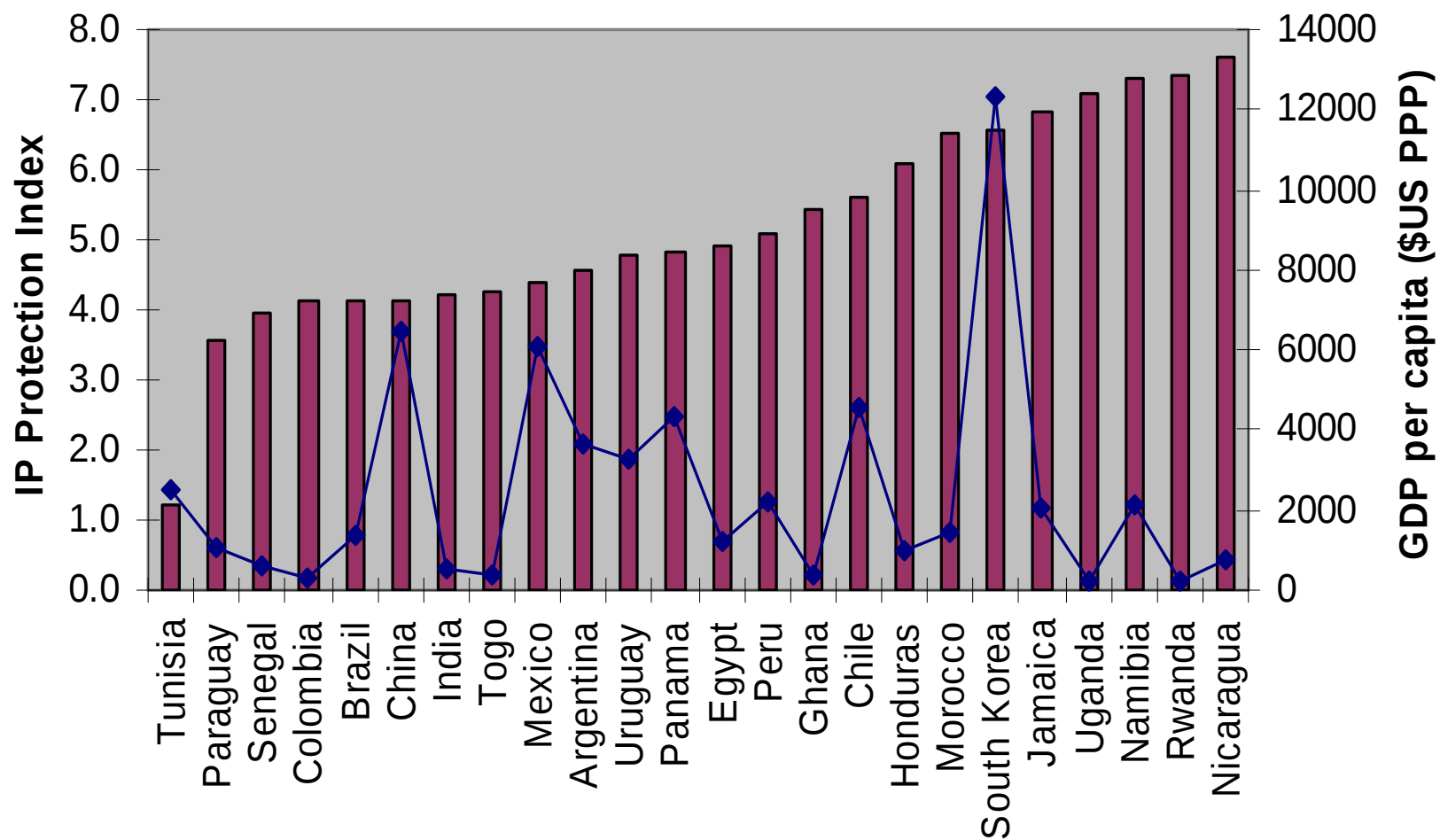
A typology of variation in approaches to IP legislative reforms

	Least Developed Countries	Developing Countries
TRIPS-minus Group: Countries with no IP standards or TRIPS-‘minus’ standards	Angola, Bangladesh, Burundi, Djibouti, Gambia, Haiti, Lesotho, Madagascar, Malawi, Mozambique, Myanmar, Rwanda, Sierra Leone, Solomon Islands, Sudan	Maldives, Zimbabwe
Mixed Group: Countries which make mixed use of TRIPS flexibilities	Lesotho, Malawi, Tanzania, Uganda, Zambia	Malaysia, Philippines, Argentina, Brazil, Bolivia, China, Cuba, Ecuador, Egypt, Ghana, India, Indonesia, Kenya, Nigeria, Pakistan, South Africa, Thailand, Venezuela
TRIPS-plus Group: Countries with a broad range of TRIPS-‘plus’ standards	Benin, Burkina Faso, Cambodia, Central African Republic, Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Mali, Mauritania, Nepal, Niger, Senegal, Togo	Bahrain, Cameroon, Chad, Chile, Côte d’Ivoire, Colombia, Dominican Republic, Gabon, Guatemala, Honduras, Jordan, South Korea, Lebanon, Mexico, Morocco, Oman, Peru, Tonga

Part 3

Explaining Variation

Variation in Strength of IP Protection (2003)



Source: WEF & UNDP

Comparison of approach to TRIPS implementation and GDP per capita (2003)

GDP per capita	\$<1000	\$1000-2500	\$2500-4000	\$>4000
TRIPS- 'minus' Group	Angola, Bangladesh, Burundi, Djibouti, Gambia, Haiti, Madagascar, Malawi, Mozambique, Rwanda, Sierra Leone, Solomon Islands, Lesotho	Zimbabwe	Maldives	
Mixed Group	Namibia, Tanzania, Uganda, Zambia	Belize, Botswana, India, Indonesia, Bolivia, Ecuador, Kenya, Egypt, El Salvador, Jamaica, Mauritius, Nicaragua, Paraguay, Sri Lanka, Suriname, Tunisia	Argentina, Brazil, Costa Rica, Nigeria, Pakistan, Panama, Thailand, South Africa, Uruguay, Venezuela	China, Malaysia
TRIPS- 'plus' Group	Benin, Burkina Faso, Cambodia, Central African Republic, Chad, Congo, Guinea, Guinea-Bissau, Mali, Mauritania, Nepal, Niger, Togo	Cameroon, Côte d'Ivoire, Gabon, Senegal	Colombia, Dominican Republic, Guatemala, Honduras, Jordan, Morocco, Peru	Mexico, Chile, South Korea

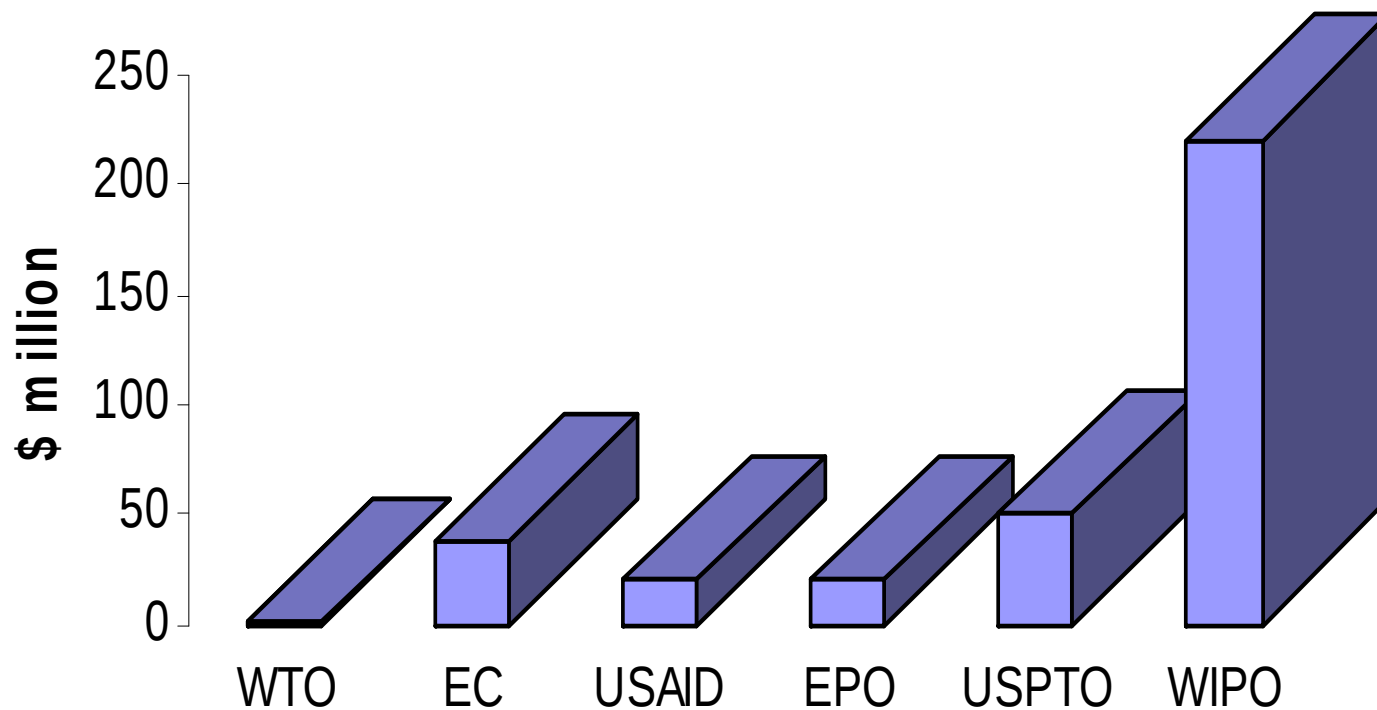
Examples of variation in IP standards and economic coercion

TRIPS-'plus' Group	301 Pressures	US FTAs	WTO Accession Agreements
Chile	X	X	
Colombia	X	X	
Dominican Republic	X	X	
Guatemala	X	X	
Honduras	X	X	
Jordan	X	X	X
Mexico	X	X	
Morocco	X	X	
Peru	X	X	
South Korea	X	X	
Cambodia		(IP Agreement)	X
Nepal			X
OAPI countries			
Mixed Group			
Brazil	X	FTAA Negs suspended	
Thailand	X	Negs suspended	
South Africa	X	Negs suspended	
India	X		
China	X	(IP Agreement)	X
Ecuador	X	Negs suspended	X
Bolivia	X	Negs suspended	
Venezuela	X	Negs suspended	
Malaysia	X	Negs suspended	

Explaining Variation

- The Global Politics of Implementation
- The Interplay Between Global & National Politics

Estimated spending on IP capacity-building (1995-2006)

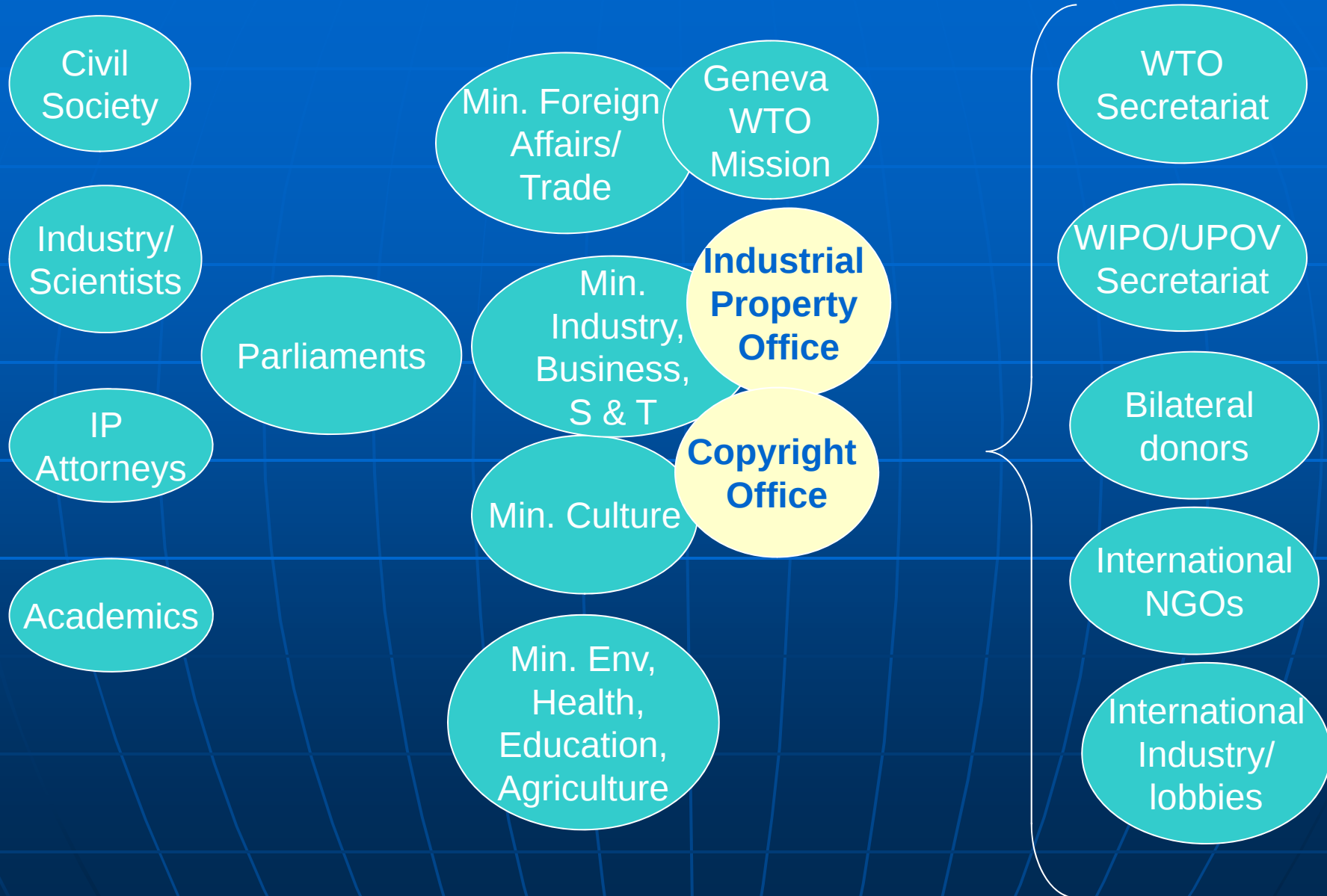


Source: OECD – WTO Database

National Factors

- Bureaucratic capacity and internal organisation
- External coordination
- Public engagement (Interest groups and parliament)

Range of Possible Actors at the National Level



Thank you.