



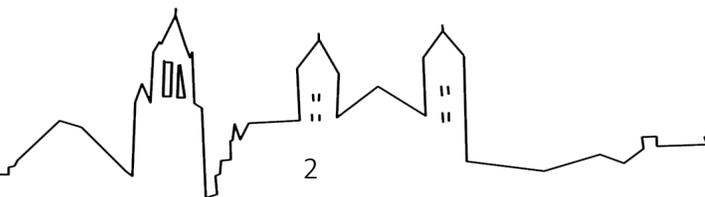
2nd – 5th of May 2019

Study Guide

World Trade Organization

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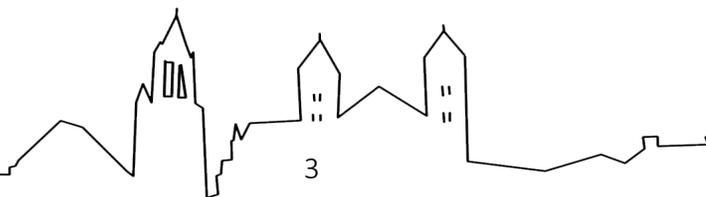
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Welcome Letter from the Secretariat

Dear delegates,

The EuroMUN 2019 Secretariat would like to warmly welcome you to the 11th edition of this conference. We are excited to provide an academically challenging experience which will motivate you to engage in insightful discussion while exploring our lovely city through the planned social program. Hopefully, you will enjoy the various events that will accompany the sessions, such as our talent night, our delegate's ball and our scavenger hunt through the city.

Our conference attracts individuals from over fifty nations to the city of Maastricht. This means that you will encounter points of view that will be very dissimilar to your own. See this conference as an opportunity to push yourself outside of your comfort zone, alongside people who might seem different, but at their core, just like you, are looking to expand their horizons beyond what they are confronted with at home. Be respectful but don't be afraid to challenge your beliefs and have them challenged in return. EuroMUN is a forum for discussion: take advantage of it, challenge yourself.

The slogan for this year's edition of EuroMUN is: Exploring the European Idea.

The European Idea is not geographically limited, but it refers to the goals of European integration. It demonstrates a move away from wide-scale disputes and towards collaboration. Every institution, organization, body, and committee represented at EuroMUN reflects the same idea: the will to work together instead of against each other. That is what is at the core of this notion.

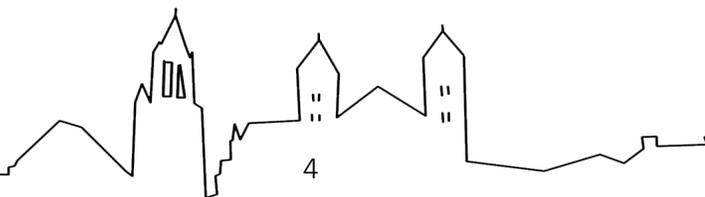
On that premise, the secretariat would like to pose the following question to you: What does the European Idea mean to you? Is it being connected through a common history? Or is it about staying united through adversity, change and the distinct characteristics of our culturally rich community?

Maastricht, the city where the Treaty on European Union was signed, provides the perfect backdrop to explore this concept. As the university hosts a diverse community of students from all over the world it truly demonstrates the possibilities the move towards collaboration can bring to the individual and the community. While we might not always fully appreciate the former, the benefits are not to be taken for granted. The environment in Maastricht and the assembly of delegates permit EuroMUN, now for the 11th time to provide this unique experience. Without each of these components, it would be impossible to replicate.

We hope that you enjoy your time at the European Model United Nations Conference 2019.

When in doubt: #fruitful

The EuroMUN Secretariat



Welcome Letter from the Chairs

Dear Delegates,

It is our great pleasure to welcome you to the 2019 World Trade Organisation at EuroMUN. During four days of debates, compromises and diplomacy, you will take on the roles of delegates facing the problems of Identifying and Enforcing the Obligations of Former Colonial Empires towards Former Colonies and Combating Digital Piracy.

We will not only serve as your Chairs during the time of the conference, but also as your guide for your preliminary preparation and questions of any kind. Therefore we have prepared this background paper to give you the framework for your research.

For some of you this might be the first Model United Nations Conference while there will also be experienced delegates among us. Regarding that the WTO is considered to be a committee especially suited for beginners, this does not mean that we do not have the highest of expectations for you. Preparation is the key to being a successful diplomat, which is the exact purpose of this study guide: Providing you with the first basic understanding of both topics on the agenda. Nevertheless we would also like to add that this background paper is serving solely as a basic understanding of the topic and thorough research is of highest importance and inevitable to ensure a productive conference.

However, no one is born as the perfect diplomat, so please do not hesitate to contact us at any time with questions of any kind - no questions are unnecessary!

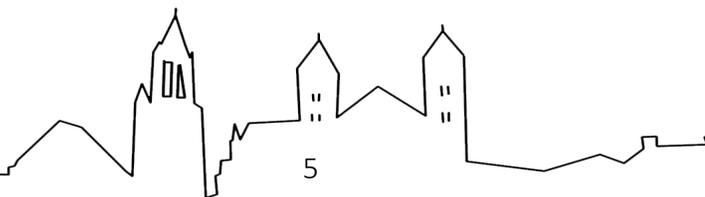
We are very excited to meet you in Maastricht and wish you all the success for your preparations and EuroMUN 2019!

Yours,

Inés Faghihi

Ismail Ismail

Vivian van der Linde

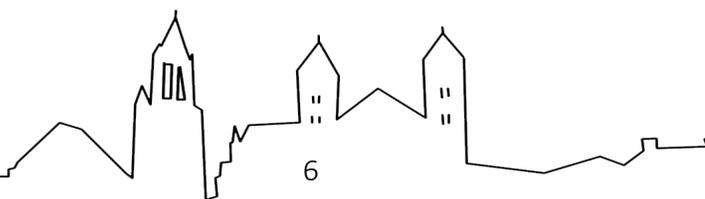


The World Trade Organisation

World Trade Organisation situated in Geneva, Switzerland was established in 1995. It currently counts 164 members representing a total of 98 percent of world trade. In 2018 the annual budget was set to 197 million Swiss francs. 124 nations signed the Marrakesh Agreement almost a year earlier and replaced the General Agreement on Tariffs and Trade (GATT) with the largest intergovernmental economic organisation in the world. The WTO has a multitude of functions. Its main objective is to act as a framework for its members to negotiate trade agreements and settle disputes according to its rules (WTO, 2018). The organisations also monitor national trade policies and provide technical assistance and training for developing countries. All agreements forged within the WTO must be signed by the individual representatives of member governments and ratified within their parliaments. The WTO strongly prohibits any forms of discrimination between its members, although extraordinary measures can apply for reasons such as national security and environmental protection. Over the course of the first chapter of this study guide, you will be provided with a detailed overview of the functions of the WTO, history of your committee and the decision-making process (WTO, 2019) (Hoekman & Kostecki, 2009).

History

The General Agreement on Tariffs and Trade (GATT) was established after World War II in 1947. A multilateral treaty signed by 23 countries created the WTO's predecessor. There was a total of seven rounds of negotiations under the GATT. The first round focused on further reducing tariffs (tax on imports and exports between sovereign states). The second round, or so-called Kennedy Round took place in the mid-sixties and produced the GATT anti-dumping Agreement and further emphasis on development (WTO, 2018). The Tokyo Round constituted the third round of negotiations and took place during the seventies. The aim of these negotiations was to design a new system of trade barrier that were not tariffs. So-called non-tariff barriers were invented and were placed under the GATT rules. However, not all members concurred with the multilateral agreements and as such some were adopted informally. These informally adopted agreements became known as "codes". Several of which would be amended during the Uruguay Round and were later accepted by all WTO members. The GATT continued to operate as a semi-institutionalised multilateral trading agreement forum until the Uruguay Round resulted in the establishment of the WTO (Hoekman & Kostecki, 2009).



The Uruguay Round

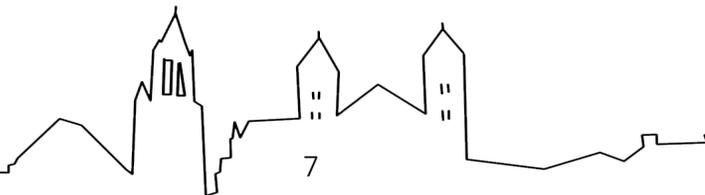
The Uruguay Round constituted the eighth round of GATT negotiations and was launched in 1986. The GATT system had been struggling to adapt to the vastly globalising world economy and an array of new issues, including structural deficiencies and spill-over effects, had arisen on the agenda. The eighth round of negotiations was to become the biggest yet. The aim was to extend the trading system to include new areas such as services and intellectual property. It also wished to reform trade in the areas of textiles and agriculture. All of the original GATT articles and informal codes were now being re-examined. The Final Act established the WTO regime and was officially signed by all parties on 15 April 1994. Although the WTO replaced the GATT as an official international trade forum, the updated 1994 version of the GATT still acts as the WTO's umbrella treaty for the trade in goods. The 1994 version of the GATT is not the only legally binding agreement adopted as a result of the Uruguay Round. A total of 60 agreements, decisions, annexes and understandings were also included in the Final Act. These can be divided into six main parts, namely the agreement which established the WTO, agreements on trade in services, agreements on trade in goods, general agreements on trade-related aspects of intellectual property rights, dispute settlements and finally, reviews of governments' trade policies (Hoekman & Kostecki, 2009).

The Doha Round

In 2001 the WTO launched a new round of negotiations, known as the Doha Development Round. It was set out as an effort to make globalisation more inclusive and in essence to aid developing countries. In particular this was to be achieved by lowering trade barriers and slashing subsidies in farming. The Doha Round's initial agenda focused on introduction of new rules and further trade liberalisation and was accompanied by commitments to substantially aid developing countries. However, major differences between developed states and developing countries on non-tariff barriers and industrial tariffs stalled the progress. The original deadline of January 1st, 2005 has still not been met to this day. The major conflict between free trade on industrial goods and services, but protectionism on farm subsidies requested by developing countries has led to an impasse. As a result, there has been a large increase in bilateral trade agreements (WTO, 2019).

Organizational structure

The General Council has the role of overseeing subsidiary bodies that are tasked with different areas. These include the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights and the Trade Negotiations Committee. The Council for Trade in Goods is further subdivided into eleven committees, of which the Textiles



Monitoring Body enjoys special rights. The Council for Trade in Services is responsible for overseeing the General Agreement on Trade in Services (GATS) and has the jurisdiction to create subsidiary bodies when required. The Council for Trade-Related Aspects of Intellectual Property Rights deals with information on intellectual property in the WTO and further shares information with other relevant international organisations in the field. The Trade Negotiations Committee is tasked with dealing with the current round of negotiations, in this case the Doha Development Round (WTO, 2019).

Function

As previously touched upon the functions of the WTO are varied but all center around the facilitation of trade at a large scale. It is the primary intergovernmental actor for global trade and oversees the implementation, administration and operation of its various agreements. Furthermore, the WTO functions as a forum for negotiations and a setting to settle trade disputes in an organised and structured manner. The WTO is also tasked with reviewing national trade policies to ensure that they adhere to the WTO rules of coherence and transparency. The international trade organisation has also made the assistance of developing countries one of its top priorities. The WTO has established a framework within which globalised international trade can function. The following five principles constitute the foundation: non-discrimination, reciprocity, binding and enforceable agreements, transparency and safety values (WTO, 2019).

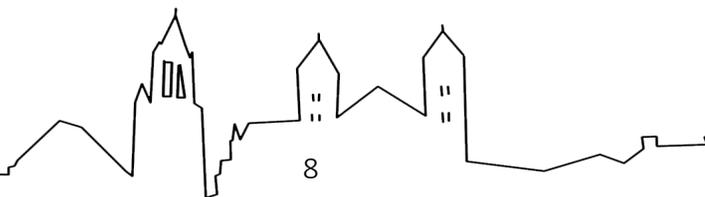
Budget

The total budget of the WTO for 2018 in Swiss Francs was 197,204. It is mainly derived from the member contributions. A specific formula derives the individual member's contribution based on their share of international trade. A detailed list of the individual member state's contributions for 2018 can be downloaded under this address:

https://www.wto.org/english/thewto_e/secret_e/budget_e/budget2018_member_contribution_e.pdf

Further income is generated from sales and rental fees of WTO electronic and print publications. Members have also contributed a number of trust funds over the years of which the WTO holds managing powers. These trust funds provide a support for an array of special activities, such as technical cooperation and training for least-developed and developing countries. The aim is to facilitate the use of the WTO and its multilateral trading system (WTO, 2018).

The budget is spread out over eight sections and in 2018 was mapped out in the following manner. A total of 131,415 CHF was allocated to staff expenditures. This includes staff remuneration,



pension and employment benefits and insurances. Short-term contractors received 17,281 CHF that year. General services of the WTO, which includes the above-mentioned publications summed a total of 15,530 CHF. 21,443 CHF constituted the contributions to the International Trade Centre and special reserves, which include the Appellate Body operating fund and the Ministerial Conference operating fund. The rest of the budget was allocated to travel and hospitality costs, financial and capital expenditures and implementing partners (WTO, 2018).

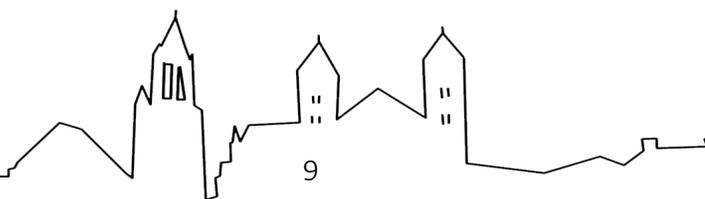
Decision-making

The WTO is shaped by its decision-making procedure. It stresses the fact that the organisation is fully run by its members. This entails that all major decisions are decided upon by the members through consensus, meaning that all 150 parties must be in favour. Moreover, the principle of single undertaking is used which means that 'all issues must be agreed before any can be agreed'. Reaching consensus within such a large body can be very challenging. However, the WTO reiterates that it is important that all decisions are then suitable for all members.

Many have been calling for adapting the decision-making process to larger number of members. Some have suggested the creation of a smaller executive board to facilitate the procedure. To this date no such board has been created and the WTO remarks upon the fact that it has come to a number of extraordinary agreements, despite the difficulties posed by consensus voting (WTO, 2018).

The Ministerial conferences are the top decision-making body in the WTO. The member states are represented by ministers, who meet at least once every two years. The General Council is the WTO's highest-level decision-making body in Geneva, meeting regularly to carry out the functions of the WTO. It has the authority to act on behalf of the ministerial conferences. Members are represented by their ambassadors or delegates. The current chair is Ambassador Sunanta KANGVALKULKIJ from Thailand. The General Council also meets, under different rules, as the Dispute Settlement Body and as the Trade Policy Review Body.

It is these ministers and ambassadors that are active during voting procedures (WTO, 2018) (Hoekman & Kostecky, 2009).



Topic A: Identifying and Enforcing the Obligations of Former Colonial Empires towards Former Colonies

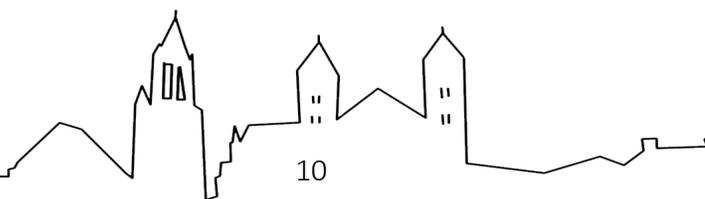
Introduction

Colonialism can better be understood in terms of political, social, cultural and economic features. Of all these features, hegemony acted as the major attribute in shaping trading relationships between colony and colonizer. Thus, colonialist hegemony cultivated a trade regime that caused disadvantage, asymmetry and scepticism in our modern world's trade relations. Making rules under the General Agreement of Trade and Tariffs (GATT), the predecessor of the World Trade Organisation (WTO), in 1945 at the height of colonialism was thus deeply connected to the colonialist world view and still holds on until this day.

Colonialism in its political point of view does not exist in the 21st century, however the extensive globalization that started in the 20th century in form of a mercantilism with a pinch of protectionism is still the reason why most of the former colonies are lagging the rest of the world in most of the Indices. The end of mass-colonialism by the second half of 20th century did not necessarily mean the end of economic dominance and exploitation.

After years of exploitation, one finds the former colonizers still benefiting from their colonies in form of bilateral trade agreements and common currency/ common trade infrastructure, such that the former colonies cannot compete with the extensiveness of the colonizer's industrial and trade infrastructure. Consequently, former colonies, thus independent states, are suffering from trading measures that marginalize them. Colonialism is therefore the core of the history of economics relations between colony and colonizer.

The Human Development Index published by the United Nations in 2018 reported that of the thirty-eight countries experiencing 'low human development' all but three are former colonies, and all but seven are in Africa. This suggests that there could be a causal relationship between colonialism and modern-day development. While many people might feel that the colonial past might have fostered such inequalities, the topic is strongly remaining controversial in the developed world, mainly in fear of reparations for the strong historical injustices endured by the former colonies, especially in the African Continent. Hence, former European colonizers have always rejected the idea of direct reparation payments to African colonies: "It would be totally



ridiculous for France to pay a subsidy, recognize or compensate for colonialism, [...] however there must be a reconciliation of memories...,” -Emmanuel Macron¹

Given the status-quo, direct reparations are not a realistic target for any former colony seeking compensations for years of historical wrongdoings that continue to have negative repercussion today. The World Trade Organization, as the main body that regulates international trade and tariffs and has a strong influence on the way international trade works in our modern-world, part of its duty is to find ways not only to free the international markets from trade barriers, but to remove trade barriers in form of historical colonial disadvantage. Former colonizers are in a position to economically pull former colonies from extreme poverty and underdevelopment; GATT Article XXVI:5(c), which allowed former colonies of GATT members to easily and smoothly join its multilateral trade regime, was a first step in that direction.

“We indeed cannot inherit responsibility for our forefathers’ sins. But how then can we plausibly claim the fruits of their sins? How can we be entitled to the great head start our countries enjoyed going into the postcolonial period, which has allowed us to dominate and shape the world? And how can we be entitled to the huge advantages over the global poor we consequently enjoy from birth?”²

History

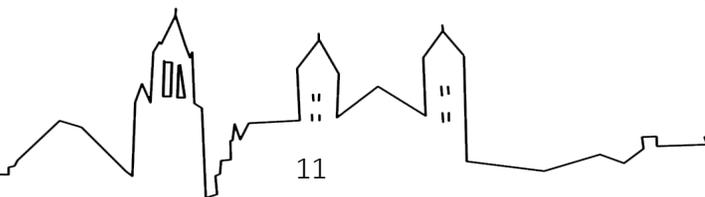
Pre 20th century

Colonialism in its commonly known form historically began in the 15th century during the so-called “Age of Discovery”³. The “Age of Discovery” was led by the Portuguese and Spanish conquests of Latin America. The most known colonizer at that time was Christopher Columbus, who in the name of the Spanish crown discovered what is today known as North America. Spain and Portugal were thus the first known colonizers, conquering vast lands across the whole globe and extracting their resources for the benefit of their respective homelands.

¹ Macron rules out reparations for colonialism <http://en.rfi.fr/africa/20171204-macron-rules-out-reparations-colonialism>

² World Poverty and Human Rights p.3 (Pogge 2005)

³ The Age of Discovery or Age of Exploration was a period from the early 15th century that continued into the early 17th century, during which European ships traveled around the world to search for new trading routes and partners.



In the 16th and 17th century, The British Crown, the Netherlands and France also started their own colonial aspirations and began colonizing most of the world in search for resources and power.

The 18th century saw the first era of decolonization and loss of territory, after the first Latin American countries started gaining independence⁴ from the Kingdom of Spain and other countries in the new world started forming from former colonies, such as the United States of America in 1776. At the same time, new colonies started to form in the “old world”, namely in Africa and Asia as well as the Middle East.

The early 19th century also set the beginning of the industrial revolution, which accelerated production in Europe, which in return needed to be supplied with sufficient resources to fulfill the demand of the industrial wheel. Thus, the industrial revolution in Europe triggered the second Phase of European Colonialism, colonizing most of Africa and Asia in the process in search for their vast resource & raw material supply.

The height of Colonialism was reached in the late 19th century during what is now known as the “Scramble for Africa”⁵ at a time where nearly 90% of the African continent was colonized. Only Liberia and Ethiopia remained uncolonized, with the latter being occupied in 1936 by Italy. The motivation behind the vast colonial expansion revolved first and foremost around exploiting the resources of the newly colonized land. Other motivations included tensions between European countries regarding the leading role in Europe as well as spreading Christianity.

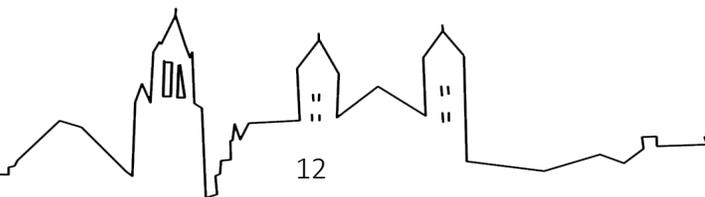
The Berlin Conference of 1884

The Berlin Conference of 1884 was organized by Otto von Bismarck, the Chancellor of Germany, in order to formalize the European colonial activity in Africa, either by bilateral agreements between two colonizers or multilateral agreements that ensured exclusivity of the land colonized by a certain colonizer and set up trade routes along the African continent in order to be able to ship raw material and goods from the heart of the African Continent to the coast and then to Europe. The signatories of the Berlin Conference included: Austria-Hungary, Belgium, Denmark, France, Germany, Italy, the Netherlands, the Ottoman Empire, Portugal, Russia, Spain, Sweden-Norway, the United Kingdom and the United States⁶. This way, the until the late 19th century informal imperialism, which was dependent on military influence and economic dominance in a

⁴ Chile gained independence from Spain in 1810, Brazil from Portugal in 1822.

⁵ The Scramble for Africa was the occupation, division, and colonisation of African territory by Western European powers during the period of the New Imperialism, between 1881 and 1914.

⁶ Encyclopedia of Africa (Appiah, Gates 2010)



certain region, became colonial imperialism, which ensured direct rule of the colonizer on the colonized territory.

The most important outcome of the conference was the Principle of “Effectivity” under which countries were obliged to effectively be present in an area that was designated at their sphere of influence in order for it to be rightfully “theirs”, which drastically speed up the colonization of most of the African Continent. Most European countries sent out expeditions in order to convince traditional African rulers, who governed their tribes and regions not under Westphalian sovereignty⁷, into signing treaties, usually by bribing the leaders.

Mercantilism vs. Protectionism

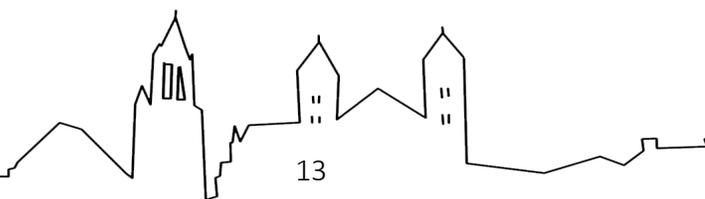
The newly discovered trade opportunities between the European mainland and the African colonies launched different types of economic trade forms, especially regarding the two main colonizers of that time, the United Kingdom and France. The two main economic trade ideologies that arose at that point were Mercantilism and Protectionism, which are both forms of economic nationalism that “prioritize the economic interests of a nation over the individual interest”.⁸ Protectionism and Mercantilism were both practiced throughout the beginnings of colonialism.

Protectionism on the one hand seeks to isolate domestic markets from foreign competition, such that local producers are always at an advantage and cannot be forced out of their own market by imported goods. France was an early adopter of Protectionism in the 19th century, forcing tariffs on goods imported from other countries to their own colony and to the mainland, while also forcing tariffs on goods imported from the colonies to France. This put the colonies at a disadvantage, as they became increasingly dependent on France and its economy.

On the other hand, the United Kingdom adopted the economic idea of mercantilism early on, which seeks to make the domestic economic expand to other international markets, while at the same time limiting foreign competition. The United Kingdom thus sought preferential trade deals abroad to acquire markets for their exports, while still favoring home-grown firms. This put foreign firms in colonies at a disadvantage as the colonies were exploited in favor of the domestic firms.

⁷ Westphalian sovereignty, or state sovereignty, is the principle in international law that each state has exclusive sovereignty over its territory.

⁸ Milner, H., & Yoffie, D. (1989). *Between Free Trade and Protectionism: Strategic Trade Policy and a Theory of Corporate Trade Demands*.



Decolonization period

The WWI and WWII had a few implications for colonies, as the colonial map was redrawn after the defeat of Germany and the Ottoman Empire in WWI and the defeat of the Axis powers in WWII, which further consolidated the position of France and the United Kingdom as the main World Colonial powers. For instance, the Middle East was redrawn and divided amongst them in the Sykes Picot Agreement of 1916, and German and Ottoman possessions were divided amongst the allied forces. Many countries also moved towards independence in the inter-war period, such as Egypt and Iraq, mainly motivated by the British involvement in two draining world wars. This marked the beginning of anti-colonialist movements across the world.

It was not until the end of WWII that the anti-colonialist movements were widely successful.

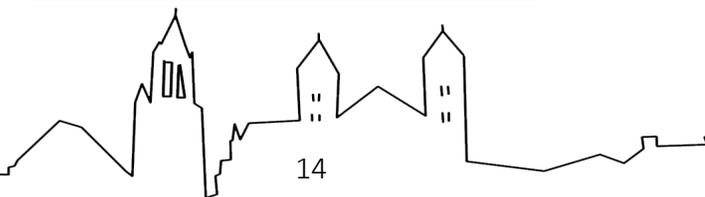
The United Nations was founded in 1945 when 50 nations signed the UN Charter⁹, which includes a statement on the right for self-determination of peoples. Amidst the Cold War, countries that neither aligned with the West nor with the Socialist Bloc formed the Non-aligned movement and represented most countries not involved in the Cold war, mostly newly independent countries or colonies with a high degree of self-autonomy, led by Egypt, India and Yugoslavia. The rise of the United States and the Soviet Union severely decreased the influence of the colonial powers like France and the United Kingdom. The United Kingdom lost its empire's "crown jewel", India, in 1947 in the aftermath of the WWII. France, in turn, lost most of its possessions in West Africa in the 1960s. In particular, the year 1963 saw Charles De Gaulle grant as many as 24 countries in Africa independence from the French Republic, with some countries being forced to independence in the process. Other important milestones in the decolonization period were the Algerian War of Independence and the Indochina war.

Today, very few colonial remnants remain in the world and are mostly insignificant in size and population as colonization has become a thing of the past. The UN counts 193 sovereign members, including many former colonies. However, colonial influences and heritage still persist in the former colonies, whether on economic or social level. Many former colonies for instance have their currencies pegged to the UK or France, have the same institutional structures as their former colonizers and still engage in higher levels of trade with their former hegemon.

Recent developments

The creation of the European Community in 1957 set forth a string of developments that led to the increased inclusion of former colonies in the global trade network and the increased

⁹ Charter of the United Nations <https://www.un.org/en/charter-united-nations/>



development of their trade regime in order to keep up with the rest of the world. The breakup of the colonial empires and the emergence of the third world countries on the international stage led to a transformation of relations between Europe and its colonies that had either already gained independence or were close to doing so. While the European colonizers were looking for ways to link their former colonies to them, also in fear of an increased Soviet influence after their independence, the newly formed countries were still very much dependent on their former colonizers in many aspects, including trade and building institutions.

The newly formed European Economic Community thus drew up a plan to establish a customs union with a Common External Tariff (CET) to other countries while still maintaining their preferential links to their former overseas territories.

While France refused to open its African markets to its partner due to its strong influence and gains, the other members of the community did not want to become engaged in a neo-colonial type of trade policy that would undermine their world standings, especially in the United Nations, and thus refused France's approach.

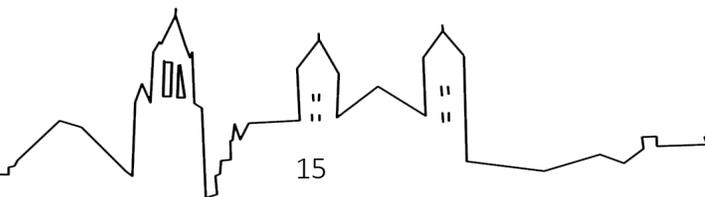
The Treaty of Rome

The Treaty of Rome, which was signed in 1957, created the financial and commercial alliance in form of the free trade area between the six associated countries. As a result, products from the African markets associated with members of the EEC found new selling points in European markets and on the other hand, EEC members were able to sell their (mainly industrial products) in Africa easier than before, due to the extensive institutional weaving of the former colonizers in their former colonies. Most of the trade institutions in the former French or Belgian colonies were still active and granted access to the other EEC members after the Treaty of Rome. On the other hand, the creation of the EEC also established the European Development Fund (EDF)¹⁰ in order to provide the former colonies with economic and social infrastructure investment.

The Yaoundé Agreement(s)

Once the first cycle of funding was over, many more countries colonies have had gained independence (especially in 1963, where over 20 former colonies had gained independence) and thus a new agreement was necessary. The Yaoundé agreement, named after the Cameroonian capital, where the agreement was signed, was the first partnership agreement to ever be signed between the 17 African and the EEC counterparts. The group of countries which signed the final

¹⁰ More information on the European Development Fund can be found here: https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments/european-development-fund_en



agreement were granted preferential trade arrangements such as the duty-free access of specified African goods into the European market. In addition, it was agreed to continue support via the EDF and the European Investment Bank (EIB). The agreement was renewed in 1969 until 1975. The most important aspect of the Yaoundé agreement however remains the recognition of national sovereignty of all participating countries, including all former colonizers who were members of the EEC. The agreement covered aspects of financial and technical assistance, investment and capital movements and most importantly trade preferences in line with the General Agreement of Trade and Tariffs. The structure of this agreement remains the main framework of agreement between the ACP and EU until this day.

While the United Kingdom joined the EEC in 1973, the future relations between the UK, the Commonwealth (who also have preferential trade agreements with the UK) and the EEC was under discussion.

The Lomé Agreement, named after the Togolese Capital of Lomé, of 1975 however established a partnership between the EEC and 46 African, Caribbean and Pacific (ACP) countries, many of them member of the Commonwealth and English-speaking African countries, thus including former British territory into the agreement.

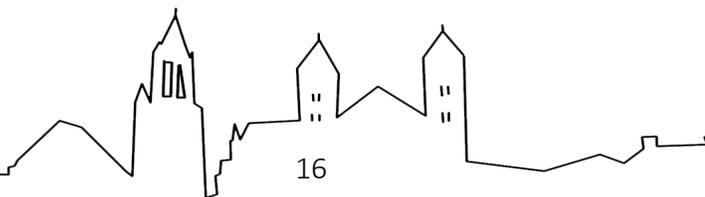
The Lomé Convention

The first Lomé convention provided free access to the EEC market for nearly all goods originating from the African, Caribbean and Pacific States. The goods were duty-free in unlimited quantities. However, the EEC good could be made subject to quotas and taxes, under the condition that all EEC members be treated equally and enjoy the “most favoured nation” (MFN) trade status.

Excursion: “Most favoured nation” (MFN) trade status

“This sounds like a contradiction. It suggests special treatment, but in the WTO, it actually means non-discrimination — treating virtually everyone equally.

This is what happens. Each member treats all the other members equally as “most-favoured” trading partners. If a country improves the benefits that it gives to one trading partner, it has to give the same “best” treatment to all the other WTO members so that they all remain “most-favoured. Most-favoured nation (MFN) status did not always mean equal treatment. The first bilateral MFN treaties set up exclusive clubs among a country’s “most-favoured” trading partners. Under GATT and now the WTO, the MFN club is no longer exclusive. The MFN principle ensures that each country treats its over—140 fellow-members equally. Some exceptions are allowed, though.



For example, countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.”¹¹

The Second Lomé Agreement, which was signed with 59 ACP states laid the foundation for more stabilization in volatile economies in developing countries, especially economies that relied heavily on specific industries, such as coal mining. The EDF endowment in the Second Lomé Agreement was double that of the first agreement, providing a major number of developing countries with urgent economic and infrastructural assistance.

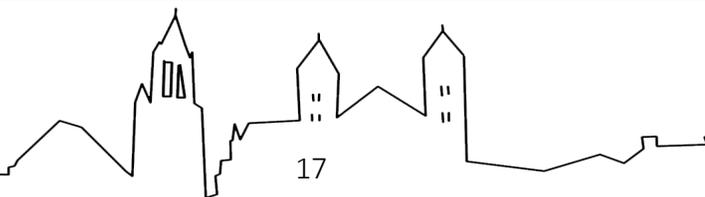
The Lomé Convention was seen as an attempt to address the points of criticism Yaounde has been subjected to, such as the preferential trade deal and the enlargement in member countries to the agreement. Colonial ties with Europe remained one of the most important factors to the participation in the Lomé Convention, however there was a noticeable diversification of countries receiving development aid from Europe, which undermined the points of criticism towards the Yaounde Agreement’s selective approach to development aid.

The Cotonou Agreement

A new agreement between the ACP group and the EEC/EU was needed in the 1990s due to the continuing absence of the economic benefits expected from the Lomé agreement, the continuing incompatibility with the GATT/WTO provisions and regulations, especially the “Most favoured Nation” provision and the complexity of the Lomé Conventions in regards to the changing relationships between the EEC/EU and the ACP group.

The relationship between the EEC/EU and the ACP changed significantly during the last decade of the 20th century. While earlier agreements reflected the historical colonial ties between the ACP countries and their European counterparts, the importance of those ties have been in decline ever since the 1960s. ACP countries were no longer of importance to the European community, especially in regards to developmental and infrastructural aid, as the fall of the Soviet Union and the end of the Cold War has caused an increase in need for development and infrastructural aid in Eastern Europe. In order to integrate the newly formed countries of the former Soviet Union as

¹¹ Understanding the WTO | https://www.wto.org/english/thewto_e/whatis_e/TIF_e/fact2_e.htm

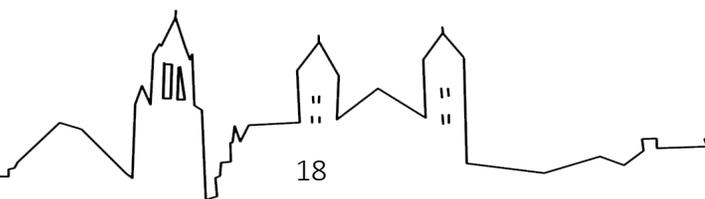


well the countries not under socialist rule anymore in Eastern Europe to the international economic community, the European Community had to provide them with necessary assistance to assume their trading relationships with the rest of the world. Another issue surrounding the Lomé agreement was the increased politicization of European development aid in developing countries, with many opposing the neo-colonial act of providing aid in return for market access and preferential trade agreements.

Thus, the Cotonou Agreement, named after the capital of Benin, has become the latest Preferential Trade Agreement (PTA) between the EU and the ACP and was signed in 2000. The agreement was signed for 20 years and is due to renewal/renegotiation in 2020.

The Cotonou Agreement is based on four main principles: Partnership, Participation, Dialogue and mutual obligations. The most significant change to the Cotonou Agreement, relative to the previous agreements over the 40 years before was the introduction of conditionality in regard to development cooperation. Respect for human rights, democracy and the rule of law have basically become conditions to the receipt of development aid via the Cotonou Agreement, which in return biases the equal partnership principle that the previous agreements revolved around. Another vital change to the agreement was the inclusion of the private sector in fostering international development, meaning that non-state actors shall have a say in their respective state. Another important aspect of the Cotonou agreement was the increase in regional incorporation between the ACP countries, especially the ones with shared borders or shared legal and economic institutions, such as countries in the former French West Africa or members of the Commonwealth.

The most important change however was the introduction of the Economic Partnership Agreements (EPAs) which were supposed to take effect in 2008. The EPAs are in short regional free trade agreements based on the regionalization clause in the Cotonou Agreement that are set to create a Free Trade Area between the EU and the ACP. Given the fact that the previous agreements were incompatible with WTO rules and provisions, based on the discriminating and preferential nature they provided to the members of those agreements, the phasing out and eventual removal of all trade preferences between EU and ACP countries was the eventual target. Due to the fact that the ACP countries already enjoyed duty free access to European markets and the increased fear of not being able to compete with European products once the ACP markets are forced to reciprocate, the EPA and the Cotonou Agreements has met many challenges, effectively hindering it of taking effect. The extent of liberalization and reciprocation however remains to be seen. Whether WTO rules regulating regional trade agreements can or will be revised in favour of the EPAs remains to be seen at the end of the Doha Round.



Current Situation

Current negotiations

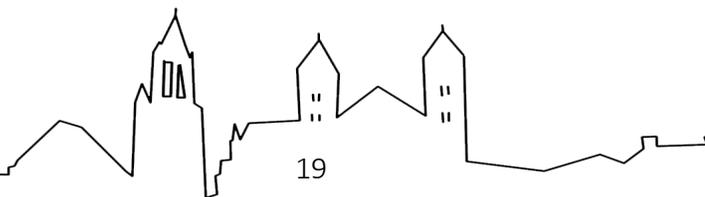
While the Cotonou Agreement has primarily been as a trade and development Agreement between the EU and ACP member states, the importance of the main pillars of the agreement has shifted towards other more pressing topics. From the European side, increasing their cooperation with Africa for instance is heavily related to reducing the migration flows that enter Europe through its southern and eastern Borders, with a large part of those migrants coming from Sub-Saharan states as well as the Maghreb States. On the other hand, African countries are entering the talks as a union and are negotiating the deal together in order to extract the largest benefit for all African countries together, a novelty and breakthrough in intra-African relations. Pacific and Caribbean nations enter the negotiations with hopes for more European investments and higher volumes of bilateral trade. The competing and largely differing demands need to be reconciled in order for a new deal to be able to be agreed upon.

An important topic that has been fundamental in drafting a new deal is the human rights situation in the respective countries. Countries who have signed the agreement are committed to the rule of law and to democratic principles. The current agreement allows the suspension of aid in case of human rights violation, which has also been implemented in multiple occasions over the years, mainly in African Sub-Saharan countries on issues related to military coups. However, the European side of the negotiations sees an increase in human right violations and corruption in the signing countries, which is one of the main obstacles of the renewal of the deal from a political side. Countries who sign the agreement need to make amends in the direction of human rights and anti-corruption in order to move forward.

From an economic perspective, the share of imports and exports between ACP countries and the EU has been constantly decreasing over the past 7 years. The EPAs have come under much criticism as well, with the African countries blaming it for obstructing the integration of the African markets and fragmenting them into the regional markets the Cotonou Agreement foresaw. Nigeria for instance, refuse to sign the EPA until today.

The Upcoming Negotiations

There has been no deadline set where a deal has to be reached, and there is no mandate until today for the time after the Agreement ends. The most important fact that needs to be considered when negotiating a new deal is that, when initially signed in 2000, the EU had 9 member states. Today, they are 28, with countries who have little to nothing to do, from an economic, cultural and historical point of view, to do with the ACP countries. “The main problem of Cotonou is that



it is structured like a classic framework for development, it is a tool for assistance. However, it does not make it possible to respond to the big challenges such as the commercial transactions, migration or climate change, etc. Cotonou cannot address the challenges of the 2030 Agenda and the Sustainable Development Goals,” Jean Bossuyt, an expert on ACP-EU relations at the European Centre for Development Policy Management, believes.¹²

In renewing the Cotonou Agreement, the member states need to make sure of its conformity to WTO rules, especially in its reciprocity rule. This has been a major issue in the current Cotonou Agreement and is the main obstacle facing the economic side of the Agreement. The main question that arises here is whether, nearly 50 years after the largest wave of independence from colonial powers took place, African, Caribbean and Pacific countries are in a position to economically compete with their former colonial occupants or if WTO rules shall be further changed and exceptions extended in order to further stimulate the world economy and bilateral trade between colony and colonizer. How can a new agreement benefit countries that have suffered the exploitation of colonialism in the past and how can the WTO enshrine this into its trading system preferences and agreements such that developing countries can benefit in the long run?

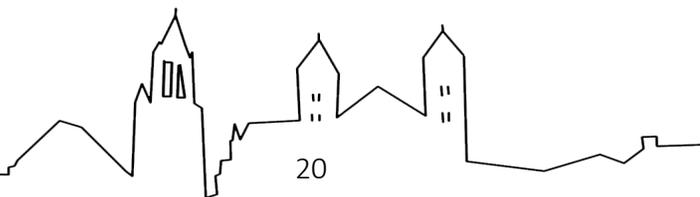
Controversies

WTO and Developing Countries

While the WTO has been committed to improving free trade amongst its members, it has been accused multiple times of hindering the development of developing countries, mostly former colonies.

It is argued that developing countries need some kind of trade protection in order to be able to develop new and competitive industries that are able to keep up with the already far ahead and developed industries in developed countries in order to be able to diversify the economy and increase a country’s wealth. However, under WTO rules, this is not possible and thus developing countries do not get the same opportunity that developed countries had in their early years to develop their economy. A degree of tariff protection was used by multiple developed countries in order to further develop. This is also true for the process of diversifying an economy, especially and emerging economy which relied solely on agriculture.

¹² Bossuyt, J (2016) The future of ACP-EU relations:A political economy analysis



Another controversial point in this regard in the MFN principle that is arguably the core principle of the WTO. While it means that one country cannot preferentially choose one country over the other, it also means that local firms are not allowed to favour local firms or contractors. This means that favouring own emerging industry is against WTO rules and thus gives an advantage to multinational companies who have a stronger infrastructure, a competitive advantage and can easily push local firms out of the market.

Another main issue of the WTO's stance towards developing countries, who comprise nearly two thirds of their total member states, is not being able to reach an agreement on how to reduce tariffs on agricultural goods, which hurt developing countries who mostly rely on the agricultural sector and thus face high tariff protection from the developed world.

Eventually, while the WTO's principle of free trade is beneficial for global wealth and has played a big part in today's globalized economy, it also played a role in the continued ill treatment of developing countries, who have been exploited in the past by colonial powers and continue to be face open and free markets that they cannot compete in.

Suggested Reading

Remarks of the Ambassador at the Post Cotonou Public Forum:
https://eeas.europa.eu/headquarters/headquarters-homepage/54673/remarks-ambassador-post-cotonou-public-forum_en

EU and Africa: Investment, Trade, Development : https://www.swp-berlin.org/fileadmin/contents/products/comments/2019C01_scm.pdf

EU ACP Relations after Cotonou Agreement: Re-set, Relaunch or Retreat?:
<https://en.euractiv.eu/wp-content/uploads/sites/2/special-report/EURACTIV-Special-Report-EU-ACP-Relations-after-Cotonou-agreement.pdf>

The Role of the WTO in Assisting Developing Countries, Especially the BRICS: an Analysis of Doha and Bali (2015):
https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1010&context=international_immersion_program_papers

Neo-Colonialism In Africa: The Economic Crisis In Africa And The Propagation Of The Status Quo
 By The World: <https://web.stanford.edu/class/e297a/Neo-Colonialism%20in%20Africa.pdf>

The Colonial Legacies of Trade Agreements with the European Union:
<https://stars.library.ucf.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1205&context=honorsthesis>

Questions the Resolution needs to answer

- What is the role of the WTO in making sure that former colonies receive a fair treatment and compensation by their former colonizers?
- How can the WTO make sure that its regulatory framework does not put former colonies in a similar position to its position in the colonial era?
- To what extent can the WTO change its regulatory framework to make former colonies benefit from a global trade network?
- Which sort of economic protection can the WTO framework provide to the former colonies?
- How can a new Cotonou Agreement be drawn and integrated into a framework that allows former colonies and former colonizers to increase the quality of life as well as global trade participation in the former colonies?

Bibliography

Impact of WTO Policies on Developing Countries: Issues and Perspectives:

<https://repository.uwc.ac.za/bitstream/handle/10566/531/RenaWTO-Policies2012.pdf?sequence=4&isAllowed=y>

The WTO can help countries develop:

https://www.wto.org/english/thewto_e/whatis_e/tif0e/tif0e10thi_e/10thi06_e.htm

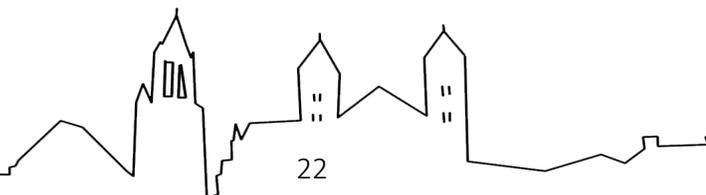
The Cotonou Agreement: has it fulfilled its promises?

<https://www.euractiv.com/section/agenda-for-change/news/the-cotonou-agreement-has-it-fulfilled-its-promises/>

The Erosion of Colonial trade Linkages after independence: <https://hal-sciencespo.archives-ouvertes.fr/hal-01024396/document>

Colonial Trade and International Exchange: The Transition from Autarky to International Trade

<https://www.bloomsbury.com/us/colonial-trade-and-international-exchange-9781472505910/>



Topic B: Combating Digital Piracy

Introduction

Digital piracy, in its most simple form, refers to the illegal act of duplicating, copying, sharing or distributing an artwork that has been digitalized in any way without the explicit permission of the owner or copyright holder, which is a direct violation of copyright laws. In a broader sense, piracy can be anything that varies between intellectual and physical robbery of digital material.

In the debate over digital piracy, the degree of copyright infringement also plays a role. As a matter of fact, every creator of any piece of work has an exclusive right over their work and any duplicate of it. The rights include reproduction, distribution and most importantly, creating derivatives of the original. In the laws of most member states of the WTO, copyright infringements, including digital infringement of copyrighted material, is illegal and prosecutable by the local authorities. In severe cases, international authorities such as the Interpol can also play a role.

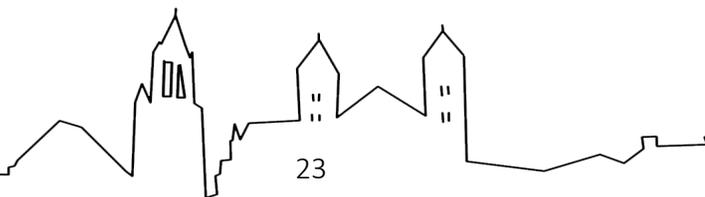
The question thus arises why copyright is necessary and how the WTO can address the issue of copyright infringement in the digital space and age?

Copyright, per se, helps in protecting the efforts put into research and innovation and thus rewards the owners of a certain innovations and ideas of their work by granting them exclusive rights in using said items. Thus, copyright prevents third parties from profiting from other people's efforts. Copyright thus provide incentives to research, revolutionize and be creative.

While digital piracy includes any and all types of digital media, the primary media that are aggressively tackled by digital theft are:

- music (songs recordings, albums, etc.)
- video (series, movies, recordings, etc.)
- software (computer programs, video games, etc.)

Estimates indicate that online digital piracy has cost each of the aforementioned industries billions of dollars in losses worldwide, given the large amount of data pirated via P2P (peer-to-peer) technologies and the low prosecution rates in many parts of the world. The software pirated in 2010 alone was worth over \$59 billion worldwide, with a massive increase in online literacy and thus internet usage worldwide over the last decade.



Digital piracy thus negatively affects world trade volumes as it affect every single person working in these industries and their worldwide supply chains. Therefore, less money is invested, and new software, songs and movies become less profitable. Digital piracy also disrupts global employment, as less software developers, testers, engineers, videographers, actors, musicians, designers, sales persons, advertisers, etc. do not earn sufficient amount of money to uphold their the business.

Thus, the WTO, in its mandate and effort to promote global trade flows and business, fights digital piracy by all means and puts in large efforts in making sure its member states abide by legal frameworks and copyright laws.

History

The term digital piracy grew out of computer hacking in the 70s of last century, where hobby programmers started copying data off digital media and distributing hard copies of games and computer software. Those hackers worked according to the philosophy that information in the “digital” age shall be shared and be easily accessible to everyone. With advancements in information technology, large computer networks allowed files to be shared and accessed across specific networks, however one needed IT skills in order to be able to copy and redistribute files over the internet. Not long after that, file sharing over P2P networks¹³ became as easy as two clicks and personal computers are now all able to share, receive, download and play pirated media in no time. The increase in internet bandwidth, storage technology, etc. all contributed to the rise and spread of digital piracy throughout the world.

A different, more advanced technology, known as cyberlockers, arose that makes use of cloud storage at locations out of reach of copyright enforcement. Similar to legal services and platforms such as Netflix and Spotify, illegal supply can also be streamed.

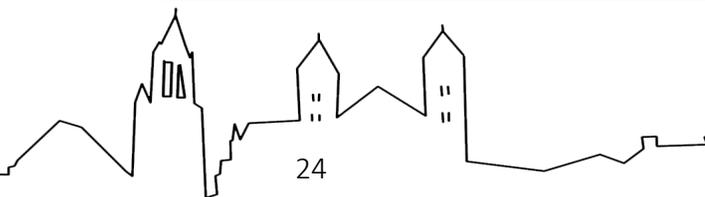
Historically, especially by the end of the 20th century, at the time of the rise of Internet usage, copyright law, including but not limited to the aforementioned industries, has been harmonised by international treaties such as the Berne Convention¹⁴, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)¹⁵, and the WIPO Internet Treaties¹⁶. Those treaties set out rules and standards regarding copyright law and enforcement that need to be met. The TRIPS agreement, which will address more in depth later on, is especially legally binding to WTO member states in regard to prosecution and enforcement of copyright infringement offenses. On the other

¹³ Such as Limewire, Bittorrent, etc.

¹⁴ The Berne Convention for the Protection of Literary and Artistic Works was signed in Berne in 1886.

¹⁵ Overview | The Trips Agreement: https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

¹⁶ World Intellectual Property Organization: https://www.wipo.int/copyright/en/activities/internet_treaties.html



hand, many local law already implement such harmonization efforts, such as “the series of directives as interpreted by the Court of Justice of the EU (CJEU): (i) the InfoSoc Directive, implementing the WCT/WPPT and containing the regulation of online exclusive rights and injunctions against Internet intermediaries; (ii) the Enforcement Directive, implementing certain TRIPS provisions on civil enforcement measures for all intellectual property rights, including injunctive relief and damages; and (iii) the E-Commerce Directive (ECD), setting forth liability exemptions or safe harbours for certain intermediaries, prohibiting the imposition of general monitoring obligations, but not harmonizing intermediary liability beyond that.”¹⁷

The Berne Convention

The Berne Convention for the Protection of Literary and Artistic Works is an international agreement drafted in the 19th century that governs copyright and its infringements.

It was the first agreement to formally mandate aspects of modern copyright law. The Berne Convention for instance paved the way for the existence of copyright as soon as the work is set in stone, without the need to register your work at any certain point. It also deals with the requirement that countries shall recognize copyrights held by citizens of all other parties of the Berne Convention. As of 2018, 176 states have signed the Berne Convention.

The Berne Conventions is based on three basic principles that determine the minimum protection needed as well as some exceptions for developing countries.

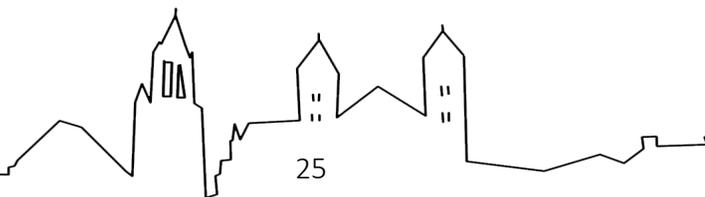
The three principles are the following:

- Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of "national treatment")¹⁸
- Protection must not be conditional upon compliance with any formality (principle of "automatic" protection)¹⁹
- Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be

¹⁷ (Quintais 2018) Global Online Piracy Study Legal Background Report

¹⁸ National treatment is a basic principle of GATT/WTO that prohibits discrimination between imported and domestically produced goods with respect to internal taxation or other government regulation.

¹⁹ Copyright protection exists automatically from the time a qualifying work is fixed in a tangible medium



protected in the country of origin, protection may be denied once protection in the country of origin ceases.

The Berne Convention also set a list of rights that must be recognized as exclusive rights to the respective owner of the copyright:

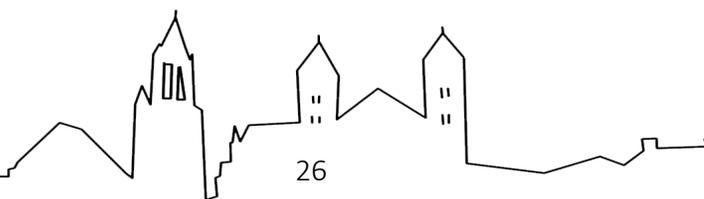
- the right to translate,
- the right to make adaptations and arrangements of the work,
- the right to perform in public dramatic, dramatic-musical and musical works,
- the right to recite literary works in public,
- the right to communicate to the public the performance of such works,
- the right to broadcast (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
- the right to make reproductions in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration).

On the other hand, the Berne Conventions lists certain limitations and exceptions, including cases where the work may be used without the authorization of the owner of the copyright without any compensation. Such cases include illustrations for teaching purposes.

Recent developments

TRIPS Agreement

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was negotiated during the Uruguay Round between 1986 and 1994, introduced intellectual property rules into the WTO trading system for the first time, in an effort to harmonize the rules and make them more transparent on an international scale. The Agreement sets a minimum standard for the national governments of member states on how to regulate intellectual property, and its application to nationals of other WTO member nations.



TRIPS requires all WTO members to provide “copyright rights, covering authors and other copyright holders, as well as holders of related rights, namely performers, sound recording producers and broadcasting organisations; geographical indications; industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; trade names and undisclosed or confidential information.”²⁰

On the other hand, TRIPS also requires certain law enforcement procedure standards and dispute resolution from its member states, in order for the protection of said property rights to be worthwhile. Enforcement procedures are covered by Article 3 of the TRIPS Agreement. The Agreement clearly states that “governments have to ensure that intellectual property rights can be enforced to prevent or deter violations. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They must not entail unreasonable time-limits or unwarranted delays. People involved must be able to ask a court to review an administrative decision or to appeal a lower court’s ruling.”²¹ It is hence the only international agreement that sets rules on enforcement, including how to obtain evidence, how to measure damages and penalties. Copyright piracy on a commercial scale is subject to criminal offence.

The TRIPS agreement also added more obligations and clarifications to the Berne Convention:

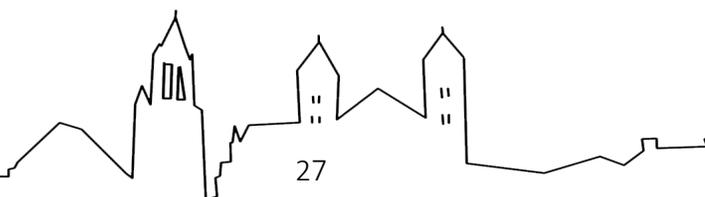
- The TRIPS agreement made sure that software and programs is protected as literary works and outlines how databases are supposed to be protected under copyright
- The TRIPS agreement expanded copyright rule to also include rental and streaming rights. This means that authors of programs and producers of music and film are allowed to prohibit the rental of their work to third persons.
- The TRIPS agreement added the right to prevent unauthorized “recording, reproduction and broadcast of live performances”

In general, the TRIPS agreement which was introduced in 1995 set forth a set of rules that amended the rules of the Berne Convention and added much needed harmonization and mitigation of local intellectual property laws.

While some developing countries faced issues with some of the rules, those were then discussed in the Doha Round in the early 2000s, the basis of intellectual property in the digital age was set and is worked with until this very day.

²⁰ WTO | TRIPS Agreement: https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

²¹ Ibid.



SOPA/PIPA

The Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA) were two United States Bills, with strong international resonance introduced in the US House in 2011 to give US law enforcement more ability to combat online copyright infringement and online trafficking of illegal goods. The bill demanded court orders to stop advertisement and payment facilities from doing business with illegal websites, and search engines from listing them. The bill also required Internet providers to block access to certain websites that pertain to illegal activities including digital content piracy. The law would have also expanded criminal laws to including streaming of copyright content.

The SOPA/PIPA Acts were the first of their kind to comprehensively overhaul the online intellectual property rights and be more detailed about punishable offences, especially with the evolvement of the internet and the provided services over the years. The TRIPS Agreement was outdated when it came to digital content and piracy.

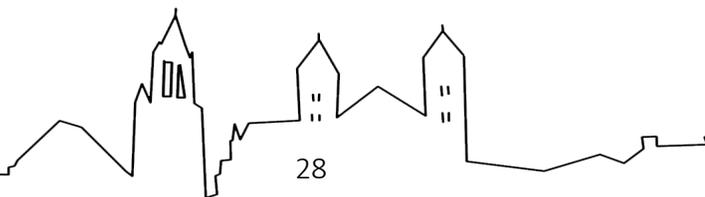
Supporters saw in the act the protection of intellectual property markets and industries, especially against foreign owned and operated websites. The new law would cover enforcement claims against foreign outlets for instance.

EU Copyright Directive

The Directive on Copyright in the Digital Single Market is the newest EU directive intended to modernize the EU copyright law and make its rules for the digital age. It intends to ensure the rights of copyright owners while taking into account the digital and cross border uses of the protected content. The Directive was first introduced in summer of 2018 and the final version was approved on March 26th, 2019. The European Council approved of the directive on April 9th in order for the it to become EU law.

The key goals of the new directive are protecting press and offline publications, reducing the gap between profits made on the internet and by content creators online, and creating copyright exceptions for text and data mining tools. The main point of the Directive is to give the content owner the right to choose where their content appears online and receive proper compensation for the usage and linking of the content. In order to prevent unauthorized posting of copyrighted material, social media platforms will thus be required to prevent such postings and will be held liable for their user's actions.

Other goals of the Directive are more access to online content, wider opportunities to use copyrighted materials in education, research and cultural heritage and having an overall better functioning marketplace.



Geo-blocking

Geo-blocking is a technology that restricts a user’s access to online content depending on their current location. This means that access to certain websites, blogs, newspapers, legal and illegal streaming sites can be blocked depending on which country you are currently in.

Most of movie, (live-)streaming, etc. broadcasting rights are nation-based, meaning that the rights are sold individually in every country, which makes availability vary between neighbouring countries.

While this has been common practice in the past year, research²² has shown that geo-blocking has caused an increased in digital piracy and an increase in illegal downloads, given the fact that consumers are unable to legally consume the digital media they intend to consume due to the blockage.

The EU, in an effort to get closer to a digital single market, now allows content that is stream-able in one EU member states and unavailable in the other to be available, albeit with some exceptions and for a limited amount of time. There exists no common legal framework that regulates geo-blocking, how it is used and when it is used.

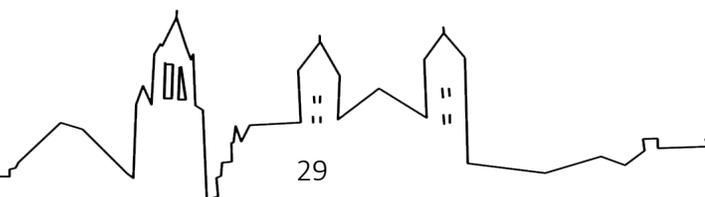
Controversies

SOPA/PIPA demonstrations

The SOPA and PIPA Bills triggered huge protests across the United States, with the masses clearly concerned with the threat that the bill will obstruct free speech and innovation will enable the government and their law enforcement agencies to block access to certain websites and services online due to copyright infringement. Another concern was that stronger copyright infringement enforcement will generally put an end to internet culture as it is known and the public libraries for instance could be made liable and even prosecuted. The users and protesters feared an increase in internet censorship, as it is common in many autocratic regimes.

The bills, which were intended to regulate the responses of law enforcement towards digital piracy inside and outside of the United States, offered no protection to current internet status-quos and common practices such as user generated content on social media website, etc.

²² Intellectual Property arrangements | The Australian Government:
<https://www.pc.gov.au/inquiries/completed/intellectual-property#report>



The protests which took place in 2011 were accompanied by large corporations who are mainly present online, such as Wikipedia, Google and Firefox, which could potentially be hurt by the legislation. There were also reported protests globally against the bill.

Articles 15 and 17 controversy

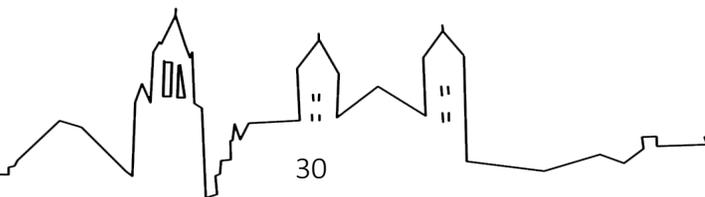
In 2019, similar protests were launched in many European capitals, demonstrating against the EU directive in general and articles 15 and 17 in particular.

Article 13, commonly referred to as the “link tax”, limits the online use of press publications and requires search engines to pay the copyright holders for the links they provide on their website, a practice that is seen by many as inefficient, costly and complex. “The use of news articles by “news aggregators or media-monitoring services” for commercial purposes” will need to be taxed, which on the one hand is supposed to protect copyright holders and guarantee them their rights, but on the other hand will make less information and resources available to the public via common tools such as Google and Bing search engines.

Article 17, which is also known as the “upload filter”, requires online web services and social media websites to be held liable for copyright infringements by their users. In practice, this is intended to protect the copyright holders from illegal reproduction of their work and innovations, on the other hand the websites and services such as Google, Facebook or Youtube, will be required to filter content before its upload in order to check for its legality. Another concern is that only major firms, such as the aforementioned ones, will be able to afford such upload filters and thus smaller services will be pushed out of the market.

China and copyright infringements

China is the world’s leading intellectual property infringer and produces over 0% of the world’s counterfeits, including pirated films and software. China is also the largest infringer of patents, both industrial and technological patents of foreign firms. While China has signed the Berne Convention in 1992 and was acceded to the WTO in 2001, it remains inconclusive on how it tackles its widespread Intellectual property infringement epidemic. On one hand, China’s laws and regulations are consistent with the TRIPS agreement and is in line with it. However, the enforcement of those laws and regulation remains a huge issue for the Chinese government. The main issue China faces is that not only illegal products are produced underground, but many legitimate businesses ignore copyright infringements and violate intellectual property openly.



China’s government computers also have pirated software installed to it, of which some are currently subject to copyright infringement lawsuits in the United States²³.

While the government makes huge efforts to protect and enforce intellectual property rights, infringements are deep-rooted in the local and regional Chinese economies, such that local and regional governments show no interest in enforcing such intellectual property rights.

Current situation

Situation in developing countries

Developing countries commonly face a lot of problems, digital piracy being one of them. Piracy in emerging economies and developing countries has one simple reason: video games, music, movies or software are expensive goods. The problem is, in the developing world, digital media costs the same as in the developed world, which means that individual’s, who also want access to entertainment and software, need to find alternatives to be able to afford such “luxuries”.

On the other hand, large media corporations and developed countries argue that poorer countries simply lack the “copyright culture”, which can and should be reinforced through education and then enforcement.

Nevertheless, what are the main reasons behind digital piracy? High prices, low incomes, and cheap digital technologies all contribute to the global digital piracy epidemic. All an individual needs is access to a certain medium, a PC and an internet connection, which enables him to duplicate, sell and redistribute millions of copies of copyrighted goods online. “Relative to local incomes in Brazil, Russia, or South Africa, the price of a CD, DVD, or copy of Microsoft Office is five to ten times higher than in the United States or Europe. Licit media goods are luxury items in most parts of the world, and licit media markets are correspondingly tiny. Industry estimates of high rates of piracy in emerging markets—68% for software in Russia, 82% for music in Mexico, 90% for movies in India—reflect this disparity and may even understate the prevalence of pirated goods.”²⁴

In order to be able to tackle the issue of digital piracy, countries and corporations with copyright interests should thus first acknowledge the price and have a look at the reasons behind piracy in

²³ Mercurio (2016) The Protection and Enforcement of Intellectual Property in China since Accession to the WTO: Progress and Retreat

²⁴ Karaganis (2011) Media Piracy in Emerging Economies. <http://piracy.americanassembly.org/wp-content/uploads/2011/06/MPEE-PDF-1.0.4.pdf>

the first place. The lack of consumption options is the main reason, after all, the whole world consumes digital media, not just the developed world.

The growth of digital piracy since the 1990s, albeit hurting legal media outlets in the developed world and disrupting whole sectors, is one of the reasons why so many opportunities are created in emerging economies, which inevitably trickles back to the developed world.

Thus, the current situation entails us to ask the following question: can stronger enforcement of copyright reduce piracy and retain the status quo of current market structures?, or can countries reach a formal agreement that addresses the concerns of several billion consumers at the very low end of the (legal and illegal) supply chain?

Some studies show that lower piracy rates will lead to greater legal investments and thus to economic growth and innovation in the emerging economies, which is also one of the main pillars of trade negotiations in recent years. Thus, a common legal and economic framework that encompasses all WTO members as well as corporations with copyright interests and expands current agreements in place is a starting point towards reducing digital piracy.

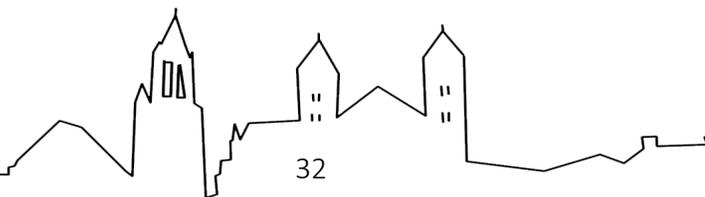
Enforcement in developing countries

A further issue that faces a large scale roll out of copyright and intellectual property enforcement in developing countries is the overburdened legal and enforcement system in many emerging economies. Law enforcement simply has bigger issues to deal with than enforcing copyright infringement and actively prosecuting offenses.

A lot of developing countries experience security and stability problems due to weakness of the states, disorganization of security forces, lack of transparency and most importantly, corruption. Thus, many law enforcement officials do not have an interest in enforcing copyright or prosecuting offenses simply because they benefit from it directly or indirectly. Moreover, the system is not set out to prosecute such offenses. It would be costly to overhaul the police systems in many countries such as they are able to prosecute digital piracy offenses, a point especially developed countries need to keep in mind when drafting prohibition and enforcement laws.

Suggested Reading

Combating Online Piracy: Should Pirated Products Be Made Less Available or Less Attractive?
https://www.researchgate.net/publication/272243307_Combating_Online_Piracy_Should_Pirated_Products_Be_Made_Less_Available_or_Less_Attractive



The fight against digital piracy: An Experiment:

<http://www.cba.edu.kw/krouibah/Publications/2010-The%20fight%20against%20digital%20piracy-An%20experiment.pdf>

China's Accession to the WTO and its Effects on Electronic Commerce, the Internet, and Digital Piracy under the Agreement on Trade Related Aspects of Intellectual Property Rights: <https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1004&context=jib>

EU Digital Single Market: <https://ec.europa.eu/digital-single-market/en/copyright>

Geo-piracy and the digital single market: <https://www.digitaltveurope.com/comment/geo-piracy-and-the-digital-single-market-now-is-the-time-to-act/>

How to combat digital Piracy: <https://www.bookbusinessmag.com/article/10-ways-combat-online-piracy/all/>

The TRIPS Agreement: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

The Berne Convention: https://www.wipo.int/treaties/en/ip/berne/summary_berne.html

Questions the Resolution needs to answer

How can WTO member states fight digital piracy on a national level?

How can WTO member states combine efforts and cooperate on fighting online copyright infringements?

How can the WTO ensure that developing countries are able to enforce copyright infringements?

Which amendments need to be made to existing agreements in order to combat digital piracy effectively?

How can multinational corporations work towards lowering digital piracy rates?

What role does legislation in developed countries play in the global fight against cyber piracy?

Bibliography

Media Piracy in Emerging Economies: <http://piracy.americanassembly.org/wp-content/uploads/2011/06/MPEE-PDF-1.0.4.pdf>

Digital Piracy in China: An analysis from Human Rights perspective:
<http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=3460857&fileId=3460863>

Targeting Websites Dedicated To Stealing American Intellectual Property:
<http://www.itif.org/files/2011-coica-testimony.pdf>

Global Online Piracy Study: <https://www.ivir.nl/publicaties/download/Global-Online-Piracy-Study.pdf>

The Protection and Enforcement of Intellectual Property in China since Accession to the WTO:
Progress and Retreat: <https://journals.openedition.org/chinaperspectives/5795?file=1>