

# [A trade environment and the rights of patients - dissertation example](https://assignbuster.com/a-trade-environment-and-the-rights-of-patients-dissertation-example/)

[Law](https://assignbuster.com/essay-subjects/law/)

## A Trade Environment and the Rights of Patients

DISSERTATION PROPOSAL Introduction The of global public health has never been worse. Every year, millions of people from impoverished nationsdie from preventable diseases. Because of environment and lifestyle, old diseases are developing new strains, more harmful and menacing than the previous. 37, 000 die everyday from diseases like pneumonia, HIV/AIDS, tuberculosis, measles, and diarrhea. The tragedy is that even amidst this urgent and compelling need to address this global problem, the right of the people to health care still remains inextricably intertwined with a rigid intellectual property regime.

In a knowledge economy where knowledge is considered private property and is thus deserving of full protection under the law, Intellectual Property laws play a fundamental role in ensuring stability and predictability. However, it has been suggested that these laws undermine public health by tending to put the cost of essential medicines far beyond the reach of those who desperately need it most.

This dissertation endeavors to examine the tension between intellectual property law and the right of the patient to health care, and to explore the specific ways that the latter can be compromised by the former. It will also look at the possible solutions to overcome this problem and create an intellectual property regime that will put health over profit and patients over patents.

Contextual Background
Recent free trade agreements have extended extremely generous patent rights to multinational pharmaceutical companies, and have limited access to generic equivalent drugs.

In the " DOHA declaration on TRIPS and Public Health" of 2001, states that were members of the World Trade Organization (WTO) guaranteed that when a country is undergoing a public health crisis, it is not bound by its patents commitments. A consensus was reached that the provisions in the WTO having to with patents should be interpreted liberally in favor of the patient, and in favor of granting access to essential medicines. In order to circumvent these commitments, bilateral agreements are being forged by developed countries with lesser developed countries where the requirements for intellectual property law surpass those found in TRIPS.

The TRIPS agreement does contain various safeguard mechanisms to protect public health. The two distinct safeguards are (1) parallel importation, and (2) compulsory licensing. By its silence, the TRIPS allows countries to import drugs from another country that is selling it at a lower price. Countries must make domestic legislation in this regard. The US-Singapore Free Trade Agreement, however, is an example of how the US has engaged in scare tactics to pressure developing countries not to pass a parallel important law. Compulsory licensing, on the other hand, permits the government to grant compulsory licenses to particular companies to create generic versions of the drug and arrest a public health crisis. It was found that the introduction of generics competition upon expiry of a patent typically leads to a significant price reduction, often by up to 70 percent.

Methods and Conceptual Framework
This dissertation will first examine the provisions of the TRIPS that involve patents and whether these provisions are sufficient in form and substance to protect patients, or skewed in favor of the corporate interests of multinational pharmaceutical companies. After which, the Doha declaration must be given careful scrutiny as well, in particular the " paragraph six problem". By virtue of paragraph six of the said Declaration, poor countries will lose access to cheaper medicines produced in other countries. This is because the TRIPS provisions providing for production of generics under compulsory licensing require that the medicines produced are used predominantly in the domestic market.

Then, a survey of developing countries and their internal legislation with respect to patents will be made, alongside an analysis of how this legislation has impacted on their public health situation.

Fundamentally, the question sought to be answered is this: is a one-size-fits-all intellectual property regime truly the best answer, or is it currently doing more harm than good to developing nations grappling with urgent issues of public health Lastly, the dissertation will propose changes that may be introduced to create a trade environment that protects the rights of patients.
TENTATIVE SOURCES
Indigenous Knowledge of Biological Resources and Intellectual Property Rights: The Role of Anthropology
Stephen B. Brush
American Anthropologist, New Series, Vol. 95, No. 3 (Sep., 1993), pp. 653-671

Invention, Authorship, " Intellectual Property," and the Origin of Patents: Notes toward a Conceptual History
Pamela O. Long
Technology and Culture, Vol. 32, No. 4, Special Issue: Patents and Invention (Oct., 1991), pp. 846-884

Towards an Integrated Theory of Intellectual Property
Gideon Parchomovsky, Peter Siegelman
Virginia Law Review, Vol. 88, No. 7 (Nov., 2002), pp. 1455-1528

Trips, Trade, and Growth
M. Scott Taylor
International Economic Review, Vol. 35, No. 2 (May, 1994), pp. 361-381

North-South Disputes over the Protection of Intellectual Property
R. Stephen Richardson, James D. Gaisford
The Canadian Journal of Economics / Revue canadienne d'Economique, Vol. 29, Special Issue: Part 2 (Apr., 1996), pp. S376-S381
The Critique of Intellectual Property
Jonathan Benthall
Anthropology Today, Vol. 15, No. 6 (Dec., 1999), pp. 1-3

Patent Medicine
Dean Baker
Journal of Public Health Policy, Vol. 22, No. 3 (2001), pp. 275-279

Intellectual Property
Catherine Seville, Karl Newman
The International and Comparative Law Quarterly, Vol. 48, No. 3 (Jul., 1999), pp. 710-716

Research and Competitive Product Differentiation in the Pharmaceutical Industry in the United States
William S. Comanor
Economica, New Series, Vol. 31, No. 124 (Nov., 1964), pp. 372-384

Patent Medicines: An Early Example of Competitive Marketing
James Harvey Young
The Journal of Economic History, Vol. 20, No. 4 (Dec., 1960), pp. 648-656

Innovation, Technology Transfer, and Patent Policy: The University Contribution
Thomas A. Massaro
Virginia Law Review, Vol. 82, No. 8, Symposium on Regulating Medical Innovation (Nov., 1996), pp. 1729-1735

Freedom and Interference in Medicine
Richard H. Shryock
Annals of the American Academy of Political and Social Science, Vol. 200, Freedom of Inquiry and Expression (Nov., 1938), pp. 32-59

Trade-Environment Negotiations in the EU, NAFTA, and WTO: Regional Trajectories of Rule Development
Richard H. Steinberg
The American Journal of International Law, Vol. 91, No. 2 (Apr., 1997), pp. 231-267

The WTO Legal System: Sources of Law
David Palmeter, Petros C. Mavroidis
The American Journal of International Law, Vol. 92, No. 3 (Jul., 1998), pp. 398-413

Is the WTO Legit
Kevin Watkins
Foreign Policy, No. 132 (Sep. - Oct., 2002), pp. 78-79

Universities and the Market for Intellectual Property in the Life Sciences
Walter W. Powell, Jason Owen-Smith
Journal of Policy Analysis and Management, Vol. 17, No. 2, Special Issue: The Commercialism Dilemma of the Nonprofit Sector (Spring, 1998), pp. 253-277

Innovation, Imitation, and Intellectual Property Rights
Elhanan Helpman
Econometrica, Vol. 61, No. 6 (Nov., 1993), pp. 1247-1280

Intellectual Property Protection and U. S. Foreign Direct Investment
Jeong-Yeon Lee, Edwin Mansfield
The Review of Economics and Statistics, Vol. 78, No. 2 (May, 1996), pp. 181-186

One Hundred Years of Solicitude: Intellectual Property Law, 1900-2000
Robert P. Merges
California Law Review, Vol. 88, No. 6, Symposium of the Law in the Twentieth Century (Dec., 2000), pp. 2187-2240

Intellectual Property Protection and Antitrust in the Developing World: Crisis, Coercion, and Choice
Susan K. Sell
International Organization, Vol. 49, No. 2 (Spring, 1995), pp. 315-349