

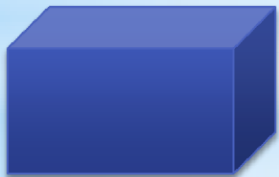
How to Reshape Treaties without Negotiations: IP Enforcement as a Case Study

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WTO - only multilateral regime with enforcement rules

G8 Priority: Advance new norms on IPR enforcement

TRIPS



TRIPS-Plus



TRIPS-else



WTO - original regime - TRIPS Art. 41ss.

Two failed attempts to advance new legal normativity:

a. TRIPS Council

b. Dispute settlement system - China-
Intellectual Property Rights case (DS362)

c. elsewhere: unilaterally (seizure of drugs in transit); ACTA;...

Option for alternative strategy

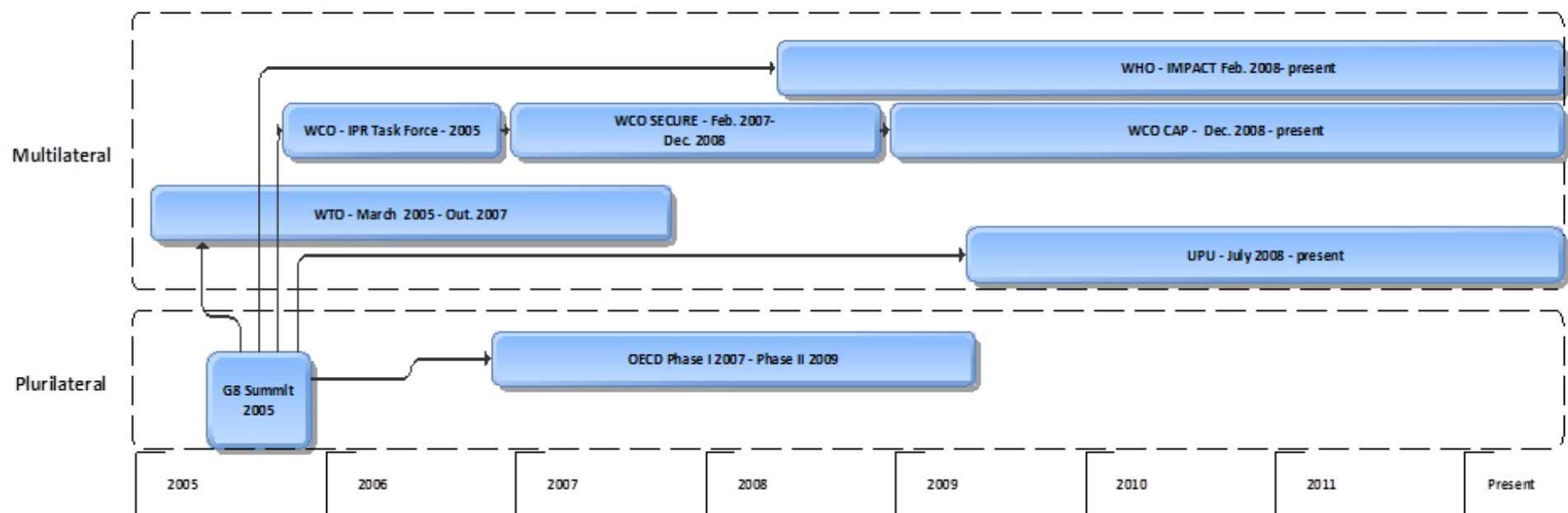
Elements:

1. Institutions

- a. Regime shifting; what is new: shift to technical and enforcement organizations;
- b. simultaneous shift to multiple regimes

Advantages:

- * lower levels of formal governance
- * absence or lower scrutiny by political representatives of states
- * technical officials lacking knowledge on IPR rules and policy
- * possibility of debating IPR enforcement as technical standards rather than new legal norms (skip negotiations and law production at the multilateral level)
- * Fast dissemination of new standards across regimes directly in the phase of implementation



2. Agents

a. Public-Private Partnerships

- * direct participation of private holders in intergovernmental organizations, through the elaboration of soft law; provision of data; participation in technical assistance; source of demands; voluntary contributions for IPR enforcement initiatives; organization of joint events to disseminate new standards
- * advantages: lack of accountability to domestic constituencies; flexibility to propose and implement initiatives and mobilize peers; economic wealth

b. Networks of domestic enforcers

- * direct dissemination and modification of IPR enforcement rules at the domestic level, through regulations that escape high scrutiny and direct implementation of operations (e.g. INTERPOL)
- * shapes initial preferences (e.g. tax collector vs. gatekeeper)
- * benefits from lack mechanisms of coordination within and across governments

3. Norms

Regimes	WTO-TRIPS	Other Int'l Regimes
Legal Standards		
Main authority in charge of enforcement	Judicial	Customs, Criminal Police
Counterfeiting and piracy definitions	Counterfeiting registered trademarks Piracy - copyright	All sorts of IPR infringement, including patents, also medicine that has low quality standards,...
Main agents responsible for enforcement and related costs	Private holders	Governments
Major form of sanctions	Civil sanctions	Criminal sanctions; regulatory sanctions

4. Closing the cycle of the dynamics

Reframing the issue as a public policy (health and safety; link with terrorism and organized crime)

Advantage: besides transferring costs and modifying initial preferences, allows reintroduction of the topic in the WTO as relevant domestic policy.

How:

Art. XX GATT (General exceptions; but high standard to allow public policies that create a barrier to trade);

Newly promoted interpretation: Art. III:4 GATT (national treatment provision - does not capture the discrimination promoted through new IPR enforcement standards)

