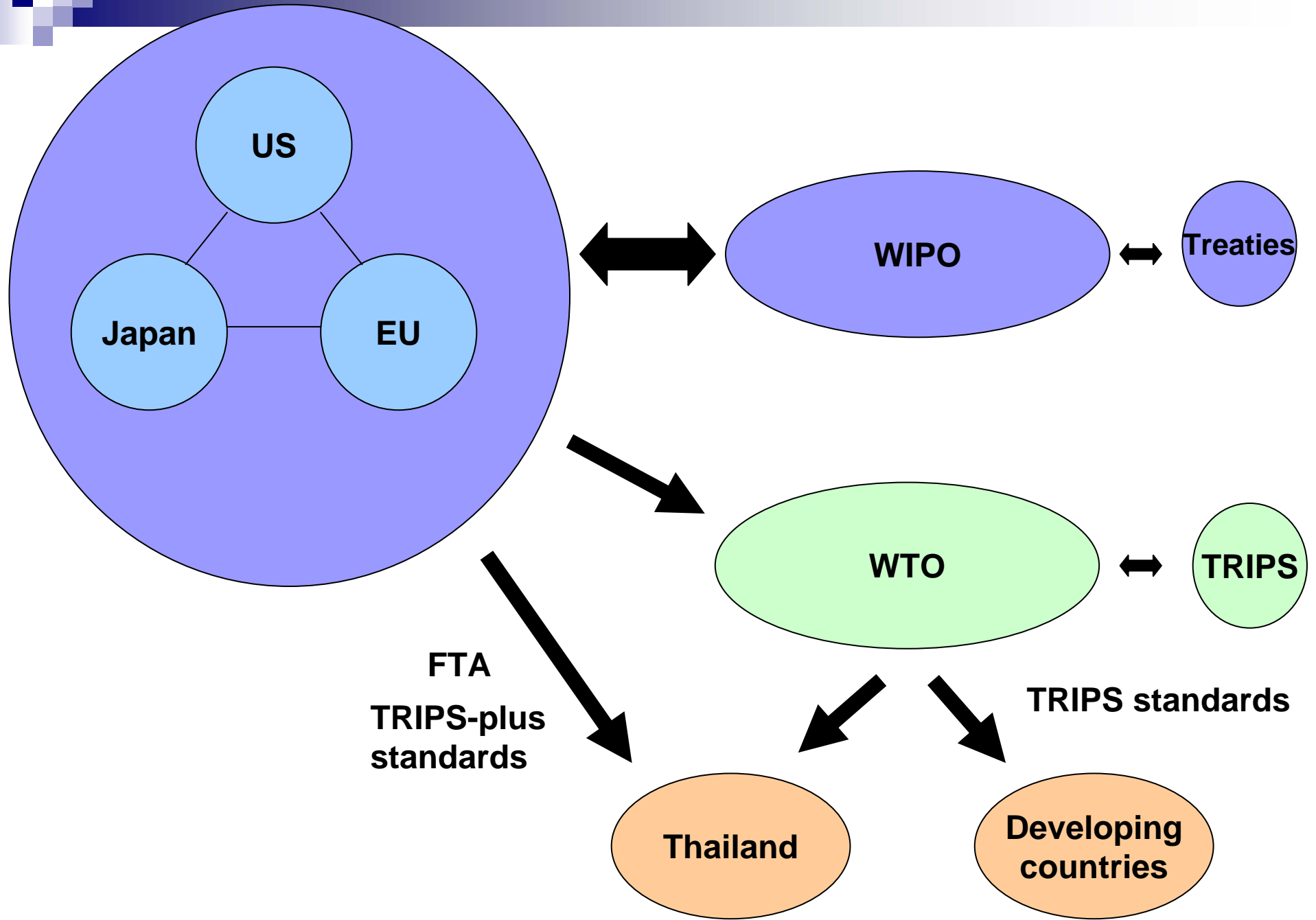
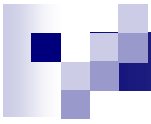




TRIPS-plus Approach: Implications to Thailand

Dr Jakkrit Kuanpoth
School of Law
Sukhothai Thammathirat Open
University





TRIPS-plus

- What is it?
 - Provisions restrict options that are available under TRIPS
- How it looks?
 - Protecting additional subjects
 - Limiting controlling powers of states
 - Limiting exceptions to exclusive rights



Key elements of the US proposal (TRIPS-plus)

- Copyright
- Trademarks and Geographical Indications
- Patents
- Protection for plant varieties
- Trade secret
- Enforcement of rights



Copyright

- Joining WIPO Treaties:
 - *Copyright Treaty and WIPO Performances and Phonograms Treaty*

- New rules on copyrights:
 - *ensure exclusive right to make their works available online*
 - *prohibit tampering with the technology managing access to internet*
 - *prohibit circumventing technology intended to guard against copyright piracy*
 - *prohibit temporary reproduction (control of reading and use)*
 - *ensure right holder to take a legal action against the ISP*



Trademarks and Geographical Indications

- WIPO's Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks 1999
- Protocol to the *Madrid Agreement Concerning the International Registration of Marks* 1989
 - national offices as gateways for filing applications in other countries
- TM owner can prevent a newly established geographical indications



Patents

- Limit the circumstances for issuing compulsory licence (CL), e.g. not for non-working of patents, issuance to public sectors only
- Prohibiting the revocation of patent on public interest grounds
- Forbidding the “international exhaustion doctrine” and parallel import
- Extension of patent term
- Accession to the Patent Co-operation Treaty (PCT)



Protection for plant varieties

- Join UPOV, then circumventing TRIPS
Art.27.3(b)
 - Subject agricultural sectors to absolute monopoly of TNCs
 - Conflicting the attempt to promote PIC and ABS under CBD
 - No declaration of source



Trade Secret

- Exclusivity over test data
 - Go beyond Art 39.9 of TRIPS
 - Officials cannot use data for registration of generic drugs
 - Officials cannot register generics on ground that the same drugs has been registered elsewhere



■ Implications

- the generic manufacturers will have to enter into a long and costly testing process
- restraining the effectiveness of the compulsory licence
- prohibiting the regulatory authorities from relying on marketing approvals in other countries



Enforcement of rights

- No formal complaint by the right holder is required
- Increase authority to seize pirated goods, equipment used for counterfeiting
- To inform the right holder as to the name and address of the suspected and the quantity of the counterfeit goods



Significant effects

- TRIPS-plus will increase social and economic costs, especially exacerbating the public health crisis
- Make Thailand's self-sufficiency in technology impossible
- Bilateral deal will become a multilateral approach. (TRIPS, Art.4(d))



What to do?

- Reject the TRIPS-plus standards
- Explore the possible flexibilities under TRIPS
- Reform WTO and WIPO
 - not imposing "disciplines" on states to ensure high standards of IPRs
- Amend WTO's agreements to prohibit bilateral agreements
- Reframing IPRs not as a trade issue but as a public interest issue
- Adopt competition-friendly IPRs
 - fair remuneration for innovation and creativity, rather than the exclusive rights or private property