

Facts about the TRIPS Agreement

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The importance of trade as a Factor for development and growth is becoming more and more evident. Appropriate implemented trade policies can provide opportunities for promoting economic development and tackling poverty reduction and hence contribute positively to the Millennium Development Goals¹.

The World Trade Organization (WTO) is an international, multilateral organization which sets the rules for the global trading system and resolves disputes between its member states. As of December 11 2005, there are 149 members in the organization. At its heart are the about 30 WTO agreements, negotiated and signed by the member states. In general, ministerial conferences are the WTO's highest decision-making body, meeting at least once every two years and providing political direction for the organization².

One agreement which has to be signed by members of the World Trade Organisation's, is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). First negotiated in the 1986-94 Uruguay Round, it introduced intellectual property rules into the multilateral trading system for the first time.

The agreement covers five broad issues:

- How basic principles of the trading system and other international intellectual property agreements should be applied
- How to give adequate protection to intellectual property rights
- How countries should enforce those rights adequately in their own territories
- How to settle disputes on intellectual property between members of the WTO
- Special transitional arrangements during the period when the new system is being introduced³.

¹ http://europa.eu.int/comm/trade/issues/global/development/index_en.htm

² http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm

³ http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm

All member states of the WTO are thereby obliged to raise their national standards for the protection of intellectual property to a common minimal level and to guarantee legal protection for innovations which haven't had any on an international basis, before.

The TRIPS principles had to be implemented by developing countries and economies in transition till January 2000. Many have finished implementing new laws, while others face sever difficulties to comply⁴. Following the latest decision by the WTO's TRIPS Council, for Least-developed countries (at present 32 WTO members are considered least-developed⁵) an extension until 1 July 2013 have been given to provide protection for trademarks, copyright, patents and other intellectual property under the WTO's agreement.

Importance for the CGIAR

Some of the IP issues covered by TRIPS fall outside of the interest of agricultural research institutions⁶. However, there are many important topics, regarding agricultural research that is covered by this agreement. These include:

- Formal protection and patentable subject matter (especially, Art 27, particularly Art. 27.3(b)⁷ regarding plants, see footnote),
- Anticompetitive Practice (Article 40),
- Geographical Indications (Article 22-24),
- Exchange of Information (Art. 17),
- Copyright (especially, Art. 9, 10, 12),
- Trademarks, (Section 2, Art 15-21),
- Trade Secrets (Art. 39)⁸.

⁴ MASKUS, K. (2000): Intellectual Property Rights in the Global Economy, Institute for International Economics, August 2000, Washington DC, p.25

⁵ http://www.wto.org/english/news_e/pres05_e/pr424_e.htm

⁶ Examples of non-interest protection might be those for the design of computer chip masks, etc.

⁷ **Article 27.3(b)** states that WTO Member must provide patent protection over micro-organisms and microbiological processes, such as those used in biotechnology today, but countries are free to exclude plants and animals from their patent laws. However, all nations must provide intellectual property titles over plant varieties, either through patents or through an .effective *sui generis* system thereof. Most developing countries prefer the implementation of a *sui generis* system, such as the UPOV 1978 version, as it allows domestic farmers to reuse harvested material.

⁸ <http://www.isnar.cgiar.org/cas/newsletter3.htm>

TRIPS and the CBD

Under ongoing discussion is the tension between the granting of IPRs on products containing genetic resources and traditional knowledge under TRIPS with the objectives of the Convention on Biological Diversity (CBD). Countries like India and Brazil, that hold many of the genetic resources and associated TK which have raised concerns over the misappropriation of such as the neem tree or basmati rice, are demanding an amendment of the WTO rules requiring patent holders to disclose the origin of their patents, obtain prior consent and share benefits when those patents are associated with genetic plant material or traditional knowledge from developing countries⁹.

However, opposition such as the recently formed American BioIndustry Alliance, argues that creating mandatory patent disclosure obligation is likely to hinder industry to invest in biotechnology in developing countries and hence prevent that further genetic resource inventions would become commercially viable¹⁰.

At the 6th Ministerial Conference in Hong Kong in December 2006, the proponents of mandatory disclosure could not persuade the WTO to provide a mandate for a formal negotiation of this issue. Unlike the discussions on establishing a register of geographical indications (GI) for wines and spirits, for which there is an official mandate under TRIPs, the CBD issue still has the status of one of the WTO's "implementation" issues¹¹.

However it was agreed to set a date for reporting back on the CBD issue and the General Council will review progress and take any appropriate action no later than July 31 2006¹².

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⁹ BRIDGES Vol. 5 Nr.22 Dec05

¹⁰ <http://lists.essential.org/pipermail/ip-health/2006-January/008921.html>

¹¹ <http://www.managingip.com/?Page=9&PUBID=198&ISS=21054&SID=604143>

¹² <http://www.managingip.com/?Page=9&PUBID=198&ISS=21054&SID=604143>