
**Council for Trade-Related Aspects
of Intellectual Property Rights**

**THE RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND
THE CONVENTION ON BIOLOGICAL DIVERSITY**

SUMMARY OF ISSUES RAISED AND POINTS MADE

Note by the Secretariat

*This document has been prepared under the Secretariat's own
responsibility and without prejudice to the positions of Members
and to their rights and obligations under the WTO*

1. This note summarizes the issues raised and the points made by delegations in the Council for TRIPS in regard to the relationship between the TRIPS Agreement and the Convention on Biological Diversity. It has been prepared in response to the request made during the TRIPS Council meeting of 5-7 March 2002¹ that the Secretariat prepare short papers on, *inter alia*, the agenda items related to review of the provisions of Article 27.3(b), the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore, summarizing the relevant material presented to the TRIPS Council, whether in written or oral form, and listing all the relevant documentation.
2. Up until this year, the discussion in the TRIPS Council on these three matters has taken place in the context of the review of the provisions of Article 27.3(b) and, to a much lesser extent, in the context of the review of Article 71.1. This note seeks to summarize those parts of this work which relate more specifically to the relationship between the TRIPS Agreement and the CBD. To avoid undue duplication, cross-references to the two other notes have been made in certain places. In accordance with the mandate given to the Secretariat, the note only contains issues raised and points made by delegations in the Council for TRIPS and does not cover the documentation of the Committee on Trade and Environment and of the General Council, unless the relevant paper has also been circulated as a Council for TRIPS document.
3. It is emphasized that this note is an attempt to summarize the work done so far. By its very nature, it cannot include a full reflection of all the interventions made and documents submitted. It is structured around the issues raised rather than the positions of individual Members. Therefore any reader wishing to appreciate fully the position of a particular Member should consult the statements made and any papers submitted by that Member. As requested, such documentation is listed in the Annex to this note. It is also referred to in the footnotes.
4. This note is divided into three major sections. The first concerns general views on the relationship between the TRIPS Agreement and the CBD, the second concerns patentability of genetic

¹ IP/C/M/35, paragraph 226.

resources and the CBD, and the third concerns the TRIPS Agreement and prior informed consent/benefit sharing. There is also a final section which provides information on national legislation, practices and experiences with respect to this agenda item.

I. GENERAL VIEWS ON THE RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CBD

5. Two general issues concerning the overall relationship between the TRIPS Agreement and the CBD that have been raised in the discussion are:

- whether or not there is conflict between the TRIPS Agreement and the CBD;
- whether something needs to be done, at least on the TRIPS side, to ensure that the two instruments are applied in a non-conflicting and mutually supportive way, and if so, what.

6. With regard to these two questions, the views expressed appear to fall into three broad categories:

- there is inherent conflict between the two instruments, and the TRIPS Agreement needs to be amended to remove such conflict²;
- there is no conflict between the two Agreements and governments can implement the two in a mutually supportive way through national measures;
- there is no inherent conflict but there is or could be a potential for conflict depending on the way that the Agreements are implemented, and there is a need for, or at least a case for, international action to ensure that the two Agreements are implemented in a mutually supportive manner.

7. Two main reasons have been put forward for the view that there is an **inherent conflict** between the TRIPS Agreement and the CBD:

- the TRIPS Agreement, by requiring that certain genetic material be patentable or protected by *sui generis* plant variety rights and by not preventing the patenting of other genetic material, provides for the appropriation of such genetic resources by private parties in a way that is inconsistent with the sovereign rights of countries over their genetic resources as provided for in the CBD³;
- the TRIPS Agreement provides for the patenting or other intellectual property protection of genetic material without ensuring that the provisions of the CBD, including those relating to prior informed consent and benefit sharing, are respected.⁴

Similar points have been made about the relationship between the TRIPS Agreement and the provisions of the CBD relating to the traditional knowledge of indigenous peoples and local communities.

8. The proponents of this view have suggested that Article 27:3(b) of the TRIPS Agreement should be amended so as to oblige all Members to make life forms and parts thereof non-patentable.

² India, IP/C/M/25, para. 89, IP/C/M/24, para. 81, IP/C/W/196, IP/C/W/195; Kenya, IP/C/M/28, para. 144, IP/C/W/163; Mauritius on behalf of the African Group, IP/C/W/206; Zambia, IP/C/M/28, para. 147.

³ Kenya, on behalf of the African Group, IP/C/W/163.

⁴ Kenya, IP/C/M/28, para. 144.

It has been suggested that, if this was not possible, at least patents for those inventions based on traditional or indigenous knowledge and essentially derived products and processes should be excluded.⁵ In addition there has been a suggestion that patents inconsistent with Article 15 of the CBD not be granted and that such an obligation be incorporated into the TRIPS Agreement.⁶

9. The following are the main reasons that have been put forward for the view that there is **no conflict** between the TRIPS Agreement and the CBD and little or no likelihood of a conflict in practical implementation:

- the TRIPS Agreement and the CBD have different objects and purposes and deal with different subject-matter⁷;
- the granting of patent rights over inventions that use genetic material does not prevent compliance with the provisions of the CBD regarding the sovereign right of countries over their genetic resources, prior informed consent and benefit sharing⁸;
- no specific examples of conflict have been cited.⁹

10. The proponents of this view believe that no change is required to either Agreement to accommodate the implementation of the other and that implementation of each should be pursued in separate frameworks. The view has been expressed that, in fact, implementation of the TRIPS Agreement is supportive of measures that would implement the obligations of the CBD most effectively: for example, the disclosure requirements of the patent system and the control over production and distribution given to patent owners and their licensees can facilitate the sharing of technology, the avoidance of anti-competitive secrecy agreements among commercial operators and the implementation of bio-safety rules; patents can also be instrumental in the sharing of benefits and the conservation of biological diversity based on voluntary contracts.¹⁰

11. In support of the **third category of views**, namely that, while there may be no inherent conflict between the two Agreements, there is considerable interaction between them¹¹ and a need, or at least a case, for enhanced international action to ensure that the two Agreements are implemented in a mutually supportive manner, it has been said that there is considerable interaction and overlap between the subject-matter of the two Agreements.¹² Some holding this view have said that there is a potential for conflict depending on the way the Agreements are implemented at the international and national levels.¹³ The view has also been expressed that what is more important than considering whether there is potential for conflict is to consider how the TRIPS Agreement could be implemented in a way supportive of the CBD.¹⁴

12. It has been suggested by some who take this view that, while maintaining the existing exceptions provided for in Article 27.3(b), the TRIPS Agreement should be amended to incorporate

⁵ India, IP/C/M/25, para. 70.

⁶ India, IP/C/W/196.

⁷ EC, IP/C/M/30, para. 143, IP/C/W/254; Japan, IP/C/M/26, para. 77, IP/C/M/25, para. 93, IP/C/W/236; Norway, IP/C/M/32, para. 125, IP/C/W/293; United States, IP/C/W/209, IP/C/W/162.

⁸ EC, IP/C/W/254, IP/C/M/30, para. 143.

⁹ United States, IP/C/W/162, IP/C/M/29, para. 181.

¹⁰ EC, IP/C/W/254, IP/C/M/30, para. 143; Korea, IP/C/M/28, para. 164; Switzerland, IP/C/W/284, IP/C/M/29, para. 176; United States, IP/C/W/257, IP/C/M/30, para. 154.

¹¹ EC, IP/C/W/254.

¹² Australia, IP/C/W/310; Czech Republic, IP/C/M/33, para. 126; EC, IP/C/M/35, para. 233; Japan, IP/C/M/32, para. 142; Norway, IP/C/M/32, para. 125, IP/C/W/293.

¹³ Brazil, IP/C/M/29, paras. 146 and 148, IP/C/M/28, para. 135, IP/C/M/27, para. 122; India, IP/C/M/30, para. 169, IP/C/M/33, para. 124; Indonesia, IP/C/M/32, para. 135; Norway, IP/C/M/32, para. 125, IP/C/W/293; Venezuela, IP/C/M/28, para. 165, IP/C/M/32, para. 136.

¹⁴ China, IP/C/M/35, para. 248.

certain requirements of the CBD.¹⁵ In particular, a suggestion has been made that patent applicants should be required to disclose the origin of any genetic material or traditional knowledge used in inventions and to demonstrate that they have obtained prior informed consent from the competent authority in the country of origin and entered into appropriate benefit-sharing arrangements.¹⁶ It has also been suggested that work on these ideas should be pursued in WIPO, CBD and FAO and, where and when relevant, in the TRIPS context.¹⁷

13. The issue of what can be learnt about the relationship between the TRIPS Agreement and the CBD from **the way in which the CBD refers to intellectual property matters and other international agreements** has also been discussed:

- one view is that Article 16.5 of the CBD itself acknowledges a conflict between the objectives of protecting IPRs and those of the conservation of biological diversity when it states that "[t]he Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives"¹⁸;
- another view has been that the mere fact that the CBD refers to the possibility of conflict does not mean that one exists.¹⁹ Moreover, the CBD itself recognizes, in its Article 16.2, the need for adequate and effective protection of IPRs. This demonstrates that the two instruments are not in conflict.²⁰ Further, it has been said that another reason why it would be difficult to imagine a conflict is that Article 22.1 of the CBD states that "provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause serious damage or threat to biological diversity".²¹

II. PATENTABILITY OF GENETIC MATERIALS AND THE CBD

14. As indicated in the previous section, one view that has been expressed about the relationship between the TRIPS Agreement and the CBD is that allowing patents to be granted in respect of genetic material is in itself inconsistent with the CBD because they limit access to such genetic material and can conflict with the sovereign rights of countries over their genetic resources.²²

15. It has also been said that problems of consistency with the CBD can arise more particularly where Members do not follow closely enough the **criteria for patentability** laid down in the TRIPS Agreement, namely those of novelty, inventive step (or non-obviousness) and industrial applicability (or usefulness) and grant over-broad patents.²³ In this regard, concern has been expressed about:

¹⁵ Brazil, IP/C/M/29, paras. 146, 148 and 234; IP/C/M/28, para. 135, IP/C/M/27, para. 122; Ecuador, IP/C/M/25, para. 87; India, IP/C/M/30, para. 169, IP/C/W/198; Indonesia, IP/C/M/32, para. 135; Kenya, IP/C/M/28, para. 144, Kenya on behalf of the African Group, IP/C/W/163; Mauritius on behalf of the African Group, IP/C/W/206; Norway, IP/C/M/32, para. 125, IP/C/W/293; Thailand, IP/C/M/25, para. 78; Turkey, IP/C/M/27, para. 132; Venezuela, IP/C/M/32, para. 136, IP/C/M/28, para. 165.

¹⁶ India, IP/C/M/24, para. 81, IP/C/W/195; Brazil, IP/C/M/33, para. 121, IP/C/M/32, para. 128, IP/C/W/228.

¹⁷ EC, IP/C/W/254.

¹⁸ Brazil, IP/C/M/26, para. 62.

¹⁹ United States, IP/C/M/29, para. 193.

²⁰ United States, IP/C/M/29, para. 193.

²¹ United States, IP/C/W/209.

²² Kenya, IP/C/W/163.

²³ Brazil, IP/C/W/228.

- the granting of patents covering genetic material in its natural state. A concern has been expressed that the TRIPS obligation to provide patent protection for micro-organisms could mean the patenting of a range of genetic materials in their natural state.²⁴ It has been argued that some Members define inventions to include discovery of naturally occurring matter and that this has led to patents on life forms found in their natural state²⁵;
- the granting of patents in respect of genetic material that has been merely isolated from nature and not otherwise modified. In this connection, the view has been expressed that for a micro-organism to be patentable in a way that would avoid conflict with the CBD, it should have undergone some genetic modification at the hands of man.²⁶

16. In response, it has been said that:

- the granting of patents on inventions which use genetic resources does not stand in the way of the fulfilment of the provisions of the CBD relating to the sovereign right of countries over access to genetic resources in their territories and prior informed consent as a condition of such access²⁷;
- holding a patent on isolated or modified genetic materials does not amount to ownership of genetic materials themselves, nor does it provide property rights with regard to the source from which the original material was obtained.²⁸ A patent on an isolated, identified and modified gene provides the patentee only with the ability to prevent others from producing, marketing and using the modified gene. The source from which the gene was taken would be unaffected by the patent²⁹;
- life forms in their natural state would not satisfy the criteria for patentability in the TRIPS Agreement. However, if the subject-matter of a patent has involved sufficient human intervention, such as production by means of a technical process or isolation or purification, and if the isolated or purified subject is not of a previously recognized existence, then it is capable of constituting an invention³⁰;
- when the criteria for patentability are properly applied, most problems arising in this context would be avoided.³¹ Occasions do arise where patents are granted for inventions that do not fully meet the tests for patentability set out in the TRIPS Agreement, notably because of inadequate information available to the patent-examiner. The point has been made that, in such circumstances, the patent system provides means by which such patents can be successfully opposed or revoked.³²

17. In response, it has been said that examining the very numerous patent applications and grants to check on whether inappropriate patents are being applied for or granted is a burdensome process, especially for developing countries. Moreover, legal procedures for seeking revocation of such patents are expensive.³³ It has been suggested that one way of reducing such burdens and facilitating

²⁴ Kenya, IP/C/M/28, para. 141; Peru, IP/C/M/29, para. 175.

²⁵ Kenya, IP/C/M/28, para. 141.

²⁶ Brazil, IP/C/W/228.

²⁷ EC, IP/C/W/254, IP/C/M/30, para. 143.

²⁸ EC, IP/C/W/162; United States, IP/C/W/209, IP/C/M/25, para. 71.

²⁹ United States, IP/C/W/162.

³⁰ EC, IP/C/W/254; Japan, IP/C/W/236, IP/C/M/29, para. 151.

³¹ Switzerland, IP/C/M/30, para. 164.

³² EC, IP/C/W/254; Japan, IP/C/M/29, para. 157; Switzerland, IP/C/W/284; United States, IP/C/W/209.

³³ Brazil, IP/C/M/28, para. 135; India, IP/C/M/28, para. 126; Pakistan, IP/C/M/28, para. 157.

the invocation of opposition/revocation procedures would be by requiring patent applicants to disclose the origin of any genetic resources used in their inventions. This would facilitate the monitoring by source countries of potentially inappropriate patent applications and grants.³⁴ The discussion that has taken place regarding this proposal is more fully set out in Section III below.

18. Concern has also been expressed that the grant of **overly broad patents** could impede access to and use of genetic resources in a way which gives rise to questions of compatibility with the CBD.³⁵ A related concern has been expressed about **patent rights over genetic resources that restrict research** by third parties.³⁶

19. The summary note on the review of the provisions of Article 27.3(b) provides further details of the discussion on the above points. In addition, in the discussions in the TRIPS Council, some points similar to those outlined above in relation to genetic resources have also been made in regard to traditional knowledge, having regard *inter alia* to the provisions of the CBD on the traditional knowledge of indigenous peoples and local communities. This discussion is set out in the Secretariat summary note relating to the protection of traditional knowledge and folklore.

III. THE TRIPS AGREEMENT AND PRIOR INFORMED CONSENT/BENEFIT SHARING

20. As indicated in Section I of this paper, concern has been expressed that the TRIPS Agreement allows the granting of patents for inventions that use genetic material without requiring that the provisions of the CBD in relation to prior informed consent and benefit sharing are respected. It has therefore been suggested that the TRIPS Agreement should be amended so as to require, or to enable, WTO Members to require that patent applicants disclose, as a condition to patentability: (a) the source of any genetic material used in a claimed invention; (b) any related traditional knowledge used in the invention; (c) evidence of prior informed consent from the competent authority in the country of origin of the genetic material; and (d) evidence of fair and equitable benefit sharing.³⁷ It has been suggested that such provisions could be incorporated into the TRIPS Agreement by amending Article 27.3(b)³⁷ or Article 29.³⁸

21. In response, the view has been expressed that such a provision is neither necessary nor desirable for implementing the prior informed consent and benefit-sharing provisions of the CBD. The point has been made that intellectual property rights do not aim to regulate the access and use of genetic resources, to regulate the terms and conditions for bio-prospecting or the commercialization of IPR-protected goods and services.³⁹ It has been said that this could best be done through contracts between the authorities competent for granting access to genetic resources and any related traditional knowledge and those wishing to make use of such resources and knowledge. In accordance with the CBD, countries could incorporate in their national legislation requirements for the conclusion of such contracts. It has been suggested that, to be effective, such contracts should spell out in detail the terms and conditions under which access and use is granted, including any requirements for joint research and development or for the transfer of technology that might result from the use of genetic resources and traditional knowledge to which access is to be granted. For instance, those seeking access to genetic resources for research and development could be required to share the benefits of any patents that might be granted for inventions developed from those genetic resources, including by providing access to the technology. Questions of jurisdiction of courts and conditions required to be included in contracts with third parties licensed to make use of genetic resources or traditional

³⁴ Brazil, IP/C/M/33, para. 121, IP/C/M/32, para. 128, IP/C/W/228; India, IP/C/M/29, para. 165, IP/C/W/195.

³⁵ Brazil, IP/C/W/228, IP/C/M/29, para. 146; India, IP/C/M/28, para. 126.

³⁶ Kenya, IP/C/M/28, para. 141; Mauritius on behalf of the African Group, IP/C/W/206.

³⁷ Brazil, IP/C/W/228, IP/C/M/32, para. 128, IP/C/M/33, para. 121.

³⁸ India, IP/C/W/195, IP/C/M/24, para. 81.

³⁹ EC, IP/C/W/254.

knowledge obtained would have to be spelled out. Criminal and/or civil remedies could be provided for in the event of a breach of obligations on either side and contracts can be litigated in the specified jurisdiction and judgements enforced around the world under international agreements regarding the recognition of judgements.⁴⁰

22. It has also been said that such a system would be flexible enough to take into account that the economic value of inventions resulting from the exploitation of the biological resource can be highly variable and may be largely attributable to the inventive efforts of the inventor and the commercialization efforts of the patent owner, not to the biological resource as such.⁴¹ Moreover it could also recognize that, where genetic resources can be obtained from a number of sources, the party seeking access would be likely to seek the resources from the territory that provides the most favourable terms. The system could thus help in finding a balance between the value attributable to the genetic resources and that attributable to the efforts of the inventors and developers.⁴²

23. It has also been said that the benefit-sharing provisions of the CBD can be implemented through governmental fund-granting activities.⁴³ Attention has been drawn to the financial mechanism provided for under Articles 20 and 21 of the CBD.⁴⁴

24. In response, it has been said that reliance on a system of voluntary contracts has a number of significant drawbacks from the perspective of developing countries:

- it does not address the situation where bio-prospecting and use of genetic resources and traditional knowledge might take place without the authorization of the competent authority in the country of origin and therefore without the conclusion of any contract.⁴⁵ While such actions might be illegal under the law of the country of origin, there might be little that could be done under that law once the genetic material and traditional knowledge is being used outside that jurisdiction. If voluntary contracts were a sufficient means of ensuring respect of the rights of the country or community of origin of genetic material/traditional knowledge, why would a similar logic not also apply in respect of the protection of intellectual property and specific IP legislation that applies even in the absence of contracts not be considered necessary⁴⁶;
- it cannot be assumed that the two parties to such a contract would be in a position to negotiate it and defend it on equal terms.⁴⁷

25. It has been argued, on the other hand, that the proposed disclosure requirement would have the following advantages:

- it would help provide a predictable environment for governments, investors, traditional communities and researchers and would lead to more biotechnological R&D in developing countries⁴⁸;

⁴⁰ United States, IP/C/W/257.

⁴¹ Japan, IP/C/M/29, para. 156, IP/C/W/236.

⁴² Japan, IP/C/M/29, para. 156, IP/C/W/236; Thailand, IP/C/M/29, para. 174; United States, IP/C/W/257.

⁴³ Japan, IP/C/W/236.

⁴⁴ United States, IP/C/W/257.

⁴⁵ Peru, IP/C/M/35, para. 236, IP/C/M/32, para. 133.

⁴⁶ Brazil, IP/C/M/32, para. 128.

⁴⁷ Pakistan, IP/C/M/28, para. 158.

⁴⁸ Brazil, IP/C/W/228.

- it would facilitate the conclusion of contracts, such as material transfer agreements for the transfer of biological materials and information transfer agreements for the transfer of traditional knowledge⁴⁹;
- several countries have already established such requirements in their national legislation as a means of implementing the CBD and there would be legal certainty if the TRIPS Agreement was amended accordingly⁵⁰;
- incorporation of such an obligation in the TRIPS Agreement and its enforcement through the WTO dispute settlement system would provide a mechanism to help ensure compliance with the prior informed consent/benefit rules of the CBD.⁵¹

26. In response, the following points have been made:

- the additional proposed requirements on patent applicants would be unnecessarily burdensome.⁵² Indeed, such a system could be a legal and administrative nightmare as origin is not easy to determine.⁵³ It would result in increasing the costs of acquiring patents and be disadvantageous to inventors, including to those in developing countries. It could also encourage inventors to keep their inventions secret rather than apply for patents⁵⁴;
- for the above reasons, such a proposal could not be relied upon to ensure benefit sharing;
- contracts could include requirements on applicants to disclose the contract in any patent application filed that claims an invention developed through the use of the genetic resources or traditional knowledge obtained⁵⁵;
- while it is possible that a few individuals could ignore legal requirements and obtain samples of genetic material without entering into an access agreement with the appropriate party, in the same way that some individuals counterfeit trademarks or pirate copyright works, this does not negate the value of a contractual system that would apply to the vast majority of those seeking access. Criminal provisions and/or civil remedies can be included in a country's laws in order to tackle such cases⁵⁶;
- neither the intellectual property system in general nor the TRIPS Agreement in particular are the appropriate instruments for regulating access to and use of genetic resources, the terms and conditions for bio-prospecting or the commercialization of IPR-protected goods and services⁵⁷;
- the proposed requirement is not consistent with the TRIPS Agreement. Existing disclosure rules in Article 29 are directly related to determining whether an invention meets the standards of patentability and to disclosing the technology for which patent

⁴⁹ India, IP/C/W/195.

⁵⁰ India, IP/C/M/29, para. 165, IP/C/W/198, IP/C/W/195.

⁵¹ Brazil, IP/C/W/228; India, IP/C/M/29, para. 160; Mauritius on behalf of the African Group, IP/C/W/206; Norway, IP/C/M/35, para. 237, IP/C/W/283.

⁵² Japan, IP/C/M/32, para. 142; Korea, IP/C/M/32, para. 140.

⁵³ United States, IP/C/W/216, IP/C/W/209; Norway, IP/C/W/293.

⁵⁴ United States, IP/C/W/216.

⁵⁵ Japan, IP/C/M/29, para. 155; Korea, IP/C/M/30, para. 171; Thailand, IP/C/M/29, para. 174; United States, IP/C/M/30, para. 177.

⁵⁶ United States, IP/C/W/257.

⁵⁷ EC, IP/C/M/32, para. 129, IP/C/W/254

protection is being sought to enable others to reproduce it and learn from it.⁵⁸ Such a requirement would also be contrary to Article 62.1 of the Agreement which only provides for "reasonable procedures and formalities". This proposal might also conflict with Article 27.1 which provides for non-discrimination in patent availability between fields of technology.⁵⁹ Given all this, the proposed requirement would modify the balance of rights and obligations found in the TRIPS Agreement, both between interested parties and between WTO Members;

- the proposal goes beyond the CBD itself, in that the CBD leaves it to each country to establish its own system for controlling access to genetic resources and benefit sharing, without being prescriptive about how this should be done.⁶⁰

27. In response to these points, it has been said that the proposed requirements would not be more burdensome than any other under the existing patent application procedure.⁶¹ It has also been said that these requirements could be administered by national biodiversity authorities.⁶² Moreover they could be applied selectively, that is to say only in cases where a Member had reasonable grounds to suspect that national biodiversity legislation had been violated by a patent applicant.⁶³

28. Another reaction to the proposed disclosure requirement is a readiness to engage in a positive manner in a discussion on a stand-alone multilateral system and/or other solutions for disclosing and sharing information about the geographical origin of biological material relied upon in patent applications without affecting the TRIPS Agreement and whilst preserving the right to create a favourable intellectual property environment for biotechnology research.⁶⁴ Once such a system or solution is in place, attention could then be focused on examining how and to what extent it needed to be included in the TRIPS Agreement. It has been stressed that such a system could never on its own be a satisfactory guarantee of the sharing of benefits arising from the use of genetic resources and should be considered as complementary to the main legal instrument in this respect, i.e. the enforcement of a sound and effective national legislation for access, benefit sharing and the protection of traditional knowledge.⁶⁵

IV. INFORMATION ON NATIONAL LEGISLATION PRACTICES AND EXPERIENCES

29. Four Members have made submissions with regard to their national legislation, practices and experiences in the area of access to genetic resources and benefit sharing. These are Australia, India, Peru and the United States.⁶⁶

⁵⁸ Japan, IP/C/M/29, para. 155; United States, IP/C/M/30, para. 177.

⁵⁹ Japan, IP/C/M/29, para. 155.

⁶⁰ EC, IP/C/W/254; Japan, IP/C/W/236; Singapore, JOB(00)/7853, IP/C/M/29, para. 166.

⁶¹ Brazil, IP/C/W/228; India, IP/C/M/29, paras. 165 and 166; Thailand, IP/C/M/29, para. 173.

⁶² India, IP/C/W/198, IP/C/M/29, para. 166.

⁶³ Brazil, IP/C/W/228; Thailand, IP/C/M/29, para. 173.

⁶⁴ EC, IP/C/M/35, para. 234, IP/C/M/30, paras. 144 and 146.

⁶⁵ EC, IP/C/M/30, para. 144; Australia, IP/C/W/310.

⁶⁶ Australia, IP/C/W/310; India, IP/C/W/198; Peru, IP/C/W/296; United States, IP/C/W/341.

ANNEX

DOCUMENTS OF THE TRIPS COUNCIL WITH RESPECT TO THE REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B), THE RELATIONSHIP BETWEEN TRIPS AND THE CONVENTION ON BIOLOGICAL DIVERSITY AND THE PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

The TRIPS Council held 15 formal meetings during the period January 1999 to March 2002. The reports on these meetings (IP/C/M/21-35) reflect the work done so far in the TRIPS Council pursuant to *inter alia* the mandated review of the provisions of Article 27.3(b). The substantive discussions in the TRIPS Council on these issues have been recorded in the reports of the meetings held from August 1999 to March 2002 (IP/C/M/24-35).

Other documents that have been made available include:

- Members' submissions relating to specific issues. Over the period December 1998 to October 2001, 22 papers have been submitted by Members or groups of Members (List B).
- Information on national legislation, practices and experiences submitted by four Members; and the responses to the questionnaire on Article 27.3(b) from 23 Members (List C).
- Information provided on work in intergovernmental organizations (List D).
- Notes by the Secretariat on relevant issues under discussion in the TRIPS Council (List E).

LIST A – Records of the work of the TRIPS Council

	IP/C/M/21-35	Minutes of the TRIPS Council Meetings	22 January 1999 – 22 March 2002
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LIST B - Members' submissions relating to the agenda items

2001

Australia	IP/C/W/310	Communication from Australia: Review of Article 27.3(b)	2 October 2001
EC	IP/C/W/254	Review of the Provisions of Article 27.3(b) of the TRIPS Agreement: Communication from the European Communities and their Member States	13 June 2001
Norway	IP/C/W/293	Communication from Norway: Review of Article 27.3(b) of the TRIPS Agreement: The Relationship between the TRIPS Agreement and the Convention on Biological Diversity	29 June 2001
Switzerland	IP/C/W/284	Communication from Switzerland: Review of Article 27.3(b): The View of Switzerland	15 June 2001
United States	IP/C/W/257	Communication from the United States - Views of the United States on the Relationship between the Convention on Biological Diversity and the TRIPS Agreement	13 June 2001

2000

Brazil	IP/C/W/228	Review of Article 27.3(b) – Communication from Brazil	24 November 2000
India	IP/C/W/195	Communication from India	12 July 2000
India	IP/C/W/196	Communication from India	12 July 2000
India	JOB(00)/6091	Non-paper by India	5 October 2000
Japan	IP/C/W/236	Review of the provisions of Article 27.3(b) - Japan's view	11 December 2000
Mauritius	IP/C/W/206	Communication from Mauritius on behalf of the African Group	20 September 2000
Singapore	JOB(00)/7853	Non-paper by Singapore - Article 27.3(b)	11 December 2000
United States	IP/C/W/209	Review of the Provisions of Article 27.3(b) - Further Views of the United States – Communication from the United States	3 October 2000

1999

Andean Group	IP/C/W/165	Review of the Provisions of Article 27.3(b) - Proposal on the Intellectual Property Rights Relating to the Traditional Knowledge of Local and Indigenous Communities – Communication from Bolivia, Colombia, Ecuador, Nicaragua and Peru	3 November 1999
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Canada, EC, Japan and USA	IP/C/W/126	Review of the Provisions of Article 27.3(b) - Communication from Canada, the European Communities, Japan and the United States	5 February 1999
Brazil	IP/C/W/164	Review of the Provisions of Article 27.3(b) - Communication from Brazil	29 October 1999
Cuba, Honduras, Paraguay and Venezuela	IP/C/W/166	Review of Implementation of the Agreement under Article 71.1: Proposal on the Intellectual Property Rights of the Traditional Knowledge of Local and Indigenous Communities	5 November 1999
India	IP/C/W/161	Review of the Provisions of Article 27.3(b) - Communication from India	3 November 1999
Kenya	IP/C/W/163	Review of the Provisions of Article 27.3(b) – Communication from Kenya on behalf of the African Group	8 November 1999
Norway	IP/C/W/167	Review of the Provisions of Article 27.3(b) - Communication from Norway	3 November 1999
United States	IP/C/W/162	Review of the Provisions of Article 27.3(b) – Communication from the United States	29 October 1999
1998			
Mexico	Job No. 6957	Non-paper from Mexico: Application of Article 27.3(b)	8 December 1998

LIST C - Information on national legislation, practices and experiences

2002			
United States	IP/C/W/341	Technology transfer practices of the US National Cancer Institute's departmental therapeutics programme – Communication from the United States	25 March 2002
2001			
Australia	IP/C/W/310	Communication from Australia: Review of Article 27.3(b)	2 October 2001
Czech Republic	IP/C/W/125/Add.8/Suppl.1	Review of the Provisions of Article 27.3(b) - Information from Members - Supplement	18 September 2001
Estonia	IP/C/W/125/Add.20	Review of the Provisions of Article 27.3(b) - Information from Members – Addendum	2 July 2001
Hong Kong, China	IP/C/W/125/Add.22	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 August 2001
Thailand	IP/C/W/125/Add.21	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 July 2001
Peru	IP/C/W/246	Communication from Peru: Peru's Experience of the Protection of Traditional Knowledge and Access to Genetic Resources	14 March 2001

2000			
Iceland	IP/C/W/125/Add.19	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	17 July 2000
India	IP/C/W/198	Protection of Biodiversity and Traditional Knowledge – The Indian Experience	14 July 2000
1999			
Australia	IP/C/W/125/Add.13	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 March 1999
Bulgaria - (Republic of)	IP/C/W/125	Review of the Provisions of Article 27.3(b) - Information from Members	3 February 1999
Canada	IP/C/W/125/Add.12	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	12 March 1999
Czech Republic	IP/C/W/125/Add.8	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999
European Communities	IP/C/W/125/Add.4	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 February 1999
Hungary	IP/C/W/125/Add.1	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999
Japan	IP/C/W/125/Add.7	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	12 March 1999
Korea (Republic of)	IP/C/W/125/Add.9	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999
Morocco	IP/C/W/125/Add.14	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	20 April 1999
New Zealand	IP/C/W/125/Add.2	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	12 February 1999
Norway	IP/C/W/125/Add.17	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	19 May 1999
Poland	IP/C/W/125/Add.11	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	12 March 1999
Romania	IP/C/W/125/Add.6	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999
Slovak Republic	IP/C/W/125/Add.18	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	27 July 1999
Slovenia	IP/C/W/125/Add.10	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999
South Africa	IP/C/W/125/Add 16/Corr.1	Review of the Provisions of Article 27.3(b) - Information from Members - Corrigendum	25 May 1999
South Africa	IP/C/W/125/Add.16	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	21 April 1999
Switzerland	IP/C/W/125/Add.15	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	13 April 1999
United States	IP/C/W/125/Add.5	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	20 April 1999
Zambia	IP/C/W/125/Add.3	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 February 1999

LIST D - Information on the work of intergovernmental organizations			
2002			
UPOV	IP/C/W/347/Add.3	Review of the Provisions of Article 27.3(b) - Relationship between the TRIPS Agreement and the Convention on Biological Diversity and Protection of Traditional Knowledge and Folklore	7 June 2002
UNCTAD	IP/C/W/347/Add.2	Review of the Provisions of Article 27.3(b) - Relationship between the TRIPS Agreement and the Convention on Biological Diversity and Protection of Traditional Knowledge and Folklore	7 June 2002
CBD	IP/C/W/347/Add.1	Review of the Provisions of Article 27.3(b) - Relationship between the TRIPS Agreement and the Convention on Biological Diversity and Protection of Traditional Knowledge and folklore	7 June 2002
FAO	IP/C/W/347	Review of the Provisions of Article 27.3(b) - Relationship between the TRIPS Agreement and the Convention on Biological Diversity and Protection of Traditional Knowledge and Folklore	7 June 2002
2001			
WIPO	IP/C/W/242	Statement by the World Intellectual Property Organization (WIPO) on intellectual property, biodiversity and traditional knowledge	6 February 2001
2000			
UNCTAD	IP/C/W/230	Document prepared by the UNCTAD Secretariat for the expert meeting on systems and national experiences for protecting traditional knowledge, innovations and practices which took place from 30 October to 1 November 2000 in Geneva: Outcome of the expert meeting	14 December 2000
International Bureau of WIPO	IP/C/W/218	Document prepared by the International Bureau of WIPO for the meeting on intellectual property and genetic resources, which took place on 17 and 18 April 2000 in Geneva: Intellectual Property and Genetic Resources – An Overview	18 October 2000
International Bureau of WIPO	IP/C/W/217	Document prepared by the International Bureau of WIPO for the round table on Intellectual Property and traditional knowledge, which took place on 1 and 2 November 1999 in Geneva: Protection of Traditional Knowledge: A Global Intellectual Property Issue	18 October 2000
1999			
CBD	IP/C/W/130/Add.1	Review of the Provisions of Article 27.3(b) – Information from Intergovernmental Organizations - Addendum	16 March 1999
FAO	IP/C/W/130/Add.2	Review of the Provisions of Article 27.3(b) – Information from Intergovernmental Organizations - Addendum	12 April 1999
UPOV	IP/C/W/130	Review of the Provisions of Article 27.3(b) – Information from Intergovernmental Organizations	17 February 1999

LIST E – Notes by the Secretariat		
2001		
Job No. 2689 IP/C/W/273	Review of the Provisions of Article 27.3(b): Synoptic Tables of Information provided by Members – Informal Note by the Secretariat	5 June 2001
2000		
JOB(00)/7517	The Relationship between the Convention on Biological Diversity and the TRIPS Agreement: Checklist of Points Made – Note by the Secretariat	23 November 2000
Job no. 2627	UPOV-WIPO-WTO joint symposium on the protection of plant varieties under Article 27.3(b) of the TRIPS Agreement: Texts of presentations	7 May 1999
1998		
IP/C/W/122	Illustrative Questions: Review of the Provisions of Article 27.3(b)	22 December 1998