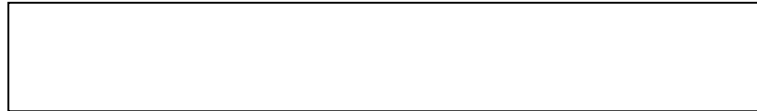


**Council for Trade-Related Aspects  
of Intellectual Property Rights**

**REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)  
SUMMARY OF ISSUES RAISED AND POINTS MADE**

Note by the Secretariat

RevENERAL



	ISSUES .....	2
B.	SCOPE OF EXCEPTIONS TO PATENTABILITY IN ARTICLE 27.3(B) .....	N3()-5.9C5.8(.5.9(.)). 8

**I.**

contribute to solving problems in both developed and developing countries in areas such as agriculture, nutrition, health and the environment;<sup>1</sup>

- for this purpose to be adequately met, it is necessary to have international rules for the protection of plant and animal inventions rather than relying on differing national rules;<sup>2</sup>
- patent protection for plant and animal inventions facilitates the transfer of technology and the dissemination of the state-of-the-art research on plant and animal inventions by providing an important incentive for the private sector to conclude licensing agreements and by discouraging confidentiality and trade secret arrangements<sup>3</sup> and, instead, requiring the publication of patent applications on a global basis;<sup>4</sup>
- patent disclosure requirements and the control over exploitation given to the patent owner can facilitate the operation of laws designed to protect public morality, health and the environment.<sup>5</sup>

7. Another view that has been expressed is that patents on life forms give rise to a range of

- the exceptions to patentability authorized by Article 27.3(b) are unnecessary<sup>8</sup> and patent protection should be extended to all patentable inventions of plants and animals;<sup>9</sup>
- Article 27.3(b) should be maintained as it is,<sup>10</sup> with no lowering of the level of protection.<sup>11</sup> The provision is well-balanced, preserving Members' rights and flexibility to decide whether or not to exclude plants and animals from patentability in the light of their specific national interests and needs.<sup>12</sup> With regard to the process to be followed in the review, it has been suggested that this should primarily be one of information sharing on how Members have implemented Article 27.3(b) nationally;<sup>13</sup>
- retain the exceptions, but provide clarification or definitions of certain terms used in Article 27.3(b), especially with a view to clarify the differences between plants, animals and micro-organisms;<sup>14</sup>
- amend or clarify Article 27.3(b) to prohibit the patenting of all life forms, more specifically plants and animals, micro-organisms and all other living organisms and their parts, including genes as well as natural processes that produce plants, animals and other living organisms.<sup>15</sup> It has been argued that the review should provide for unqualified exceptions for exclusions from patentability, along the lines of the general and security exceptions in the other WTO agreements, that recognize the rights of Members to take measures in the public interest, including on ethical and

10. **Since 2002** reference has been made to the mandate contained in paragraphs 12 and 19 of the Doha Ministerial Declaration.<sup>20</sup> This broad mandate has been said to be a more appropriate basis for dealing with a wide array of issues raised in the review.<sup>21</sup> Reference has also been made to Article 7 and 8 of the TRIPS Agreement, the development dimension in the Doha Declaration contained in paragraph 19 and the objective of sustainable development contained in paragraph 6 and the recitals of the WTO Agreement.<sup>22</sup> The link between Article 27.3(b) and development has been said to be the central theme of debate in the context of the Doha Development Agenda.<sup>23</sup>

11. Concern has more particularly been expressed that the review of Article 27.3(b) of the TRIPS Agreement that started in 1999 has not yet been finalised. In order to finalise the review in a manner that would reflect a good overall balance for all Members, it has been proposed that areas of possible agreement could be identified. It has been suggested that these include the recognition:

- (a) of Members' right and freedom to determine and adopt appropriate regimes to protect plant varieties by an effective *sui generis* system, including non commercial use of plant varieties and the system of seed saving and exchange as well as selling among farmers;
- (b) that the TRIPS Agreement and the CBD should be implemented in a mutually supportive and consistent manner;
- (c) that the TRIPS Agreement, being a minimum standards agreement, does not prevent Members from protecting traditional knowledge;
- (d) of the importance of documentation of genetic resources and traditional knowledge to help better patent examination.<sup>24</sup>

12. It has also been suggested that in areas where a common understanding did not yet exist, further work was needed in the TRIPS Council, including on:

- (a) the proposal to eliminate patent availability for all life forms, including elimination of the current TRIPS obligation to patent micro-organisms and microbiological and non-biological processes for the production of plants and animals;<sup>25</sup>
- (b) recognition of the need to adopt definitions to clarify certain terms in Article 27.3(b);<sup>26</sup>

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<sup>20</sup> African Group, IP/C/W/404, p.1; Australia, IP/C/M/40, para. 134, IP/C/M/43, para. 44; Brazil, IP/C/M/40, para. 132; Canada, IP/C/M/40, para. 133; China, IP/C/M/43, para. 56; European Communities, IP/C/W/383, para. 1; India IP/C/M/40, para. 83, 129; Malaysia, IP/C/M/43, para. 40; New Zealand, IP/C/M/43, para. 45; Switzerland, IP/C/M/40, para. 69, IP/C/W/400/Rev.1, para.1; United States, IP/C/M/40, para. 131; Zimbabwe, IP/C/M/36/Add. 1, para. 200, IP/C/M/39, para. 111,112, IP/C/M/40, para. 80; China, Colombia, Cuba, Dominican Republic, Kenya, Peru, Venezuela, IP/C/M/40, para. 135; European Communities, IP/C/M/44 para. 28.

<sup>21</sup> European Communities, IP/C/W/383, para. 4.  
<sup>22/t</sup>

- (c) the protection of traditional knowledge;<sup>27</sup> and
- (d) the way to make the TRIPS Agreement and the CBD mutually supportive.<sup>28</sup>

13. As a way of moving forward it has been proposed that, where the views of delegations suggest a common understanding, the Council for TRIPS should agree upon a Decision and report the adoption of the Decision to the TNC. The Decision should become operational immediately. It has been stated that such a Decision would have to be worthwhile in terms of adequately addressing most

B. SCOPE OF EXCEPTIONS TO PATENTABILITY IN ARTICLE 27.3(B)

17. Issues have been raised regarding the scope of the exceptions, including the **definition of the terms** used, in Article 27.3(b). It has been argued that the absence of clear definitions could pose problems of legal uncertainty as regards the scope of patentability under Article 27.3(b),<sup>37</sup> and that it is necessary to define the terms at both the national and international level.<sup>38</sup> The difficulty to get WTO Members to agree on definitions should not deter the Council from developing precise definitions of certain terms.<sup>39</sup>

18. In response, the view has been expressed that it is difficult to get all WTO members to agree on definitions as decisions are made by consensus and the issues involved are complex. Doubt has been expressed whether the TRIPS Council should study and clarify the issue of micro-organisms, as, in case of a dispute, this would hand the interpretation of these definitions to the DSB, including the Appellate Body, and this would not be desirable.<sup>40</sup> It has further been argued that the absence of definitions at the international level affords Members flexibility in the use and interpretation of these terms,<sup>41</sup> whereas a clear definition of the term micro-organism is important at the national level, as this is the only form of living organisms for which Members are obliged to provide patent protection and which are widely used in the pharmaceutical, chemical and biotechnology industries.<sup>42</sup> It has also been said that the more important issue with respect to micro-organisms is whether or not the patentability criteria are met.<sup>43</sup> The view has also been expressed that the term "review" does not mean that WTO Members are under a duty to agree on an exhaustive definition of each and every term, but rather to see how different Members define and apply these terms.<sup>44</sup>

19. Regarding the question whether **WIPO or the WTO is the right forum** to discuss such definitions, it has been questioned whether the TRIPS Agreement could or should go into this amount of detail.<sup>45</sup> It has been stated that WIPO rather than the TRIPS Council is the right forum to agree on technical definitions, as they have more expertise.<sup>46</sup> In response, it has been pointed out that the WTO membership is more or less replicated in WIPO, and that with regard to technical expertise the WTO can enlist the services of experts at WIPO to arrive at specific definitions.<sup>47</sup> It has also been said that there is no intention on the part of Members advocating precise definitions to diminish or erode any flexibilities that Members have in respect of the meanings that they currently attribute to any of those terms,<sup>48</sup> as such flexibilities also provide protection against unilateral pressure to take on higher commitments than those in the TRIPS Agreement.<sup>49</sup> However, specific meanings could be agreed upon while preserving reasonable flexibilities.<sup>50</sup>

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<sup>37</sup> Brazil, IP/C/M/29 para. 146; Pakistan, IP/C/M/25 para. 88., Kenya, IP/C/M/28 para. 141-146; Mauritius on behalf of the African Group, IP/C/W/206; Zimbabwe, IP/C/M/36/Add.1 para. 201.

<sup>38</sup> Zimbabwe, IP/C/M/37/Add.1, para. 198.

<sup>39</sup> Zimbabwe, IP/C/M/37/Add.1, para. 197.

<sup>40</sup> Peru, IP/C/M/37/Add.1, para. 217.

<sup>41</sup> European Communities, IP/C/W/383, para. 20.

<sup>42</sup> European Communities, IP/C/W/383, para. 21.

<sup>43</sup> European Communities, IP/C/W/383, para. 21.

<sup>44</sup> European Communities, IP/C/W/383, para. 24.

<sup>45</sup> European Communities, IP/C/W/383, para. 18; United States, IP/C/M/37/Add.1, para. 210.

<sup>46</sup> European Communities, IP/C/M/37/Add.1, para. 200, IP/C/W/383, para. 19; United States, IP/C/M/37/Add.1, para. 210.

<sup>47</sup> Peru, IP/C/M/37/Add.1, para 217, Zimbabwe, IP/C/M/37/Add.1, para. 199.

<sup>48</sup> Zimbabwe, IP/C/M/37/Add.1, para. 199.

<sup>49</sup> Peru, IP/C/M/37/Add.1, para. 217.

<sup>50</sup> Zimbabwe, IP/C/M/37/Add.1, para. 199.

20. In regard to the **definition of plants and animals**, it has been suggested that it should be made clear that parts of plants and animals are excludable from patentable subject-matter.<sup>51</sup> In particular, it has been said that there are ambiguities about the meaning of "plants",<sup>52</sup> and that cells, cell lines, genes and genomes should be excluded.<sup>53</sup>

21. With regard to **micro-organisms**, the view has been expressed that there is no scientific or other rationale for distinguishing between plants and animals on the one hand and micro-organisms on the other. Both should not be patentable, since both are living things which can only be discovered and not invented.<sup>54</sup> The view has also been expressed that there is no consensus on the meaning of the term "micro-organism" in the scientific community.<sup>55</sup> For example, it has been argued that the scientific definition of micro-organisms only comprises bacteria, fungi, algae, protozoa and viruses<sup>56</sup> and it has been questioned whether biological material such as cell lines, enzymes, plasmids, cosmids and genes should qualify as micro-organisms.<sup>57</sup> It has also been said that there is no scientific basis for the distinction between plants, animals and micro-organisms.<sup>58</sup>

22. In response, the view has been expressed that the distinctions made in Article 27.3(b) are in accordance with the generally accepted scientific classification of organisms<sup>59</sup> and that the notion of categorising life-forms into plants, animals and micro-organisms is widely accepted in existing international agreements, including the CBD.<sup>60</sup> It has been said that the absence of a definition in the TRIPS Agreement of the term "micro-organism" reflects the fact that the term has not been defined by patent experts anywhere, not even in the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedures. It has also been said that the



appropriate to define the term "micro-organism",





remembered that Article 27.3 (b) is the result of a carefully negotiated balance.<sup>97</sup> The view has also been expressed that biological materials are research ingredients and that patents for these materials should be granted as long as the patentability requirements are met and the commercial exploitation of such living organisms does not go against public order.<sup>98</sup>

D. CONDITIONS OF PATENTABILITY IN ARTICLE 27.1 AND PLANT AND ANIMAL INVENTIONS

33. The way in which the basic criteria for patentability set out in Article 27.1, namely novelty, inventive step (or non-obviousness) and industrial ap

isolation of such matter, and that this has led to patents on life forms found in their natural state and on research materials.<sup>109</sup> It has been questioned whether the mere act of isolation of genetic material from its natural state would satisfy the test of non-obviousness or of the inventive step.<sup>110</sup> The view has been expressed that the negotiating history of the TRIPS Agreement shows that the negotiators were not able to agree that the task of isolating a bacterium would satisfy the inventiveness test.<sup>111</sup> It has also been said that, however costly it may be today to isolate a micro-organism, in many instances it may correspond better to a mere discovery than to an invention.<sup>112</sup> Members should be able to limit the grant of patents in respect of micro-organisms to those that had been transgenetically modified and satisfy the requirements of patentability.<sup>113</sup>

37. In response, it has been said that mere discoveries, not involving human intervention, are not considered patentable subject-matter.<sup>114</sup> Examples have been given to illustrate the point, relating to ores, natural phenomena, chemical substances or micro-organisms found in nature. Life-forms in their natural state would not satisfy the criteria for patentability in the TRIPS Agreement.<sup>115</sup> It has been elaborated that if, however, naturally occurring things, such as chemical substances or micro-organisms, have been first isolated artificially from their surroundings in nature they are capable of constituting an invention. It has also been said that the subject-matter of a patent has involved sufficient human intervention, such as isolation or purification, and if the isolated or purified subject-matter is not of a previously recognized existence, then it is considered an invention.<sup>116</sup> Plants, animals or micro-organisms and other genetic resources would have to be altered by the hand of man or produced by.6(id)-5.1pe3(e)-ieTc0. s

to the patent applicant.<sup>121</sup>

45. With regard to the **question of why plant varieties should be protected**, the point has been made that such protection allows development of new technological solutions in the field of agriculture.<sup>128</sup> It encourages the easy introduction of new varieties and ensures that breeders continue breeding effectively.<sup>129</sup> More particularly, the point has been made that improvements in agricultural biotechnology have resulted in the design of new plants through direct manipulation of the genome of a plant rather than reliance upon conventional plant breeding techniques that involve a trial and error process. Advances in the area include the development of new crops with higher productivity and yields and with disease resistance.<sup>130</sup> Further, it has been said that strengthening plant varieties protection ensures a more efficient agricultural sector.<sup>131</sup>

46. On the other hand, concerns have been expressed that the protection of plant varieties can have an adverse impact upon the fulfilment of the national goals of developing countries, in particular in regard to food security, health, rural development and equity for local communities whose traditional knowledge systems have produced staple varieties, including varieties that have medicinal and biodiversity value.<sup>132</sup> It has been suggested that plant variety protection could lead to excessive dependence on foreign commercial breeders, and that such persons could not always be relied upon.<sup>133</sup> Concern has also been expressed about the possible adverse implications for the cooperative relationships among neighbouring farmers that are common in developing countries and the difficulty of traditional farmers in having the capacity or education required to use the system to protect their own interests.<sup>134</sup> The view has further been expressed that although the TRIPS Agreement is not to apply to least-developed countries until 2006,<sup>135</sup> and 2016 with respect to pharmaceutical products, the imposition of patenting requirements on some least-developed countries is imminent through bilateral arrangements.<sup>136</sup>

47. With respect to the question as to whether provisions in the TRIPS Agreement relating to the protection of plant varieties strike the right **balance between right holders and other interests** that are involved, two views have been expressed:

- Article 27.3(b) provides a certain degree of flexibility to Members in deciding on the most effective means of *sui generis* protection for plant varieties and that the status quo should be maintained;







**to obtain rights** under a *sui generis*

have also been expressed about the way in which the issue of farmers' privilege is treated in UPOV 1991; these are summarized in paragraph C.61 below.

57. In regard to **the period of application of the rights**, the view has been expressed that this should be determined, but should be sufficient to allow breeders to recover costs and invest in new research.<sup>173</sup> In this regard, it has been suggested that the right holder should, for a period of at least 20 years from the date rights are granted, be entitled to prevent others from commercializing or taking steps to commercialize the protected variety without the authorization of the right holder. A period of 25 years should apply in relation to new varieties of trees and vines given that the development and commercialisation of such new varieties requires a lo

involved.<sup>185</sup> The view has also been expressed that the standards for patents might not necessarily be applicable, particularly for countries that have opted to create a *sui generis* system rather than relying upon patents or a combination of systems including patents.<sup>186</sup>

C. RELATIONSHIP BETWEEN THE TRIPS REQUIREMENT TO HAVE AN EFFECTIVE *SUI GENERIS* SYSTEM AND THE UPOV CONVENTION

61. Views have been expressed as to whether the systems of plant variety protection provided for under UPOV constitute effective *sui generis* systems for the purposes of Article 27.3(b). One view has been that, while it is recognized that the TRIPS Agreement does not specifically call for a UPOV model to be followed, UPOV does provide for an effective *sui generis* system as required by Article 27.3(b).<sup>187</sup> Several arguments have been made to support this view and in favour of widespread use of UPOV:

- the UPOV system is the most favourable for encouraging development of new plant varieties in all WTO Members' territories;<sup>188</sup>
- with respect to concerns that have been expressed about the impact of the UPOV system on farmers and plant breeders especially in developing countries, the UPOV system is flexible enough to allow Members to adequately address such concerns through, for example, the farmers' privilege and the breeders' exemption;<sup>189</sup>
- recognizing the difficulties associated with the creation and administration of *sui generis* systems for the protection of plant varieties, the most efficient and rapid way to implement Article 27.3(b) would be to rely on existing harmonised plant variety systems with possible adaptations to ensure special national needs;<sup>190</sup>
- lack of a uniform system like UPOV could reduce market access for small plant breeders and biotech developers because maintaining protection in other markets would be more time consuming and costly;<sup>191</sup>
- the uniformity provided by the UPOV system would facilitate trade in new plant varieties;<sup>192</sup>
- a growing number of countries have signed on to UPOV and the number of protected varieties under UPOV is increasing.<sup>193</sup>

62. In response, the view has been expressed that a reference to UPOV would not be appropriate,<sup>194</sup> for the following reasons:

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<sup>185</sup> Norway, IP/C/M/43, para. 51; IP/C/W/293.

<sup>186</sup> India, IP/C/M/29, para. 162, Thailand, IP/C/M/42, para. 115.

<sup>187</sup> European Communities, IP/C/M/25, para. 74; Japan, IP/C/W/236, IP/C/M/40, para. 98; Switzerland, IP/C/M/30, para. 166; United States, IP/C/W/162; Uruguay, IP/C/M/28, para. 132.

<sup>188</sup> United States, IP/C/M/30 para. 175.

<sup>189</sup> Japan IP/C/W/236; Switzerland, IP/C/M/32, para. 123; Norway, IP/C/M/43, para. 51.

<sup>190</sup> European Communities, IP/C/M/25, para. 74.

<sup>191</sup> United States, IP/C/M/37/Add.1, para. 210.

<sup>192</sup> United States, IP/C/M/37/Add.1, para. 210.

<sup>193</sup> European Communities, IP/C/M/37/Add.1, para. 212; Japan, IP/C/M/40, para. 98.

<sup>194</sup> Norway, IP/C/M/25, para. 76.

- Article 27.3(b) does not bind Members to use UPOV as a model in providing protection for plant varieties, although UPOV may be an important point of reference.<sup>195</sup> More particularly, Members are free to choose a model other than UPOV, such as those based on FAO's International Undertaking on Plant Genetic Resources or the CBD, if they so desire.<sup>196</sup> The appropriate and beneficial approach is to have systems of protection that can address the local realities and needs.<sup>197</sup>
- incorporation of a reference to UPOV into Article 27.3(b) could damage the delicate balance already established in that provision;<sup>198</sup>
- there is no authoritative interpretation as to whether UPOV satisfies the requirements contained in Article 27.3(b);<sup>199</sup>
- UPOV is premised on the protection of plant breeders in industrialized countries rather than the needs of users in developing countries, although the 1978 Act of UPOV allows the recognition of farmers' privilege to re-sow farm-saved seeds.<sup>200</sup>

63. In response, it has been said that the reason why a reference to UPOV does not appear in Article 27.3(b) is because of its limited geographic coverage at the time the TRIPS Agreement was being negotiated.<sup>201</sup> While there may be *sui generis* systems for the protection of plant varieties other than UPOV that meet the requirements of Article 27.3(b)<sup>202</sup> and may be equally effective<sup>203</sup>, such systems would have to be judged on their merits on a case by case basis.<sup>204</sup> It has also been said that Members may implement a minimum set of standards in order to meet their TRIPS obligations.<sup>205</sup>

64. Differing views have been expressed on the merits of the various UPOV conventions and their relationship to the TRIPS Agreement. In regard to **UPOV 1991**, one view has been that it achieves a proper balance of rights and obligations which work to the benefit of all countries and that UPOV 1991 provides the most appropriate system and level of protection.<sup>206</sup> In this regard, the point has been made that the 1991 Act of UPOV does not permit contracting parties to limit the eligibility for protection of varieties by species of plant. This means that newly developed varieties of species of plant that would not have been eligible for protection under the 1978 Act are now eligible for protection under the 1991 Act. However, under UPOV 1991, contracting parties can limit rights so as to permit farmers to save seeds harvested from their own plantings for replanting in subsequent years.<sup>207</sup> The point has also been made that most Members that responded to the questionnaire on the

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D. RELATIONSHIP BETWEEN *SUI GENERIS* PROTECTION OF PLANT VARIETIES AND TRADITIONAL KNOWLEDGE AND FARMERS' RIGHTS

67. The view has been expressed that laws and measures on the protection of plant varieties directly affect traditional knowledge and farmers' rights.<sup>221</sup> In this respect, it has been noted that staple or medicinal plants would not qualify for protection under UPOV given their long-standing existence, thus not protecting the traditional knowledge relating to their use.<sup>222</sup> The point has been made that such traditional knowledge has been recognized under a number of international instruments, such as the CBD, the FAO International Undertaking on Plant Genetic Resources, and the OAU model law.<sup>223</sup> The view has been expressed that systems for the protection of plant varieties

other hand can and should be implemented in a mutually supportive way.<sup>234</sup> The view has also been expressed that farmers' rights are part of a much broader issue and are appropriately being dealt with in other organisations, in particular the FAO.<sup>235</sup>

#### IV. TRANSFER OF TECHNOLOGY

70. In the work of the Council for TRIPS, the issue of the implications of patent protection in respect of life forms and *sui generis* plant variety protection for access to, and transfer and dissemination of, technology has been discussed. This discussion has taken place in a number of contexts, including in relation to developmental matters and the relationship between the TRIPS Agreement and the objectives and provisions of the CBD concerning access to and the transfer of technology. It has been recalled that Article 7 of the TRIPS Agreement includes the transfer and dissemination of technology as one of the basic objectives of the protection of intellectual property rights and the need for measures to effectively operationalize this has been referred to.<sup>236</sup> It has been said that access by the developing world to these important technologies, as well as their capacity to deal with the potential risks associated with these technologies remains limited. Agricultural technology and biotechnology in particular are therefore important issues to be tackled in the context of transfer of technology and capacity building.<sup>237</sup>

71. In the discussion, one view has been to put emphasis on the concern that intellectual property rights in respect of life forms and genetic material could impede access to, and raise the cost of technology in this area, by virtue of the exclusive rights given to right holders to prevent others from using the protected technology. It has been said that the issue of whether and how IPRs such as patents and plant breeders' rights lead to the relocation of investment, transfer and dissemination of technology and research and development in developing countries needs to be examined.<sup>238</sup>

72. In response, it has been said that full implementation of TRIPS provisions, including those in Article 27.3(b) by developing countries, would build confidence among investors, both domestic and foreign, stimulating investment in innovative and creative businesses in these countries.<sup>239</sup> It has been said that where technology is in the hands of the private sector, it can be transferred most effectively through market mechanisms such as licensing and that for licensing agreements adequate intellectual property protection is an important premise. Experience shows that the benefits to recipients and users of technology exceed the cost of acquiring that technology and that they can in time themselves become producers of follow-up technology.<sup>240</sup> The importance of the patent system for discouraging secrecy and its disclosure requirements for facilitating the dissemination of technological and scientific knowledge has already been referred to.<sup>241</sup>

73. Concern has been expressed that excessively broad patent rights in the area of biotechnology may impede the use of micro-organisms and genetic material by others for research purposes.<sup>242</sup> In response, it has been said that the TRIPS Agreement leaves scope to WTO Members to provide for exclusions from patent rights to allow use for research purposes and that this is also the case for *sui generis* plant variety protection, as made clear by the breeders' exception required under UPOV 1991. The point has been made that this access to protected technology for research purposes should

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<sup>234</sup> Switzerland, IP/C/W/284.

<sup>235</sup> European Communities, IP/C/M/35, para. 215.

<sup>236</sup> Mauritius on behalf of the African Group, IP/C/W/206.

<sup>237</sup> EC, IP/C/W/383, para. 15.

<sup>238</sup> Mauritius on behalf of the African Group, IP/C/W/206.

<sup>239</sup> United States, IP/C/W/257, IP/C/M/29, para. 184.

<sup>240</sup> Japan, IP/C/W/236.

<sup>241</sup> Switzerland, IP/C/W/284.

<sup>242</sup> Brazil, IP/C/W/228.





**ANNEX**

**DOCUMENTS OF THE COUNCIL FOR TRIPS 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 reports on the meetings of the Council for TRIPS held during the period January 1999 to

<b>LIST A – Records of the work of the Council for TRIPS</b>		
IP/C/M/21-35, 36/Add.1, 37/Add.1, 38-40 and 42-49	Minutes of the Council for TRIPS Meetings	22 January 1999 - 31 January 2006

<b>LIST B - Members' submissions relating to the agenda items</b>			
Dominican Republic	IP/C/W/429/Rev.1/Add.3	Request of the Dominican Republic to be added to the List of Sponsors of Document IP/C/W/429/Rev.1	10 February 2005
Colombia	IP/C/W/429/Rev.1/Add.2	Request of Colombia to be added to the List of Sponsors of Document IP/C/W/429/Rev.1	20 January 2005
<b>2004</b>			
Bolivia, Brazil, Cuba, Ecuador, India, Pakistan, Peru, Thailand, Venezuela	IP/C/W/438	The Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), and the Protection of Traditional Knowledge - Elements of the Obligation to Disclose Evidence of Prior Informed Consent under the Relevant National Regime	10 December 2004
United States	IP/C/W/434	Article 27.3(b), Relationship between the	

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<b>LIST B - Members' submissions relating to the agenda items</b>			
<b>2003</b>			
African Group	IP/C/W/404	Taking Forward the Review of Article 27.3(b) of the TRIPS Agreement	26 June 2003
Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, India, Peru, Thailand, Venezuela	IP/C/W/403	The Relationship between the TRIPS Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge	24 June 2003
Switzerland	IP/C/W/400/ Rev.1	Article 27.3(b), the Relationship between the TRIPS Agreement and the Convention on Biological Diversity, and the Protection of Traditional Knowledge	18 June 2003
Switzerland	IP/C/W/400	Article 27.3(b), the Relationship between the TRIPS Agreement and the Convention on Biological Diversity, and the Protection of Traditional Knowledge	28 May 2003
United States	IP/C/W/393	Access to Genetic Resources Regime of the United States National Parks	28 January 2003
<b>2002</b>			

European  
Communities  
and member  
States

**LIST B - Members' submissions relating to the agenda items**

EC	IP/C/W/254	Review of the Provisions of Article 27.3(b) of 13 June 2001 the TRIPS Agreement: Communication from the European Communities and their Member States
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**LIST B - Members' submissions relating to the agenda items**

Cuba, Honduras, Paraguay and Venezuela	IP/C/W/166	Review of Implementation of the Agreement under Article 71.1: Proposal on Protection of the Intellectual Property Rights of the Traditional Knowledge of Local and Indigenous Communities	5 November 1999
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<b>LIST D - Information on Review of the Provisions of Article 27.3(b)</b>			
<b>2004</b>			
Moldova	IP/C/W/125/ Add.24	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	26 January 2004
<b>2002</b>			
Lithuania	IP/C/W/125/ Add.23	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	22 July 2002
<b>2001</b>			
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
Thailand	IP/C/W/125/ Add.22	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 August 2001
Hong Kong, China	IP/C/W/125/ Add.21	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 July 2001
Estonia	IP/C/W/125/ Add.20	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	2 July 2001
<b>2000</b>			
Iceland	IP/C/W/125/ Add.19	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	17 July 2000
<b>1999</b>			
Slovak Republic	IP/C/W/125/ Add.18	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	27 July 1999
Norway	IP/C/W/125/ Add.17	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	19 May 1999
South Africa	IP/C/W/125/ Add.16/Corr.1	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum - 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
Morocco	IP/C/W/125/ Add.14	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	20 April 1999
Australia	IP/C/W/125/ Add.13	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 March 1999
Canada	IP/C/W/125/ Add.12	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	12 March 1999
Poland	IP/C/W/125/ Add.11	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	12 March 1999
Slovenia	IP/C/W/125/ Add.10	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999
Korea	IP/C/W/125/ Add.9	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 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
Japan	IP/C/W/125/ Add.7	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	12 March 1999

<b>LIST D - Information on Review of the Provisions of Article 27.3(b)</b>			
Romania	IP/C/W/125/ Add.6	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 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
European Communities	IP/C/W/125/ Add.4	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 February 1999
Zambia	IP/C/W/125/ Add.3	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	10 February 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
Hungary	IP/C/W/125/ Add.1	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999
Bulgaria	IP/C/W/125	Review of the Provisions of Article 27.3(b) - Information from Members	3 February 1999

<b>LIST E - Information on the work of intergovernmental organizations</b>			
<b>2002</b>			

UPOV	IP/C/W/347/ Add.3	Review of the Provisions of Article 27.3(b),	
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<b>LIST E - Information on the work of intergovernmental organizations</b>			
<b>2000</b>			

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
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