

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

**THE PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE**

**SUMMARY OF ISSUES RAISED AND POINTS MADE**

Note by the Secretariat

Revision

*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*

<b>TABLE OF CONTENTS</b>	<b>PAGE No.</b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. GENERAL ISSUES RELATING TO THE PROTECTION OF TRADITIONAL KNOWLEDGE .....</b>	<b>2</b>
<b>III. THE GRANT OF PATENTS IN RESPECT OF TRADITIONAL KNOWLEDGE .....</b>	<b>9</b>
<b>IV. CONSENT AND BENEFIT SHARING .....</b>	<b>12</b>
A. USE OF THE EXISTING IPR SYSTEM .....	13
B. PROTECTING TRADITIONAL KNOWLEDGE UNDER A <i>SUI GENERIS</i> SYSTEM .....	16
<b>V. INFORMATION ON MEMBERS' NATIONAL LEGISLATION, PRACTICES AND EXPERIENCES .....</b>	<b>18</b>
<b>ANNEX .....</b>	<b>19</b>

**I. INTRODUCTION**

1. At its meeting of 17-19 September 2002 the Council for TRIPS requested the Secretariat to periodically update its summary notes of issues raised and points made in the Council's work on three items of its agenda: namely the 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. It was requested that this be done not after every meeting, but when significant new material had been presented. The present document, which replaces the earlier summary note in IP/C/W/370, responds to this request with respect to the protection of traditional knowledge and folklore.

2. This note, like the original note, seeks to summarize the relevant material presented to the Council for TRIPS, whether in written or oral form, and lists all the relevant documentation tabled in the Council since 1999. To avoid undue duplication, cross-references to the other two notes or to other sections of this note 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. Nor does it cover the discussions in the Director-General's consultative process on outstanding implementation issues.

3. The Council for TRIPS documentation relevant to its work on all the three issues is listed in the Annex to this note. Specific documents are also referred to in the footnotes which reflect the sources for the points made in the compilation. In many cases, the same point has been made more than once; the footnotes do not purport to contain references to all such occasions. Where a group of delegations has made submissions, the footnotes use an abbreviated reference rather than listing the sponsoring delegations in full. The full lists can be found in the Annex to this note.

4. 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.

5. This note is divided into three major sections. The first concerns general issues relating to the protection of traditional knowledge; the second concerns the granting of patents in respect of traditional knowledge; and the third concerns consent and benefit sharing.

6. The title of this paper covers both traditional knowledge and folklore as indicated in paragraph 19 of the Doha Ministerial Declaration.<sup>1</sup> However, most of what has been said so far in the Council for TRIPS has related only to traditional knowledge and relatively little has been said with respect to folklore. Therefore, most of this note pertains to traditional knowledge. However, it is possible that for some delegations, the issues raised and points that were made in relation to traditional knowledge were also intended to apply to folklore. For example, one proposal has included, in its definition of traditional knowledge, the term "cultural expressions"<sup>2</sup> and another submission has referred to the protection of designs, music and other art forms generated by traditional communities.<sup>3</sup>

## **II. GENERAL ISSUES RELATING TO THE PROTECTION OF TRADITIONAL KNOWLEDGE**

7. This section primarily sets out views that have been expressed on two issues:

- why there is need for international action on the protection of traditional knowledge and folklore; and
- the international forum/forums most appropriate to pursue such a work.

8. The concerns expressed about the present situation by the proponents of international action to protect traditional knowledge and folklore can be put into two main categories:

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<sup>1</sup> WT/MIN(01)/DEC/1.

<sup>2</sup> Bolivia, Colombia, Ecuador, Nicaragua and Peru, IP/C/W/165.

<sup>3</sup> Australia, IP/C/W/310.

- concern about the granting of patents or other IPRs covering traditional knowledge to persons other than those indigenous peoples or communities who have originated and legitimately control the traditional knowledge;
- concern that traditional knowledge is being used without the authorization of the indigenous peoples or communities who have originated and legitimately control it and without proper sharing of the benefits that accrue from such use.

9. The reasons that have been put forward for **why international action should be taken** to remedy these problems can be summarized as follows:

- Common economic interest. It has been said that traditional knowledge is a valuable global resource and hence international efforts to secure its protection should be actively supported.<sup>4</sup> More specifically, it has the potential of being translated into commercial benefits by providing leads for the development of useful products and processes, in particular in the pharmaceutical and agricultural sectors, saving time and cost for the biotechnology industry.<sup>5</sup> For these reasons it is in the common interest of mankind to provide conditions that would be favourable to the preservation of traditional knowledge and the continuing vitality of the peoples and communities which generate and develop it.<sup>6</sup>
- Equity. It has been said that, given the important economic value of traditional knowledge, the holders of traditional knowledge should share in the economic benefits derived from that knowledge.<sup>7</sup> Given that the TRIPS Agreement requires countries with traditional and indigenous communities to provide intellectual property protection for a broad range of subject-matters including new ones such as plant varieties, biological materials, lay-out designs and computer software, it is only equitable that traditional knowledge should be given legal recognition.<sup>8</sup> Indeed, it is the responsibility of the international community to create an egalitarian system for the availability, acquisition, maintenance and enforcement of intellectual property rights, which does not *a priori* exclude any section of the society.<sup>9</sup>
- Food security. Local farming communities have over the years developed knowledge systems for the conservation and sustainable use of biological diversity, including through the selection and breeding of plant varieties. The well-established practices of saving, sharing and replanting seeds sustain these communities and ensure their food security.<sup>10</sup> International recognition and protection of traditional knowledge would help maintain and promote such systems.

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<sup>4</sup> Bolivia, IP/C/M/37/Add.1, para. 241; Indonesia, IP/C/M/32, para. 134; Kenya, IP/C/M/37/Add.1, para. 254; Switzerland, IP/C/W/284; Peru, IP/C/W/447, IP/C/M/49, para.82, IP/C/M/48, para. 18; Venezuela, IP/C/M/32, para. 136.

<sup>5</sup> Brazil, IP/C/W/228, IP/C/M/28, para. 136; Peru, IP/C/W/447, IP/C/M/48, para. 18; India, IP/C/W/198.

<sup>6</sup> Ecuador, IP/C/M/30, para. 184; Peru, IP/C/M/30, para. 153.

<sup>7</sup> Bolivia, Colombia, Ecuador, Nicaragua and Peru, IP/C/W/165; Peru, IP/C/W/447, IP/C/M/48, para. 18.

<sup>8</sup> Bolivia, Colombia, Ecuador, Nicaragua and Peru, IP/C/W/165; Cuba, Honduras, Paraguay and Venezuela, IP/C/W/166.

<sup>9</sup> Bolivia, Colombia, Ecuador, Nicaragua and Peru, IP/C/W/165; Cuba, Honduras, Paraguay and Venezuela, IP/C/W/166; India, IP/C/M/28, para. 128.

<sup>10</sup> Kenya, IP/C/M/28, para. 142; the African Group, IP/C/W/206; Peru, IP/C/M/29, para. 175.

- Culture. The traditional knowledge of traditional communities is put into practice in a way which is part of the day-to-day lives of these peoples and thus part of their culture.<sup>11</sup> International action to protect traditional knowledge would help sustain such cultures.<sup>12</sup>
- Environment. The traditional knowledge of indigenous peoples and local communities is central to their ability to operate in an environmentally sustainable way and to conserve genetic and other natural resources. Protection of traditional knowledge is therefore closely linked to the protection of the environment.<sup>13</sup>
- Development. The point has been made that for the various reasons set out above, protection of traditional knowledge could contribute significantly to the fulfilment of developmental objectives.<sup>14</sup>
- Coherence of international and national law. International recognition of traditional knowledge, including farmers' rights, as protectable subject-matter would be in conformity with the obligation to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities provided for under Article 8(j) of the CBD.<sup>15</sup> Other international systems such as the International Undertaking on Plant Genetic Resources<sup>16</sup> and the model law of the Organization of African Unity (OAU) also recognize and protect the rights of local communities, farmers and breeders and there is a need to reconcile these with the TRIPS Agreement which considers intellectual property rights to be private rights.<sup>17</sup> Without the existence of an international mechanism, national and regional laws which acknowledge the collective rights of indigenous and local communities over their traditional knowledge and folklore could be undermined.<sup>18</sup> Moreover, the legal protection of traditional knowledge would improve confidence in the international intellectual property system.<sup>19</sup>
- Transboundary use of traditional knowledge. Misappropriation of traditional knowledge often involves the acquisition of such knowledge in one country and the seeking of patents in other countries. Such actions may be illegal under the law of the country of origin, but nothing could be done under that law once the knowledge is being used and patented outside that jurisdiction.<sup>20</sup> Transparency and predictability in the regime of protection of traditional knowledge could be established only through international

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<sup>11</sup> India, IP/C/M/28, para. 125.

<sup>12</sup> The African Group, IP/C/W/404; Bolivia, IP/C/M/38, para. 246, IP/C/M/37/Add.1, para. 241; India, IP/C/M/28, para. 127, IP/C/M/25, para. 70; Peru, IP/C/W/447, IP/C/M/48, para. 18.

<sup>13</sup> Ecuador, IP/C/M/30, para. 184.

<sup>14</sup> Venezuela, IP/C/M/29, para. 201.

<sup>15</sup> Bolivia, Colombia, Ecuador, Nicaragua and Peru, IP/C/W/165.

<sup>16</sup> Now the International Treaty on Plant Genetic Resources for food and Agriculture (2001) adopted on 3 November 2001 in Rome. See [www.fao.org/biodiversity/doc\\_en.asp](http://www.fao.org/biodiversity/doc_en.asp).

<sup>17</sup> Brazil, IP/C/W/228; Cuba, Honduras, Paraguay and Venezuela, IP/C/W/166; Indonesia, IP/C/M/36/Add.1, para. 217; the African Group, IP/C/W/206, IP/C/W/163.

<sup>18</sup> The African Group, IP/C/W/404; Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, India, Peru, Thailand, Venezuela, IP/C/W/403 (hereinafter Bolivia et al IP/C/W/403); China, IP/C/M/40, para. 120; Ecuador, IP/C/M/30, para. 184; Peru, IP/C/W/447, IP/C/M/48, para. 18.

<sup>19</sup> EC, IP/C/M/35, paras. 238-239, IP/C/M/30, para. 145.

<sup>20</sup> The African Group, IP/C/W/404; Brazil, IP/C/M/46, paras. 79-81, IP/C/M/37/Add.1, para. 238, IP/C/M/36/Add.1, para. 220; India, IP/C/M/48, para. 49, IP/C/M/46, para. 38, IP/C/M/45, para. 25, IP/C/M/37/Add.1, para. 223; Indonesia, IP/C/M/36/Add.1, para. 217; Kenya, IP/C/M/42, para. 114; Pakistan, IP/C/M/36/Add.1, para. 211; Peru, IP/C/M/46, para. 50, IP/C/M/40, para. 84, IP/C/M/36/Add.1, para. 203.

action, which could regulate the relationships between entities, persons and activities taking place in different countries.<sup>21</sup>

10. In response, it has been said that establishing national regimes of protection of traditional knowledge is essential before engaging in discussion of international action.<sup>22</sup> The following reasons have been put forward in support of this view:

- using laws currently in force and those already well understood will enable holders of traditional knowledge to protect such knowledge immediately;<sup>23</sup>
- there is very little concrete evidence at this stage that national regimes for regulating access to traditional knowledge and benefit sharing are *per se* insufficient to deal with misappropriation of traditional knowledge;<sup>24</sup>
- it is prudent for Members to share their national experiences, determine areas of inadequacy, and conduct cost-benefit analyses before further considering international action;<sup>25</sup>
- a national system can be international in its outlook and may contain, *inter alia*, choice of forum, choice of law or international arbitration provisions relevant to cross-boundary dispute or enforcement issues.<sup>26</sup>
- international regimes need to be supported by the widespread implementation of national regimes.<sup>27</sup>

11. In response to these points, it has been said that owing to the transboundary nature of the issue of the protection of traditional knowledge, national regimes can only be supplementary to an international mechanism<sup>28</sup> and will not be effective unless an international mechanism is established.<sup>29</sup>

12. It has been said that the Council for TRIPS should look into ways of providing both defensive and positive protection of traditional knowledge,<sup>30</sup> and special consideration should be given to fully

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<sup>21</sup> Brazil and India, IP/C/W/443.

<sup>22</sup> Australia, IP/C/W/310, IP/C/M/46, para. 62, IP/C/M/38, para. 236, IP/C/M/36, para. 222; New Zealand, IP/C/M/49, para. 119, IP/C/M/48, para. 79, IP/C/M/37/Add.1, para. 249; United States, IP/C/W/449, IP/C/M/48, para. 30.

<sup>23</sup> United States, IP/C/M/37/Add.1, para. 250.

<sup>24</sup> Australia, IP/C/M/46, para. 65, IP/C/M/40, para. 101; Canada, IP/C/M/47, para. 66, IP/C/M/46, para. 55, IP/C/M/40, para. 115; Japan, IP/C/M/46, para. 77; New Zealand, IP/C/M/47, para. 54, IP/C/M/46, para. 61; Switzerland, IP/C/M/47, para. 75; United States, IP/C/W/434, IP/C/M/47, para. 48, IP/C/M/46, para. 36, IP/C/M/43, para. 55.

<sup>25</sup> Australia, IP/C/M/42, para. 118, IP/C/M/40, paras. 99, 101; United States, IP/C/W/449, IP/C/M/48, para. 30.

<sup>26</sup> United States, IP/C/W/449.

<sup>27</sup> New Zealand, IP/C/M/49, paras. 118-119.

<sup>28</sup> The African Group, IP/C/W/404.

<sup>29</sup> The African Group, IP/C/W/404; Bolivia, IP/C/M/37/Add.1, para. 241; Brazil, IP/C/M/48, para. 40, IP/C/M/47, para. 27, IP/C/M/46, paras. 79-81, IP/C/M/40, para. 90, IP/C/M/39, para. 126, IP/C/M/37/Add.1, para. 238, IP/C/M/36/Add.1, para. 220; Brazil and India, IP/C/W/443; Colombia, IP/C/M/36/Add.1, para. 209; China, IP/C/M/40, para. 120; India, IP/C/M/48, para. 53, IP/C/M/47, para. 34, IP/C/M/45, para. 25, IP/C/M/37/Add.1, para. 223; Indonesia, IP/C/M/36/Add.1, para. 217; Kenya, IP/C/M/42, para. 114; Pakistan, IP/C/M/36/Add.1, para. 211; Peru, IP/C/W/447, IP/C/W/441/Rev.1, IP/C/M/48, para. 18, IP/C/M/40, paras. 84, 85, IP/C/M/36/Add.1, para. 203; Zimbabwe, IP/C/M/36/Add.1, para. 201.

<sup>30</sup> Bolivia, IP/C/M/38, para. 246, IP/C/M/37/Add.1, para. 241; Brazil, IP/C/M/36/Add.1, para. 221; Brazil, China, Cuba, Dominican Republic, Ecuador, India, Pakistan, Peru, Thailand, Venezuela, Zambia,

engaging and respecting the concerns of indigenous peoples and local communities in developing the international mechanism.<sup>31</sup>

13. On the question of the **appropriate international forum/forums** for further development of the protection of traditional knowledge and folklore, two main views seem to exist:

- priority should be given to the ongoing work in WIPO and other relevant international forums, and the WTO should come back to this matter when this work has sufficiently clarified conceptual issues and possible options;
- all relevant forums, including the Council for TRIPS, should pursue work on this matter in parallel and in a mutually supportive way.

14. The following reasons have been put forward for the view that emphasis should be put, at this stage, on the work of WIPO and other relevant intergovernmental organizations:

- WIPO is already engaged in a very substantive programme in the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore, which has already yielded concrete results, including a decision to prepare a document on the elements of a *sui generis* system for the protection for traditional knowledge. It is, therefore, necessary to follow closely this discussion and to avoid duplication of efforts.<sup>32</sup> The discussion in WIPO will be informative for deliberations in the Council for TRIPS.<sup>33</sup> The Council for TRIPS should only deal with issues not tackled, or not fully tackled, in WIPO;<sup>34</sup>
- indigenous communities, whose views vary widely with regard to both the main problems and the possible solutions, are involved in WIPO's work;<sup>35</sup>
- at this stage the WTO is not the right place to negotiate a fully fledged system of protection for a complex new, and as yet undefined, subject-matter like traditional knowledge or folklore.<sup>36</sup> It is important to try to clarify the definition of traditional knowledge,<sup>37</sup> the objectives of protection<sup>38</sup> and modalities.<sup>39</sup> Once self-standing solutions as discussed in the appropriate forum are in place, attention could then be

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Zimbabwe, IP/C/W/356, IP/C/W/356/Add.1 (hereinafter Brazil et al, IP/C/W/356); Peru, IP/C/M/37/Add.1, para. 252, IP/C/M/36/Add.1, para. 203.

<sup>31</sup> New Zealand, IP/C/M/37/Add.1, para. 247; Zimbabwe, IP/C/M/36/Add.1, para. 201.

<sup>32</sup> Australia, IP/C/M/46, para. 64, IP/C/M/39, para. 140; Canada, IP/C/M/47, para. 67, IP/C/M/46, para. 54, IP/C/M/42, para. 116; EC, IP/C/W/383, IP/C/W/254, IP/C/M/43, para. 41, IP/C/M/37/Add.1, para. 242, IP/C/M/35, paras. 238, 239; Japan, IP/C/M/45, para. 46, IP/C/M/43, para. 48, IP/C/M/40, para. 96, IP/C/M/37, para. 216, IP/C/M/36/Add.1, para. 226; Korea, IP/C/M/49, para. 121, IP/C/M/46, para. 52; New Zealand, IP/C/M/46, para. 61; Switzerland, IP/C/W/400/Rev.1, IP/C/M/42, para. 99, IP/C/M/40, para. 73; United States, IP/C/M/35, paras. 241-242.

<sup>33</sup> United States, IP/C/M/49, para. 98, IP/C/M/43, para. 55.

<sup>34</sup> Australia, IP/C/M/28, para. 150; Switzerland, IP/C/M/35, para. 247.

<sup>35</sup> United States, IP/C/M/35, paras. 241-242.

<sup>36</sup> EC, IP/C/W/383, IP/C/M/44, para. 28, IP/C/M/43, para. 41, IP/C/M/37/Add.1, para. 242, IP/C/M/35, paras. 238-239; Japan, IP/C/M/36/Add.1, para. 226, IP/C/M/26, para. 62; Singapore, IP/C/M/26, para. 74.

<sup>37</sup> EC, IP/C/M/43, para. 41; Japan, IP/C/M/36/Add.1, para. 226; New Zealand, IP/C/M/37/Add.1, para. 247; Switzerland, IP/C/W/400/Rev.1, IP/C/M/40, para. 73; Thailand, IP/C/M/42, paras. 105, 115; United States, IP/C/M/37/Add.1, para. 250.

<sup>38</sup> Switzerland, IP/C/W/400/Rev.1, IP/C/M/40, para. 73; New Zealand, IP/C/M/37/Add.1, para. 247; Thailand, IP/C/M/42, para. 105.

<sup>39</sup> EC, IP/C/W/383, IP/C/W/254, IP/C/M/35, paras. 238-239; Japan, IP/C/M/25, para. 93; Korea, IP/C/M/28, para. 164, IP/C/M/25, para. 95; United States, IP/C/M/35, paras. 241-242.

focused on examining how and to what extent these need to be included in the TRIPS Agreement;<sup>40</sup>

- WIPO, as the specialized UN agency responsible for the promotion of intellectual property worldwide, is from a technical point of view, the most appropriate forum to tackle the issue of legal protection of traditional knowledge, especially if the purpose is to create a new "intellectual-property-like" protection regime.<sup>41</sup> WIPO has more expertise and capacity to do more technical work in this area and they have been exploring this issue for some time.<sup>42</sup> The issue of traditional knowledge does not involve trade and therefore handling it in the WTO would be inappropriate;<sup>43</sup>
- reference has been also been made to the work of the Working Group on Article 8(j) of the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture of the FAO.<sup>44</sup>

15. The reasons that have been advanced for the view that work should proceed in parallel in all relevant forums are as follows:

- the WTO has its own mandate under the Doha Declaration and specific time-frame;<sup>45</sup> pursuing the work in other forums would be inconsistent with the mandate and instructions given to the Council for TRIPS.<sup>46</sup> Besides, the pertinent paragraphs of the Doha Ministerial Declaration refer to the need to take into account the development dimension of these issues, which is important and not found in the mandates contained in other forums;<sup>47</sup>
- the work in WIPO is proceeding slowly and still far from realisable, and it is not appropriate to defer action mandated under the Doha Declaration;<sup>48</sup>
- the ongoing work at WIPO should not be a reason for delaying work at the WTO,<sup>49</sup> as in any case any conclusions reached at WIPO will not automatically become applicable in the WTO;<sup>50</sup>

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<sup>40</sup> EC, IP/C/W/383, IP/C/M/35, paras. 238-239, IP/C/W/254; Japan, IP/C/M/25, para. 93; Korea, IP/C/M/28, para. 164, IP/C/M/25, para. 95; United States, IP/C/M/35, paras. 241-242.

<sup>41</sup> EC, IP/C/M/43, para. 64, IP/C/M/37/Add.1, para. 242, IP/C/M/35, para. 239.

<sup>42</sup> Canada, IP/C/M/40, para. 116; EC, IP/C/M/43, para. 64; Japan, IP/C/M/48, para. 75, IP/C/M/45, para. 46; United States, IP/C/M/40, para. 123.

<sup>43</sup> Canada, IP/C/M/25, para. 91.

<sup>44</sup> Switzerland, IP/C/W/284.

<sup>45</sup> The African Group, IP/C/W/404; Brazil, IP/C/M/46, para. 78, IP/C/M/43, para. 61, IP/C/M/40, paras. 90, 132, IP/C/M/37/Add.1, para. 207, IP/C/M/36/Add.1, para. 219; Brazil and India, IP/C/W/443; Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Ecuador, India, Pakistan, Peru, Thailand, Venezuela, IP/C/W/429, IP/C/W/429/Rev.1, IP/C/W/429/Rev.1/Add.1-3 (hereinafter Bolivia et al, IP/C/W/429/Rev.1); Chile, IP/C/M/40, para. 126; China IP/C/M/43, para. 56, IP/C/M/40, para. 120, IP/C/M/39, para. 136, IP/C/M/36/Add.1, para. 227; India, IP/C/M/48, para. 52, IP/C/M/40, para. 83; Malaysia, IP/C/M/44, para. 40; Pakistan, IP/C/M/36/Add.1, para. 211; Peru, IP/C/W/447, IP/C/M/48, para. 91, IP/C/M/43, para. 45; Thailand, IP/C/M/47, para. 56; Venezuela, IP/C/M/43, para. 49, IP/C/M/40, para. 102, IP/C/M/36/Add.1, para. 208; Zimbabwe, IP/C/M/43, para. 46, IP/C/M/40, para. 80; Bolivia et al, IP/C/W/403.

<sup>46</sup> Brazil, IP/C/M/43, para. 61.

<sup>47</sup> Brazil, IP/C/M/43, para. 61; India, IP/C/M/47, para. 40; Peru, IP/C/M/47, para. 72, IP/C/M/43, para. 45.

<sup>48</sup> The African Group, IP/C/W/404; India, IP/C/M/48, para. 52; Peru, IP/C/M/48, para. 91; Venezuela, IP/C/M/40, para. 102; Zimbabwe, IP/C/M/40, para. 78.

<sup>49</sup> Norway, IP/C/M/38, para. 241; Zimbabwe, IP/C/M/40, para. 78.

- it would be inappropriate to have issues and problems arising out of the TRIPS Agreement dealt with by WIPO.<sup>51</sup> Indeed, the Council for TRIPS has a valuable role to play in shedding light on these issues and in looking for practical and equitable responses to the concerns raised, while minimizing duplication of efforts by dealing with issues not dealt with at all or only inadequately at WIPO;<sup>52</sup>
- the WTO must, for its part, find measures that are in line with its unique way of functioning, particularly in regard to the manner in which disputes are settled.<sup>53</sup> A solution to the concerns relating to patenting that constitutes a misappropriation of traditional knowledge should similarly take the form of obligations that are enforceable within the WTO framework;<sup>54</sup>
- conflicts in the implementation of the CBD and the TRIPS Agreement, including on the subject of traditional knowledge, demand a systemic solution that should be addressed as part of the review of Article 27.3(b).<sup>55</sup>
- lack of definition or clarity of the concept of traditional knowledge should not prevent WTO Members from establishing multilateral disciplines, just as it did not do so in the case of "micro-organisms".<sup>56</sup> Therefore, it is neither useful nor necessary to define the term "traditional knowledge".<sup>57</sup> Indeed, the exercise was called for precisely because there was a lack of clarity;<sup>58</sup>
- the WTO is an appropriate forum to discuss traditional knowledge as work on this issue is being carried out not only in the Council for TRIPS but also in the Committee on Trade and Environment.<sup>59</sup> The WTO does not lack the necessary expertise either in the Secretariat or in the delegations;<sup>60</sup>
- it is important for the Council for TRIPS to take note of the discussions elsewhere on this subject, so as to avoid duplication of efforts and to create the basis for the necessary synergies between the work done in the Council for TRIPS and WIPO, the CBD, the FAO and other relevant intergovernmental organizations;<sup>61</sup>
- a resolution adopted by WIPO Assembly in 2003 clearly indicates that WIPO is not the sole forum for the discussion on traditional knowledge and that the work done in WIPO should not have any negative effect on the discussion in other forums.<sup>62</sup> The work in

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<sup>50</sup> The African Group, IP/C/W/404; Zimbabwe, IP/C/M/40, para. 78.

<sup>51</sup> Brazil, IP/C/M/28, para. 168; India, IP/C/M/28, para. 167; Australia and Norway stated that the Council for TRIPS should deal with issues that touched on the TRIPS Agreement - IP/C/M/28, para. 151 and IP/C/M/27, para. 133, respectively.

<sup>52</sup> Venezuela, IP/C/M/37/Add.1, para. 244; Australia, IP/C/M/28, para. 150; Switzerland, IP/C/M/35, para. 247.

<sup>53</sup> Peru, IP/C/W/447, IP/C/M/43, para. 45.

<sup>54</sup> The African Group, IP/C/W/404.

<sup>55</sup> Brazil, IP/C/M/28, para. 185.

<sup>56</sup> Brazil, IP/C/M/30, para. 183.

<sup>57</sup> Dominican Republic, IP/C/M/40, para. 110; Venezuela, IP/C/M/40, para. 103.

<sup>58</sup> India, IP/C/M/28, para. 128.

<sup>59</sup> Venezuela, IP/C/M/26, para. 73.

<sup>60</sup> Brazil, IP/C/M/43, para. 61; Peru, IP/C/M/48, para. 91.

<sup>61</sup> Brazil, IP/C/M/26, paras. 62, 64; the African Group, IP/C/W206; Venezuela, IP/C/M/26, para. 84. Others supported coordination with other relevant organizations: EC, IP/C/M/30, para. 146; New Zealand, IP/C/M/26, para. 69; Switzerland, IP/C/M/29, para. 176.

<sup>62</sup> Venezuela, IP/C/M/43, para. 49.



WIPO will be strengthened by the results that will emerge from the Council for TRIPS and vice versa. It is not desirable to study this issue in one single organization.<sup>63</sup>

16. In regard to the point concerning conflicts between the implementation of the CBD and the TRIPS Agreement, it has been said that, even if true, the point would only be relevant for that part of traditional knowledge dealt with by the CBD, namely that relating to the conservation and sustainable use of biological diversity.<sup>64</sup>

17. It has been suggested that as a way forward the Council for TRIPS consider adopting a decision on traditional knowledge which would be a result of the review of Article 27.3(b) of the TRIPS Agreement.<sup>65</sup> The decision would reflect Members' common understanding on certain issues, including the definition of traditional knowledge, rights conferred, documentation of traditional knowledge, and institutional arrangements.<sup>66</sup>

### III. THE GRANT OF PATENTS IN RESPECT OF TRADITIONAL KNOWLEDGE<sup>67</sup>

18. As indicated earlier, a concern that has been expressed in the discussions in the Council for TRIPS is about the grant of patents or other IPRs covering traditional knowledge to persons other than the indigenous peoples or communities who have originated the knowledge and legitimately control it. Several patents have been cited as examples, including in regard to turmeric, neem<sup>68</sup> and ayahuasca vine.<sup>69</sup>

19. The view has been expressed that the granting of patents on traditional knowledge already in the public domain or without the consent of indigenous peoples and local communities amounts to unauthorized appropriation of the knowledge.<sup>70</sup> It has been said that this occurs particularly in the case where Members do not follow appropriate definitions of the criteria for patentability or appropriate procedures.<sup>71</sup>

20. Two areas where it has been said that the patent system is not working well enough in connection with the granting of patents covering traditional knowledge have been referred to:

- one is in connection with the **definition of prior art** used to determine whether a claimed invention meets the novelty standard for patentability. In this connection, it has been said that some Members define novelty in a manner that does not recognize information available to the public through use or oral traditions outside their domestic jurisdictions.<sup>72</sup> To ensure that traditional knowledge is not included in patent claims, the concept of novelty under the TRIPS Agreement must be interpreted to include prior publication and use anywhere in the world.<sup>73</sup>

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<sup>63</sup> Kenya, IP/C/M/36/Add.1, para. 233; Venezuela, IP/C/M/37/Add.1, para. 244.

<sup>64</sup> United States, IP/C/W/257.

<sup>65</sup> The African Group, IP/C/W/404. A draft decision on traditional knowledge is included as annex to document IP/C/W/404.

<sup>66</sup> The African Group, IP/C/W/404.

<sup>67</sup> This Section should be read with Section III of the Secretariat's revised summary note on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (IP/C/W/368/Rev.1).

<sup>68</sup> India, IP/C/W/198, IP/C/M/48, paras. 57-59.

<sup>69</sup> Brazil, IP/C/W/228.

<sup>70</sup> Peru, IP/C/W/447; India, IP/C/M/30, para. 170.

<sup>71</sup> India, IP/C/M/39, para. 122, IP/C/M/28, para. 126; Kenya, IP/C/M/28, para. 141; Peru, IP/C/W/447.

<sup>72</sup> India, IP/C/M/39, para. 122, IP/C/M/28, para. 126; Kenya, IP/C/M/28, para. 141.

<sup>73</sup> India, IP/C/M/39, para. 122.

- the second concerns the **adequacy of the information on prior art** available to patent examiners. It has been said that the instances of patents wrongly granted show that the prior art in the case of traditional knowledge originating in one country is not widely known or documented and available to patent offices all over the world.<sup>74</sup> Often traditional knowledge exists only in oral form or, if documented, is available in languages that the patent authorities are not familiar with.<sup>75</sup>

21. In response, it has been said that:

- if **the criteria for patentability** are properly applied, the granting of erroneous patents would be avoided;<sup>76</sup>
- Under the patent laws of many Members, **prior art** comprises not only earlier disclosures in writing but also what is already publicly known or used anywhere in the world;<sup>77</sup>
- patent applicants can be required to disclose information which is **material to patentability**;<sup>78</sup>
- if patents are improperly granted, the patent system provides remedies, such as **post-grant opposition or re-examination proceedings**, as demonstrated by the revocation of the neem and turmeric patents.<sup>79</sup> Were parties other than traditional knowledge holders to obtain patent protection, the patent should be cancelled.<sup>80</sup>

22. In response, it has been said that post-granted opposition or re-examination proceedings would be insufficient, complicated and expensive, especially for developing countries, and therefore economically infeasible.<sup>81</sup> In the turmeric and neem cases, the challenges could be sustained owing to the engagement of the government and a consortium of non-governmental organization.<sup>82</sup>

23. With regard to patent applications, not for traditional knowledge itself but when traditional knowledge is used as a basis for further innovations which meet the relevant criteria, it has been said that these innovations are perfectly patentable. However, the existence of a patent would not override accompanying national requirements to obtain authorization from the owners of the traditional knowledge from which the invention is derived and to reward them for the use of it or share the benefits of its use.<sup>83</sup>

24. In response, it has been said that, even if the national laws applicable do not allow patents on inventions based on traditional knowledge, patents in other regimes that allow such patents reduce the economic value of the knowledge of local communities and may constrain the development and use of

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<sup>74</sup> United States, IP/C/W/209; Switzerland, IP/C/W/284.

<sup>75</sup> Brazil, IP/C/M/48, para. 37; India, IP/C/M/39, para. 123; EC, IP/C/M/32, para. 137; Switzerland, IP/C/M/30, para. 164.

<sup>76</sup> Switzerland, IP/C/M/30, para. 164.

<sup>77</sup> Japan, IP/C/W/236.

<sup>78</sup> United States, IP/C/W/449, IP/C/W/434, IP/C/M/49, para. 105, IP/C/M/48, para. 33.

<sup>79</sup> United States, IP/C/W/449, IP/C/W/434, IP/C/M/49, para. 105, IP/C/M/48, para. 33, IP/C/M/46, para. 35, IP/C/M/32, para. 131; Japan, IP/C/M/48, para. 76, IP/C/M/29, para. 157.

<sup>80</sup> EC, IP/C/W/254.

<sup>81</sup> Bolivia, IP/C/M/48, para. 83; Bolivia et al, IP/C/W/403; Brazil, IP/C/M/48, para. 37, IP/C/M/39, para. 126; Brazil et al, IP/C/W/356; India, IP/C/M/48, paras. 51, 56, IP/C/M/46, para. 42; Indonesia, IP/C/M/36/Add.1, para. 217; Pakistan, IP/C/M/36/Add.1, para. 211; Peru, IP/C/M/46, para. 51, IP/C/M/43, para. 44.

<sup>82</sup> India, IP/C/M/48, para. 60.

<sup>83</sup> EC, IP/C/W/254.

their knowledge in the market-place or may facilitate others' use or exploitation of their knowledge without any rewards to them.<sup>84</sup>

25. It has been suggested that the development of **databases on traditional knowledge** would help patent examiners discover relevant prior art so as to improve examination of patent applications and prevent the grant of patents for subject-matter that should not be patentable.<sup>85</sup> Databases would also help potential licensees in terms of searching for knowledge, innovations and practices.<sup>86</sup> Some specific suggestions have been made for the features of such databases:

- access to these databases for patent authorities and relevant judicial authorities could be facilitated through the establishment of an international gateway for traditional knowledge, which would electronically link these databases;<sup>87</sup>
- at least a minimum harmonization of the structure and contents for these databases should be achieved;<sup>88</sup>
- databases should be searchable over the Internet;<sup>89</sup>
- to the extent that traditional knowledge is already recorded in databases and print media, it is important to ensure that patent examiners are made familiar with these resources;<sup>90</sup>
- databases should only disclose traditional knowledge already in the public domain or traditional knowledge for which prior informed consent has been obtained.<sup>91</sup> This would ensure that databases do not themselves facilitate piracy;<sup>92</sup>
- access to these databases should not involve costly or burdensome procedures.<sup>93</sup>

26. In this regard, concerns have been expressed about the following:

- the responsibility for bearing the cost of maintaining these databases;<sup>94</sup>
- while serving as a repository of information, databases cannot be completely exhaustive as they may not contain knowledge held by local communities in oral form or knowledge that is continuously evolving through informal innovations within a community.<sup>95</sup>

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<sup>84</sup> India, JOB(00)/6091.

<sup>85</sup> The African Group, IP/C/W/404; Brazil, IP/C/W/228, IP/C/M/37/Add.1, para. 255; Bolivia et al, IP/C/W/403; China, IP/C/M/36/Add.1, para. 228, EC, IP/C/W/383, IP/C/M/43, para. 39, IP/C/M/40, para. 94, IP/C/M/37/Add.1, para. 242, IP/C/M/32, para. 137; India, IP/C/M/37/Add.1, para. 253, IP/C/W/198; Japan, IP/C/M/48, para. 76, IP/C/M/32, para. 142; Korea, IP/C/M/49, para. 121; Switzerland, IP/C/W/400/Rev.1, IP/C/W/284, IP/C/M/42, para. 98, IP/C/M/30, para. 164; United States, IP/C/W/449, IP/C/W/434, IP/C/W/257, IP/C/W/209, IP/C/M/48, para. 33, IP/C/M/46, para. 34; Venezuela, IP/C/M/37/Add.1, para. 243; Zimbabwe, IP/C/M/36/Add.1, para. 201.

<sup>86</sup> United States, IP/C/W/257.

<sup>87</sup> Switzerland, IP/C/W/400/Rev.1, IP/C/W/284.

<sup>88</sup> Switzerland, IP/C/W/400/Rev.1, IP/C/W/284.

<sup>89</sup> Switzerland, IP/C/M/42, para. 98, IP/C/M/30, para. 164; United States, IP/C/W/434.

<sup>90</sup> United States, IP/C/W/209.

<sup>91</sup> Brazil, IP/C/M/37/Add.1, para. 255; Bolivia et al, IP/C/W/403; Venezuela, IP/C/M/37/Add.1, para. 244.

<sup>92</sup> Brazil, IP/C/W/228, IP/C/M/37/Add.1, para. 255, IP/C/M/32, para. 130, IP/C/M/28, para. 136; India, IP/C/W/198, IP/C/M/29, para. 164, 165; Venezuela, IP/C/M/37/Add.1, para. 244, IP/C/M/32, para. 136.

<sup>93</sup> Brazil, IP/C/W/228; Switzerland, IP/C/W/284, IP/C/M/32, para. 124; Venezuela, IP/C/M/32, para. 136.

<sup>94</sup> Venezuela, IP/C/M/37/Add.1, para. 244.

- while databases may help forestall the grant of inappropriate patents, they cannot address the problem of the non-accrual to the holders of traditional knowledge of economic benefits resulting from the use of that knowledge;<sup>96</sup>
- reference to databases by patent examiners would be voluntary and patent examiners in Member countries would have no obligation to consider this information in their prior art searches.<sup>97</sup> Obligations, guidelines or recommendations should be established to improve and substantially tighten up search systems in respect of information that is relevant to traditional knowledge so as to evaluate novelty and inventiveness.<sup>98</sup>

27. It has also been suggested that a requirement on patent applicants to disclose in their applications any traditional knowledge used in the invention in question could help in the assessment of novelty and also assist countries with possible claims to examine the application and oppose the patent in time.<sup>99</sup> The discussion on this suggestion, which has also been made in regard to prior informed consent and benefit sharing with regard to genetic resources, is set out in the Secretariat's revised summary note on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (IP/C/W/368/Rev.1).

#### IV. CONSENT AND BENEFIT SHARING

28. As indicated earlier, one of the major concerns expressed has been that traditional knowledge is being used without the authorization of the indigenous peoples or communities who have originated and legitimately control it and without proper sharing of the benefits that accrue from such use. Several suggestions have been put forward with a view to addressing this concern:

- **Use of the existing IPR system.** It has been suggested that a starting-point should be to explore possibilities for making more effective use of the existing IPR system for protecting the traditional knowledge of indigenous peoples and local communities;<sup>100</sup>
- **Contracts.** It has been suggested that the best way of addressing these concerns would be through systems based on bilateral contracts between holders of traditional knowledge and persons or companies wishing to access and use that knowledge. Such systems could be backed up by suitable national or local legislation;<sup>101</sup>
- **Disclosure requirement.** It has been suggested that applicants for patents for inventions that use traditional knowledge associated with genetic resources should be required to disclose the source<sup>102</sup>, or the origin or source<sup>103</sup>, of the traditional knowledge in their patent applications. Additionally, it has been suggested that patent applicants be also required to provide evidence that they have obtained any necessary prior informed

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<sup>95</sup> The African Group, IP/C/W/404; Brazil, IP/C/M/48, para. 39; Bolivia et al, IP/C/W/403; Brazil and India, IP/C/W/443; India, IP/C/M/39, para. 123, IP/C/M/37/Add.1, para. 253.

<sup>96</sup> Brazil, IP/C/W/228, IP/C/M/32, para. 130; India, IP/C/M/29, para. 164; Pakistan, IP/C/M/28, para. 159.

<sup>97</sup> The African Group, IP/C/W/404; India, IP/C/M/45, para. 20.

<sup>98</sup> Peru, IP/C/W/447.

<sup>99</sup> Brazil, IP/C/W/228, IP/C/M/48, para. 38, IP/C/M/33, para. 121, IP/C/M/32, para. 128; India, IP/C/W/195, IP/C/M/29, paras. 164-165.

<sup>100</sup> Australia, IP/C/W/310; EC, IP/C/W/383; Japan, IP/C/M/29, para. 157.

<sup>101</sup> United States, IP/C/W/434, IP/C/W/393, IP/C/W/341, IP/C/W/257.

<sup>102</sup> Switzerland, IP/C/W/433, IP/C/W/423, IP/C/W/400/Rev.1.

<sup>103</sup> EC, IP/C/383, IP/C/M/44, para. 29, IP/C/M/42, para. 107, IP/C/M/37/Add.1, para. 228.

consent from the competent authority in the country of origin of that knowledge and have entered into appropriate benefit-sharing arrangements;<sup>104</sup>

- ***Sui generis* system of protection.** It has been suggested that only a system of protection of traditional knowledge which provides proprietary rights can ensure that market forces will operate to generate fairness and equity.<sup>105</sup>

29. The subsections that follow summarize the discussion on the first and last of these suggestions. The suggestions concerning contracts and disclosure, which have also been made in regard to genetic material used in inventions that are the subject of patent applications, are discussed in more detail in the Secretariat's revised summary note on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (IP/C/W/368/Rev.1).

30. A general point that has been made is on the importance of educating indigenous and local communities to be able to protect their interests by effectively negotiating contracts and using intellectual property systems.<sup>106</sup>

#### A. USE OF THE EXISTING IPR SYSTEM

31. The view has been expressed that, while there is a need to examine ways of improving protection for traditional knowledge, the starting-point should be to explore possibilities for making more effective use of the existing legal framework, particularly the intellectual property system.<sup>107</sup> Beyond the patent system several other IPRs such as copyright and related rights, trademarks and certification marks can be used.<sup>108</sup> Since traditional knowledge is often a combination of elements such as cultivation of genetic resources, use of traditional knowledge, ritual chants and ritual dress, protection can be most effective by using a combination of intellectual property and other laws.<sup>109</sup> Under the existing system, traditional artists and creators have legal rights through which they can exclude unauthorized use by others and obtain financial benefits for their efforts, including in the international market. Points that have been made and some examples cited in the discussion so far that relate to specific IPRs are set out below:

- Copyright and related rights. While it is claimed that copyright laws illustrate the existing system's inability to accommodate the concept of traditional knowledge, for example on account of communal ownership, attention has been drawn to some recent court cases that have extended legal rights over copyright to traditional knowledge in certain circumstances, thus demonstrating that creative use of the current legal system can provide for such protection.<sup>110</sup> These cases including ones involving the unauthorized use

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<sup>104</sup> The African Group, IP/C/W/404; Andean Community, IP/C/M/37/Add.1, para. 231; Brazil, IP/C/M/32, para. 128, IP/C/M/33, para. 121, IP/C/M/36/Add.1, para. 219, IP/C/M/37/Add.1, paras. 205, 237-238, IP/C/M/38, para. 230, IP/C/M/39, para. 126, IP/C/M/42, para. 101, IP/C/M/46, para. 81, IP/C/W/228; Bolivia et al, IP/C/W/403; Brazil et al, IP/C/W/356; China, IP/C/M/43, para. 56, IP/C/M/42, para. 119, IP/C/M/37/Add.1, para. 229, IP/C/M/36/Add.1, para. 228; Colombia, IP/C/M/46, para. 57, IP/C/M/40, para. 127, IP/C/M/36/Add.1, para. 209; India, IP/C/M/45, para. 25, IP/C/M/40, para. 81, IP/C/M/39, para. 122, IP/C/M/36/Add.1, para. 214, IP/C/M/24, para. 81, IP/C/W/195; Indonesia, IP/C/M/36/Add.1, para. 217; Kenya, IP/C/M/42, para. 114, IP/C/M/37/Add.1, para. 239; Pakistan, IP/C/M/36/Add.1, para. 211; Peru, IP/C/W/447, IP/C/M/43, para. 45; Thailand, IP/C/M/42, para. 105; Venezuela, IP/C/M/40, para. 102, IP/C/M/36/Add.1, para. 208.

<sup>105</sup> Brazil, IP/C/W/228; Indonesia, IP/C/M/32, para. 134.

<sup>106</sup> United States, IP/C/W/209.

<sup>107</sup> Australia, IP/C/W/310; Japan, IP/C/M/29, para. 157.

<sup>108</sup> Australia, IP/C/M/28, para. 152.

<sup>109</sup> United States, IP/C/M/37/Add.1, para. 250.

<sup>110</sup> Australia, IP/C/W/310.

of a photograph of an indigenous dance group, the unauthorized reproduction of spiritual rock art images and the distortion of artistic works containing pre-existing cultural clan images.<sup>111</sup> In addition, the WIPO Performances and Phonograms Treaty (WPPT) provides for the protection of performances of traditional music and is the only neighbouring rights treaty to explicitly include the protection of performers of expressions of folklore.<sup>112</sup>

- Patents, plant variety protection and utility models. It has been argued that, when combined with voluntary contracts, obtaining patents around the world on commercial products that use traditional knowledge would provide a firm legal basis for the sharing of benefits, whereas the absence of such protection would mean that anyone would be free to use the technology without any obligation to share benefits.<sup>113</sup> It has also been said that *sui generis* systems for protecting plant varieties can be designed so as to recognize traditional knowledge and farmers' rights, for example those that take the form of selecting, breeding, using and sustaining plant varieties. The example of the OAU Model Law has been cited as protecting the rights of local communities, farmers and breeders.<sup>114</sup> It has been suggested that a footnote might be added to the TRIPS Agreement to clarify that any *sui generis* law for plant variety protection can provide for the protection of the innovations of indigenous and local farming communities in developing countries and the continuation of traditional farming practices.<sup>115</sup> The view has also been expressed that the TRIPS Agreement does not exclude the possibility of protecting farmers' varieties under a system separate from that providing effective protection for commercially bred plant varieties<sup>116</sup> and that farmers' rights and breeders' rights would have to be balanced;<sup>117</sup>
- Unfair competition and trade secrets. Some examples have been given in the discussion involving the use of unfair competition laws or remedies against passing off, in conjunction with, for example, copyright and related rights to deal with the protection of traditional knowledge.<sup>118</sup> It has been said that trade secret law is particularly appropriate in helping indigenous and local communities maintain limitations on the circulation of their knowledge, innovations and practices;<sup>119</sup>
- Industrial designs. It has been said that the extent to which indigenous groups have used design law to protect their indigenous cultural expression, through registration and enforcement of indigenous designs and symbols, is the subject of a study in one Member country. An example has been given of the unauthorized reproduction of an indigenous artist's work embodying clan designs, on imported fabric. It has been said that this case involves examining the ability of another party to bring an action as co-applicant, as a representative of the clan involved;<sup>120</sup>
- Trademarks and certification marks. Examples have been given of the use of trademarks by indigenous arts centres and galleries for the protection of artistic works and other forms of indigenous knowledge.<sup>121</sup> Another example has been given of a national label

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<sup>111</sup> Australia, IP/C/W/310.

<sup>112</sup> United States, IP/C/M/37/Add.1, para. 251.

<sup>113</sup> United States, IP/C/W/257.

<sup>114</sup> The African Group, IP/C/W/206.

<sup>115</sup> The African Group, IP/C/W/163.

<sup>116</sup> Switzerland, IP/C/W/284.

<sup>117</sup> Malaysia, IP/C/M/29, para. 206.

<sup>118</sup> Australia, IP/C/W/310.

<sup>119</sup> United States, IP/C/W/257.

<sup>120</sup> Australia, IP/C/W/310.

<sup>121</sup> Australia, IP/C/W/310.

of authenticity registered as a certification trademark for indigenous art and art products,<sup>122</sup>

- Geographical indications. The view has been expressed that under certain circumstances geographical indications could be a particularly important way of protecting traditional knowledge,<sup>123</sup> for example for identifying products originating from a "protected area" as defined in Article 1 of the CBD where producers decide to link their collective production standards and related traditional knowledge to conservation goals.<sup>124</sup> It has been said that since traditional knowledge is constantly developing and has its own dynamism, it should be protected in the same way as geographical indications, particularly with respect to the term of protection.<sup>125</sup> In response, it has been said that while there are some similarities between geographical indications and traditional knowledge, such as their links with local communities, there is still a fundamental difference between them. Geographical indications protect denominations or indications of products, while traditional knowledge is related to knowledge. The protection of geographical indications cannot prevent others from making the same products so long as they use a different denomination. Moreover, as traditional knowledge can be important to scientific development, it will not be justified to grant exclusive rights that allow people to prevent the use of such knowledge for an unlimited period of time.<sup>126</sup>

32. The view has been expressed that, while the existing IPR system may be usable in certain circumstances, it cannot provide for sufficient protection of traditional knowledge.<sup>127</sup> Several reasons have been given to support this argument:

- IPRs protect individual property rights whereas traditional knowledge is by and large collective;<sup>128</sup>
- traditional knowledge is developed over a period of time and is intergenerational and, therefore, may not meet the criteria of novelty or originality or inventive step required by IPRs;<sup>129</sup>
- communities often hold this knowledge in parallel which makes it difficult to determine title holders;<sup>130</sup>
- communities lack adequate education, awareness and resources to take advantage of IPRs;<sup>131</sup>
- communities do not use scientific methods but trial and error over time.<sup>132</sup>

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<sup>122</sup> New Zealand, IP/C/M/37/Add.1, para. 248; Australia, IP/C/W/310.

<sup>123</sup> EC, IP/C/W/254; South Africa, IP/C/M/43, para. 66; Venezuela, IP/C/M/32, para. 136.

<sup>124</sup> EC, IP/C/W/254.

<sup>125</sup> Venezuela, IP/C/M/43, para. 50.

<sup>126</sup> EC, IP/C/M/43, paras. 42, 65.

<sup>127</sup> Brazil, IP/C/M/37/Add.1, para. 255.

<sup>128</sup> Brazil, IP/C/W/228; India, IP/C/W/198; Venezuela, IP/C/M/25, para. 86.

<sup>129</sup> Brazil, IP/C/W/228; India, IP/C/W/198.

<sup>130</sup> Brazil, IP/C/W/228; India, IP/C/W/198.

<sup>131</sup> India, IP/C/W/198.

<sup>132</sup> Venezuela, IP/C/M/25, para. 86.

B. PROTECTING TRADITIONAL KNOWLEDGE UNDER A *SUI GENERIS* SYSTEM

33. It has been suggested that only a system of protection of traditional knowledge that provides proprietary rights can ensure that market forces will operate to generate fairness and equity.<sup>133</sup> A proprietary protection approach could provide protection *erga omnes*, in the sense that, even if the knowledge is in some way publicly disclosed, there could be mechanisms available to prevent its use by all third parties.<sup>134</sup>

34. In response, it has been said that any discussion of such a system would require clarity as to the definition and scope of the term traditional knowledge.<sup>135</sup> There would also be considerable hurdles to overcome regarding issues of the determination and modalities of ownership.<sup>136</sup> It has also been said that careful thought would need to be given before establishing different systems of intellectual property protection for public domain traditional knowledge developed by industrial and non-industrial communities.<sup>137</sup> In response, it has been argued that the absence of clarity as to the meaning of some terms or the limited amount of experience with national legislation should not be used to justify a refusal to discuss, any more than they had deterred Members from agreeing to the protection of a range of subjects in the TRIPS Agreement that were new to many Members.<sup>138</sup>

35. The point has been made that there is nothing in the TRIPS Agreement that prevents WTO Members from setting up a specific protection regime for traditional knowledge that regulates or enforces access to, prohibition of, and rewards for the use of traditional knowledge.<sup>139</sup> Support has been expressed for developing an international model for such legislation.<sup>140</sup>

36. With regard to action at the multilateral level, views have been expressed that national systems will not be sufficient and that there is a need to explore an international system of minimum standards of protection of traditional knowledge, drawing on synergies with the work of CBD, WIPO, FAO and UNCTAD.<sup>141</sup> Another view in this connection is that once WIPO has completed work on model national legislation, attention could be focused on how and to what extent the protection of traditional knowledge can be included in the TRIPS Agreement.<sup>142</sup>

37. Some more specific suggestions have been made on what such a *sui generis* system should cover:

- a possible definition put forward states that traditional knowledge consists largely of innovations, creations and cultural expressions generated or preserved by its present possessors, who may be defined and identified as holders of rights who are either individuals

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<sup>133</sup> Brazil, IP/C/W/228; Indonesia, IP/C/M/32, para. 134.

<sup>134</sup> Brazil, IP/C/W/228, para. 34.

<sup>135</sup> EC, IP/C/M/43, para. 41, IP/C/W/383; New Zealand, IP/C/M/37/Add.1, para. 246; Japan, IP/C/M/36/Add.1, para. 226, IP/C/M/29, para. 157; Switzerland, IP/C/M/40, para. 73; Thailand, IP/C/M/42, paras. 105, 115; United States, IP/C/M/37/Add.1, para. 250.

<sup>136</sup> EC, IP/C/M/35, paras. 238-239.

<sup>137</sup> Singapore, Job(00)7853.

<sup>138</sup> Brazil, IP/C/M/30, para. 183; Dominican Republic, IP/C/M/40, para. 110; Venezuela, IP/C/M/40, para. 103.

<sup>139</sup> Bangladesh, IP/C/M/42, para. 102; EC, IP/C/M/43, para. 39, IP/C/W/254; Malaysia, IP/C/M/40, para. 128; Zimbabwe, IP/C/M/36/Add.1, para. 201.

<sup>140</sup> EC, IP/C/W/254.

<sup>141</sup> Brazil, IP/C/M/36/Add.1, paras. 199, 220, IP/C/W/228; Colombia, IP/C/M/37/Add.1, para. 231.

<sup>142</sup> EC, IP/C/W/254.



or whole communities, natural or legal persons.<sup>143</sup> It should cover products as well as services;<sup>144</sup>

- the rights provided should follow those provided in Article 28 of the TRIPS Agreement so as to give exclusive rights to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, or importing the covered product or process;<sup>145</sup>
- creating a system for registration of innovations and giving the registered owner the right to challenge any use of the innovations without prior permission. It has been said that for novel and useful innovations, some kind of a petty patent system should be implemented.<sup>146</sup>

38. The draft decision on traditional knowledge submitted by the African Group as a basis for further discussion includes, *inter alia*, the following elements:

- traditional knowledge includes, but is not limited to, knowledge systems, innovations and adaptations, information, and practices of local communities or indigenous communities relating to medicine or cures, agriculture, use and conservation of biological material and diversity, and other aspects of economic, social, cultural, aesthetic or other value;
- the rights relating to traditional knowledge include, in relation to local communities or traditional practitioners, the right for such communities or practitioners to be respected for their will and decisions on whether or not to commercialize their knowledge; to be respected and honoured of sanctity they attach to their knowledge; to give prior informed consent for access to and intended use of their traditional knowledge; to obtain full remuneration for their knowledge; and to prevent third parties from using, offering for sale, selling, exporting, and importing their knowledge or any article or product in which their knowledge is an input, unless all the requirements under the decision have been met;
- the existence of traditional knowledge in any form or at any stage shall defeat the novelty and inventiveness requirements for patents and the originality requirement for copyright. No intellectual property right should be granted to inventors or creators, if they used traditional knowledge without due recognition of it or without compliance with the requirements provided for in the CBD;
- the WTO shall adopt a programme and establish a committee to review and develop the protection of traditional knowledge;
- Members may document traditional knowledge in their territories and designate a competent authority to carry out this exercise. They may also maintain registers of local communities and traditional practitioners administrative purposes.<sup>147</sup>

39. In response, it has been said that it would be difficult to implement this suggestion in practice if the parameters of traditional knowledge protection are not defined.<sup>148</sup>

40. It has been suggested that the Council should consider the proposals on possible components of a *sui generis* system for protection of traditional knowledge addressed in a seminar held by the

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<sup>143</sup> Bolivia, Colombia, Ecuador, Nicaragua and Peru, IP/C/W/165.

<sup>144</sup> Thailand, IP/C/W/36/Add.1, para. 218.

<sup>145</sup> Indonesia, IP/C/M/32, para. 134.

<sup>146</sup> India, IP/C/W/198.

<sup>147</sup> The African Group, IP/C/W/404.

<sup>148</sup> Thailand, IP/C/M/42, para. 115.

Government of India and UNCTAD on the protection and commercialization of traditional knowledge in New Delhi on 3-5 April 2002.<sup>149</sup>

## **V. INFORMATION ON MEMBERS' NATIONAL LEGISLATION, PRACTICES AND EXPERIENCES**

41. Eight Members have provided information with regard to their legislation, practices and experiences, with respect to the protection of traditional knowledge or have described these in the Council meetings. These are Australia, Chinese Taipei, the European Communities, India, New Zealand, Norway, Peru and the United States.<sup>150</sup>

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<sup>149</sup> Brazil, IP/C/M/36/Add.1, para. 221; Brazil et al, IP/C/W/356; Thailand, IP/C/M/36/Add.1, para. 218.

<sup>150</sup> Australia, IP/C/W/310, IP/C/M/46, para. 63; Chinese Taipei, IP/C/M/43, para. 58; EC, IP/C/M/43, para. 39, IP/C/M/42, para. 108; India, IP/C/W/198, IP/C/M/48, paras. 57-59, IP/C/M/37/Add.1, para. 253; Norway, IP/C/M/49, para. 120, IP/C/W/48, para. 81, IP/C/M/43 para. 54, IP/C/M/40 paras. 87-88, IP/C/M/39 para. 121; New Zealand, IP/C/M/37/Add.1, para. 248; Peru, IP/C/W/458, IP/C/W/447, IP/C/W/441/Rev.1, IP/C/W/246, IP/C/M/49, paras. 81-84, IP/C/M/47, paras. 16-23, IP/C/M/45, para. 31, IP/C/M/38, para. 245, IP/C/M/36/Add.1, para. 204; United States, IP/C/W/393, IP/C/W/341, IP/C/M/42, para. 110, IP/C/M/37/Add.1, para. 251.

## **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 January 2006 (IP/C/M/21-35, 36/Add.1, 37/Add.1, 38-40 and 42-49) reflect the work done so far in the Council for TRIPS with respect to three agenda items, namely, the 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 (List A). The substantive discussions in the Council for TRIPS on these issues have been recorded in the reports of the meetings held from August 1999 to January 2006 (IP/C/M/24-35, 36/Add.1, 37/Add.1, 38-40 and 42-49).

Other documents that have been made available include:

- Members' submissions relating to specific issues. Over the period December 1998 to November 2005, 51 papers have been submitted by Members or groups of Members (List B).
- Information on national legislation, practices and experiences provided by eight Members (List C)
- Responses to the questionnaire on Article 27.3(b) from 25 Members (List D).
- Information provided on work in intergovernmental organizations (List E).
- Notes by the Secretariat on relevant issues under discussion in the Council for TRIPS (List F).

<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>			
<b>2005</b>			
Bolivia, Brazil, Colombia, Cuba, India, and Pakistan	IP/C/W/459	The Relationship between the TRIPS Agreement and the CBD, and the Protection of Traditional Knowledge - Technical Observations on US Submission IP/C/W/449	18 November 2005
Peru	IP/C/W/458	Analysis of Potential Cases of Biopiracy	7 November 2005
United States	IP/C/W/449	Article 27.3(b), Relationship between the TRIPS Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore	10 June 2005
Peru	IP/C/W/447	Article 27.3(b), Relationship between the TRIPS Agreement and the CBD and Protection of Traditional Knowledge and Folklore	8 June 2005
Switzerland	IP/C/W/446	The Relationship between the TRIPS Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore and the Review of Implementation of the TRIPS Agreement under Article 71.1	30 May 2005
Brazil, India	IP/C/W/443	The Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the Protection of Traditional Knowledge: Technical Observations on Issues Raised in a Communication by the United States (IP/C/W/434)	18 March 2005
Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Ecuador, India, Peru, Thailand	IP/C/W/442	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 Benefit-Sharing under the Relevant National Regime	18 March 2005
Peru	IP/C/W/441/Rev.1	Article 27.3(b), Relationship between the TRIPS Agreement and the CBD and Protection of Traditional Knowledge and Folklore	19 May 2005
Peru	IP/C/W/441	Article 27.3(b), Relationship between the TRIPS Agreement and the CBD and Protection of Traditional Knowledge and Folklore	8 March 2005

<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 TRIPS Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore	26 November 2004
Switzerland	IP/C/W/433	Further Observations by Switzerland on its Proposals regarding the Declaration of the Source of Genetic Resources and Traditional Knowledge in Patent Applications	25 November 2004
Bolivia	IP/C/W/429/Rev.1/Add.1	Request from Bolivia to be added to the List of Sponsors of document IP/C/W/429/Rev.1	14 October 2004
Brazil, Cuba, Ecuador, India, Pakistan, Peru, Thailand and Venezuela	IP/C/W/429/Rev.1	Revised Version of Document IP/C/W/429 and Request from Cuba and Ecuador to be added to the List of Sponsors	27 September 2004
Brazil, India, Pakistan, Peru, Thailand and Venezuela	IP/C/W/429	Elements of the Obligation to Disclose the Source and Country of Origin of Biological Resources and/or Traditional Knowledge Used in an Invention	21 September 2004
Switzerland	IP/C/W/423	Additional Comments by Switzerland on its Proposal Submitted to WIPO Regarding the Declaration of the Source of Genetic Resources and Traditional Knowledge in Patent Applications	14 June 2004
Bolivia	IP/C/W/420/Add.1	Request of Bolivia to be added to the List of Sponsors of Document IP/C/W/420	5 March 2004
Brazil, Cuba, Ecuador, India, Peru, Thailand and Venezuela	IP/C/W/420	The Relationship Between the TRIPS Agreement and the Convention on Biological Diversity (CBD) - Checklist of Issues	2 March 2004

<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	IP/C/W/383	Review of Article 27.3(B) of the TRIPS Agreement, and the Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the Protection of Traditional Knowledge and Folklore	17 October 2002
Peru	IP/C/W/356/ Add.1	Request of Peru to be added to the List of Sponsors of Document IP/C/W/356	1 November 2002
Brazil, China, Cuba, Dominican Republic, Ecuador, India, Pakistan, Thailand, Venezuela, Zambia and Zimbabwe	IP/C/W/356	The Relationship between the TRIPS Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge	24 June 2002
United States	IP/C/W/341	Technology Transfer Practices of the US National Cancer Institute's Departmental Therapeutics Programme	25 March 2002
<b>2001</b>			
Australia	IP/C/W/310	Communication from Australia: Review of Article 27.3(b)	2 October 2001

<b>LIST B - Members' submissions relating to the agenda items</b>			
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
<b>2000</b>			
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: Issues for Discussion under the Review of the Provisions of Article 27.3(b) of the TRIPS Agreement	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
<b>1999</b>			
Andean Group	IP/C/W/165	Review of the Provisions of Article 27.3(b) - Proposal on Protection of 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
Canada, EC, Japan and the United States	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

<b>LIST B - Members' submissions relating to the agenda items</b>			
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
India	IP/C/W/161	Review of the Provisions of Article 27.3(b) - Communication from India	3 November 1999
African Group	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
<b>1998</b>			
Mexico	Job No. 6957	Non-paper from Mexico: Application of Article 27.3(b)	8 December 1998

<b>LIST C – Information on national legislation, practices and experiences</b>			
<b>2006</b>			
Norway	IP/C/M/49, para. 120	Minutes of the Council for TRIPS Meeting	31 January 2006
Peru	IP/C/M/49, paras. 81-84	Minutes of the Council for TRIPS Meeting	31 January 2006
<b>2005</b>			
Peru	IP/C/W/458	Analysis of Potential Cases of Biopiracy	7 November 2005
India	IP/C/M/48, paras. 57-59	Minutes of the Council for TRIPS Meeting	15 September 2005
Norway	IP/C/M/48, para. 81	Minutes of the Council for TRIPS Meeting	15 September 2005
Peru	IP/C/W/447	Article 27.3(b), Relationship between the TRIPS Agreement and the CBD and Protection of Traditional Knowledge and Folklore	8 June 2005
Peru	IP/C/W/441/ Rev.1	Article 27.3(b), Relationship between the TRIPS Agreement and the CBD and Protection of Traditional Knowledge and Folklore	19 May 2005
Peru	IP/C/M/47, paras. 16-23	Minutes of the Council for TRIPS Meeting	3 June 2005
Peru	IP/C/W/441	Article 27.3(b), Relationship between the TRIPS Agreement and the CBD and Protection of Traditional Knowledge and Folklore	8 March 2005
Australia	IP/C/M/46, para. 63	Minutes of the Council for TRIPS Meeting	11 January 2005



<b>LIST C – Information on national legislation, practices and experiences</b>			
<b>2004</b>			
Peru	IP/C/M/45, para. 31	Minutes of the Council for TRIPS Meeting	27 October 2004
Chinese Taipei	IP/C/M/43, para. 58	Minutes of the Council for TRIPS Meeting	7 May 2004
EC	IP/C/M/43, para. 39	Minutes of the Council for TRIPS Meeting	7 May 2004
Norway	IP/C/M/43, para. 54	Minutes of the Council for TRIPS Meeting	7 May 2004
EC	IP/C/M/42, para. 108	Minutes of the Council for TRIPS Meeting	4 February 2004
United States	IP/C/M/42, para. 110	Minutes of the Council for TRIPS Meeting	4 February 2004
<b>2003</b>			
Norway	IP/C/M/40, paras. 87-88	Minutes of the Council for TRIPS Meeting	22 August 2003
Norway	IP/C/M/39, para. 121	Minutes of the Council for TRIPS Meeting	21 March 2003
Peru	IP/C/M/38, para. 245	Minutes of the Council for TRIPS Meeting	5 February 2003
United States	IP/C/W/393	Access to Genetic Resources Regime of the United States National Parks	28 January 2003
<b>2002</b>			
India	IP/C/M/37/ Add.1, para. 253	Minutes of the Council for TRIPS Meeting	8 November 2002
New Zealand	IP/C/M/37/ Add.1, para. 248	Minutes of the Council for TRIPS Meeting	8 November 2002
Peru	IP/C/M/36/ Add.1, para. 204	Minutes of the Council for TRIPS Meeting	10 September 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
<b>2001</b>			
Australia	IP/C/W/310	Communication from Australia: Review of Article 27.3(b)	2 October 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
<b>2000</b>			
India	IP/C/W/198	Protection of Biodiversity and Traditional Knowledge - The Indian Experience	14 July 2000

<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
Romania	IP/C/W/125/Add.6	Review of the Provisions of Article 27.3(b) - Information from Members - Addendum	16 February 1999

<b>LIST D - Information on Review of the Provisions of Article 27.3(b)</b>			
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), Relationship between the TRIPS Agreement and the Convention on Biological Diversity and Protection of Traditional Knowledge and Folklore	11 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	10 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	10 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
<b>2001</b>			
WIPO	IP/C/W/242	Statement by the World Intellectual Property Organization (WIPO) on Intellectual Property, Biodiversity and Traditional Knowledge	6 February 2001
<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

<b>LIST E - Information on the work of intergovernmental organizations</b>			
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 Roundtable 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
<b>1999</b>			
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

<b>LIST F - Notes by the Secretariat</b>		
<b>2003</b>		
IP/C/W/273/Rev.1	Review of the Provision of Article 27.3(b): Illustrative List of Questions Prepared by the Secretariat - Revision	18 February 2003
<b>2002</b>		
IP/C/W/370	The Protection of Traditional Knowledge and Folklore - Summary of Issues Raised and Points Made	8 August 2002
IP/C/W/369	Review of the Provisions of Article 27.3(b) - Summary of Issues Raised and Points Made	8 August 2002
IP/C/W/368	The Relationship between the TRIPS Agreement and the Convention on Biological Diversity - Summary of Issues Raised and Points Made	8 August 2002
JOB(02)/60	The Protection of Traditional Knowledge and Folklore - Summary of Issues Raised and Points Made	18 June 2002
JOB(02)/59	Review of the Provision of Article 27.3(b) - Summary of Issues Raised and Points Made	18 June 2002
JOB(02)/58	The Relationship between the TRIPS Agreement and the Convention on Biological Diversity - Summary of Issues Raised and Points Made	18 June 2002
<b>2001</b>		
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

<b>LIST F - Notes by the Secretariat</b>		
<b>2000</b>		
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
<b>1999</b>		
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
<b>1998</b>		
IP/C/W/122	Illustrative Questions: Review of the Provisions of Article 27.3(b)	22 December 1998

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