

## INTELLECTUAL PROPERTY

The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) aims to ensure all WTO members provide an adequate standard of protection for intellectual property and that intellectual property rights do not become barriers to trade.

The TRIPS Agreement sets the minimum international standards of protection and enforcement for each of the different categories of intellectual property including:

- copyright, trademarks and patents.
- location-specific 'naming rights', called Geographical Indications (GIs).
- industrial designs.
- layout designs of integrated circuits for electronics.

A number of issues related to intellectual property are being considered as part of the current WTO trade round, launched in Doha 2001. The focus in this Round includes improving access to medicines for developing countries, geographical indications, and the protection of traditional knowledge.

### TRIPS and access to medicines

In one of the most important developments in the Doha Round so far, WTO members reached final agreement in December 2005 on a system that allows developing countries with insufficient domestic manufacturing capacity in the pharmaceutical sector to import generic drugs issued under a compulsory licence (called "the Decision"). New Zealand strongly supported this outcome.

Ministers were most concerned to help developing countries gain access to more affordable medicines in order to fight public health crises such as AIDS/HIV, malaria and tuberculosis.

### Geographical Indications

Geographical Indications (GIs) are names that identify a good as originating from a particular place, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. A GI can be thought of as location-specific branding.

One of the most internationally recognised GIs is "Champagne", which refers to wine produced in the French region of Champagne. There are many other examples covering a wide range of products and placenames, including "Scotch" whiskey and "Stilton" cheese.

The TRIPS Agreement currently provides two levels of protection for GIs.

- Article 22 is designed to prevent consumer deception and unfair competition, and provides protection for GIs for all products. It allows other producers to use the GI, provided they do not mislead consumers into thinking the product comes from the place where the GI originated. An example could be "Feta Style Cheese produced in New Zealand".
- Article 23 protects GIs for wines and spirits and affords producers from a region the exclusive right to use a GI. This measure prohibits products from outside the region using the name, even if its use is in conjunction with terms like "style" or "imitation". "Champagne", again, is the most well known example of a name that may only be applied to wines from the Champagne region in France.

Article 24 lists a limited number of exceptions to the protection measures.

Geographical Indications are a controversial issue in the Doha round.

Negotiations are taking place on the creation of a multilateral system for the notification and registration of wines and spirits GIs (known as "the Register"). Positions in this negotiation are polarised. On the one side is the European Union, a main user of GIs, and on the other side is a group of "New World" countries including New Zealand, the United States of America, Australia, Canada and Argentina as well as a number of developing countries. This is the only GI issue for which there is a mandate to negotiate in the current trade round.

At the same time, the EU is seeking a mandate to extend to all products the level of protection received by wines and spirits under Article 23 (known as "Extension"). New Zealand's position is that there is no justification for extending this level of protection to all products. Article 22 takes appropriate account of the needs of consumers and of all producers.

The EU has also put forward a proposal in the agricultural negotiations that seeks to "claw-back" the exclusive right to use terms the EU considers are GIs, but which are used as generic terms in many other countries. Examples include Feta cheese and Parma ham. This proposal disregards the exceptions to

protection contained in Article 24 of the TRIPS Agreement and has been strongly rejected by many WTO Members.

While GIs can play a role in the branding of some products, and in providing information to consumers about the origin of products, the EU's proposals go far beyond these objectives and have the potential to introduce new barriers to international trade.

### Traditional knowledge and related issues

In the last decade there has been increasing discussion about the relationship between intellectual property laws, genetic resources and the protection of traditional knowledge.

Among other things, a number of developing countries and traditional knowledge holders have raised concerns about:

- their limited ability to control access to, and use of, their traditional knowledge and genetic resources
- their limited ability to use intellectual property rights to protect their traditional knowledge.

In response to these concerns, trade ministers agreed at Doha that the TRIPS Council should:

- examine the issue of the protection of traditional knowledge and folklore.
- examine the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD). TRIPS allows for private rights to be established over inventions based on genetic resources, while the CBD provides that countries have sovereign rights over their genetic resources. The CBD also provides that access to genetic resources should be on the basis of prior informed consent, on mutually

agreed terms with benefit sharing arrangements. The patent system does not necessarily take these factors into account in the grant of rights.

- continue to review the part of the TRIPS Agreement that allows countries to prevent patents being granted over plants and animals.

Some developing countries have proposed that the patent assessment process be amended to include new requirements incorporating principles contained in the CBD.

New Zealand's position is that the national level policy and legal frameworks incorporating the CBD principles, which are required to underpin these patent proposals, have not yet been fully developed by many countries. In such circumstances, the proposed patent requirements would be unworkable. In New Zealand's view, a case has not been adequately put for the patent system to be amended.

Similar issues are also being considered by the World Intellectual Property Organisation Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and in the CBD.

For a glossary of trade associated words please go to:  
[http://www.wto.org/english/thewto\\_e/glossary\\_e/glossary\\_e.htm](http://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm)