TRIPS Issues Papers **2**

Special and Differential Treatment of Developing Countries in TRIPS

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Published by:

Quaker United Nations Office (QUNO), Geneva
Quaker International Affairs Programme (QIAP), Ottawa

Project undertaken with the financial support of the Government of Canada
provided through the Canadian International Development Agency (CIDA)

Contents

About these papers

In these issues papers, individual authors are invited to examine a subject of importance in the developing international intellectual property regime and highlight the key issues they see arising. The topics have been chosen following consultations with negotiators from developing countries and respond to their concerns. Our aim is to contribute to a greater understanding of the impact of changes in this area upon people's lives and better inform debate and negotiations.

About the author

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The opinions given herein belong solely to the author and do not involve any of the organisations mentioned in this work.

Acknowledgements

The author would like to thank Fred Abbott, Carlos Correa, Graham Dutfield, Carsten Fink, Jonathan Hepburn, Paul Mably, Ruth Mayne, Tasmin Rajotte, Geoff Tansey, and the participants at a review seminar at Quaker House, Geneva, for their comments.

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Series editor: Geoff Tansey

Design: Mike Barrett

Summary

Differential and more favourable treatment of developing countries has been a fundamental principle of the General Agreement on Tarrifs and Trade (GATT) and the World Trade Organisation (WTO). Because developing countries are disadvantaged in international trade, the international community has agreed that these countries should be subject to somewhat different rules and disciplines in international trade than those that apply to developed countries; and that the latter will implement their obligations under the GATT and WTO in ways that would be favourable to development.

This paper analyses the special and differential treatment (SDT) provisions in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and assesses their implementation in support of development. Given the variety of circumstances facing developing countries and the evidence that different levels of Intellectual Property Rights (IPRs) protection are suitable for different stages of development, the TRIPS Agreement should have contained substantial SDT provisions. In fact this is not the case. Unlike most WTO agreements, it contains no significant differences in the rules for developing countries or least developed countries (LDCs) and developed countries. It is a clear case of 'one size fits all' regarding the minimum rules for IPRs protection, for example in patents, trademarks and copyright, except that the timing of implementation of the rules differs, through the provision of longer transition periods for developing countries and LDCs. In addition there are two, non legally binding provisions, involving commitments by developed countries to promote technology transfers and technical and financial assistance to developing countries. There are also some aspects of the agreement which provide flexibility in its implementation at the national level by different countries.

The lack of substantial SDT poses serious problems for developing countries in many areas but especially in the patent system where the balance of costs and benefits of IPRs is likely to differ markedly in diverse circumstances and at different stages of development. Moreover, the transition periods for implementation were chosen without any serious analysis of the time and resources required for establishing the necessary institutional capacity. These periods have either expired or are about to expire. What remains are the exceptions granted to the LDCs which are expected to fulfil the requirements for TRIPS by 2006. At the Doha Ministerial in 2001, under the 'Declaration on TRIPS and Public Health', LDCs were given a further extension to 2016 to implement certain aspects of the Agreement.

On the implementation of the TRIPS Agreement itself, developing countries have felt that developed countries have failed to live up even to their limited commitments by not taking concrete steps to provide technology transfers and by failing to provide adequate technical assistance as called for by the Agreement. Developing countries have also felt that the Agreement fails to address a number of IPRs issues of importance to development, such as protection of traditional knowledge.

The most powerful way in which SDT should be offered to the developing countries in the TRIPS Agreement, is to change some of the fundamental principles on which the Agreement is based by modifying the one size fits all minimum requirements with the most deleterious effects on development. This means amending the TRIPS Agreement so that developing countries, or at least a subset of them consisting of LDCs and other low income/small economies, do not have to introduce product patents in particular sectors of their choice and, where they do extend patents, they can do so for periods they determine themselves.

However, the Doha negotiating mandate contains only general language to strengthen SDT and, regarding TRIPS, focuses only on issues concerning health, geographical indications and the issue of compatibility of TRIPS and the United Nations Convention on Biological Diversity (CBD). Thus, there are serious limitations on what may be done to make TRIPS more development friendly in the present WTO negotiations. The main recommendations are as follows:

1. If it is not feasible to change the fundamental rules on patents, the transition period for LDCs should be extended to 2016, and the extension should be provided for all sectors and all aspects of the Agreement, not only pharmaceuticals.
2. The problems faced by other small and low income countries in implementing TRIPS are similar to those faced by LDCs. An effort should be made to include these countries in the extension to 2016 provided to the LDCs.
3. Even beyond 2016, it is doubtful that LDCs and other low income countries should adopt the full range of TRIPS disciplines. The question of what would be the most opportune occasion to seek an overall waiver to some of the most detrimental aspects of the agreement should be a topic for discussion and further analysis by the countries concerned.
4. It is important that the agreement reached on means to operationalise the exception on the imports of low cost drugs by developing countries finally reached in August 2003 is shown to be an effective solution through its rapid use by those countries in need, and, if not, that more effective measures with less constraints be introduced.
5. The TRIPS Council decision to monitor the incentives

provided by developed countries for technology transfer to LDCs could be strengthened by extending it to other low income countries and by seeking to develop a mechanism for evaluation of the effectiveness of these efforts.

6. Assistance for the implementation of the TRIPS Agreement should be placed in the context of overall development priorities—which is currently being done in the context of the Poverty Reduction Strategy Papers being prepared by low income developing countries. Since it is likely that the priority given to TRIPS is going to vary in each country, it is inappropriate to force LDCs and other low income countries to a fixed deadline, 2006, 2016 or whatever date by which to adhere to all aspects of TRIPS. In providing assistance, care needs to be taken to ensure that it is not supply driven and that donors reflect developing country perspectives and attitudes rather than their own.

7. In order to operationalise the developed country commitment to technology transfer, developed countries should establish specific financial targets which could be met through various actions by individual donors. But the likelihood for such a commitment would be much greater, if the recipients of the transfer were limited to the LDCs and other low income countries/ small economies who are the countries most in need and who are the regular recipients of development asssitance.

8. The TRIPS Agreement should be rebalanced by the introduction of more effective protection for traditional knowledge. This could be done in the context of the discussion of the compatibility of TRIPS with the CBD which contains provisions regarding the protection of traditional knowledge and remuneration for its use. Strengthening geographical indicators, on the other hand, is not something which would unambiguously benefit developing countries.

9. Developing countries need to continue their efforts to maintain and increase the flexibility they have in implementing TRIPS, and avoid reducing it through limitations introduced in bilateral and regional free trade arrangements they conclude with developed country partners.

10. Developing countries need to take domestic measures to both protect IPRs important to their development, such as those that derive from traditional knowledge, as well as to take other steps that would mitigate the adverse effects of TRIPS, for example, including legislation that strengthens competition.

1. Introduction

Differential and more favourable treatment of developing countries has been a fundamental principle of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO). It is based on the premise that developing countries are inherently disadvantaged in their participation in international trade. For this reason the international community has agreed that, in principle, developing countries should be subject to somewhat different rules and disciplines in international trade than those that apply to developed countries; and that the latter will implement their obligations under the GATT and WTO in ways that would be favourable to development[1]. Consistent with this principle of 'special and differential treatment' (SDT), the WTO agreements that ended the Uruguay Round (UR) contain numerous provisions in favour of developing countries. How to ensure that these provisions are implemented effectively, is a matter of continued controversy in the context of the current Doha Round of WTO multilateral negotiations.

Before the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement was invented by the developed countries during the UR, developing countries had applied very different rules to protect intellectual property rights (IPRs) in their national jurisdictions. By and large, there was less protection of IPRs than in developed countries, for various reasons, including the difficulty of enforcement as well as the belief that strong IPRs protection compromised the diffusion of technology essential for development[2]. In light of these very large differences in the rules affecting IPRs, one may have expected to find extensive SDT provisions in the TRIPS Agreement. Paradoxically, while the Agreement contains a certain amount of in-built flexibility, there are very few provisions calling for SDT of developing countries.

The TRIPS Agreement has come under extensive criticism because of its potentially adverse effect on development:

- it is likely to result in massive resource flows from developing to developed countries based on the increased monopoly rents that developed country multinationals will be able to extract from the increased IPRs protection in developing countries that TRIPS mandates[3];
- it could reduce access to and increase costs of medicines essential for combating AIDS and other epidemics in developing countries[4];
- its implementation requires heavy investment in institutional capacity development that poor countries can ill afford[5]; and,
- it does not contain protection of traditional knowledge, which is an important resource in many poor developing countries[6].

Moreover, the benefits that could potentially accrue to developing countries are diffuse and uncertain[7].

This paper is not intended to address all the complex and difficult issues raised by the TRIPS Agreement for developing countries nor assess the potential impact of its various provisions on development. The paper's objective is to focus only on the SDT aspects of the Agreement. After a brief overview of SDT and its implementation following the UR, the paper analyses the existing SDT provisions in the TRIPS Agreement and assesses their implementation in support of development. Subsequent sections explore alternatives which would strengthen the SDT provisions in the Agreement, as well as ways to 'rebalance' the Agreement so that it reflects better developing country interests. The analysis of TRIPS and, more generally, protection of IPRs at the international level raises a variety of issues from the economic, legal and ethical perspective, while the actual negotiation of agreements is subject to a variety of political considerations. This paper is written primarily from an economic perspective. While it contains recommendations regarding modifications in the provisions of TRIPS, which is a legal document, it does not attempt to formulate precise proposals regarding the legal nature of the changes, i.e. whether they involve formal amendments, interpretations or other means of putting into effect the recommendations made.

[1]The principle was formally introduced in the GATT under the "Enabling Resolution" in 1979, but specific provisions addressing developing country problems had been introduced in the GATT much earlier. For a detailed discussion of the rationale and evolution of the SDT concept see Michalopoulos, 2001, ch 3

[2]Some developing countries had on paper strong IPRs protection, inherited from their colonial past, but limited enforcement capacity

[3]Maskus, 2000

[4]Abbott, 2001

[5]IPRs Commission, 2002 and World Bank, 2002

[6]Adede, 2001

[7]Duran and Michalopoulos, 1999

2 The SDT concept and its elements

The legal texts of the agreements embodied in the WTO contain a very large number of provisions regarding differential and more favourable treatment of developing and least developed countries (LDCs). Thus, while a lot has been made of the increasing participation of developing countries in the UR agreements on the same basis as other members, the UR agreements contain many SDT provisions[8].

There are several conceptual premises underlying the provision of SDT as it has evolved and as reflected in the UR agreements. The fundamental one is that for a variety of reasons, e.g. because of weaknesses in their institutions or asymmetries in economic power, developing countries are intrinsically disadvantaged in their participation in international trade. Therefore, any multilateral agreement involving them and developed countries must take into account these weaknesses when specifying their rights and responsibilities. A related premise has been that the trade policies and rules that would maximise sustainable development in developing countries are different from those in developed economies and hence that certain disciplines applying to the latter should not apply to the former. The final premise is that it is in the interest of developed countries to assist developing countries in their fuller integration and participation in the international trading system[9].

Based on these premises, the SDT provisions introduced into the WTO agreements fall in two broad categories:

1. positive actions by developed country members;
2. exceptions to the overall rules contained in the agreements that apply to developing countries and, sometimes, additional exceptions for the LDCs.

There are three kinds of actions that developed countries have agreed to take to support developing countries participation in international trade:

1. provide preferential access to their markets;
2. provide technical and other assistance which would permit them to meet their WTO obligations and otherwise enhance the benefits developing countries derive from international trade;
3. implement the overall agreements in ways which are beneficial or least damaging to the interests of developing and least developed countries .

There are two fundamental ways in which developing and LDCs have accepted differential obligations under the UR agreements:

1. they enjoy freedom to undertake policies which limit access to their markets or provide support to domestic producers or exporters in ways which are not allowed to other members—all of which can be viewed as exemptions from WTO disciplines to take into account particular developing country circumstances;
2. they are provided with more time to meet obligations or commitments under the agreements.

In some cases, more favourable treatment involves a combination of both the above.

It is beyond the scope of this paper to analyse the conceptual basis or evaluate the overall effectiveness of these SDT provisions in promoting development[10]. Suffice it to say that overall assessments of the implementation of SDT in the UR have raised a number of general concerns, which are important to keep in mind as we examine the SDT provisions contained in the TRIPS Agreement.

- Many of the developed country SDT commitments are in the nature of 'best efforts' and hence are not legally enforceable under the WTO;
- Developed countries have been unwilling to make meaningful binding commitments on SDT that cover all developing countries, because the latter category is determined by countries themselves in the WTO and may include many countries which do not need it; they have been more willing to make more meaningful SDT commitments to LDCs, in part because the category includes countries which account for a small fraction of international trade and hence pose very limited threat to developed country commercial interests;
- Implementation of the commitments developing countries have assumed under the UR requires the allocation of significant resources in capacity building in areas which may not be of high priority for their long-term development;
- The transition periods established for meeting developing country obligations have been too short to implement the major institutional strengthening needed to meet the UR commitments.

[8]For a detailed listing see WTO, 2000

[9]This section is based on Michalopoulos 2001, ch 3; see also Stevens, 2003

[10]For a detailed discussion and assessment see Youssef, 1999, Michalopoulos, 2001, Stevens, 2003; see also Hoekman et al, 2003; and Corrales-Leal, 2003

Discussions on the implementation of the UR agreements and SDT have been mandated under the Doha Round (Box 1). Indeed, it was agreed that, because of concerns by developing countries that there were serious problems of implementation of the SDT provisions under the UR, agreement on more effective SDT implementation was supposed to have been reached early on in the negotiations. In 2002, several deadlines on SDT passed without an agreement being reached on the many proposals put forth by developing countries. Finally, in May 2003 the Chairman of the WTO General Council devised an approach for dealing with the Agreement's specific proposals, while assuring developing countries that all their proposals would be considered by the WTO membership. The approach involves dividing the 88 proposals into three groups:

(a) 38 proposals on which there is likelihood of reaching agreement;

(b) another 38 proposals which have been made in areas that are currently under negotiations as part of the Doha Development Agenda, or being considered in other WTO bodies, and which are likely to get a better response within the framework of the negotiations or at the technical level; and,

(c) 12 proposals on which there are wide divergences of views among WTO members[11].

The Chairman with the help of a small group of Ambassadors then started consultations on the proposals in groups (a) and (c) in order to move the process forward. A number of developing country proposals for SDT in TRIPS are included in groups (a) and (b) and are discussed below. There are none in group (c), i.e. those proposals on which there is wide disagreement among WTO members.

3. SDT provisions in TRIPS

3.1 Description

As noted in the introduction, there are relatively few SDT provisions in the original TRIPS Agreement. In particular, the basic rules in TRIPS about, for example, the minimum length of time for patents, exceptions to patents or other forms of IPRs are the same for developing and developed countries alike. The main SDT provisions are as follows[12]:

- **Transitional time periods** have been established for developing countries in general in the implementation of most aspects of the Agreement (Articles 65.2 and 65.4) and even longer transition periods for the implementation of the Agreement in LDCs: developing countries had been given four extra years and LDCs an additional six years from entry into force of the TRIPS Agreement to begin applying its provisions[13]. Moreover, an additional five years were given to countries that have had to introduce product patent protection in areas of technology that were less protected at the time of general application of the Agreement; but all members agreed to accept patent applications and exclusive marketing rights for pharmaceutical and agricultural chemical products as from the date the Agreement entered into force (Article 70). These extended time periods only applied to the countries which joined the WTO at the start as they were negotiated under the UR package and do not apply to developing and LDCs acceding subsequently (e.g. China, Cambodia and Nepal).

- **Technical and financial assistance** to facilitate implementation of the Agreement should be provided by developed countries to all developing countries and LDCs on mutually agreed terms and conditions (Article 67);

- **Technology transfer** should be encouraged to LDCs (not to all the developing countries) through developed country provision of incentives to enterprises and institutions in their territories for this purpose (Article 66.2).

The Agreement is remarkable in that, unlike most WTO agreements, it contains no differences in the rules as between developing or LDCs and developed countries. It is a clear case of 'one size fits all', except that the timing of implementation of the rules differs. In addition there are two, non-legally binding provisions, involving commitments by developed countries to give technical and financial assistance to all developing countries and to provide incentives for technology transfer to the LDCs.

In assessing the adequacy of these SDT provisions it is important to ask three questions:

1. Is TRIPS an agreement where it can be reasonably argued that 'one size fits all' regarding the rules that ought to be applied?

2. How effectively have the existing SDT provisions been applied?

[11]WTO, 2003 c

[12]WTO, 1995

[13]Except for obligations pertaining to MFN and national treatment; the LDC dates have been recently extended in a limited area (see below section 6)

Box 1 Doha Declaration (excerpts)

Trade-Related Intellectual Property Rights

17. We stress the importance we attach to implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines and, in this connection, are adopting a separate declaration.

18. With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this declaration.

19. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this declaration, to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.

Special and Differential Treatment

44. We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. In this connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns.

(WTO, 2001a)

3. What, if any, other SDT provisions are needed to address differences between developed and developing countries—and which countries should be the beneficiaries of such SDT?

3.2 Does one size fit all in TRIPS?

In answering this question, it is necessary to address the fundamental question of whether there should be any differences in the rules about the protection of IPRs in countries at different levels of development. IPRs are not fundamental rights, such as the freedom of speech, applicable universally. They are rights which are conveyed by governments to individuals or groups for the pursuit of certain social objectives such as, the promotion of inventions and technological improvements.

3.2.1 Patents

Let us look, in the first instance, at patents. Patents are the source of serious costs to developing countries as most of the patents in developing countries are taken out by individuals or companies from developed countries. In the case of patents, societies consider the development of inventions as a worthwhile objective which they pursue through the provision of a monetary incentive (reward) in the form of the monopoly rents that result from the exclusive use of the patent for the production of a particular product. If a new product requires considerable ingenuity as well as investment in time and effort to produce, but can be copied easily, then there may be little incentive to invent, and too few inventions from the viewpoint of the public interest. Patents confer market exclusivity (and hence monopoly rents) for a period of time to permit inventors to recoup their costs and reap a profit in exchange for making the new product and the knowledge embodied in it available to consumers. The length of the patent (how many years the inventor has the exclusive rights) determines in part the size of the reward.

But there is no reason to believe that all societies value inventions the same. Hence, there is no *a priori* reason why the reward or the length of time during which the inventor has exclusive rights should be the same.

Also, the patent system may provide an incentive, but in many developing countries there may be very limited local capacity to exploit it. 'Even when technologies are developed, firms in developing countries can seldom bear the costs of acquisition and maintenance of rights and above all, of litigation if disputes arise'[14]. Thus, the rewards are obtained primarily by multinationals that take out the patents, whereas the costs, in the form of higher prices due to the market exclusivity, are born by the developing country consumer. How costly patent protection is will also depend on market structure as well government policy to promote competition. Quite clearly the net benefit from protection of intellectual property will be uncertain, and is likely to vary from country to country and from sector to sector, depending on each country's value of invention and capacity to take advantage of the patent system, a country's capacity to implement competition policies and so forth.

[14]IPRs Commission, 2002, p 15

It can be argued, erroneously, that TRIPS does not impose one size fits all requirements on WTO members since countries can and do decide on even higher levels of IPRs protection than the minimum requirements. The fundamental problem arises with the minimum requirements which are by definition the same for all; and so are the rules—although there is some flexibility in their application at the national level. Many developing country legal experts have devoted considerable efforts to identify the measures that developing countries should take in order to take advantage of the flexibility provided by the agreement[15].

But the minimum requirements are the same and so are the exceptions to the rules. TRIPS imposes the same minimum length for patents (as well as trademarks and copyright) – which affects the rewards to patent holders, at 20 years for all, which is even longer than the 17 years prevailing in the USA, the strongest supporter of the patent system, when TRIPS was agreed[16]. Also, it does not permit a government to exclude an industrial sector from patents—although for plant varieties there is some flexibility regarding the nature of protection that can be used.

An early analysis of this issue, even before an agreement had been reached on TRIPS, concluded that 'to standardise protection at advanced levels is to presume that each economy has in place a technological or creative infrastructure for which high protection is suitably stimulative over some reasonable time frame. This presumption is clearly false and the existence of various levels of economic and technological development points to the desirability of differing national protection schemes, if not outright discrimination. Indeed the GATT rarely insists on uniform levels of trade protection (as opposed to non-dicrimination) and to do so in intellectual protection seems inconsistent and excessive.'[17].

History is full of examples of countries that developed well without patents: Switzerland and the Netherlands did well without patents for over half a century between the 1850s and the 1900s[18]. China, Taiwan (China) and Korea all developed very rapidly in the last half of the twentieth century without strong IPRs protection by emphasising the importance of imitation and reverse engineering. In India, the relative weakening of patent protection for pharmaceuticals (by allowing patents on process and not products) is widely considered to have been a contributing factor to the subsequent growth of India's pharmaceutical sector and its emergence as a low cost supplier of pharmaceuticals world wide. There is historical evidence that countries systematically increase the strength of their IPRs regimes as they move up the development ladder over time[19]. The TRIPS Agreement artificially pushes developing countries to adopt higher standards of IPRs protection than are consistent with their level of development.

Some have argued that stronger IPRs protection in developing countries would provide some stimulus to research and development that would result in technology suitable to these countries. Others, however, have stressed that technology development in developing countries can be stimulated not through patents but through 'utility models'. It is beyond the scope of this study to assess the validity of these claims. In general, however, there appears to be no conclusive evidence linking strong IPRs protection to economic growth. Most of the evidence showing a positive influence of IPRs protection on trade and investment relates to technologically advanced developing countries 'For other developing countries any beneficial trade and investment effects are unlikely to outweigh the costs, at least in the short to medium term'[20].

Moreover, a patent system is costly to establish and implement. These costs include the costs of scrutinising the validity of claims to patent rights and adjudicating in cases of alleged infringement. In developing countries, where resources are scarce and legal systems underdeveloped, the opportunity cost of setting up such a system is high. Initial capital expenditure may well be in the range of $1.5-2.0 million[21] or even higher[22]; while operating costs may be in the $1 million per annum range[23]. Over time, operating revenues, primarily from the administration of trademarks, may cover at least some of the costs. Additional analysis is needed to determine the costs of TRIPS implementation especially in low income and LDCs; and the priority of allocating resources in this area should be assessed in the context of the overall development priorities of each country (see section 5.2).

Developing countries recognised that limitations in their judicial system and overall implementation capacity could result in delays or less effective enforcement of IPRs protection than in developed countries. For this reason they insisted on Article 41.5 in the Agreement which provides some additional flexibility in TRIPS implementation. The article essentially says that developing countries can not be found in violation of TRIPS, if their enforcement of IPRs protection is no worse than enforcement of other laws in general. It provides legal cover in case, for example, litigation over a patent takes a very long time. But this does not mean that their obligations under the Agreement are different.

It is reasonable to conclude that the 'value of the patent system needs to be assessed in a balanced way and that the balance of costs and benefits is likely to differ markedly in diverse circumstances'[24]. It is clear that circumstances are

[15]See, for example, Correa, 1998; Correa 1999; Watal, 2001

[16]The earlier patent term in the USA is from the date of the grant of the patent not from the date of application; thus, the increase in the patent term was in practice probably less than three years

[17]Maskus, 1990, p 6

[18]Schiff, 1971

[19]Maskus, 2000

[20]IPRs Commission, p 24

[21]World Bank, 2002

[22]Finger and Schuler, 2000

[23]UNCTAD, 1996

[24]IPRs Commission, 2002 p 15

Box 2: Doha Declaration on the TRIPS Agreement and Public Health

1. We recognise the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.
2. We stress the need for the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems.
3. We recognise that intellectual property protection is important for the development of new medicines. We also recognise the concerns about its effects on prices.
4. We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all. In this connection, we reaffirm the right of WTO members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.
5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognise that these flexibilities include:
   a. In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.
   b. Each member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.
   c. Each member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
   d. The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.
6. We recognise that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.
7. We reaffirm the commitment of developed-country members to provide incentives to their enterprises and institutions to promote and encourage technology transfer to least-developed country members pursuant to Article 66.2. We also agree that the least-developed country members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016, without prejudice to the right of least-developed country members to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement. We instruct the Council for TRIPS to take the necessary action to give effect to this pursuant to Article 66.1 of the TRIPS Agreement

(WTO, 2001b)

very different in developed and developing countries. Yet, there are no SDT provisions for developing countries. TRIPS imposes the same minimum standards and rules for all, although there is some latitude in the implementation of the rules at the national level.

Developing countries have the flexibility of reducing some of the costs of the patent system through compulsory licensing, in carefully delineated circumstances. Under Article 31, compulsory licensing permits governments to authorise the use of the subject matter of a patent to others on the condition that an effort has been made to obtain authorisation from the patent holder on reasonable commercial terms in a reasonable period of time. The condition is waived in cases of national emergency, extreme urgency or public non-commercial use. This flexibility was put to the test recently when it became apparent that developing countries needed to address urgently the question of availability of drugs at affordable prices to deal with AIDS and other epidemics; and some actions on their part to do so were opposed by the pharmaceutical industry as a violation of the TRIPS agreement[25].

Following a great deal of public pressure on the pharmaceutical companies in developed countries that hold patents in HIV/AIDS drugs, WTO Ministers agreed at Doha to a 'Declaration on TRIPS and Public Health' (Box 2). The Declaration, inter alia, reasserts that under the compulsory licensing provisions of TRIPS each WTO member has the right to determine what constitutes a national emergency, and that public health crises relating to HIV/AIDS, TB, malaria and other epidemics can represent a national emergency. But it became apparent, once again that 'one size does not fit all' because provisions for compulsory licensing may not be very meaningful for developing countries that do not have the capacity to produce the drugs domestically. Hence the 'Declaration' also instructed the Council of TRIPS to find a solution to this problem and report to the WTO General Council by the end of 2002.

The TRIPS Council laboured hard to develop a proposal, which essentially would have permitted developing countries which did not have a capacity to produce drugs needed to combat epidemics to import them from low cost suppliers at low prices under carefully circumscribed circumstances,

[25]Pharmaceutical companies attacked South African legislation in this area on the grounds that it violated TRIPS, though no actual case was brought before the WTO; and the USA filed a TRIPS-based complaint to the WTO (later withdrawn) against some aspects of the compulsory licensing provisions of the Brazilian patent legislation

which would, for example, protect against the danger that these drugs would be re-exported to developed country markets. The Council failed to reach agreement by the deadline because the USA wanted to limit the application of the exception to pharmaceuticals related to AIDS/HIV, malaria and TB rather than include the possibility that it may be extended to pharmaceuticals related to other possible diseases that may affect developing countries.

An agreement was finally reached eight months later at the end of August 2003, under heavy political pressure to settle the issue before the fifth WTO Ministerial meeting in September 2003. This did not limit the exception to certain diseases but did introduce various requirements on countries that go beyond those in TRIPS, initially as a waiver until the Agreement can be amended[26]. These have been criticised by various non-governmental organisations and generic manufacturers as unwieldy and unworkable but time will tell. It does show, however, that the TRIPS Agreement is not set in stone. It can be amended, if it makes sense to do so, and sufficient political pressure is brought to bear on governments of developed countries to counteract the influence of the pharmaceutical and other industries that stand to benefit from the Agreement as it stands now.

3.2.2 Copyright

Some of the same concerns regarding patents apply to copyright. 'Copyright has emerged as one of the most important means of regulating the international flow of ideas and knowledge based products…The fact is that copyright ownership is largely in the hands of the major multimedia corporations placing low per capita income countries and smaller economies at a significant disadvantage'[27]. International copyright rules allow countries to place limits on exclusivity and the right to prevent unauthorised use by permitting reproduction for personal use, research, education and other non-commercial purposes. These exceptions and limitations on exclusivity are helpful in the diffusion of knowledge and technology.

Recently, however, the development of digital technology has permitted the unauthorised reproduction and world wide distribution of works under copyright. This has in turn led the copyright industries to introduce encryption technologies and anti-circumvention measures that may reduce access to information in developing countries[28]. Thus, the main concern for developing countries in the area of copyright, is to ensure that they maintain and, where appropriate, adopt exemptions to copyright for education, research and similar non-commercial uses in their national legislation; and to prevent the adoption of any international standards or rules that limit their ability to do so.

3.2.3 Trademarks

Trademark protection has so far been less controversial than patent protection in the development context and there has been little argument for differential treatment of developing countries in this area. As opposed to patents, the majority of trademark registrations are domestic registrations; and trademarks may be far less costly to implement. Trademarks may be helpful in providing important information to consumers, and thus contribute to improvements in the operation of markets in developing countries[29]. At the same time, they too generate economic rents to their owners by providing for product differentiation – which may or may not involve real quality differences. Many of the owners of the trademarks are transnational corporations which use trademarks together with other IPRs to help them establish and maintain market power as well as shape consumer attitudes. Still, the question remains as to what type of SDT might suitable to promote development objectives, other than the general provisions of the TRIPS agreement – suitably expanded and modified as discussed below.

[26]Decision on implementation of paragraph 6 http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm,
and General Council Chairperson's statement http://www.wto.org/english/news_e/news03_e/trips_stat_28aug03_e.htm

[27]UNESCO, 1998

[28]IPRs Commission, p 104

[29]Fink and Smarzynska, 2002

4. Bargains and SDT implementation

It is reasonable to conclude from the above analysis that TRIPS is one area in which a minimum one size does not fit all regarding the rules that should apply to developing and developed countries. But it may be still be argued that developing countries could agree to such rules – despite the costs that they may entail to many, especially the low income and least developed – if they obtained appropriate 'compensation' in other areas of trade liberalisation of interest to them and/or they are given enough time and resources to permit them to reach a level of development in which applying the same rules as developed countries made sense from a development perspective.

4.1 The bargain

When the original agreement was reached on TRIPS, two considerations apparently influenced developing country representatives' agreement to its provisions. First, while they were aware of the costs that the Agreement could impose on developing countries, they felt they had to accept TRIPS in exchange for commitments by developed countries to liberalise trade in agriculture and textiles[30]. Secondly, they obtained SDT commitments about the periods of transition for implementation of the Agreement by developing and LDCs and promises of assistance to defray the costs of implementation as well as to obtain technology transfers.

If, indeed, that was the bargain made, with developing countries accepting TRIPS in exchange for developed country commitments to liberalise trade in agriculture and textiles, these were two sectors in which developed country practices were already in clear violation of the spirit of GATT :

- in agriculture, because, at the insistence of developed countries, the sector was essentially previously excluded from trade liberalisation within the GATT; and,
- in textiles, under a waiver, because the developed countries insisted on maintaining import quotas, in clear violation of GATT provisions[31].

In discussions on the implementation of the UR agreements, developing countries have argued that developed country implementation of liberalisation in agriculture and textiles, while consistent for the most part with the letter of the UR agreements, violated their spirit because they did not, in fact, up to the present result in significant actual liberalisation of trade in these two important sectors for developing countries:

- in textiles, the commitments were backloaded and have been implemented without significant liberalisation in the quantitative restrictions affecting developing country market access;
- in agriculture because the tarrification process resulted in many instances in even higher protection, while export subsidies continue to undermine developing countries production at home and competitiveness abroad.

4.2 Implementation

Regarding the implementation of the TRIPS Agreement itself, developing countries have felt that, in general, developed countries have failed to live up to their commitments in a number of ways:

(a) by not providing for technology transfers as called for in Article 7;

(b) by failing to provide the necessary incentives to implement technology transfers to LDCs, as called for by Article 66.2; and,

(c) by failing to provide adequate technical assistance as required under Article 67. The LDCs have also argued that the transition periods provided to them were inadequate to permit them to develop the necessary capacity to implement the Agreement.

Developing countries have attempted both in the context of the implementation discussions as well as in the ongoing discussions on Article 27.3(b) to maintain and, if possible, expand the flexibility available to them under the provisions of the Agreement. This they have done by offering a number of 'interpretations' of various articles, for example, regarding the meaning of Article 31 on licensing (see Section 3), the meaning of 'exclusive marketing rights' (in Article 70) and the meaning of Article 39(3) which requires member countries to establish protections for submitted test data, and others. While these 'interpretations' are intended to maintain freedom of action for developing countries in the implementation of the TRIPS Agreement, they do not by themselves constitute SDT, because, if they are adopted, they would be available to all members, developed and developing alike.

In keeping with the above concerns, developing countries have offered a number of specific proposals which have been included in the group of SDT proposals currently under consideration under the process established by the President of the General Council (see Section 2). These involve, first, a proposal of the African Group[32], currently included among

[30] I have argued elsewhere (Duran and Michalopoulos, 1999) that unlike bargaining in trade that takes the form of mutually liberalising 'concessions' which benefit both parties, the TRIPS Agreement by tightening IPRs on patents resulted in gains to developed countries and losses to developing ones

[31] Another reason that some developing countries may have agreed to TRIPS is because they were feeling a lot of pressures to do so in their bilateral trade relations with developed countries

[32] WTO, 2002e

those for which it is judged that there are good chances for agreement, which involves recommendations on how to implement Article 66.2 and Articles 7 and 8 regarding technology transfer. Second, there are two proposals which are to be remitted for further discussion in specific WTO negotiating bodies. These include a proposal by the LDCs calling for additional transition periods for countries which have not established a 'viable technological base'; and, in case of objection by a WTO member, to have the burden of proof rest on the objecting member[33]; as well as the above mentioned proposal by the African group which calls for:

(a) extensions for all developing countries beyond the additional 5 year period under Article 65.4 relating to other areas of technology required to be protected under the Agreement; and,

(b) for an interpretation that patent rights are different from exclusive marketing rights and that the latter can be defined individually by each Member[34].

5. SDT options

The most powerful way in which SDT should be offered to developing countries in the TRIPS Agreement, is to change some of the fundamental principles on which the Agreement is based. Essentially this means changing some of the one size fits all minimum requirements which have potentially the most deleterious effects on development. These are the provisions that product patents should be provided to all sectors (only with the exceptions provided in Article 27.3(b)); and that all countries should provide product patents of the same minimum length of time. A meaningful SDT provision should permit all developing countries, or at least a subgroup of them – perhaps defined as the LDCs and other low income countries (see below) – to decide which sectors of their economy to include for patenting and the length of the period for which patents would be provided. This would be consistent with the development view that different levels and degrees of IPRs protection are appropriate at different levels of development.

Such an SDT provision would drastically change the meaning of TRIPS and make it more development friendly. But, given the Doha mandate, it will be extremely difficult to renegotiate the Agreement in this direction at present. Thus, it may be necessary for developing countries to fall back to what in a sense are 'second best' SDT proposals aimed to accomplish three objectives:

1. have as many of them avoid having to implement the TRIPS Agreement for as long as possible;
2. get the developed countries to live up to their commitments on technology transfer and technical assistance; and,
3. maintain and, if possible, enhance the 'policy space' open to developing countries (and others) in implementing the Agreement.

5.1 Transition periods

When TRIPS was agreed the transition periods were chosen without any serious analysis of the time and resources needed to establish the institutional capacity required to implement the Agreement, or indeed other WTO agreements. Apparently, there was also no thought given to the question of whether, even if a capacity to implement TRIPS was established, developing countries would find it in their interest to adopt the same rules regarding the length of patents or even having patent protection in certain sectors, such as pharmaceuticals.

The transition periods in TRIPS for developing countries as a whole have either expired or are about to expire. What remains are the exceptions granted to the LDCs which are expected to fill the requirements for the Agreement by 2006. At Doha, under the 'Declaration on TRIPS and Public Health' LDCs were given a further extension to 2016 to implement the TRIPS provisions on pharmaceuticals. There are several questions regarding these time periods.

1. Should not the extensions that have been granted to the LDCs regarding pharmaceuticals be extended to all sectors? While the pharmaceutical sector is critical to public health issues, there is no reason to believe that it is in the interest of LDCs to implement several other aspects of the Agreement (e.g. those related to patents in general) any time soon.

The Doha Declaration on TRIPS and Public Health says that

[33]WTO, 2002d

[34]Developing countries have made a number of other proposals regarding TRIPS which are not linked to SDT some of which are discussed below

the extension regarding pharmaceuticals is provided without prejudice to the rights of LDCs to seek other extensions of transition periods as provided in Article 66.1. The latter, in turn, specifies that the TRIPS Council 'shall upon a duly motivated request by an LDC, accord extension of this period' i.e. the ten years which expire in 2006. This essentially suggests that the TRIPS Council can provide a waiver to an individual LDC from implementing TRIPS for a time, on a case by case basis. It is not clear that the wording or the intent of this provision is to create a presumption in favour of granting such an extension or this is simply a different way of talking about a waiver, which is the right of any WTO Member to seek on anything at any time. The LDC proposal to obtain automatic approval for an extension on a case by case basis and place the burden of proof on granting further extensions on objecting members (see Section 4.2) would go a long way in dealing with this issue and should be endorsed by other developing countries.

2. Should not the extensions that have been (or will be) granted to LDCs not be extended to other developing countries, which, while not formally qualified as LDCs, face very similar development challenges? The definition of an LDC is itself somewhat controversial. For example, there is a 'size' limitation of 75 million in population, which has been explicitly introduced to prevent Nigeria from qualifying, as it otherwise meets all the LDC criteria[35]. Besides Nigeria, there are many other low income and/or very small economies whose technological capacity to implement the TRIPS Agreement is very limited which have nonetheless been forced to put in place the infrastructure to implement it. It has been argued that per capita and size should be used as criteria to expand the list of countries that qualify for SDT in a number of agreements whose implementation is resource intensive[36].

The African group proposal, to extend the transition beyond the additional 5 year period under Article 65.4 for all developing countries, goes in the direction of providing for all developing countries some of the benefits provided to LDCs. But the 'developing country' group is determined by self selection and includes a number of more advanced developing countries which may well be in a position and would like to implement the TRIPS provisions in their totality and for whom SDT is not appropriate. There is little doubt that developing countries institutional capacity as well as the level of IPRs protection they should provide varies markedly with the level of their development. Yet, except for the LDCs, WTO rules regarding the treatment of developing countries by developed countries are in most cases identical. Singapore and Korea with per capita incomes in 2001 of US$ 21,000 and $9,500 respectively, are supposed to be treated the same way as Ghana and Nigeria with per capita incomes of $290; Brazil with 170 million people the same as Mauritius with less than one million.

The LDC category has been a convenient focus for SDT by developed countries because these countries account for a very small proportion of world wide trade; and hence their preferential treatment tends to give rise to less objections among entrenched developed country commercial interests. Expanding the group of countries which are eligible for the same benefits as LDCs but not including the more advanced developing countries is a controversial issue among developing countries many of which perceive it as an effort to divide them politically. Its relevance is not limited to TRIPS. The general problem is that both from the standpoint of purely development considerations and from the standpoint of the political economy of preferential treatment, adhering to the present definition of LDCs on the one hand and all developing countries on the other, tends to result in the provision of some concrete measures of support to the LDC group and only 'best efforts' and not legally binding commitments for the rest.

There is one precedent for differentiation on a per capita income basis incorporated in the WTO Agreement on Subsidies and Countervailing Measures which provides developing countries with less than $1,000 per capita with a transition period of eight years in implementing the agreement (while the LDCs are totally exempt). There are some questions as to whether, from the development standpoint, it is wise for lower income developing countries or the LDCs to use their scarce budgetary resources to subsidise exports. But the principle of using a per capita income cut-off point is of importance and could be pursued in other, more appropriate, aspects of SDT treatment. Similarly, a strong case has been made that small economies, even if they have attained a certain level of development, are subject to serious institutional capacity constraints, are very vulnerable to external shocks and therefore require additional SDT.

Substantial differentiation also exists regarding financial flows from all the international financial institutions and from the United Nations Development Programme (UNDP). In the case of the World Bank, some developing countries get no assistance at all, others are only eligible for loans on hard terms others for soft loans, and still others for a mix. Why can the principle which has been accepted without serious difficulty on issues of finance not be acceptable regarding trade or TRIPS? It may be difficult to do, but it is being considered in the context of discussions on overall SDT in the Doha Round.

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[35]See UN, 2000; but the exception does not apply to Bangladesh whose population exceeds the limit but has been 'grandfathered' in the list

[36]Michalopoulos, 2001 and Hoekman, Michalopoulos and Winters, 2003

3. More fundamentally, should there be any arbitrary cut-off point in time for implementation of TRIPS (or, for that matter, a number of other WTO agreements) in 2016 or whenever, for any predetermined group of countries; or should there be flexibility in the implementation of the Agreement depending on when a particular country meets specific indicators of economic, social and technological development? This 'case by case' approach of SDT has some obvious attractions. But it has the shortcoming of being time consuming and resource intensive to administer; and is also subject to special pleading and the introduction of extraneous 'political' considerations, as the process of 'graduating' from the LDC category has shown where a similar case by case approach has been used[37].

Yet another approach may be to introduce flexibility in certain basic aspects of the Agreement, i.e. whether any developing country below a certain income level and/or size should be forced to adhere to certain aspects of the Agreement – e.g. the length of patent protection, or protection in certain sectors (e.g. pharmaceuticals), except when they voluntarily believe it is in their interest to do so. This, of course, would mean changing the basic minimum 'one size fits all' nature of the Agreement. But, as noted above, there is very good reason to question whether this principle should apply to TRIPS. This issue of basic flexibility has to be reviewed in the context of the question of transition periods for LDCs and other low income countries, which apply to some or all of the sectors or aspects of IPRs protection, and seems particularly appropriate in a 'development round'.

5.2 Technical assistance and capacity building

As noted above, developed countries are obliged under Article 67 of the Agreement to provide technical and financial assistance to developing countries to help them implement the Agreement. This has been done both bilaterally and through assistance programmes of international organisations such as United Nations Conference on Trade and Development (UNCTAD), World Intellectual Property Office (WIPO), WTO and the World Bank. Various kinds of assistance have been provided ranging from general and specialised training to support for establishing and modernising IPRs administration and promotion of local innovation and creativity[38].

Developing countries have questioned the adequacy of this support in their submissions on the implementation of the UR agreements. Yet, it is very difficult to reach general conclusions on this issue. Two considerations need to be evaluated in the provision of future assistance related to the implementation of TRIPS:

1. Capacity building in IPRs protection needs to be considered in the context of an overall assessment of development priorities and assistance requirements in each country. It should not be driven by arbitrary deadlines linked to WTO agreements. Nor should it be driven by levels of assistance developed countries are supposed to provide, determined arbitrarily and irrespective of the capacity of developing countries to utilise assistance effectively. This means that it would be inappropriate to seek to substitute these 'best efforts' and non-legally binding SDT provisions on foreign assistance with legally binding levels of assistance for this on any other trade-related assistance. In many low income developing countries, priority assessments for assistance are made through the development of Poverty Reduction Strategy Papers (PRSPs), which are being prepared in consultation with the International Monetary Fund and the World Bank[39]. The assistance is to be provided in a co-ordinated way by all donors, both bilateral and multilateral. Strengthening of trade-related capacity, including for the implementation of TRIPS, should be included in the PRSPs so as to ensure that it is properly evaluated and funded under donor programmes. Organisations such as UNCTAD, the WTO and WIPO, with expertise in strengthening IPRs institutions, should be included in donor sponsored consultative group meetings where trade-related capacity assistance is being considered, in addition to the UNDP, the international financial institutions and the bilateral donors which normally participate in such meetings.

2. In the past, concerns have been raised that assistance provided by WIPO and certain bilateral donors reflects the perspective of strengthening IPRs and reducing developing country flexibilities in implementing TRIPS rather than maximising flexibility and adapting the Agreement to developing country needs[40]. Because of the many, and to an extent contradictory, interests involved in TRIPS, it is important that great care be taken in ensuring that the assistance provided by donors truly addresses developing country needs.

3. IPRs protection in low income countries and the LDCs is likely to be beneficial in the short to medium term primarily to foreign trademark, copyright or patent owners. The priority of providing assistance in this area may well be questionable for this reason. The implication for such developing countries would be that they should strive as much as possible to defray costs of operating IPRs systems by establishing charges in their use.

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[37]Michalopoulos, 2002

[38]WTO, 2002a and IPRs Commission, 2002

[39]The group of developing countries that is covered by PRSPs is in principle very similar to the group of low income/small countries to which there is prima facie reason to extend SDT treatment in TRIPS. The exceptions relate to low income countries which do not have adequate policy or governance frameworks to merit support by the donors

[40]Médecins sans Frontières (MSF), Consumer Project on Technology (CPT), Oxfam, Health Action International (HAI), Conference on "Implementation of the Doha Declaration on the TRIPS agreement and Public Health: Technical assistance – How to get it right", Geneva, 28 March 2002, http://www.accessmed-msf.org/prod/publications.asp?scntid=26420021519443&contenttype=PARA&

5.3 Technology transfer

There is little evidence that developed countries have taken concrete steps to implement either Article 7 which states that the protection and enforcement of IPRs 'should contribute to the promotion of technological innovation and the transfer and dissemination of technology' or Article 66.2 which calls for the provision of specific incentives for technology transfer to LDCs. It is this general problem that the first African group proposal (see Section 4.2) tries to address. Under pressure from LDCs, in February 2003, the TRIPS Council adopted a new decision (Box 3) to help realise the objectives of Article 66.2. The decision calls for the developed countries to provide annual reports to the Council which would provide information on:

(a) the incentive regime established;

(b) the institutions in each developed country that would provide the incentives;

(c) the technology transfer involved; and,

(d) any other information that would help assess the impact of the incentives on the achievement of the objectives[41].

Technology transfer to developing countries is a difficult concept to define[42]. It occurs through many different and often not obvious ways. It can be embodied in imports, it can be the result of reverse engineering, from general education or specific training, from foreign direct investment or from specific assistance programmes. Thus, it is often very difficult to assess the actual fact that technology has been transferred or the effectiveness of various incentive instruments that have been used for this purpose. As a consequence, the Council Decision, which introduces a reporting requirement on this issue, is likely to be a useful first step in assessing implementation of this provision of TRIPS.

There are two kinds of concerns related to it: first, it could have gone a bit further, in not only asking for information that can be used in the assessment of donor efforts, but actually requesting the evaluation of developed country efforts in this area. It is not necessary to establish new evaluation institutions for this or any other trade-related assistance or initiatives. Evaluation programmes have been established and used by bilateral donors and multilateral organisations to evaluate their assistance efforts in various areas. These programmes can be used also to evaluate developed country activities in this and other TRIPS-related activities.

Box 3: Implementation of Article 66.2 of the TRIPS Agreement

Decision of the Council for TRIPS of 19 February 2003

The Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS"),

Having regard to Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement");

Having regard to the instructions of the Ministerial Conference to the Council for TRIPS contained in paragraph 11.2 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17), adopted on 14 November 2001;

With a view to putting in place a mechanism for ensuring the monitoring and full implementation of the obligations in Article 66.2, as called for by that Decision;

With a view further to establishing arrangements for annual reports by developed country Members and their annual review by the Council for TRIPS, as also called for by that Decision;

Decides as follows:

1. Developed country Members shall submit annually reports on actions taken or planned in pursuance of their commitments under Article 66.2. To this end, they shall provide new detailed reports every third year and, in the intervening years, provide updates to their most recent reports. These reports shall be submitted prior to the last Council meeting scheduled for the year in question.

2. The submissions shall be reviewed by the Council at its end of year meeting each year. The review meetings shall provide Members an opportunity to pose questions in relation to the information submitted and request additional information, discuss the effectiveness of the incentives provided in promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base and consider any points relating to the operation of the reporting procedure established by the Decision.

3. The reports on the implementation of Article 66.2 shall, subject to the protection of business confidential information, provide, inter alia, the following information:

(a) an overview of the incentives regime put in place to fulfil the obligations of Article 66.2, including any specific legislative, policy and regulatory framework;

(b) identification of the type of incentive and the government agency or other entity making it available;

(c) eligible enterprises and other institutions in the territory of the Member providing the incentives; and

(d) any information available on the functioning in practice of these incentives, such as:

- statistical and/or other information on the use of the incentives in question by the eligible enterprises and institutions;
- the type of technology that has been transferred by these enterprises and institutions and the terms on which it has been transferred;
- the mode of technology transfer;
- least-developed countries to which these enterprises and institutions have transferred technology and the extent to which the incentives are specific to least-developed countries; and
- any additional information available that would help assess the effects of the measures in promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

These arrangements shall be subject to review, with a view to improving them, after three years by the Council in the light of the experience.

(WTO, 2003a)

[41]WTO, 2003a

[42]Becker, 2002

Second, as with transition periods, the developed country commitments relate only to the LDCs, while a number of other low income developing countries face the same problems. The African group proposal also talks about reporting on steps taken to implement the objectives in Article 7 which would involve transfer of technology to all developing countries. This is not being addressed in the General Council decision and is part of the overall problem of developed countries providing concrete SDT commitments to the LDCs while limiting themselves only to general and unenforceable statements regarding the rest.

There are several ways in which developed countries can take meaningful steps to implement the objectives of Article 7. One approach, which has been used effectively in the context of debt reduction for developing countries, is to establish concrete financial targets for developed country compliance for technology transfer to developing countries with developed countries being given a choice of alternative modalities of how to meet their obligations. This could include:

- the purchase of patents and granting them to developing countries (for example, gene donations in the case of biotechnology or environmentally-sound technologies) or contributions to the Global Alliance for Vaccines and Immunisation; or
- the buying of drugs which would then be provided on a grant basis to needy developing countries; or
- fiscal incentives, such as tax reductions or exemptions for firms making transfers of technology to developing countries[43].

Again, there will be a problem if developed countries are asked to make directly or indirectly financial contributions to advanced developing countries which they normally exclude from their development assistance programmes. This problem can only be addressed by the willingness of developing countries, in certain circumstances, to accept that SDT treatment would be extended to a group that is larger than the LDCs but falls short of 'all developing countries'. It is only in this way that the TRIPS Agreement can make meaningful and concrete progress in promoting technology transfer, as called for in a very general way in Article 7.

5.4 Flexibility

An important dimension of developing country efforts on SDT in the Doha Round is the emphasis on maintaining 'policy space' to pursue development objectives[44]. In TRIPS this effort has focused on securing flexibility in the interpretation of various Articles in the Agreement. As noted earlier, this does not involve SDT as such because it does not result in a different treatment of developing countries. Flexibility has an important development dimension, especially because of continuing efforts by commercial interests in developed countries and members that represent them to introduce interpretations that limit competition and enhance the profitability of multinational firms at the expense of producers or consumers in developing countries.

The interpretation of Article 31 on licensing is one such example in which developing countries have been successful in obtaining agreement on an interpretation that maintains their flexibility to act in the public interest through compulsory licensing. At present, there are several issues in which maintaining flexibility in the interpretation of the TRIPS Agreement has important development dimensions. Perhaps the most important are those that surround the ongoing review of Article 27.3(b) which started in 1999 and has yet to be completed.

In the discussions of Article 27.3(b) which inter alia permits the protection of plant varieties through effective *sui generis* systems, other than patents, several issues need to be addressed. First, to ensure that developing countries have the freedom to use the *sui generis* regime of their choice. An internationally recognised system of plant variety protection has been developed under UPOV (Union International pour la Protection des Obtentions Vegetales). Although mainly used by developed countries, it has also been used by some developing countries, as it is readily available and thus eliminates the need to create something completely new. But as the UPOV system has evolved over time, it has resulted in more and more restrictive interpretations of farmers' rights – which are based on traditional knowledge and practices. Later versions of the agreement (starting with UPOV 1991) do not allow, for example, for informal sale and exchange of seeds among farmers[45]. Some preferential free trade arrangements between developed and developing countries have reduced the flexibility in Article 27.3(b) by requiring participating developing countries to adopt a particular system of plant protection, typically UPOV 1991[46], which may or may not be appropriate for their circumstances[47]. It should be made clear that members have the right to adopt **any effective *sui generis* system which is compatible with their TRIPS obligations**. Moreover, whichever system members adopt, should permit non-commercial use of plant varieties as well as preserve seed saving, exchange and selling practices among farmers; and the right of governments to sustain traditions of farming communities and indigenous peoples and encourage the development of new plant varieties which enhance biological diversity[48].

Second, there are serious concerns, especially among African

[43]For a discussion see Michalopoulos, 2001, ch 7

[44]Corrales-Leal, 2003

[45]Dhar, 2002

[46]IPRs Commission, 2002 and Vivas-Eugui, 2003

[47]Bilateral or regional free trade agreements involving developed and developing countries often call for 'TRIPS-plus' provisions in a number of other areas, such as more demanding enforcement disciplines, and thus obviously undermine any efforts to strengthen SDT provisions and flexibilities in TRIPS

[48]WTO, 2003b

members that under 27.3(b) Members must grant patents on micro-organisms and on non-biological and microbiological processes for the production of plants and animals. While there is some ambiguity in the definition of a number of these terms, the African group has reservations about patenting any life forms, as it feels that this would be contrary to the provisions of Article 27.2 which prohibits from patentability inventions whose commercial exploitation would be contrary to public order (*ordre public*) or morality. Accordingly these members have recommended that plants, animals and micro-organisms as well as essentially biological, non-biological and microbiological processes for the production of plants and animals be exempted from patentability.

Outside of 27.3(b), two other issues involving flexibility also deserve consideration.

First, as noted earlier, is the proposal by African countries which aims to establish that exclusive marketing rights are both different from patent rights and can be defined by each country individually. This is important because of the TRIPS commitment that countries confer exclusive marketing rights for five years to pharmaceutical and agricultural chemical products for which a patent application is pending. By opening up the definition of exclusive marketing rights, the proposal would permit the introduction of flexibility at the national level which could be helpful in limiting the costs of the reduction in competition involved in the granting of exclusive marketing rights.

Second, national authorities normally require, as a condition for registering a pharmaceutical product, the submission of data relating to the drug's quality, safety and efficacy ("test data"), as well as information on the physical and chemical characteristics of the product. Article 39.3 of the Agreement requires countries to establish protection for submitted data so that, for example, a competitor does not obtain the results of the test data through fraud or dishonest practices and uses them to submit an application for marketing its own product. The pharmaceutical industry has been arguing in favour of a broad coverage under the Article and for a requirement that countries confer exclusive rights to the originators of market approval data. Yet the Article is in fact narrowly drawn; and while countries have the responsibility of protecting test data against fraudulent use, they do not have the obligation to confer exclusive rights to such data[49]. To do so might result in blocking entry to generic competitors which would drive down the price of the drug and thereby enhance the welfare of consumers. Developing countries had been interested in reaching agreement on a development friendly interpretation of this provision in the context of the Doha Declaration on health, but failed. It may be useful to revisit the issue in the ongoing discussions on TRIPS, though it is not clear under which provision of the Doha Agenda this could be done.

6. Beyond SDT: rebalancing TRIPS

If TRIPS and the WTO in general is to be supportive of development, it may well be that focusing on SDT and trying to introduce interpretations that maintain flexibility is not enough. It is equally important to review the Agreements to ensure that they contain provisions that reflect the concerns and problems of developing countries which constitute the majority of the Membership. Viewing TRIPS in this context, one glaring omission appears: it is based on a developed country concept of individual ownership of rights that frequently fails to provide coverage for traditional knowledge (TK) in a manner satisfactory to its holders.

6.1 Traditional knowledge

TRIPS contains no provisions defining or protecting collective or TK[50]. In general, there is some ambiguity as to what constitutes TK, who are the 'owners' and what kinds of 'rights' can be developed to protect it. And there are other international organisations, notably WIPO which are currently exploring these issues. According to WIPO, TK refers to tradition-based literary, artistic or scientific works; performances inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary and artistic field[51].

In general, two kinds of TK have been identified: that pertaining to plant genetic resources; and that relating to cultural heritage or folklore, involving literary and artistic creations and music. Products based on TK are most frequently public goods[52], since their use is not exclusive, but open to others in the community.

Patents and other forms of IPRs protection based on individual ownership have been used to protect TK. But there are many fundamental difficulties in doing so:

[49]Correa, 2002

[50]There is reference to 'indigenous knowledge' in Article 12.4 of the Technical Barriers to Trade Agreement

[51]WIPO, 2001 p 25

[52]Sometimes, products may be sacred and, therefore, limited in their public use for their protection

- Certain forms of protection, such as patents, require novelty and/or inventive steps which can not be met by TK which is not contemporary and has been used for long periods[53];
- Genetic materials and TK may be extracted from indigenous and local communities with collective ownership for which a system of IPRs based on exclusive ownership by an individual or a company is inappropriate and ineffective;
- The granting of exclusive rights to protect IPRs as embodied in TRIPS limits rather than promotes the use of TK which may contradict practices of traditional communities who value sharing of knowledge[54].
- In some cases, making sacred information available in the public domain and exposing it to new forms of exploitation could have an adverse impact on indigenous and local communities.

As noted above, TRIPS contains a degree of flexibility that can be used to address some of these issues. However, underlying TRIPS is the notion that TK involves a private right. TRIPS recognises such rights in several areas, including micro-organisms and microbiological processes. By contrast, the United Nations Convention on Biological Diversity (CBD) affirms that a nation has sovereign rights over its biological resources. Moreover, the CBD explicitly espouses the equitable sharing of any benefits arising from the use of these resources (something that TRIPS does not do) and recognises the usefulness of TK, innovations and practices to the conservation of biological diversity and its sustainable use. Recognising this potential conflict, the Doha Declaration refers to the need to examine the relationship between TRIPS and CBD, the protection of TK and folklore, taking full account of the developmental perspective (See Box 1).

It could be argued that, in some ways, IPRs that convey exclusive rights for exploitation of TK may not be the proper instrument for protecting TK and ensuring that communities get remunerated for its use. Some have argued for the establishment of a new concept of 'Traditional Intellectual Property Rights' that would contain rules that relate both to knowledge involving genetic resources and cultural activities[55]. The main problems faced by developing countries today, which are not being addressed by TRIPS, are protection against biopiracy and unauthorised use of TK; and the establishment of mechanisms for remuneration of communities for the use of collective knowledge. There are many examples of companies from developed countries appropriating TK and then taking out patents on it without compensation to the communities or collectives involved[56]. Several elements of reform are needed to address these issues.

First, to develop mechanisms to document TK. Once a particular product, process, or anything that is covered by the WIPO definition of TK has been identified and documented in a database, novelty, and hence a form of IPRs such as a patent, could not be claimed. But it is going to be very difficult, costly and time consuming to develop such a data base world wide or even on a national basis; and unrestricted access could actually be counterproductive and lead to further abuses[57]. In any case, the point may not be to try to limit the use of TK but to remunerate its owners.

Second, perhaps the most urgent need is to develop the legal basis and rules at the national level for access to and compensation for the use of TK. Such legislation would also need to contain requirements to provide for proof of origin and informed consent by indigenous and local communities for any claim of an IPR which may be based on TK as well as for compensation in the case of its unauthorised use. TK is clearly a case where the benefits and costs to society as a whole may diverge from those of specific individuals or groups and where, for this reason, careful government intervention is justified. As a consequence, in designing national rules and legislation that involve compensation, it would be important to define contractual arrangements with governmental entities at the local level or other means which would ensure adequate representation of the interests of indigenous and local communities.

Many developing countries have started along the path of establishing protection of TK along the lines discussed above[58]. It would appear important to move forward and introduce protection of TK in TRIPS. This can be done through the discussion of the compatibility of the TRIPS Agreement with the CBD, which is one of the points for negotiation on TRIPS agreed at Doha. Two basic elements of TRIPS revision could be introduced:

1. to introduce language that provides the legal foundation at the international level for the protection of TK along with the related biological resources and the equitable sharing of benefits for its use;
2. to introduce language that WTO Members would require as conditions of patentability:

   (a) the disclosure of the source and country of origin of the biological resource and of the TK, if any, used in the invention;

   (b) evidence of informed consent from the government or indigenous or local community for the exploitation of the subject matter of the patent;

   (c) evidence of fair and equitable benefit sharing with the indigenous or local community[59].

[53]But this does not mean that TK does not also evolve over time as local communities innovate to cope with adverse and changing circumstances

[54]On the other hand some TK may belong to 'healers' who may wish to keep much of what they know secret

[55]Cottier and Panizzon, 2003

[56]IPRs Commission, 2002

[57]Dutfield, 2002

[58]Correa, 2001

[59]The proposal here is similar to the proposal made by Brazil, China, India and several developing countries to the TRIPS Council (WTO, 2002c), except that in this case there is explicit reference to indigenous and local communities. The developing country proposal focused instead on consistency of disclosure and compensation with the 'national regime'. It is also in keeping with the proposals emanating from the UNCTAD Seminar on Traditional Knowledge (Dutfield, 2002)

It has been argued that addressing illegal access or unauthorised use through patent law would leave out cases where patents are not used, or other types of TK besides genetic material; and that it would be difficult to enforce because the original source of the genetic material may be difficult to identify. It has also been argued, primarily by developed countries (the USA and the EU) that WIPO should be the main forum for establishing a consensus on a new global IP protection of TK; and that the WTO should follow and not duplicate the discussion at WIPO's Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore[60].

On this latter argument, note that a few years ago developed countries found it in their interest to use TRIPS as a means of codifying rules at the multilateral level on issues of IPRs of interest to them – at a time when WIPO was also available as a multilateral forum. Now, when developing countries are becoming interested in codifying rules on TK, which are of interest to them in the WTO, developed countries seem to have rediscovered the importance of WIPO. It would seem that efforts should proceed in parallel, as many developing countries have argued[61].

Countries have the right to enact legislation that would require somebody that benefits from the exclusive rights of patents to disclose the geographical source of the material on which the invention is derived, subject to reasonable exceptions when that is not possible; and, where this was based on TK, that indigenous and local communities agreed to its use and were suitably remunerated. Just as developed countries have codified national practices into minimum standards applicable to all through TRIPS, it would seem that TRIPS should be used to codify standards and rules that are of interest to developing countries. Amendments to TRIPS or other modifications along the lines suggested above would make TRIPS a more balanced agreement that addresses important concerns of developing countries without actually creating special and differential rules in their favour[62].

6.2. Geographical indications

In addition to TK, some developing countries have felt that another area in which 'rebalancing' of TRIPS is needed relates to the question of geographical indications (GIs). GIs provide the opportunity for producers of something which is grown in a particular geographic region or locality to charge a higher price for the product because of the alleged higher quality that the soil, climatic conditions or other characteristics that the locality make possible. Under TRIPS, there is a basic standard of GIs protection provided for all products and a somewhat higher standard for wines and spirits, which are of export interest to some developed countries, especially the EU. A number of countries including several developing countries (which are not significant exporters of wines and spirits) have argued that the standards for all products should be raised to those enjoyed by wine and spirits. Other developing countries (including Argentina and Chile which export wines) have argued that additional protection would impose costly administrative burdens to developing countries and outweigh the potential benefits.

Clearly GIs are not an area where there is neat demarcation of developed/developing country interests and where increasing protection for other products would be unambiguously beneficial to a large number of developing countries or to developing countries as a group. Some developing countries would clearly benefit from higher standards of GIs protection applied to all products. Also, strengthening of GIs may be one way of strengthening the rights of communities and products using TK. On the other hand, some developing countries may produce reasonable substitutes for products which would benefit from increased GIs protection and their exports could be hurt. Others may be hurt because they are consumers of the products that would benefit from increased protection and whose prices may go up as a result of the increased protection. It is very hard to reach a judgement that strengthening GIs protection for all products would be beneficial to developing countries as a group – or for that matter to low income developing countries and LDCs, and that the TRIPS Agreement should be modified for this purpose[63].

In the current negotiations on GIs a number of proposals have been presented for the establishment of a multilateral register of GIs. One of the proposals envisages a register that would apply to all WTO members irrespective of whether they have products with GI protection on the register or not. Other proposals envisage a more flexible, voluntary use of a register. From the standpoint of developing countries, a register that applies to all members irrespective of their particular situations would appear to be one more instance of inappropriate application of the 'one size fits all' principle and as such would appear incompatible with their interests.

In sum, effective implementation of rules for disclosure of geographic origin for genetic materials would appear to contribute to rebalancing of the TRIPS Agreement in favour of developing countries. But tighter GIs standards for products do not seem to have necessarily the same unambiguously beneficial impact; indeed some proposals involving the establishment of a multilateral registry for GIs may result in net costs for lower income countries and LDCs which may have few products that would benefit from increased GI protection.

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[60]Cottier and Panizzon, 2003

[61]WTO, 2002b

[62]This paper does not advocate specific legal changes in TRIPS needed to accomplish this overall objective. It could be that formal amendments to the agreement are needed; it is possible that some of the changes could be introduced as interpretations of existing language in Article 27(3)b or in the Articles dealing with geographical indications

[63]The recent US legislation regarding the use of the name 'catfish', aimed at limiting imports from Vietnam, is yet another example of how GIs can be abused to restrict developing country market access (IHT, 2003)

7. Conclusions and recommendations

The TRIPS Agreement is the one UR agreement in which SDT for developing countries was especially appropriate. This did not happen to the extent and in the manner necessary to safeguard the interests of developing countries at different levels of development. The question now is what to do to make the Agreement more development friendly and to limit the potential damage that the principle of a minimum 'one size fits all', which is deeply imbedded in the Agreement, can do to development. Indeed, this is the basic assumption of developing countries in their approach to the Doha Round and other discussions on the implementation of TRIPS.

Some of the basic changes needed in TRIPS may not be feasible in the current negotiating environment. For example, TRIPS should have been negotiated on the same basis as the Services Agreement, i.e. that countries would adhere to certain rules regarding IPRs voluntarily and to the extent that they felt that doing so contributed to their development. Under such as a principle, countries would not, for example, have had to adhere to minimum standards on duration of patents in certain sectors – and/or the minimum standards may have been set much lower. This may well not be feasible under the present negotiating mandate of the Doha Round.

The Doha negotiating mandate regarding TRIPS focuses only on three areas: (a) issues regarding health (and the related 'Declaration' discussed earlier); (b) negotiations of GIs and (c) the issue of compatibility of TRIPS and the CBD especially regarding TK. In addition, there is general language about SDT under the general mandate of Doha to strengthen SDT in the Round. Thus, there are considerable limitations on what may be done to make TRIPS more development friendly at present. My main recommendations are as follows:

1. The most meaningful SDT provision is to modify the TRIPS Agreement so that developing countries, or at least a subset of them which would consist of the LDCs and other low income/small economies, do not have to introduce patents in particular sectors of their choice and, where they do extend patents, they can do so for periods they determine themselves.
2. If recommendation (1) does not prove feasible, the transition period for LDCs should be extended to 2016, and the extension should be provided for all sectors and all aspects of the Agreement, not only pharmaceuticals.
3. There is reason to believe that the problems faced by other small and low income countries in implementing TRIPS are similar to those faced by LDCs. An effort should be made to include these countries in the extension to 2016 provided to the LDCs. TRIPS is not the only WTO Agreement in which these poor countries face implementation difficulties because of high costs and institutional capacity weaknesses. This is a topic that needs to be pursued in the context of broader discussions of SDT eligibility by developing countries.
4. Even beyond 2016, it is doubtful that it would be in the interest of LDCs and other low income countries to adopt the full range of TRIPS disciplines. To do so would mean that in slightly more than a decade, LDCs and other low income countries would have made such developmental progress as to warrant adopting the same minimum standards of IPRs protection as developed countries. This would be hard to imagine, even if the most optimistic assumptions about future LDC growth and development would materialise. The only protection that LDCs now have in the agreement is the right to seek a waiver in 2006 or 2016 for pharmaceuticals. But of course, any member of the WTO has the right to seek a waiver to anything in the agreements with which it does not wish to comply. And as long as the other members agree to it, there is no problem. So, this is not much of a concession to LDCs. The question for LDCs and other low income countries and small economies is what is the most opportune occasion to try to seek an overall waiver to some of the most detrimental aspects of the Agreement. And the chances for this to happen would tend to increase if a very large group of countries, indeed the majority of current WTO members agree. This should be a topic for discussion and further analysis by low income developing countries and LDCs for whom implementation of certain aspects of the TRIPS Agreement would not only be costly and onerous but actually incompatible with their long-term developmental interests.
5. It is especially important to operationalise very soon the exception regarding imports of low cost drugs by developing countries which do not have the capacity to produce such drugs domestically, which was finally agreed in August 2003. This will demonstrate whether or not it is the expeditious solution required in The Doha Declaration on the TRIPS Agreement and Public Health.
6. Regarding the implementation of other SDT aspects of the Agreement, the recent TRIPS Council decision involving the monitoring of the incentives provided by developed countries is a useful first step. It could be strengthened by extending it to other low income countries which face the same problems as the LDCs; and by seeking to develop a mechanism for evaluation of the effectiveness of these efforts in actually promoting technology transfer.

7. On assistance for the implementation of the TRIPS Agreement, support for developing appropriate IPRs regimes should be placed in the context of overall development priorities of low income countries – which is currently being done in the context of the PRSP process. Since it is likely that the priority given to this is going to vary, it is inappropriate to force LDCs and other low income countries to a fixed deadline, 2006, 2016 or whatever date by which to adhere to all aspects of TRIPS. In providing assistance, care needs to be taken to ensure that it is not supply driven and that donors reflect developing country perspectives and attitudes rather than their own.

8. To develop a mechanism for operationalising the commitment to technology transfer. This could include a commitment by developed countries to a specific financial target which could be met through various actions by individual donors. But the likelihood that such a commitment would materialise is much greater if the recipients of the transfer are the LDCs and other low income countries/ small economies which are the main recipients of developed country assistance.

9. The TRIPS Agreement should be rebalanced by introduction of more effective protection for TK in the Agreement along the lines suggested in Section 6. This could be done in the context of the discussion of the compatibility of TRIPS with the CBD which contains provisions regarding the protection of TK and remuneration for its use. Strengthening GIs, on the other hand, is not a subject area, which would unambiguously benefit developing countries.

10. Developing countries should continue their efforts to maintain and increase the flexibility they have in implementing TRIPS, in such as areas as the ongoing reviews of Article 27.3(b) or Article 39.3 regarding the protection of test data; and avoid reducing flexibility through limitations introduced in bilateral and regional free trade arrangements they conclude with developed country partners.

11. In parallel with efforts to introduce flexibility in the multilateral rules affecting IPRs protection and strengthening TRIPS in ways that support development, developing countries need to take domestic measures to both protect IPRs important to their development, such as those that derive from TK, as well as to take other steps that would mitigate the adverse effects of TRIPS, for example, including legislation that strengthens competition.

Acronyms

CBD	United Nations Convention on Biological Diversity
EU	European Union
GATT	General Agreement on Tariffs and Trade
GIs	Geographical indications
IPRs	Intellectual property rights
IPRs Commission	UK Commission on Intellectual Property Rights
LDC	Least developed country
PRSP	Poverty Reduction Strategy Paper
SDT	Special and differential treatment
TK	Traditional knowledge
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UPOV	International Union for the Protection of New Varieties of Plants (Union International pour la Protection des Obtentions Vegetales)
UNDP	United Nations Development Programme
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
UR	Uruguay Round
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

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