



# **Review of Article 27.3(b), the Relationship between the TRIPS Agreement and Convention on Biological Diversity and Protection of Traditional Knowledge and Folklore**

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***WTO-ESCAP-IIUM Regional Workshop on IP and Public  
Health and Environment Policy for Asian and Pacific  
Region***

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# Outline of Presentation

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- Background: Article 27.3(b); Rio Earth Summit, CTE; Seattle Ministerial; Doha mandate.
- Organization of work since Doha
- Substantive issues and positions
  - Review of Article 27.3(b)
  - Relationship between TRIPS and CBD
  - Protection of traditional knowledge and folklore

# Background on TRIPS-CBD discussions in the WTO

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- ❑ Discussion on the TRIPS-CBD began in the WTO in the Committee on Trade and Environment in 1995
- ❑ Brought into the TRIPS Council through the built-in review of Article 27.3(b) in 1999
- ❑ Picked up momentum in the run up to Seattle with proposals on amending TRIPS to include TK submitted by developing country groups. No result at Seattle but was seen as important by all.
- ❑ Discussion continued through 2000-2001. GC Special Session on Implementation directed continued examination of the relationship between TRIPS and CBD
- ❑ Doha work programme – birth of triplets

# Doha Ministerial Declaration

- Doha Ministerial Declaration (WT/MIN(01)/DEC/1, 14 Nov. 2001)
  - Para. 19: “We instruct the TRIPS Council, 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... ”
  - Para. 12: Outstanding implementation-related issues: we agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme... and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the TNC, established under paragraph 46 below, by the end of 2002 for appropriate action.”
    - Different views on whether or not part of Doha round of negotiations



WTO OMC

# Organization of work since Doha

- Para. 19: regular meetings of the TRIPS Council:
  - three separate agenda items on the agenda of the TRIPS Council since 2002
- Para. 12: also took place in the TRIPS Council and was reported upon to the TNC at the end of 2002
  - Since 2003, part of DG consultative process on outstanding implementation issues chaired by DDG
  - From early 2009- 2011
    - DG re-activated fairly intensive consultations chaired by him.
    - The consultations were on two TRIPS-related implementation issues.
    - in-depth Q&A are basis of discussion, and reports to all Members. Gathering information about selected members' national laws, regulations and practices relevant to the discussion.

# TRIPS and CBD

# What is the CBD

- ❑ CBD: entered into force on 29 Dec. 1993 and 193 Parties as of March 2010
- ❑ Three main objectives:
  - Conservation of biological diversity;
  - sustainable use of the components of biological diversity; and
  - Fair and equitable sharing of the benefits arising out of the utilization of GRs
- ❑ Most relevant provisions:
  - Art.8(j): in-situ conservation: each contracting Party shall ... respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities, ... and encourage the equitable sharing of the benefits arising from the utilization.
  - Art. 15: access to genetic resources: PIC and ABS
    - ❑ Recognizing the sovereign rights of States over their natural resources
    - ❑ Access, where granted, shall be on mutually agreed terms
    - ❑ Access to GRs shall be subject to PIC of the Contracting Party providing such resources.



# What is Nagoya Protocol?

s to GRs and associated TK and to the benefits arising from  
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shall be shared in a fair and equitable way upon mutually agreed  
h the provider. Each Party shall take legislative, administrative or  
asures, as appropriate.

GR and TK to be subject to prior informed consent. Each Party  
measures, as appropriate, with the aim of ensuring that the PIC or  
and involvement of indigenous and local communities is obtained  
d TK.

t compliance, each Party shall take measures, as appropriate, to  
nd to enhance transparency about the utilization of GR, including  
check points.

points must be effective and relevant to the utilization of genetic resources  
collect information] at, *inter alia*, any stage of research, development,  
ation, pre-commercialization or commercialization.

information, including from Internationally Recognized Certificate of  
iance (IRCC) where they are available, will, without prejudice to the  
tion of confidential information, be provided to relevant national authorities,  
Party providing PIC and to the ABS Clearing-House, as appropriate;

Party shall take appropriate, effective and proportionate measures to address  
ons of non-compliance.