



## **Work of WTO 1999 - 2001**

- r Review of the provisions of Art. 27.3 (b)
  - Questionnaire to Members on implementation
  - Information from other IGOs
  - Communications from Members
  
- r Implementation issue referred to the TRIPS Council:  
relationship between TRIPS Agreement and CBD



## **Para. 19 of the Doha Ministerial Declaration; Nov. 2001**

“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.”



## Article 27.3(b)

### Positions:

- r Remove exceptions to patentability provided for in Article 27.3(b).
- r Leave Article 27.3(b) as it is.
- r Clarify certain terms in Article 27, i.e. plants, animals, micro-organisms; criteria for patentability; ethical exceptions.
- r Prohibit the patenting of life forms
- r Clarification of effective *sui generis* protection of plant varieties.



## **Relation TRIPS and CBD: Main views:**

- r Inherent conflict and need to reconcile CBD and TRIPS
- r No conflict and objectives of CBD can be met without involving the patent system. No action required in the TRIPS Council.
- r No inherent conflict, but need/case for action to ensure they are implemented in a mutually supportive way.



## **Disclosure Proposal of Some Delegations**

TRIPS Agreement should make obligatory disclosure by patent applicant of:

- r The source and country of origin of biological resources and traditional knowledge used in the invention.
- r Evidence of prior informed consent under the relevant national regime.
- r Evidence of fair and equitable benefit sharing under the national regime.



## **Reactions of Other Delegations to Disclosure Proposal**

- r CBD objectives best implemented through national systems, outside patent laws, including contractual arrangements concluded under such systems.
- r Openness to disclosure of source requirement, enforceable by law, but not linked to patentability.
- r Could be linked to patentability in certain situations.



## Issues discussed on Protection of Traditional Knowledge and Folklore

- r Respective roles of WIPO and WTO.
- r Use of existing IPR system.
- r Disclosure requirement.
- r Contracts.
- r Proper application of patentability criteria/definition of prior art.
- r Databases.
- r *Sui generis* protection.



## Issues Relating to Further Process

- r Agreement on the desirability of a more structured discussion in the TRIPS Council. Ideas put forward include:
  - r Identification of points of convergence regarding Art. 27.3(b).
  - r Relation TRIPS and CBD:
    - r checklist of issues on disclosure proposal;
    - r ways of realizing commonly agreed objectives.
  - r Other TK and folklore matters.
- r General Council Decision of 1 August 2004.