denoting a particular quality. This paper does not concern itself much with trademarks, but rather focusses on patents and copyrights, these being more relevant to sustainable development.

4. What Are the Possible Effects?

As noted above, it will not be easy to predict the effects of the TRIPS Agreement, since much of its interpretation is still uncertain, as is its relationship to other existing legal instruments, notably the Convention on Biological Diversity.[4] It is, however, possible to engage in informed speculation. The speculation that follows divides itself into three areas of effects: agriculture, manufacturing and information products.

4.1 Agriculture

The main areas of interest here are plant varieties, and genetically-modified organisms, whether plants, animals or microorganisms. There are two passages in TRIPS of direct relevance to these issues:

> "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment."

> "Members may also exclude from patentability ... plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof."[5]

The first passage has yet to be definitively interpreted, and we will likely not know how powerful or weak this exception will be in practice until it is tested in a WTO Dispute Panel. Note the use of the word "necessary", which might give pause to those familiar with the restrictive way in which this word has been interpreted in other areas of exception in GATT law.[6]

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[4] For a good overview of the tensions between TRIPS and CBD, see Cameron, James and Zua Makuck. "The Biodiversity Convention and the WTO TRIPS Agreement: Recommendations to avoid conflict and promote sustainable development", Cultural Survival – World Wide Fund for Nature, 1995.

[5] TRIPS, Article 27.3 (b).

[6] Article XX(b) of the GATT provides for an exception to GATT rules for certain measures "necessary to protect human, plant or animal life or health". Several distinct panels have interpreted this to mean that the measure in question must be the least trade restrictive alternative available to regulators. For a discussion see Steve Charnovitz (1991) "Exploring the Environmental Exceptions in GATT Article XX", Journal of World Trade, Vol. 25 No. 5, October 1991, pp. 37 – 56.