

Trade-related Intellectual Property (TRIPs)

Organization of the TRIPs Negotiations

The Doha Round is to review the entire TRIPs Agreement, as required under Article 71.1. Article 27.3(b), which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties, is singled out for specific review. The key negotiating issues, however, are public health and geographical indicators.

Public Health

The separate declaration on TRIPs and public health stated that governments should not be prevented from acting to protect public health, and reaffirmed the right to use the flexibility provided for in the TRIPs Agreement, including by clarifying the use of measures such as compulsory licensing and parallel importing. The declaration also extended the deadline for least developed countries to apply provisions on pharmaceutical patents until January 2016.

The main bone of contention is the scope of the public health carve-out in the TRIPs agreement. The US has asked that the proposed carve-out cover only 23 infectious diseases (e.g., HIV/AIDS, malaria, tuberculosis and other similar infections that risk epidemics) and only apply to developing countries to avoid a fundamental undermining of patent rights for a broad array of pharmaceutical products. Developing countries argue that the mandate of the Doha Declaration referred to “measures to protect public health” in general and are resisting a specific list approach. The US has since followed up by stating that it would not challenge any member “that breaks WTO rules to export drugs produced under compulsory license to a country in need”.

Geographical Indicators (GI)

The Doha Declaration set a deadline for completing work on a multilateral system that registers geographical indicators (names used to identify products with particular characteristics that come from a specific place). A registration system for wines and spirits has already been started. Negotiations also are addressing the issue of extending “the higher level of protection” to other products beyond wine and spirits. Whether the TRIPs Council even has a mandate to examine this issue is being debated.

The TRIPs and public health issue is proving extremely difficult to resolve. Some were of the view that bringing protection of intellectual property rights (IPR) inside the trade tent has made this issue harder to resolve, not easier. For example, it was suggested that, if HIV/AIDS were dealt with as a health issue, the main lobby interests (such as the pharmaceuticals) could