

## **XII. TRADE AND INTELLECTUAL PROPERTY RIGHTS**

### **A. OVERVIEW OF THE AGREEMENT**

The Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (Agreement on TRIPs) strengthens the protection and enforcement of intellectual property-rights holders outside their home country. With the goal of reducing distortions and impediments to international trade, the Agreement sets standards for the protection of copyrights, trademarks, geographical indications, industrial designs, patents, integrated-circuit designs and trade secrets.

With the exception of the need for new trademark legislation dealing with geographical indications, Canada's existing intellectual property laws for the most part already comply with the TRIPs standards. However, Canada retains the right to revise its intellectual property laws and practices—including the use of amendments to protect the environment. Under Article 27 of the Agreement, Canada may refuse to patent any invention in order to "protect human, animal or plant life or health or to avoid serious prejudice to the environment," provided that the invention's commercial use in Canada has been prevented for the same reasons. Patentability for plants and animals and related biological processes is not required by the Agreement.

### **B. POTENTIAL ENVIRONMENTAL IMPLICATIONS**

The Agreement on TRIPs may have environmental implications in two areas—the transfer of environmental technologies and the protection of biodiversity.

First, by requiring high minimum standards for the protection of the rights of foreign intellectual property holders, the TRIPs encourages the development of environmental technologies. Improved protection of intellectual property rights provides exporters greater security in their foreign dealings and encourages the transfer of Canadian environmental technology to developing countries. The attractiveness of Canada as a venue for conducting research is enhanced by the TRIPs guarantee that Canada will maintain a high level of intellectual property rights.

Second, concerns have been expressed that by requiring the protection of biotechnology inventions the Agreement on TRIPs might result in a reduction in the size of the agricultural gene pool. While it has been argued that patents on the genetic engineering that produces a plant, such as a transgenic tomato, lead to corporate domination of agriculture and a trend toward monoculture (i.e. away from biodiversity), others argue that patent protection encourages the development of new plants and thus enhances biodiversity. The issue is not clear. It should be noted, however, that Canada has granted biotechnology patents without reference