

such willingness to accommodate the negotiation of rules such as TRIPS.¹⁴

Fourth, there are various problematic aspects to the inclusion of TRIPS in a trade agreement including, *inter alia*, the internationally asymmetric outcomes from the TRIPS agreement (gains for developed countries and costs for developing countries); and regime inconsistency (private rights for genetic resources under TRIPS versus sovereign ownership of the same asserted by the Convention on Biodiversity).¹⁵

For all these reasons, the TRIPS Agreement represents a very dubious salient towards a regime for democratic global governance—and this is quite apart from the moral issues raised because of the threat of legal action against compulsory licensing of HIV-AIDS drugs by developing countries, which were put aside (at least to all appearances¹⁶) at Doha.

¹⁴ More generally, it was observed that, insofar as the attack on the WTO stems from the fact that it favours the private interest over the public interest, then something has seriously gone wrong, since the original GATT expressly suppressed private producer interests in favour of expanding the public interest, in particular by reducing producer rents and expanding consumer surplus!

¹⁵ For a fuller discussion of the trade-offs and issues surrounding the TRIPS agreement see Keith E. Maskus, *Intellectual Property Rights in the Global Economy* (Washington DC: Institute for International Economics, 2000).

¹⁶ The extent to which the declaration resolves the issue remains subject to debate. It was observed that, even though TRIPS may not be enforced through the WTO, the fact that most governments, most of the time, will adhere to their formal commitments means that TRIPS will be *de facto* enforced. Moreover, in terms of the scope of the flexibility built into the agreement, it was suggested that those providing technical assistance to developing countries tend to interpret this flexibility narrowly, further increasing the likelihood that it will be applied narrowly. That being said, it was also pointed out that the World Bank has been highlighting the flexibility in the agreement to its developing country clients in its publications. In the end, it may be up to the dispute settlement mechanism to establish what the international regime is in *de facto* terms, in particular with respect to the boundaries that will apply to the flexibility indicated in the political declaration (i.e., when is a health situation an emergency for purposes of TRIPS) and/or in areas where controversies have yet to surface.