



International Chamber of Commerce

The world business organization

Policy statement

The review of TRIPS Article 27.3

Commission on Intellectual and Industrial Property, 1 July 1998

Prepared by the Commission on Intellectual and Industrial Property

The International Chamber of Commerce (ICC) is the world business organization. It is the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. Founded in 1919, it represents today thousands of member companies and associations from over 130 countries. The ICC's purpose is to promote international trade, investment and the market economy system.

As the world business organization, the ICC firmly believes that the protection of intellectual property stimulates international trade and investment and encourages transfer of technology, which are all essential for economic growth. The ICC therefore strongly supported the conclusion of the TRIPS agreement as being beneficial to economic development worldwide.

Background

Article 27.1 of TRIPS calls for patents to be available "for any inventions.... in all fields of technology". This is qualified by Article 27.2 (which allows inventions whose exploitation is forbidden for reasons of *ordre public* or morality to be refused protection) and Article 27.3.

Signatory states are permitted to exclude from patentability methods for the medical treatment of humans or animals under Article 27.3(a). Article 27.3(b) allows exclusion from patentability of plants or animals, or essentially biological processes for their production, but renders the protection of micro-organisms, and non-biological and microbiological processes obligatory. Article 27.3(b) also obliges TRIPS signatory states to provide effective protection for plant varieties, but not necessarily only by patents (*sui generis* rights such as UPOV-style plant variety protection are allowed as well as or instead of patent protection).

Built into Article 27.3(b) is a provision for it to be reviewed "four years after the date of entry into force of the WTO Agreement" i.e. 1999. This provision arose out of the fierce controversy that surrounded the original clause. The United States felt it did not go far enough, and that there was no need to allow exclusions for patenting plants and animals. In contrast, many developing countries were against all forms of patents on living organisms, for many reasons, including ethics, practicality and perceived self-interest.

ICC position on review of Article 27.3(b)

The ICC has always supported strong and non-discriminatory intellectual property rights, which it believes encourage investment, development and trade. It also supports the principle that life-forms should be patentable if they meet the general criteria for patentability.

However, an initiative to re-open the debate on Article 27.3(b) is likely to give rise to the same controversies which surrounded the negotiations over the original clause, with the risk of endangering the advances made in this area. The ICC feels that the time is not yet ripe to call for a substantive

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change of the international rules in this field as in many countries, existing TRIPS provisions have not yet, or have only recently, been implemented.

The ICC therefore supports maintaining, at this stage, the existing wording of Article 27.3(b), without change.

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