



International Chamber of Commerce

*The world business organization*

## Department of Policy and Business Practices

### Initial views on the post-Doha Agenda of the Council for TRIPS

Prepared by the Commission on Intellectual Property

Task Force on TRIPS

ICC (International Chamber of Commerce) is the world business organisation. Representing thousands of member companies and associations from over 130 countries, ICC is the only representative body that speaks with authority on behalf of both large and small enterprises from all sectors in all parts of the world.

ICC's purpose is to promote international trade, investment and open market economies. ICC firmly believes that the protection of intellectual property stimulates international trade, creates a favourable environment for foreign direct investment, and encourages innovation, transfer of technology, and the development of local industry, all of which are essential for sustainable economic growth.

ICC has consistently advocated cost-effective and non-discriminatory systems for the protection of intellectual property rights as being in the interests of businesses worldwide. ICC therefore welcomed the conclusion of the Uruguay Round, including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which sets out minimum standards for obtaining and enforcing intellectual property rights. ICC attaches primary importance to the effective implementation by WTO Members of their commitments under TRIPS and continues to support the basic principles of the TRIPS Agreement: national treatment and most-favoured-nation treatment; non-discrimination among sectors and fields of technology; and the maintenance of an adequate balance between rights and obligations.

ICC has always supported the need for a proper balance between different interests. In the field of patents, for example, the system should allow those who innovate technology to obtain and enforce rights protecting such technology, but it should also ensure that society as a whole benefits, for instance, from disclosure of inventions and the dissemination of innovation. The interests of third parties must also be balanced against rights provided to innovators. In the view of ICC, maintaining adequate balances is necessary for the continued successful operation and, hence, acceptance of intellectual property protection systems.

ICC has closely followed the debate on whether the patent system in general, and the TRIPS Agreement in particular, meets the interests of developing countries. In this regard, ICC wishes to reiterate its view that intellectual property protection fosters sustainable development of local innovative industries and encourages investment into developing countries. Recently, the debate focussed on the complicated issue of "access to medicines," which contains significant and broad aspects that are not intellectual property-related. It culminated in the Declaration on the TRIPS Agreement and Public Health at the WTO Ministerial Conference in Doha in November 2001, in addition to the Doha Ministerial Declaration (DMD) and the Decision on Implementation-related Issues and Concerns. The three Ministerial statements define the Doha Development Agenda (DDA).

#### **1. Extension to January 1, 2016, of the time limit for least-developed WTO Members to implement or apply Sections 5 (Patents) and Section 7 (protection of undisclosed information) with respect to pharmaceutical products**

Paragraph 7 of the Doha Declaration on TRIPS and Public Health allows least developed countries (LDCs) an extension of an additional 10 years from January 1, 2006, for implementation of TRIPS

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Sections 5 and 7 with respect to the protection of pharmaceutical products. ICC generally supports this provision.

## **2. Cross-border compulsory licensing**

ICC fully shares WTO members' concern that adequate measures must be taken so that serious epidemics of infectious diseases such as HIV/AIDS, tuberculosis and malaria can be effectively treated. However, it is important to remember that the issue of access to medicines calls for measures and policies that are entirely unrelated to intellectual property, and which will not be resolved by eroding the strength of intellectual property rights.

ICC believes that the suggestion to allow for compulsory licensing in a country for the purpose of exporting to other countries not having sufficient manufacturing capacities in the pharmaceutical sector carries a significant risk for erosion of intellectual property protection without providing the desired benefit of greater access to critical drugs for HIV/AIDS, tuberculosis and malaria. Any solution to the cross-border compulsory licensing problem, which could represent a deviation from the principle of non-discrimination with respect to fields of technology, must include adequate safeguards to protect the patent holder's interests.

ICC urges that in any solution on cross border compulsory licensing, language is provided to clarify the following critical issues:

- That the field of use of compulsory licensing be strictly limited.
- That the solution should not apply to other than pharmaceutical products.
- That safeguards be put into place to protect the rights of the innovator from re-exportation of the drug out of the receiving country and from diversion of the drug either within the manufacturing country or to other countries.
- That safeguards be put in place to limit which countries will be eligible as a receiving country, and which countries will be eligible as a manufacturing country.
- That the duration of a compulsory license be limited in time and that the compulsory licence itself be reviewed periodically by the TRIPS Council.
- That the exporting and importing countries issue compulsory licenses that comply with each provision of TRIPS Article 31, excepting Article 31 (f) but including prior notice to the right holder in conformity with Article 31 (b) and with particular emphasis on Article 31 (c) as to limiting the scope of the compulsory license to the purpose for which the use was authorized.

## **3. Geographical Indications**

ICC believes that the TRIPS Council should concentrate on its current task of setting up a multilateral system for notification and registration of wines and spirits and assess actual implementation of the rules for geographical indications. It also believes that negotiations on the development of a system of notification and registration should begin without delay.

Some producers, for example of agricultural and consumer goods, have expressed an interest in using a system for the protection of geographical indications. The implications of such an extension, notably to the interests of trademark holders, would have to be studied carefully. However, care should be taken to keep discussions of the extension of the protection for geographical indications separate from the work of the Special Negotiating Session on the notification and registration system for wines and spirits.

ICC suggests that WTO members study the question of whether the World Intellectual Property Organization (WIPO) would be an appropriate organization to administer the notification and registration system on behalf of the WTO.

#### **4. Relationship between TRIPS and the CBD; the protection of traditional knowledge**

Both TRIPS and the CBD are important international treaties, which bind their numerous signatories. They have different objectives that are broadly mutually compatible. They are fully consistent. In cases of apparent or alleged conflict, neither automatically takes priority over the other, either legally or morally. This is further explained in the ICC paper "Trips and the Biodiversity Convention: What Conflict?".<sup>(1)</sup>

ICC sees a strong case in equity for recognising the contribution of groups who hold valuable traditional knowledge. However, this has to be balanced against the interests of society as a whole. ICC has raised many questions which have to be answered before a practical system can be put in place (see ICC's discussion paper "Protecting Traditional Knowledge").<sup>(2)</sup>

ICC strongly believes that the continuing intergovernmental discussions at WIPO offers the best forum for solving these problems.

#### **5. "Non-Violation" Complaints under the TRIPS Agreement**

Throughout the negotiation of the Uruguay Round and in the period since its implementation, ICC has recognized that the traditional principles governing non-violation complaints concerning goods and services apply with equal force to trade-related intellectual property rights because the TRIPS Agreement, as a market access agreement, is an integral part of a single, negotiated undertaking.

ICC urges that the TRIPS Council limit its actions to making recommendations to the Ministerial Conference about the best ways to apply Article XXIII subparagraphs 1(b) and 1(c) to "non-violation" complaints arising under the TRIPS Agreement.

#### **6. Technology Transfer to Least-Developed Countries**

ICC has long advocated the view that strong and effective intellectual property rights are an essential tool for technology transfer and will encourage the creation of a "sound and viable technological base" in the least-developed countries. As a result, ICC urges prompt implementation of the TRIPS Agreement by all WTO members, taking into account the new timeframe set out in Paragraph 7 of the Doha Declaration on TRIPS and Health for implementation of TRIPS Sections 5 and 7 with respect to the protection of pharmaceutical products by least developed countries (LDCs). The development of innovative approaches for promoting market-oriented technology transfer to less developed nations through technology development, direct investment, technology sales and dissemination, and cooperative technology ventures remains an important priority for ICC. ICC supports the increasing use of public-private partnerships to meet particularly difficult technological and economic challenges confronting many of the least-developed WTO members.

ICC hopes that the above initial views will assist the TRIPS Council in its discussions and looks forward to making further contributions later this year.

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#### **FOOTNOTE**

(1) 28 June 1999, document no. 450/897 Rev. available on ICC Website at [www.iccwbo.org](http://www.iccwbo.org)

(2) 3 December 2001 document no. 450/937 Rev. available on ICC website at [www.iccwbo.org](http://www.iccwbo.org)