

BACKGROUND

briefing

SEPTEMBER 2001

TRIPS and Development

The protection of intellectual property rights provides a crucial incentive for investment in research and development and artistic creativity. The UK Government supports the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. We believe that the flexibility within the Agreement allows all countries, including developing countries, to implement domestic intellectual property regimes that take account of their local circumstances. This flexibility must be preserved. The Government recognises that there are concerns about the Agreement. We are committed to monitoring its impact, including on poor people's access to vital drugs. The Government has established a Commission on Intellectual Property Rights to investigate the ways in which rules need to develop to take greater account of the interests of developing countries and poor people. We are also open to suggestions on how to improve the Agreement in TRIPS reviews and through more substantive negotiations in the context of a new trade Round.

TRIPS has become one of the more controversial elements of the World Trade Agreement (WTO). This background briefing builds on the White Paper *Eliminating World Poverty: Making Globalisation Work for the Poor*¹ by setting out in more detail the development aspects of intellectual property rules.

What are intellectual property rights and 'TRIPS'?

Intellectual property rights are the rights given to people, legal entities or corporations over the creations of their minds. They usually give the creator a right to prevent others from making unauthorised use of their creations for a certain period of time. Intellectual property rights can, for example, be used to prohibit the unauthorised copying of music CDs and books, and protect new seed varieties and inventions from being copied

without permission. For a patent to be granted the invention must be new, non-obvious and be capable of industrial application. The inventor must disclose a complete description of the invention to the authority granting the patent, which usually publishes this information.

TRIPS was established as part of the Uruguay Round of trade negotiations completed in 1995, and is the most comprehensive international agreement on intellectual property rights to date. It is a framework agreement and requires WTO member countries to give adequate protection to each of the main categories of intellectual property². This is done by setting minimum standards with which all WTO members' national legislation must comply. Countries that do not fulfil their obligations under TRIPS, or any of the other WTO Agreements, may face being taken to dispute settlement in the WTO by another WTO member.

protection of undisclosed information and the control of anti-competitive practices in contractual licences.

¹ See www.globalisation.gov.uk

² TRIPS covers copyrights, trademarks, geographical indications, industrial designs, patents, layout designs or integrated circuits,

Some one in five of the world's population live in extreme poverty. Governments worldwide have agreed to work together to halve the proportion of people living in extreme poverty by 2015, and to other targets including universal primary education and improved healthcare. The UK Government is strongly committed to these targets.

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Why is it so controversial?

Some question whether TRIPS belongs in the WTO at all. Until the Uruguay Round of trade negotiations, trade rounds focused on liberalisation through the removal of trade barriers and restrictions. TRIPS, however, deals with intellectual property rights, which provide for temporary monopolies on the distribution of creations to reward innovation. The harmonised minimum standards it sets for intellectual property rights are intended to reduce distortions and impediments to international trade. Its inclusion in the WTO broadens the scope of the organisation from traditional trade liberalising measures to wider trade related issues.

The positive case for the TRIPS Agreement is made on the basis that the value of goods and services traded between countries increasingly lies in the technology, know-how and creativity embodied in them. The protection of these types of technologies has made intellectual property protection an international concern. Many argue that intellectual property rights are crucial to provide incentives for risk-taking, research and innovation and to enable the free flow of trade in knowledge products.

On the other hand, it is asserted that TRIPS was pushed into the WTO by developed countries with their superior negotiating capacity. Some argue that TRIPS will impede low-innovation economies from catching up with developed countries, and that the minimum standards set out in TRIPS are too difficult for poorer countries to implement.

The TRIPS Agreement was not negotiated in isolation. It is part of a wider package of agreements in the Uruguay Round, which included concessions to developing countries in the areas of agriculture and textiles. Some developing countries feel that they have not received the full benefit of these agreements because developed countries have been reluctant to go beyond the minimum level of liberalisation required.

What are the potential costs and benefits of TRIPS?

To promote progress, domestic intellectual property rights regimes and international agreements must find the right balance between the production and the dissemination of new

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Research Evidence on Intellectual Property Rights and TRIPS

Developed countries rely on intellectual property rights as an essential prerequisite to the creation of knowledge-based industries. The situation in developing countries is less uniform and requires further research. In the DFID-commissioned “Literature Survey on Intellectual Property Rights and Sustainable Development”, Graham Dutfield highlights the complexity of the issues surrounding intellectual property rights and the lack of consensus amongst experts in this field³. There is a trade off between innovation and the diffusion of technology. Overly stringent intellectual property rights may rule out opportunities for countries and firms to “catch up” with competitors, but weak intellectual property rights protection may constrain domestic innovation and/or access to foreign direct investment (FDI). The trade-off may even vary quite considerably between different industries in the same country.

Thurow⁴ (1997) describes a number of examples where countries have copied to “catch up”. US engineers built copies of British textile mills in New England in the early 1800s and the Japanese toured and copied American factories in the aftermath of World War II. He therefore suggests that the level of intellectual property protection that a country should adopt is related to whether its comparative advantage resides more in innovation or in the imitation and adaptation of innovation made elsewhere. Thurow concludes that a single level of protection for all technologies or sectors will rarely provide the best solution.

Roffe⁵ (2000) notes that intellectual property rights legislation has historically been

3 See www.dfid.gov.uk

4 “Needed: A New System of Intellectual Property Rights”, Lester C. Thurow, Harvard Business Review, Reprint 97510, 1997.

5 “The political economy of intellectual property rights - an historical perspective”, Pedro Roffe, Governance, Development and Globalisation, J. Faundez, M.E. Footer and Joseph J. Norton (eds.), 2000. Blackstone Press Ltd, UK, 2000.

introduced when countries reach a middle income level of economic development. At this point, an innovative base exists and the benefits of protecting innovations outweigh those of copying. He does not conclude on whether intellectual property rights protection results in innovation or whether innovation results in intellectual property rights protection, or if there is a combined effect.

Researchers have sought to assess whether FDI and technology transfer between countries by companies depend on whether their products, processes and trade secrets are adequately protected. Maskus⁶ (1998) argues that, while there is evidence to show that a strong intellectual property rights regime can be effective in attracting additional FDI, it is only one component among a broad set of other factors. To achieve net gains from stronger intellectual property rights, he suggests that developing countries should develop complementary policies, such as competition regimes, market liberalisation and technology development policies. .

Correa⁷ (1995) argues that, on the current evidence, the link between intellectual property rights and FDI is difficult to prove. He notes that available evidence on pharmaceutical patents gives insufficient evidence that the existence of product patents is a condition for FDI . For example, there have been high levels of FDI in Argentina, Brazil and Turkey - countries without strong patent protection. Alternatively (although the empirical evidence is still sketchy), both Malaysia and Chile experienced an increase in FDI following intellectual property rights reform (see IDS Briefing Note No 6)⁸.

Watal⁹ (2000) tries to model the effects of pharmaceutical patents on drug prices in India. She concludes that prices are likely to rise and welfare to fall, although these results are dependent on the assumptions of her model. Any actual measurement (as opposed to projections) of the impacts of TRIPS implementation is unlikely to yield meaningful results until around 2015 onwards.

There has been some research on the administrative costs in meeting the minimum levels of intellectual property rights protection set out in TRIPS. All or some of these costs may be recouped by charging for the granting of patents and from patent fees. However, for most developing countries compatibility will require significant institutional strengthening. Finger and Schuler¹⁰ estimate that the combined cost of implementing the TRIPS, SPS and Customs Valuation Agreement may amount to up to US\$150 million.

There are a number of areas in addition to the above that require further research. For example, there is criticism of the length of patent and copyright protection. At present copyright lasts for 50 years after the death of the author and a patent can be renewed for up to 20 years, but the ideal length of protection periods remain unclear. There is growing concern over the use of strategic or 'over patenting', where patents are being awarded for little genuine product innovation and companies are simply patenting to prevent other companies from engaging in production. 'Over-patenting' will stifle innovation, reduce the dissemination of technology and unnecessarily distort markets. Further, the impact of public research institutes increasingly patenting their findings needs to be monitored.

6 "The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer", Keith E. Maskus, *Duke Journal of Comparative and International Law*, Vol. 9, No.1, 1998.

7 "Intellectual Property Rights and Foreign Direct Investment", Carlos M. Correa, *International Journal of Technology and Management*: Vol. 10. No.s 2/3, 1995.

8 See www.ids.ac.uk/tradebriefings

9 "Pharmaceutical Patents, Prices and Welfare Losses: Policy Options for India Under the WTO TRIPS Agreement", Jayashree Watal, *The World Economy*, Vol.23, 2000.

10 "Implementation of Uruguay Round Commitments: the Development Challenge", J. Michael Finger and Philip Schuler, World Bank, 1999.

ideas. The central issue in a development context is whether TRIPS, and intellectual property rights generally, provide this balance within WTO member countries and internationally.

The potential benefits of a robust intellectual property rights regime are the encouragement of innovation, greater supply and diffusion of technology to developing countries, increased foreign investment, and the expansion of employment and profits in innovation sectors, although intellectual property rights can only be one part of this process.

An appropriate level of intellectual property rights protection is important to provide incentives for private investment (and public-private partnerships) in research and development. Research can be costly and long-term, and results are often uncertain. Intellectual property rights reward creators for the time, effort and money invested in the development process. Higher standards of protection of intellectual property rights internationally may lead to greater innovation worldwide, from which all countries might gain.

In addition, it is argued that an adequate level of intellectual property rights protection in developing countries could potentially increase foreign investment. Intellectual property rights protection will give investors some assurance that their products will not be copied, thus encouraging local manufacture, the transfer of technology and the training of workers. This can lead to an increase in a country's knowledge base and expansion in employment and profits in innovation sectors.

Potential costs also exist if intellectual property rights are too stringent. Prices can rise on protected goods, as cheaper copies are no longer available (although there are other influences on price, including competition policy). Key enabling technologies protected by intellectual property rights will only be available under licence, which may be too costly to access for local innovators. This could lead to difficulties for some countries in reproducing technology, diluting any technology transfer benefits.

There may be net losses of employment and profit in industries based on copying protected products. Where much innovation is in the informal sector (i.e. small-scale and non-established), there are potential problems in managing a domestic intellectual property rights system. For example, individual or

small-scale innovators may find it prohibitively expensive to pay the fees charged to register an intellectual property right. Intellectual property rights systems of any scale can also be relatively expensive to set up and maintain for poorer developing countries that face difficulties in obtaining the skilled staff, the financial resources and the institutional capacity to support such a system.

Striking the right balance between the production and diffusion of new ideas involves not only the legal strength of intellectual property rights, but also other factors such as the cost of obtaining intellectual property rights, their length, breadth and scope. Altering the legal strength of intellectual property rights protection is not the only way, and may not be the most efficient way, for a country to promote the right balance. For example, for developing countries it may be wiser to promote strong but shorter (than the minimum prescribed in TRIPS) protection periods in order to promote local innovation and greater diffusion.

What does the research tell us?

First, it is accepted that intellectual property rights are an essential prerequisite to growth and development in modern economies. But research is not conclusive on what is the right level of protection within developing countries and between developed and developing economies (see Box 1 on intellectual property rights research on previous page).

Most studies conclude that the appropriate level of intellectual property rights protection varies according to different country circumstances. For instance, if a country has a potential strength in innovating it may benefit from strong intellectual property rights. But if its innovation base is weak, it may benefit more by learning through copying.

Second, the development community needs to strengthen its understanding of the role of intellectual property rights in development, and the kind of international rules that best suit the needs of developing countries.

One of the reasons for a lack of clear research evidence is that TRIPS has only recently been implemented in some developing countries, while others have not yet implemented TRIPS. But governments and international agencies need to develop adequate systems now in order to monitor the possible impacts of TRIPS and intellectual property rights. Baseline information is needed as

a benchmark for future comparisons. More broadly, there needs to be continued research on the links between intellectual property rights, foreign direct investment and investment in innovation.

We are committed to monitoring the impact of TRIPS, including on poor people's access to vital drugs. The UK Commission on Intellectual Property Rights (see end of paper) and other DFID projects will help to build capacity and knowledge on TRIPS and intellectual property rights.

What is the UK position on TRIPS?

The UK government supports appropriate international rules on intellectual property protection. We believe that this is crucial to reward innovation, and that rules incorporating intellectual property are an important pillar of the WTO system to enable the free flow of trade in knowledge-products.

We recognise that some developing countries face real difficulties in implementing TRIPS on time, that some have concerns about its impact and that some would like to see changes made to it. Our position for all the Uruguay Round agreements is that we are open to improving them in light of the implementation experiences of WTO countries. Although in the case of TRIPS that implementation process will not be complete until 2006 for the least developed countries.

We are therefore open to constructive suggestions on how to make the Agreement work better for developing countries in successive TRIPS reviews and negotiations in the context of a new trade Round. In general, we do not advocate increasing the minimum standards set out in the Agreement, where this would be to the detriment of developing countries. We support a policy of restraint on dispute settlements with respect to developing countries implementing TRIPS.

What about implementation problems on TRIPS?

Governments and the WTO need to consider whether a better managed and more realistic process for the implementation of TRIPS can be developed. TRIPS provides for different transition periods for three groups of countries relating to their stages of development – immediate for developed countries, until 1 January 2000 for developing countries and until 1 January 2006 for the least developed countries. In some cases this may not adequately reflect the differences in their

level of development and implementation capacity. For developing countries improving their administrative capacity to implement TRIPS, and developing the innovation sectors to take full advantage of the Agreement, is a long-run process that could take decades.

It is unclear which countries have fully implemented the TRIPS Agreement. The UK continues to support individual requests to extend implementation periods where there is a genuine commitment to implement the Agreement. TRIPS signatories need to work together to develop a set of objective criteria, as the basis upon which extensions of TRIPS transition periods should be agreed. At the present time there exists no formal mechanism for developing countries to apply for extensions (unlike least developed countries). The UK supports the introduction into TRIPS of a mechanism for transition period extensions for developing countries alongside that for least developed countries. We also support the European Commission's efforts to work with countries on a bilateral and regional basis to help countries implement the TRIPS Agreement. This could help to avoid future WTO disputes.

What is flexible about TRIPS?

For the most part the minimum standards set out in TRIPS equate to the high levels of intellectual property rights protection already existing in most international agreements and adhered to by most developed countries, prior to the Uruguay Round. However, the Agreement does contain some flexibilities set out below which can be used by countries to take account of local circumstances.

TRIPS does not prevent governments from allowing the importation of legitimate goods from the cheapest international sources (parallel importing). We would not support any proposals to restrict this flexibility in TRIPS.

TRIPS also allows governments to authorise use of the subject of a patent without the consent of the patent holder (compulsory licensing). We see this as a last resort for governments, for the reasons set out below. Compulsory licensing can only be used in exceptional circumstances, such as a national emergency, and under specified conditions, for example that adequate remuneration is paid to the patent holder.

Article 27.3b allows the exclusion of plants and animals from patentability. However, plant varieties

have to be protected through an effective ‘sui generis’ system. ‘Sui generis’ means that national governments can decide on the legislation to provide effective protection, without having to follow a template used by other countries.

Article 1.1 of the TRIPS Agreement leaves individual WTO members free to determine the appropriate method of implementing TRIPS within their own legal system, leaving room for different interpretations. Many developing countries believe that there exists considerable ambiguity over the wording of the flexibilities within the Agreement and seek further clarification. They fear that their interpretation of the Agreement (and therefore their legislation) may differ from another country’s interpretation, which could lead to a costly WTO dispute settlement panel and other difficulties. The recent court case sought by a group of pharmaceutical companies in South Africa against the South African Government’s medicines legislation on compulsory licensing highlighted the problem of interpretation.

What about ‘TRIPS-plus’?

The term ‘TRIPS-plus’ is often used to describe the strengthening of intellectual property rights above and beyond the requirements of the TRIPS Agreement. As explained above, we believe that the flexibilities in the TRIPS Agreement should be maintained.

Countries that are setting up bilateral or regional trade agreements may seek to negotiate TRIPS-plus standards. We will support a negotiating position in the EU that advocates such standards only where they are in the interest of all parties, including that of developing countries.

Will TRIPS undermine access to drugs for the poor?

There has been controversy surrounding the TRIPS Agreement and poor people’s ability to access essential drugs. A number of non-governmental organisations and developing countries are worried that TRIPS will increase the price of essential drugs, reduce the availability of cheap copies of patented drugs and consequently lead to a reduction in the ability of the poor to access these drugs.

Although the protection afforded to intellectual property in TRIPS may affect the cost of patented

drugs we do not believe that reducing intellectual property rights protection is the way to ensure the affordability of drugs. At the present time 95 percent of drugs on the WHO Essential Drugs List (EDL) are already out of patent and will not be affected by TRIPS, but they are often not reaching the poor for a variety of reasons. However affordability is an important criterion in selecting products for the EDL, therefore some patented drugs that could be considered essential are not listed. The factors surrounding access to medicines are complex. WHO recognise four key factors, including reliable health and supply systems, sustainable financing, affordable pricing and the rational selection and use of existing drugs.

An important argument in favour of implementing intellectual property rights protection is that it will encourage research and development (R&D) into new drugs of use to the poor. However, the benefits of this will be reduced if this research is not geared towards the diseases of poor people. At present only an estimated ten percent of all R&D into new medicines is directed to disease conditions that affect the vast majority of the world’s population that are living in developing countries¹¹. New drugs to meet diseases prevalent in developing countries may not bring the same financial rewards to the innovating company as drugs for developed country consumers. The poor do not have the money to spend on healthcare, necessary to induce the required investment in R&D to combat these diseases.

Donation schemes¹², differential pricing and public/private partnerships may enable better affordability to essential drugs. With differential pricing companies will sell essential drugs at low prices in poor countries. For this to be viable, there would need to be measures in place to avoid the re-importation of low priced drugs into developed country markets (such as branding and packaging differences). Developed countries would also need to agree not to use cross-country price referencing as a bargaining tool to achieve lower prices in their own markets.

At the UN Conference for Trade and Development (October 2000), Clare Short, the Secretary of State for International Development highlighted the importance of public/private initiatives such as the

11 “The 10/90 Report on Health Research” Global Forum for Health Research, WHO, Geneva, 2000.

12 Using agreed InterAgency guidelines.

Medicines for Malaria Venture and the International Aids Vaccine Initiative in encouraging greater R&D in the diseases prevalent amongst the poor¹³. These initiatives require some form of intellectual property rights regime to work effectively.

The Government has published a joint statement with industry, which highlights the importance of strong intellectual property rights to private drugs research and also the commitment of the pharmaceutical industry to work towards meeting the demands of third world diseases¹⁴.

As discussed previously in this background briefing, the Agreement contains certain flexibilities of relevance to the pharmaceutical sector:

- Compulsory licensing is allowed under the TRIPS Agreement under specified conditions. While we must ensure that this flexibility is maintained, we would see the actual use of compulsory licensing as a last resort. Repeated use of compulsory licences may remove further the incentive for companies to undertake research and development of new drugs for the poor, as they will expect their interests to be compromised through compulsory licensing.
- Voluntary licensing schemes are a preferred way forward. Companies could voluntarily licence production in a developing country. This would be facilitated by a national system of intellectual property rights protection so that companies could be confident that their product would not be unlawfully copied. The ability of a country to grant a compulsory licence improves the country's bargaining power and increases the likelihood of the rights holder issuing a voluntary licence¹⁵.
- The TRIPS Article on compulsory licensing, however, may benefit from clarification and an interpretation to enable all countries to have recourse to it, in times of national emergencies. There are many developing countries with little or no manufacturing capacity that should also be able to make use of compulsory licensing (as a last resort), perhaps through third-country production on their behalf of essential products. The UK is working with our European partners in current discussions of this issue in the TRIPS Council.

- Parallel importing is also permitted. The overall benefit to developing countries of parallel importing is not as obvious as it may seem. Although imported drugs may be cheaper, parallel importing may discourage pharmaceutical producers from setting lower prices for their products in poorer countries, knowing that it may undermine their profits in richer country markets. Pharmaceutical companies argue they would set lower prices in poorer countries if parallel importing were not allowed.

What about 'Geographical Indications'?

Geographical indications cover all categories of goods. They are indications that identify a good as originating in a certain place, where the location of the production of the good determines its reputation or quality. Champagne and Scotch whisky are examples of geographical indications.

Under TRIPS, all geographical indications must be protected. Additional protection is afforded to geographical indications for wines and spirits, for example the indication cannot be used even with expressions such as 'like', 'type' or 'style' (e.g. scotch style whisky).

Some WTO members, both developed and developing countries, advocate extending the additional protection given to geographical indications for wines and spirits to include agricultural products and foodstuffs. The benefits and the implications of extending geographical indications remain unclear. While some producers and countries may gain in terms of increased marketing access, others may lose. Developing countries need greater analysis of the consequences before deciding whether to support the extension of geographical indications

The case for extending the products whose geographical indications receive the additional protection is mixed. Some developing country products could gain from this additional protection, if a geographical indication falls within their boundaries.

But there may be potential costs for developing countries too. Geographical indications introduce

13 "Shaping Globalisation to Benefit All - Better Health for the Poor and Global Public Goods", A Speech by Clare Short, Secretary of State for International Development, at the Palais des Nations, Geneva, 19 October 2000.

14 Pharmaceutical Industry Competitive Task Force Joint Statement, July 2000.

15 "Integrating Public Health Concerns into Patent Legislation in Developing Countries", Carlos Correa. South Centre, Switzerland, 2000.

additional rights over a product, which limits competition within the sector. This reduces the opportunity for producers in developing countries who cannot claim the indication to copy products with the indication.

Producers in developing countries may not be well organised in claiming their geographical indications and may lack the capacity to pursue parties infringing on these rights (thereby reducing the benefit they will receive from any geographical indication). Where producers cannot claim a geographical indication they will face increased constraints in marketing similar goods to products with a geographical indication.

Does TRIPS allow for the patenting of lifeforms?

Some developing countries and other stakeholders have been strongly against the patenting of plants, animals and other lifeforms.

As with all patents, the argument for the patenting of lifeforms is to encourage innovation. However, potential costs also exist. One concern surrounding the patenting of new varieties of plants is that it will lead to an increase in the cost of seeds and the loss of farmers' rights to save and use seed from those varieties from one crop to the next. Some are also concerned that it will lead to an increase in the dominance of large seed companies and reinforce trends towards mono-cropping. This could contribute to increasing vulnerability and dependence amongst small farmers and a loss of biodiversity.

But Article 27.3b of TRIPS allows WTO countries to exclude from patentability "plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes."

Members are, however, required to provide new plant varieties with a patent or sui generis system of intellectual property protection. The ability to opt for the sui generis approach means that the concerns noted can be largely avoided.

Although this flexibility exists within TRIPS, developing new legislation requires considerable capacity. There is a lack of tried and tested model legislation which developing countries can adopt as the sui generis system. The International Union for the Protection of New Varieties of Plants (UPOV) models for plant protection are the best established systems for such protection.

However, some developing countries feel that the UPOV models are more applicable to developed countries. In particular they feel its lack of protection for the rights of farmers to save and sell farm-saved seeds makes it less applicable to the needs of developing countries. It is argued that in many developing countries this is an important process in maintaining biodiversity and independence from large producers of seeds.

The UPOV model is not required under the TRIPS Agreement; however it is often required in bilateral trade agreements. We do not support the revision of Article 27.3b to specify the UPOV model as the preferred alternative to patents for plant varieties. This would reduce countries' flexibility in implementing TRIPS. We also do not support obliging countries to adopt the UPOV standard in our bilateral negotiations.

Another concern in this area has been that multinational companies may patent the results of research that should be made freely available as a 'global public good', for instance the human genome, or plant and animal genomes. We are committed to working for international agreement on the need to release fundamental information on the human genome, the DNA sequences of the world's major naturally occurring food crops and livestock species into the public domain.

Does TRIPS conflict with the Convention of Biological Diversity (CBD)?

A number of worries have been raised that the TRIPS Agreement might conflict with the CBD. In relation to the CBD's objective of the fair and equitable sharing of the benefits arising from the use of genetic resources, some have argued that the CBD's recognition of the sovereign right of states over their own biological resources implies a right to prohibit intellectual property rights on lifeforms.

We do not see that there is a conflict. The CBD specifies that states' sovereign rights over their own resources should be exercised in accordance with the principles of international law. This would include respecting the provisions of TRIPS. The CBD also obliges its parties to co-operate, subject to national and international law, to ensure that intellectual property rights are supportive of the CBD's objectives.

It is argued that TRIPS could be more supportive of the CBD, for instance through the

introduction of the requirement to include the geographic origin of the genetic resources which are the subject of, or associated with, the innovation and proof of the prior informed consent from the source of biological material in relevant patent applications.

There is also concern that there is no internationally recognised regime for protecting the traditional knowledge of indigenous and local communities and that those communities and developing countries are losing potential benefits as a result. This applies in particular to the use of knowledge relating to local seed varieties and traditional medicines.

The TRIPS Agreement does not cover traditional knowledge or access to genetic resources. The UK is supporting the World Intellectual Property Organisation (WIPO) in current efforts to examine the options for the protection of rights to indigenous knowledge and the issue of the geographic origin of genetic resources. Mechanisms for enabling access to genetic resources and benefit sharing from their use are also being developed under the CBD and the International Undertaking on Plant Genetic Resources for Food and Agriculture.

We support the development of internationally recognised standards, consistent with the objectives of intellectual property agreements, for the protection of traditional knowledge and access to genetic resources, which will help ensure fair and equitable benefit-sharing from their use. We also recognise the need to ensure that intellectual property agreements accommodate and support these standards as they are developed and that such agreements, including TRIPS and the CBD, continue to be implemented in a mutually supportive manner.

How is the UK assisting in building new understanding?

The UK government recognises the important role of intellectual property rights in development. We are undertaking a number of initiatives to raise the level of knowledge and understanding in this critical area:

- The UK Government has established a Commission to look at the ways that intellectual property rules need to develop in the future in order to take greater account of the interests of developing countries and poor people. This will

report to the Secretary of State for International Development. The Commission will consider:

- 1 how national intellectual property rights regimes should best be designed to benefit developing countries within the context of international agreements, including TRIPS
- 2 how the international framework of rules and agreements might be improved and developed – for instance in the area of traditional knowledge – and the relationship between intellectual property rules and regimes covering access to genetic resources
- 3 the broader policy framework needed to complement intellectual property regimes, including for instance controlling anti-competitive practices through competition policy and law.

- As part of a Performance and Innovation Unit (PIU) study the UK explored, among other issues, the twin problems of how to improve incentives to accelerate the development and availability of effective health interventions to tackle HIV/AIDS, tuberculosis (TB) and malaria and how to ensure such interventions are widely affordable in developing countries.
- The Secretary of State for International Development chairs an Access to Medicines High Level Working Group, with representatives from the pharmaceutical industry and international organisations. The Group will explore ways of improving access to medicines in developing countries and encouraging R&D into medicines and vaccines for diseases prevalent in developing countries, especially HIV/AIDS, TB and malaria.
- DFID is preparing a strategy paper examining the links between agricultural biodiversity and poverty reduction. This will include an examination of intellectual property rights issues and the potential for incentive mechanisms to encourage the private sector to engage in activities that reduce poverty.
- DFID is funding capacity building for developing country negotiators of the TRIPS Agreement. UNCTAD and the International Centre for Trade and Sustainable Development are undertaking this project. It will include a Handbook giving an independent assessment of the pros and cons of different negotiation strategies on intellectual

property rights rules, for developing countries' use in a new trade Round, TRIPS reviews and bilateral trade negotiations. A comprehensive policy discussion paper, case studies and capacity building seminars, will support the handbook. It will be developed on a consultative basis with stakeholders.

- We are increasing our support for trade capacity building programmes. We are ready to help developing countries to develop and implement intellectual property rights regimes suited to their national circumstances as part of the country-based assessments in the Poverty Reduction Strategy Paper process¹⁶.

¹⁶ Please see our background briefing *Building Capacity for Trade*.

This background briefing forms part of the Trade Matters series. A summary of DFID's policies on trade and development is contained in the **Why Trade Matters** booklet. To obtain further publications in this series, please visit our website at www.dfid.gov.uk or contact the Public Enquiry Point (address details on page 1).

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