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World Trade Organization  
Accession Agreements:  
Intellectual Property Issues

By Frederick M. Abbott  
and  
Carlos M. Correa

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## *Global Economic Issues*

# World Trade Organisation Accession Agreements: Intellectual Property Issues

Paper by Frederick M. Abbott  
and Carlos M. Correa

Tables and Analysis by  
Ermias Tekeste Biadgleng

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## The Quaker United Nations Office

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# I. The Accession Process and its Legal Consequences

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## A. Introduction

This paper addresses intellectual property issues that arise in the context of the accession process with a view toward assisting prospective WTO Members involved in negotiations. The Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”) is one of the Multilateral Trade Agreements or MTAs to which all WTO Members are party.<sup>1</sup> As an ordinary consequence of joining the WTO, a state or autonomous customs territory<sup>2</sup> would be expected to become party to the TRIPS Agreement and take on the obligations applicable to other Members at their respective levels of development. However, the terms of the WTO Agreement do not expressly limit the “entry fee” imposed on newly acceding Members to an equivalence of concessions with existing Members. As a consequence of this, accession negotiations have been used by certain Members as a mechanism for securing commitment to obligations in the field of intellectual property rights (IPRs) that are more extensive than those established by the TRIPS Agreement (so-called “TRIPS-plus” commitments).

For any country which has not been a Member of the WTO, there is a strong possibility that the national regime governing IPRs in place prior to the commencement of accession negotiations will be inconsistent with the requirements of the TRIPS Agreement. In this regard, the process of joining the WTO even at the same level of obligation as existing Members may require a substantial adjustment in national law and corresponding industrial policy. The impact of bringing national law into baseline or “normal” TRIPS Agreement compliance should not be underestimated.

The lengthy GATT Uruguay Round (1986-93) negotiations regarding the TRIPS Agreement were highly contentious, particularly as between developed and developing countries. In order to accommodate potentially wrenching economic adjustments,<sup>3</sup> the TRIPS Agreement included transition arrangements in favor of developing and least developed Members. For developing Members, the basic transition period lasted five years, and a more specific transition period with respect to patent subject matter lasted 10 years. Least developed Members benefited from a general 11 year transition period, subject to extension. (The least developed transition has been extended at least until July 2013.) With limited exception, countries recently acceding to the WTO have agreed to forgo transition arrangements, and have instead accepted to comply fully with the TRIPS Agreement upon accession. In most cases, applicant countries have adapted their national legislation during the course of the accession process.

A fundamental characteristic of the TRIPS Agreement is that WTO Members have flexibility regarding the manner in which obligations are implemented. This flexibility has been recognized by the WTO Appellate Body in the *India-Mailbox* decision.<sup>4</sup> Countries acceding to the WTO may have limited experience in drafting and implementing IPRs law. The way in which such law is drafted may substantially affect social welfare interests within the country. Certain WTO Members will express strong opinions regarding what types of legislation satisfy TRIPS Agreement requirements. Those views are not necessarily shared by other Members. In addition, technical advisers regarding IPRs law may have materially different viewpoints regarding

the way in which the interests of IPRs-holders and the general public should be balanced. It is therefore important to approach the process

of legal reform cautiously, taking into account the different perspectives and objectives of WTO Members and technical advisers.

## B. The Accession Process

Since the inception of the WTO era the process of acceding to the organization has evolved into a well-defined series of steps. The WTO Secretariat has produced technical documents that describe the process and expected contributions of prospective Members. In particular, reference may be made to Technical Note on the Accession Process (Note by the Secretariat, Revision), WT/ACC/10/Rev.3, 28 November 2005 and Technical Note on the Accession Process (Note by the Secretariat: State of Play and Information on Current Accessions, Revision), WT/ACC/11, Rev.6, 23 Nov. 2005. These documents effectively update a report by the Secretariat prepared in 1995 as “*a practical guide for delegations of both WTO Members and acceding States or separate customs territories*” (at para. 2) (“Accession to the World Trade Organization, Procedures for Negotiations under Article XII” (Note by the Secretariat), WT/ACC/1 24 Mar. 1995).

There are two components of the TRIPS-related accession negotiations. One component is negotiations on “*rules*” that are conducted on a multilateral basis. With respect to IPRs, this would refer, at a minimum, to the applicant’s basic compliance with the TRIPS Agreement. The second component is bilateral negotiations between the applicant and each Member interested in conducting such negotiations.

The Secretariat’s Technical Notes identify only goods and services negotiations as “bilateral”; IPRs negotiations are not referred to as part of the bilateral process. But this reflects semantics as opposed to practical reality. When a country agrees to lower its tariffs on imports of goods, or to provide improved market access to foreign services providers, as a matter of WTO terminology this is considered a “*concession*”. Agreeing

to protect IPRs interests of foreign persons typically results in net payments outflows (in the form of IPRs rent or royalties). WTO negotiators recognize that, for acceding countries, TRIPS obligations impose economic costs and represent concessions. Negotiations regarding TRIPS obligations are, in fact, conducted in bilateral settings and TRIPS-plus commitments are treated as concessions.

The recent bilateral agreement between the Russia and the United States establishing measures to be adopted and/or implemented by Russia as a condition to its accession to the WTO illustrates that IPRs are treated as the subject of bilateral negotiations (and concessions) in the accession process.<sup>5</sup> Russia bilaterally accepted to adopt significant TRIPS-plus measures, including with respect to pharmaceutical test data protection, prior to the date that U.S. might be expected to approve its accession in the WTO Ministerial Conference (or General Council).

As a practical matter, from a TRIPS standpoint, not so much importance should be attached to the multilateral/bilateral negotiations distinction. Important WTO negotiations are typically conducted in bilateral country-to-country meetings, or in informal small group meetings. While “*multilateral*” negotiations on rules (including TRIPS rules) may take place among a large group of countries at the WTO in Geneva, nothing prevents individual countries from raising rules issues in bilateral discussion, whether in or outside Geneva.

There are two critical features of WTO law and practice that help shape the outcome of accession negotiations. First is the practice of consensus voting, for which a preference is established by the WTO Agreement.<sup>6</sup> An applicant for membership in the WTO is

expected to satisfy *all* existing members (although there is a provision for non-application between specific members),<sup>7</sup> and a single Member may effectively veto an application. Thus, in TRIPS negotiations, the applicant may be required to satisfy the demands of each individual Member for higher levels of protection to get the accession agreed upon. The second critical feature is the most favored nation (MFN) obligation of the TRIPS Agreement (art.4) which effectively requires that all WTO Members be treated in an equivalent manner. When an applicant agrees to provide a higher level of protection to any Member in bilateral negotiations, it is effectively agreeing to provide that same level of protection to all Members.

At the outset of the accession process, an applicant country responds to a questionnaire with respect to its national IPRs regime. It also furnishes WTO Members with copies of relevant legislation. These documents may reflect preliminary work undertaken in contemplation of commencing the accession process.

The results of multilateral and bilateral negotiations are reflected in a Report of the Working Party on the Accession of the applicant country. It is at this stage that

the results of the bilateral negotiations are effectively “*multilateralized*”. Once commitments are included in the Working Party Report they are expected to benefit all WTO Members. The Working Party Report typically attaches a draft Protocol of Accession proposed for adoption by the Ministerial Conference (or General Council acting in place of the Ministerial Conference).

The Protocol of Accession is an agreement between WTO Members and the acceding country regarding the terms upon which accession takes place. It is adopted by a decision of the Ministerial Conference (or General Council). The Protocol of Accession typically incorporates by reference “*commitments*” in the Working Party Report. It is therefore important to be clear on what constitutes a “*commitment*” in the Working Party Report.

The decision by which the Ministerial Conference or General Council approves accession extends an invitation to the applicant to submit an instrument to the WTO Secretariat that formally accepts the terms of the Protocol of Accession and membership in the organization. The applicant country typically becomes a WTO Member 30 days following its acceptance of the Protocol.

## C. Legal Commitments

The Working Party Reports adopted since entry into force of the WTO include a paragraph in which the “*commitments*” of the acceding country are listed. This is typically done in the form of a cross-reference to various paragraphs of the Working Party Report. At least one of those paragraphs refers to TRIPS Agreement obligations, but the number and scope of the internal Working Party Report commitments varies substantially among acceding countries. A Technical Note prepared by the WTO Secretariat identifies the “*commitments*” on TRIPS so far undertaken by acceding countries.<sup>8</sup> Commitments are incorporated by reference in the Protocol

of Accession adopted by the Ministerial Conference or General Council. Specific commitments are stated to constitute part of the WTO Agreement binding on the applicant/new Member.

Elements of Working Party Reports regarding TRIPS are typically structured in the form of statements by the applicant country delegate explaining elements of the IPRs regime. Working Party Reports refer to the completed questionnaire document that provides detailed information regarding the IPRs regime of the applicant. In some cases, concerns raised by other Members are set



out. Some Reports include commitments with respect to specific IPRs legislation. Some incorporate a work program of legislation the applicant country undertakes to adopt according to a schedule.

Applicants make commitments beyond those set forth in the TRIPS Agreement. These additional commitments have different characteristics. China, for example, included a substantial number of commitments regarding bureaucratic infrastructure and adjudication of disputes, in addition to its substantive commitments. A number of countries have included commitments with respect to protection of regulatory data and marketing exclusivity with respect to the pharmaceutical and/or agricultural sector that go beyond TRIPS requirements. The various TRIPS-plus commitments are described and analyzed in detail *infra*.

The “commitments” referred to in the Working Party Report become legal obligations binding on the acceding Member. An important issue is whether, based on the terms of the Protocol and on Article XII of the WTO Agreement, those obligations are enforceable by other Members in dispute settlement just as other parts of the of the WTO agreements. This may be deemed to be the case as accession protocols are adopted by decision of the Ministerial Conference (or General Council), and because the Protocols of Accession generally provide that they, along with specified accession commitments, shall be an integral part of the WTO Agreement.<sup>9</sup> The WTO Agreement is a covered agreement under the terms of the WTO Dispute Settlement Understanding (DSU).<sup>10</sup> Although there are some differences among commentators concerning the precise legal mechanism by which the binding character and susceptibility to dispute settlement of accession commitments comes about,

the weight of such opinion is in favor of susceptibility to WTO dispute settlement.<sup>11</sup>

Commitments undertaken in Working Party Reports are subject to the same problems of ambiguity and interpretation as other legal texts. Furthermore, the commitments in the Reports may be limited to reference to the intent to adopt legislation on a particular subject matter; there may be considerable leeway in favor of the acceding Member regarding the manner in which the commitment is implemented. Only in a small number of cases do commitments on TRIPS identify a highly specific mechanism of implementation. Therefore, in most cases the commitments in the Working Party Reports leave the acceding Member with flexibility in implementation. The manner in which this flexibility is used may be the subject of dispute.

Also, non-violation nullification or impairment causes of action may not yet be brought on the basis of TRIPS Agreement obligations, as Members have failed to agree on the modalities for the application of such causes of action and it is uncertain whether non-violation causes will ever apply in the context of the TRIPS Agreement<sup>12</sup>. An important and, as yet, unanswered question is whether a cause of action based on a “commitment” regarding TRIPS in a Working Party Report would be considered a cause of action under the Protocol of Accession, which might not be subject to the TRIPS non-violation moratorium, or whether such a commitment would be considered a cause of action under the TRIPS Agreement, which would be subject to the moratorium. It would seem reasonable to suggest that, to the extent that the moratorium is still in force, no differentiation should be made in this respect between TRIPS and TRIPS-plus obligations accepted under a Protocol of Accession<sup>13</sup>.

## D. Informational Reports

The Working Party Reports typically include substantial amounts of information reported by the applicant country which does not form part of a commitment paragraph.<sup>14</sup>

### I. Treaty membership

The acceding Member has typically described the international agreements to which it is a party, such as the Paris and Berne Conventions. The TRIPS Agreement obligates Members to comply with Paris and Berne substantive rules, with few exceptions. Description of the acceding Member's status as a party to these treaties is not especially important because the TRIPS Agreement independently requires compliance with their substance.

The issue of the legal effect of the description becomes more important when the applicant/Member describes adherence to treaties that are not cross-referenced in the TRIPS Agreement. So, for example, the applicant may refer to the WIPO Copyright Treaty or some version of the UPOV Convention. By referring to its status as a treaty party in the Working Party Report, has the applicant committed to remaining a treaty party? More important, has the applicant committed to complying with the terms of the referenced treaty in a way which would give rise to a cause of action in WTO dispute settlement?

Unless the description of adherence to a non-WTO treaty is incorporated in a "commitment" paragraph, the applicant should not be bound to remain party to that treaty. By joining the WTO a country does not surrender sovereignty and autonomy, except to the extent of its bound legal commitments. Moreover, unless there is a specific linkage established between obligations under two independent international agreements or treaties, there is not a clear legal basis in public international law for considering the breach of one such agreement to be the breach of another. That is, a cause of action under treaty A does not give rise to a cause of action under

treaty B absent an express indication that the parties to the two treaties intended to create such a linkage. Therefore, by referring to membership in an IPRs treaty such as the WIPO Copyright Treaty or UPOV, the applicant country should not be authorizing a claim for a violation of the TRIPS Agreement should that other treaty be breached.

However, the matter is not crystal clear because the WTO legal system pays considerable attention to the "legitimate expectations" of the parties to the agreement. In terms of potential "violations" of the WTO agreements, this concept of legitimate expectations has a narrow focus, typically restricted to the issue of nullification or impairment of benefits after a violation has been found.<sup>15</sup> On the other hand, the WTO legal system makes wider allowance for the role of legitimate expectations in the context of so-called "non-violation nullification or impairment" causes of action. In a non-violation case, the complaining Member alleges that the complained-against Member has taken measures that nullify or impair benefits it expected to receive when it negotiated the relevant agreement, notwithstanding that the complained-against Member has not violated an express term of the relevant agreement.

As noted above, a moratorium on initiation of non-violation complaints under the TRIPS Agreement remains in effect. It is not certain whether non-violation complaints will eventually be allowed under TRIPS, and what limitations might be imposed upon them. Nevertheless, an applicant must take into account the possibility of such causes of action.

Assuming, *arguendo*, that non-violation complaints under TRIPS are permitted (or that a non-violation complaint may independently be based on the Protocol of Accession), a complaining Member could argue that the description by the applicant of its status as a party to another international agreement, e.g., the WIPO Copyright Treaty, formed part of

its legitimate expectations when it approved the Protocol of Accession. Thus, when the complained-against Member withdrew from or failed to fulfill its obligations under the WIPO Copyright Treaty, it impaired those legitimate expectations, resulting in injury. This will not occur, however, if non-violation complaints do not become applicable in the context of TRIPS matters, as elaborated above.

## 2. Legislation

A similar type of analysis applies with respect to an applicant-Member's informational description of its current legislation or of changes it intends to introduce.<sup>16</sup> Unless otherwise expressly stated, the applicant is not committing to retain that legislation in the form in which it is notified or to introduce the changes it indicated to the Working Group. A commitment to generally maintain national legislation in a static form would go far beyond the requirements of the WTO agreements in general, and the TRIPS Agreement in particular. It would mean that a national parliament or legislature was effectively surrendering its authority to legislate.

There are two caveats to this general proposition. First, the applicant does agree

to comply with the TRIPS Agreement. Amendment of legislation so as to make it inconsistent with the TRIPS Agreement would constitute a violation of the TRIPS Agreement and the Protocol of Accession which, perhaps redundantly, requires TRIPS Agreement compliance. The second caveat relates to non-violation nullification or impairment, referred to above. A complaining Member might argue that the legislation notified or announced to the Members during the accession process formed part of its "*legitimate expectations*" regarding the accession bargain. Amendment of that legislation in a way that adversely affected the complaining Member could be deemed to constitute a nullification or impairment of benefits in non-violation causes of action, provided that such causes of action are finally applicable in this context.

A "*positive*" aspect of the non-violation form of dispute settlement claim is that a finding of nullification or impairment does *not* require the complained-against Member to remove or modify the offending measure. A successful complaining Member is entitled to withdraw concessions from the complained-against Member so as to appropriately rebalance its bargain.<sup>17</sup>

## E. Least Developed Countries

Least developed countries (LDCs) were accorded special and differential treatment pursuant to Article 65.5 and 66.1 of the TRIPS Agreement. They were not required to implement the TRIPS Agreement (except for national and most-favored-nation treatment) until January 1, 2006, and they were not prevented from reducing their level of TRIPS consistency prior to that date. The date for TRIPS compliance was subsequently extended until July 1, 2013, although the provision allowing for reduction of existing TRIPS consistency was not extended. In addition to the possibility for general non-compliance with TRIPS Agreement obligations, least developed Members are authorized pursuant

to Paragraph 7 of the Doha Declaration on the TRIPS Agreement and Public Health and its implementing measures not to provide or enforce pharmaceutical patent and data protection at least until 2016.

The November 14, 2001 Doha Ministerial Declaration expressed particular concern to accelerate accession of LDCs, and to facilitate technical assistance.<sup>18</sup> On December 10, 2002, the General Council adopted a Decision on the Accession of Least-Developed Countries providing that:

- a. Special and Differential Treatment provided for in the WTO agreements would apply to acceding LDCs;

- b. Transition arrangements in the WTO agreements would be granted for LDC accessions taking into account individual development, financial and trade needs;
- c. Transition arrangements would be accompanied by Action Plans for compliance with WTO rules; and supported by technical assistance.

The terms of accession of Cambodia and Nepal with respect to TRIPS do not appear to reflect the apparent intent of the December 2002 General Council Decision. These countries have accepted accelerated implementation of TRIPS Agreement obligations - as compared with LDCs originally joining the TRIPS Agreement - and certain TRIPS-plus commitments. At the Cancún Ministerial Conference, prior to adoption of the Decision approving accession of Cambodia, WTO Deputy Director General Rufus Yerxa made a statement on behalf of the Working Party on Accession to ameliorate concerns that had been raised by NGOs and WTO experts regarding the terms of the TRIPS provisions in the Protocol. As reported by the WTO Press Office for September 11, 2003:

*“Some commentators have questioned whether Cambodia’s membership agree-*

*ment overrides its rights under the Doha Declaration on intellectual property rights and public health. Before the decision was passed, Deputy Director-General Rufus Yerxa, speaking on behalf of Cambodia’s working party, said:*

*‘The results achieved in the case of Cambodia speak for themselves, and in this context I should also add that the terms of this accession do not preclude access to the benefits under the Doha Declaration on the TRIPS Agreement and Public Health to Cambodia as a (least-developed country).’<sup>19</sup>*

This interpretative statement by the WTO Deputy Director General may be important in considering whether Cambodia will be able to take advantage of the LDC authorization in Paragraph 7 of the Doha Declaration on the TRIPS Agreement and Public Health not to adopt or enforce pharmaceutical patent and data protection.

The Working Party Report regarding Accession of Nepal includes an express statement by the delegate of that country that it preserves its flexibilities under the Doha Declaration on the TRIPS Agreement and Public Health.

## F. Enforcement

So far, no formal dispute settlement proceeding has been initiated at the WTO claiming failure of a Member to comply with the terms of a Protocol of Accession. Therefore, questions such as whether any legal obligation is created by informational reporting are not

definitively answered. There is, however, an ongoing effort by the United States, Japan, Switzerland and some other Members seeking to require China to comply with its TRIPS Agreement obligations, which might be viewed as the first steps in an effort to enforce China’s Protocol of Accession.

## II. TRIPS and TRIPS-plus IPRs Subject Matter – Comparative Analysis of 21 Post-WTO Accession Agreements

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This section provides an overview of the commitments and information provided by acceding countries. Its main purpose is to assess the TRIPS-plus effect of the accession process. The section and the tables are divided in terms of general principles, each category of IP rights and enforcement standards under the TRIPS Agreement.<sup>20</sup>

As mentioned in part I, the *commitments* of the acceding countries are those stated as such in the report of the respective Working Party or in the draft Protocol of accession. In this section, additional reference will be made to statements made by the applicant country reporting or indicating changes introduced or to be introduced in its IPRs regime<sup>21</sup>, although in these cases no commitment as such has been made. In order to identify the concrete standards of protection indicated to the Working Party, there was a need to review the laws and regulations that the applicant country referred to during the accession process and which were notified<sup>22</sup> *in accordance with the procedures set forth by the TRIPS Agreement*—after accession took place.

Some of the proposed changes to the domestic laws of the acceding countries are discussed within the Working Party itself. Jordan, for example, was requested to submit to the Working Party a plan of action for implementation of the TRIPS Agreement by the date of accession. In the view of the members of the Working Party, Jordan should use the period of its accession negotiations to make the necessary changes in the area of intellectual property rights to meet WTO norms and, as a consequence, Jordan was expected to be in conformity with the TRIPS

Agreement from the date of accession to the WTO, without recourse to any transitional period. Jordan submitted its major reforms in its intellectual property regime in 1999.<sup>23</sup> Box 1 shows the status of reforms that were ongoing during the accession of Jordan and submitted to the working party for its agreement.

Another example is provided by the reported scheduled of revisions of Chinese laws made in order to conform to the demands received by China during the accession process (Box 2).

Furthermore, there were instances where the Working Party went as far as reviewing the draft legislation of the acceding countries before their adoption, and where acceding countries agreed to incorporate the comments received<sup>26</sup>. As a result, the net impact of the accession processes on the acceding countries' intellectual property policies exceeds what is reflected in the formal 'commitments' made as part of the accession process.

Particular limitations for the research undertaken for this paper were encountered when the acceding countries were, at the same time, acceding to the European Union<sup>27</sup> and accepting the extension of its various intellectual property regimes.<sup>28</sup> To a certain extent a lack of information, especially the availability of revised or amended laws as they were during the accession process, and the time required for notification of laws for recently acceded countries, affected the comparative analysis. As a result, the tables in such cases are limited only to those specifically reflected in the accession documents.

Box 1 : *Status of legislation on intellectual property rights in Jordan (November 1999)*<sup>24</sup>

Law	Status of Draft	Expected Approval Date (Parliament)
Amendments to the Law on Trademarks No. 33 of 1952	Enacted as a Law, entering into force on 1 December 1999	
Law on Patents	Enacted as a Law, entering into force on 1 December 1999	
Amendments to the Law on Copyrights No. 22 of 1992	Enacted as a Law, entered into force on 2 November 1999	
Law on Industrial Design	Referred to Parliament	January 2000
Law on Integrated Circuits	Referred to Parliament	January 2000
Law on Geographical Indications	Referred to Parliament	January 2000
Law on Trade Secrets and Unfair Competition	Referred to Parliament	November 1999
Law on Plant Variety Protection	Referred to the Legislative Bureau at the Council of Ministers	November 1999
Regulations / Instructions	Status of Draft	Expected Adoption Date
Regulations on Border Enforcement of Intellectual property Rights	Being drafted; submission to the CM is expected in December 1999	Upon enactment of Amendments to the Customs Law
Regulations on Copyrights	Being drafted; submission to the CM is expected in December 1999	January 2000
Regulations on Integrated Circuits	Being drafted; submission to the CM is expected in December 1999	Upon enactment of the Law on Integrated Circuits

Box 2 : *Revision of Copyright, Trademark and Patent laws of China by the date of Accession*<sup>25</sup>

2001 Copyright Law	2001 Trademark Law	2000 Patent Law
60 articles including 10 new articles 6 cancelled 31 revised	64 articles including 23 new articles 20 revised articles	69 articles including 5 new articles 5 cancelled articles 29 revised articles
	1993 Trademark Law	1992 Patent Law
	43 articles including 6 revised articles	69 articles including 14 revised articles

## A. General Principles

The TRIPS Agreement contemplates in Part I 'basic principles' of intellectual property protection. They include national treatment, most-favored-nation treatment and the principle of exhaustion of rights. While the first two are mandatory<sup>29</sup>, the last one is of facultative application.

The agreements entered into by the acceding countries generally confirm the national treatment and MFN principles. Further specific indications were made to extend such standard of treatment for applicable fees in the cases of Armenia, Macedonia, Moldova, Georgia, Kyrgyz<sup>30</sup>. In the case of Nepal's accession, a member of the Working Party objected to discrimination based on nationality with respect to payment of fees.

As a result, Nepal committed to eliminate all discrimination on applicable fees upon accession<sup>31</sup>. Other countries have indicated to abolish agency requirements for registration of trademarks by foreign nationals.<sup>32</sup>

The TRIPS Agreement does not set out a mandatory principle with regard to the issue of the exhaustion of rights. The accession documents do not specifically address the regime to be followed for the exhaustion of rights by the acceding countries. There are no commitments made by the acceding countries with respect to the regime of exhaustion. However, Saudi Arabia has specifically indicated that the parallel commercial export and import is prohibited in the area of copyright.<sup>33</sup>

## B. Transitional Periods

The TRIPS Agreement provided for transitional periods that benefited developing countries and economies in transition, as well as LDCs. In accordance with article 65 of the Agreement,

- any developing country Member was entitled to delay until January 2000 the application of the provisions of the Agreement other than Articles 3, 4 and 5 (article 65.2).
- any other Member which was in the process of transformation from a centrally-planned into a market, free-enterprise economy and which was undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, could also benefit from the same period of delay (article 65.3);
- to the extent that a developing country Member was obliged by the Agreement to extend product patent protection to areas of technology not so protectable

in its territory on the general date of application of the Agreement for that Member (that is, January 1<sup>st</sup>, 2000), it could delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years, that is, until January 1<sup>st</sup>, 2005 (article 65.4).

In addition, 'in view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base', such Members were not required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65, that is, until January 1<sup>st</sup>, 2006<sup>34</sup>. This period was extended by the Decision of the Council for TRIPS of 29 November 2005. In accordance with this Decision, LDCs shall not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, until July 1<sup>st</sup>, 2013, or until such a date on which they cease to be a least-developed country Member, whichever

Table 1 : Date of accession to WTO

Acceding Country	Date of Accession	Acceding Country	Date of Accession
A. Transition Economies			
Armenia	February, 2003	Georgia	June, 2000
Macedonia	April, 2003	Estonia	November, 1999
Lithuania	May, 2001	Latvia	February, 1999
Moldova	July, 2001	Kyrgyz	December, 1998
Albania	September, 2000	Mongolia	January, 1997
Croatia	November, 2000	Bulgaria	December, 1996
B. Developing Countries			
Saudi Arabia	December, 2005	Jordan	April, 2000
Oman	November, 2000	Panama	September, 1997
Chinese Taipei	January, 2002	Ecuador	January, 1996
China	December, 2001		
C. LDCs			
Cambodia	October, 2004	Nepal	April, 2004

date is earlier<sup>35</sup>. Moreover, in the case of pharmaceutical patents and test data pursuant to the Decision of the Council for TRIPS of 27 June 2002<sup>36</sup>, the transitional period was extended until 2016.

The referred extensions granted in favour of LDCs are without prejudice to the right of least-developed country Members to seek further extensions of the period provided for in paragraph 1 of Article 66 of the Agreement.

Despite the importance of transitional periods to make the necessary changes at the national level in order to incorporate and effectively apply the new standards of intellectual property protection, most acceding countries were unable to secure such periods in their accession agreements.<sup>37</sup> This applies both to countries that acceded before and after the expiry of the general transitional period provided for in articles 65.2 and 65.3 of the TRIPS Agreement (see Table 1).

As indicated in Table 1, eight countries acceded before January 1<sup>st</sup>, 2000. Only one developing country, Ecuador, obtained a one year transitional period. Two of the acceding LDCs were accorded with transitional periods much shorter than those allowed to LDCs that were WTO Members. In the case of Cambodia, the obligations became applicable as follows:

- implementation of Article 3-5 of the TRIPS as of the date of accession;<sup>38</sup>
- protection of test data during the transition period;<sup>39</sup>
- January 1<sup>st</sup>, 2007 for the rest of the TRIPS provisions;<sup>40</sup>
- TRIPS-consistent measures already in place not be subject to transitional periods.<sup>41</sup>

The same dates of application were negotiated in the case of Nepal, with the exception of the immediate entry into force of test data protection.<sup>42</sup>



Despite the transitional periods obtained by Cambodia and Nepal, these countries were subject to detailed obligations to be complied with during such periods, including the obligation to enact laws or regulations. Moreover, in both cases there were commitments to 'ensure that existing rates of infringement would not significantly increase and that any infringement of IP rights would be addressed immediately in cooperation with the assistance from affected right holders'.<sup>43</sup>

This analysis shows that acceding countries that were developing countries and economies in transition, including those that acceded to WTO before the end of the general transitional periods of article 65.2

and 3, respectively, were denied the possibility of enjoying such periods and were obliged to comply with the TRIPS provisions earlier than developing countries and economies in transition that were WTO Members. Even acceding LDCs were denied the possibility of delaying TRIPS compliance as allowed by article 66.1 of the TRIPS Agreement and the extensions referred to above<sup>44</sup>.

It is also worth pointing out the immediate application of test data protection in the case of Cambodia<sup>45</sup>, despite the small size of the economy and low GDP per capita (US \$2,399)<sup>46</sup> and the presumably insignificant contribution that Cambodia could make to pharmaceutical companies' global income and profits.

## C. Adherence to WIPO and other Treaties on Intellectual Property

The TRIPS Agreement obliges Members to comply, with some exceptions<sup>47</sup>, with the substantive obligations contained in the:

- Paris Convention for the Protection of Industrial Property; Stockholm Act of 14 July 1967 (Paris Convention).
- Berne Convention for the Protection of Literary and Artistic Works, Paris Act of 24 July 1971 (Berne Convention);
- Washington Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989 (IPICTreaty).

In addition, the Agreement obliges Members to observe the provisions of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, October 26, 1961 (Rome Convention), but only with regard to those Members that are also parties to this Convention.

The accession processes have gone well beyond what the TRIPS Agreement requires in terms of compliance with international

treaties on intellectual property. Cambodia has made commitment to the effect that during its transition period it would introduce laws to obtain membership in the UPOV, Geneva (phonogram) and Brussels Convention no later than 1 of January 2006. Nepal on the other hand committed to ratify Rome and Washington no later than January 2006. Beyond these commitments, the working party reports indicate that Nepal and Cambodia and the rest of the acceding countries have adhered to or are in the process of adhering to one or more of the following treaties:

1. Brussels - Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, May, 1974;
2. Budapest - Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure as amended, 2002;
3. Geneva Phonogram - Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, 1971;

4. Hague - The Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925;
5. Lisbon - Agreement for the Protection of Appellations of Origin and their International Registration, as revised and amended, September 28, 1979;
6. Locarno - Agreement Establishing an International Classification for Industrial Designs, as amended on September 28, 1979;
7. Madrid - Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, as of 1967;
8. Madrid - Agreement Concerning the International Registration of Marks of April 14, 1891, as revised and amended on September 28, 1979;
9. Madrid Protocol - Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989;
10. Nice - Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration, as amended 1979;
11. Paris - Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended, September 28, 1979
12. PCT - Patent Cooperation Treaty, as in force from January 1, 2004;
13. Rome - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, October 26, 1961;
14. Strasbourg - Agreement Concerning the International Patent Classification of March 24, 1971, as amended on September 28, 1979;
15. TLT-Trademark Law Treaty adopted at Geneva on October 27, 1994;
16. UPOV - International Convention for the Protection of New Varieties of Plants as last revised on March 19, 1991;
17. Vienna - Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, as amended on October 1, 1985;
18. Washington - Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on May 26, 1989
19. WCT - WIPO Copyright Treaty and Agreed Statements Concerning the WIPO Copyright Treaty December 20, 1996;
20. WPPT - WIPO Performances and Phonograms Treaty and Agreed Statements Concerning the WIPO Performances and Phonograms Treaty, adopted in Geneva on December 20, 1996;

As indicated in Table 2, the largest number of indications of accession or interest to accede to treaties was made by economies in transition. UPOV and the Rome Convention are the treaties that have received the largest number of new members as the result of the accession process.

It should be noted that, in some cases, there is no clear link between the demands emerging from the accession process and the ratification of particular intellectual property conventions by acceding countries<sup>53</sup>. In other cases, the intention to join certain treaties was noted in specific terms. In this regard, Moldova indicated its intention to ratify the new Act of the Hague, Madrid (on Deceptive Indications) and PLT<sup>54</sup> and Mongolia indicated the intention of acceding in the near future to the relevant intellectual property conventions on patents<sup>55</sup>. In the case of Bulgaria, although no commitment was made, it later reported the ratification of UPOV.

It is also interesting to note that Nepal only indicated to look at other WIPO and IP related Conventions, e.g. Geneva Phonograms Convention, UPOV 1991, WIPO Copyright

Treaty and the WIPO Performances and Phonograms Treaty, in terms of national interest and explore the possibility of joining them in the future, as appropriate.<sup>56</sup> However, it made a commitment to accede to the Rome Convention and the Washington Treaty by January 2006<sup>57</sup>. Cambodia also indicated its intention to adhere to WCT and WPPT in 2005 upon enactment of the relevant domestic laws.

The previous analysis suggests<sup>58</sup> that Nepal and Cambodia's commitment of an

action plan that includes the ratification of Rome and Washington and UPOV, Geneva (phonogram) and Brussels Convention, respectively, acceding countries made only indications of accession to or intention to accede to international treaties that are not required by the TRIPS Agreement. The taking note of the commitment of Nepal and Cambodia to accede to international treaties by their respective working parties imply that their accession was agreed upon based on such concessions.

Table 2 : *Obligations to ratify intellectual property treaties*

Conventions	Acceding countries
Geneva Phonograms	Armenia, Lithuania, Albania, Estonia, Latvia, Kyrgyz, Cambodia
Brussels signals	Macedonia, Croatia, Cambodia
UPOV	Lithuania, Moldova, Croatia, Estonia, Latvia, Kyrgyz, Panama, Ecuador, Cambodia
WPPT	Macedonia, Moldova, Macedonia, Latvia, Kyrgyz, Cambodia
WCT	Macedonia, Moldova, Latvia, Kyrgyz, Cambodia
Lisbon	Moldova
Rome	Armenia, Lithuania, Albania, Moldova, Macedonia, Croatia, Georgia, Estonia, Kyrgyz, Jordan <sup>48</sup>
Madrid Protocol	Armenia, Macedonia, Lithuania, Moldova, Albania, Croatia, Georgia, Latvia, Jordan <sup>49</sup>
Madrid Agreement	Macedonia, Moldova, Albania, Estonia, Latvia, Jordan <sup>50</sup>
Nice	Macedonia, Lithuania, Moldova, Albania, Kyrgyz, Croatia, Jordan <sup>51</sup>
Locarno	Macedonia, Moldova, Croatia, Kyrgyz
PCT	Macedonia, Lithuania, Albania, Croatia, Georgia, Jordan <sup>52</sup>
Hague	Macedonia, Moldova, Croatia, Bulgaria
Strasbourg	Macedonia, Kyrgyz
Budapest	Macedonia, Lithuania, Moldova, Albania, Georgia, Estonia
TLT	Lithuania, Moldova
PLT	Moldova
Vienna	Moldova, Kyrgyz
Washington	Kyrgyz, Nepal

## D. Copyright and Related Rights

The obligations concerning copyright and related rights are contained in Section I, Part II of the TRIPS Agreement. Such obligations are summarized in Box 3.

There are no express TRIPS-plus commitments agreed by acceding countries with respect to copyright and related rights. Armenia has made commitment to implement its legislation on the Law on Copyright and neighbouring rights aimed at implementing the TRIPS Agreement by the date of its accession. The Working Party on the accession of Macedonia, on the other hand, took note of the commitments of Macedonia to enact all necessary amendments to the Law on Copyright and Related rights in order to comply with the TRIPS Agreement and 'all relevant conventions in the area of intellectual property ratified by Macedonia. In addition:

*“The amendments will take due account of the requirements and commentaries made by WTO Members with regard to the compliance of FYROM’s legislation with the TRIPS Agreement. In particular, this Law will include the provisions dealing with the following issues;*

*(i) national treatment and protection of foreign authors and holders of related rights; (ii) limitations on economic rights; (iii) protection for pre-existing works, sound recordings and performances; (iv) duration of protection for works; (v) duration of protection for performances, phonograms and broadcasts; (vi) rights of film and scenic producers; and (vii) enforcement.<sup>59:</sup>”*

These commitments can result in TRIPS-plus standards for Macedonia considering its indication to accede to the WPPT and WCT and depending on the comments provided from members of the Working Party on its accession. There is no adequate information on the particulars of the comments received from Member states, but the copyright laws adopted by Armenia and Macedonia as well as Lithuania, and Moldova at least show stricter definition of the limited scope of the exception for reprographic reproductions that allows for one copy of isolated articles, succinct works, and of short extracts from lawfully published written works, except of computer programs.<sup>60</sup> In these countries, and also Croatia, reverse-engineering of computer programme is permitted to achieve

### Box 3: Main provisions on copyright and related rights

- Protection of works covered by the Berne Convention, excluding moral rights, with respect to the expression and not the ideas, procedures, methods of operation or mathematical concepts as such;
- Protection of computer programs as literary works and of compilations of data;
- Recognition of rental rights, at least for phonograms, computer programme, and for cinematographic works (except if rental has not led to widespread copying that impairs the reproduction right);
- Exceptions to exclusive rights must be limited to special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder;
- Recognition of fifty years minimum term for works (other than photographic or applied art works) owned by juridical persons, and for performers and phonogram producers;
- Recognition of rights of performers, producers of phonograms and broadcasting organizations (article 14).

interoperability provided that the information obtained as a result of the de-compilation shall not be used for the development, production or marketing of a similar computer program.<sup>61</sup> In others (Georgia, Estonia), reproduction and de-compilation is required to be in line with the Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs.

In its bilateral agreement with the United States, Russia has agreed, inter alia, to implement the WCT and WPPT in national law prior to completing its accession.<sup>62</sup>

The Working Party on the accession of China, on the other hand took note of the commitments of China to address the existing differences between China's copyright laws and the TRIPS Agreement. The proposed amendments would clarify:

*“the payment system by broadcasting organizations which use the recording products and also include the following provisions: rental rights in respect of computer programs and movies, mechanical performance rights, rights of communication to the public and related protection measures, protection of database compilations, provisional measures, increasing the legitimate compensation amount and strengthening the measures against infringing activities. China's copyright regime including Regulations for the Implementation of the Copyright Law and the Provisions on the Implementation of the International Copyright Treaty would be amended so as to ensure full consistency with China's obligations under the TRIPS Agreement.”<sup>63</sup>*

Although no part of the Chinese commitment on copyright and related rights specifically indicate an agreement to abide

by standards higher than those required by the TRIPS Agreement, it is useful to note the revision of the Copyright law of China provided essentially similar obligation to those contained in article 8 of the WCT and 14 of WPPT.<sup>64</sup>

As mentioned, several acceding countries identified the ratification or intention to adhere to the WCT and WPPT. This would presumably lead to the incorporation of various TRIPS-plus obligations in their domestic laws.<sup>65</sup> Thus, Macedonia, Moldova, Latvia, Kyrgyz, and Cambodia will expand the exclusive rights conferred with regard to communications to the public by wire or wireless means, including in such a way that members of the public may access these works from a place and at a time individually chosen by them, as provided for under the WCT and WPPT.<sup>66</sup> Similarly, the exclusive rights with respect to reproduction rights could also be expanded to include the standards under the WCT and WPPT, including the debated “right” to exclude copies made in the temporary memory of a computer.

The reports of the working parties with respect to East European acceding countries have identified longer terms of protection post mortem auctoris and for works of legal persons than those required under the Berne Convention and the TRIPS Agreement. This probably is associated with compliance with EC Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights. Further, most acceding countries (Armenia, Macedonia, Lithuania, Moldova, Croatia, Georgia, Estonia, Latvia, Kyrgyz, Bulgaria, Oman and China), have made specific indications extending TRIPS-plus terms of protection for broadcasting organizations<sup>67</sup>.

## E. Trademark and Geographical Indications

The TRIPS Agreement significantly expanded the protection conferred on trademarks under the Paris Convention, especially for well-known trademarks and services trademarks. The obligations contained

in Section 2, Part II of the Agreement, are summarized in Box 4.

The only TRIPS-plus commitment with respect to trademarks is the commitment by China and Macedonia to protect collective

Box 4 : Main Provisions on Trademarks

- Definition of protectable signs, which should be capable of distinguishing the goods or services of one undertaking from those of other undertakings. Service marks shall receive a protection equivalent to marks for goods.
- Registrability, but not filing of an application, can be dependent on use.
- Definition of presumption of exclusive rights conferred with respect to identical or similar goods and services.
- Protection of well-known trademarks for goods and services, including if knowledge thereof is acquired through their promotion.
- Exceptions to exclusive rights must be limited and take into account the legitimate interest of the trademark owner and of third parties.
- The minimum term of registration is seven years, renewable without limitation.
- Requirements of use are to be limited both in terms of the minimum period of non-use and the admissibility of reasons for non-use.
- Special requirements for use are limited, as well as conditions on licensing and assignment of trademarks. A trademark can be assigned without the transfer of the business to which it belongs.
- Measures to combat trade in counterfeiting products should be available at the border.

marks and certification marks.<sup>68</sup> China also committed to updating its law to ensure TRIPS compliance. The Working party took note of the commitments of China that

*“Modifications would mainly be made to the following aspects: to include the trademark registration of three-dimensional symbols, combinations of colours, alphabets and figures; to add the content of collective trademark and certification trademark (including geographical indications); to introduce official symbol protection; to protect well-known trademarks; to include priority rights; to modify the existing trademark right confirmation system and offer interested parties the opportunity for judicial review concerning the confirmation of trademark rights; to crack down on all serious infringements; and to improve the system for providing damages for trademark*

*infringement. The Working Party took note of these commitments.<sup>69</sup>”*

However, there are several indications of TRIPS-plus standards under the Working Party reports with regard to the term of protection of trademarks, which is extended from seven to ten years in almost all cases of accession.<sup>70</sup> In some cases, such as Georgia, the trademark is made available to sound-based marks.<sup>71</sup> Other accession documents and amended laws reflect similar higher levels of protection by Lithuania, Albania, Croatia, Chinese Taipei, and Panama.

With regard to well known trademarks, at least the following TRIPS-plus elements are identified:

- a narrow scope for determination of the relevant sector of the public (China, Panama);<sup>72</sup>

Box 5 : *Main Provisions on Geographical Indications*

- Geographical indications are names or signs which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin.
- Legal means shall be provided to prevent use of an indication in a manner that mislead the public or when it constitutes unfair competition, and to invalidate a trademark if the public is misled as to the true place of origin.
- Additional protection is conferred to geographical indications for wines and spirits, including ways of protecting homonymous indications.
- Negotiations shall be undertaken to establish a multilateral system of notification and registration, and aiming at increasing the protection of indications for wines and spirits.
- Exceptions to the required protection may be based on prior and continuous use of an indication, prior application or registration in good faith of a trademark, or on the customary use of the indication
- Obligations only relate to geographical indications that are protected in their country of origin.

- specification of factors for the determination of well-known marks (China<sup>73</sup>);
- the scope of protection of well-known marks is defined as including protection from conflicting business identifier (China).<sup>74</sup>

A number of TRIPS-plus provisions can also be identified with regard to geographical indications (GIs). The applicable standards set out by the TRIPS Agreement are summarized in Box 5.

The only commitment made with respect to geographic indications is that by China, Nepal and Cambodia to adopt relevant TRIPS-consistent laws. However, the most important TRIPS-plus standards indicated under the information provided by acceding countries is perhaps the protection of geographic indications in the same manner without distinguishing between wines and

sprits, on one hand, and all other geographic indications on the other hand. A proposal to amend the TRIPS Agreement in order to make mandatory the extension of additional protection of wines and spirits to all GIs has generated considerable controversy and a deep division between WTO's membership. Macedonia, Croatia, Georgia and Oman have indicated protection at the same level. Other information indicates a superiority of GIs over trademarks beyond that which is required under the TRIPS Agreement. Thus, several countries have indicated under their relevant laws:

- GIs as absolute and mandatory grounds for ex officio refusal or invalidation of the registration of trademarks of a nature as to mislead the public as to the true place of origin;<sup>75</sup> and
- GIs as absolute and mandatory grounds for ex officio refusal or invalidation of registration of trademarks for wines<sup>76</sup>.

In addition, the solution for conflicting homonymous GIs provided for GIs applicable to wines and spirits<sup>77</sup> has been extended

for all GIs in some cases (e.g., Macedonia, Moldova, Croatia, Georgia).<sup>78</sup>

## F. Patent and Plant Variety Protection

The implementation of Section 5, Part II of the TRIPS Agreement has raised significant controversy among WTO Members, leading to the adoption, in November 2001, of the Doha Declaration on the TRIPS Agreement and Public Health.<sup>79</sup> Developing countries

have striven to preserve the flexibilities that the TRIPS Agreement permits, particularly to grant compulsory licenses and allow for parallel imports. The main substantive provisions of the TRIPS Agreement regarding patents are summarized in Box 6.

### Box 6 : *Main Provisions on Patents*

- Patents shall be granted for any inventions, whether products and processes, provided they are new, involve an inventive step and are capable of industrial application.
- Patents shall be granted in all fields of technology. No discrimination is allowed with respect to the place of the invention, or based on whether the products are locally produced or imported
- Member countries can exclude from patentability diagnostic, therapeutic and surgical methods for treatment of humans or animals, as well as plants and animals and essentially biological processes for the production thereof
- Exclusive rights conferred in the case of product and process patents are defined, subject in the case of imports to the principle of exhaustion (article 6)
- Inventions shall be disclosed in a manner which is sufficiently clear and complete for a skilled person in the art to carry out the invention. The indication of the best mode of carrying out the invention, as well as information concerning corresponding patent applications and grants, may be required
- Limited exceptions to the exclusive rights can be defined by national laws (article 30)
- Conditions for granting other uses without the authorization of the patent holder (compulsory licenses) are set forth; Member countries can determine the grounds to allow such uses;
- Revocation/forfeiture is subject to judicial review
- The term of protection shall be at least twenty years from the date of application
- Reversal of the burden of proof in civil proceedings relating to infringement of process patents is to be established in certain cases.



Several departures from the TRIPS minimum standards can be identified in the working party reports on the accession of countries to the WTO. However, the commitments made were largely to ensure TRIPS consistency. China is committed to amend its law to ensure the consistency of exclusion from patentability based on public interest and compliance with Article 31 of the TRIPS Agreement.<sup>80</sup>

According to a literal interpretation of article 27.1 of the TRIPS Agreement<sup>81</sup>, it only obliges the grant of patents with regard to products and processes. Members, hence, are under no obligation to grant use claims, including second indications for pharmaceutical products. However, several countries (e.g. Armenia, Moldova, Estonia, Latvia, Kyrgyz, Oman, and Panama) have provided information concerning laws that grant patents over new uses of known products, if the relevant patentability requirements are met. Estonia amended its patent law in 1998 in order to ensure that patents shall be available not only for equipment, process, material, or microorganisms, or their combination, but also the use of known equipment, process, material or microorganisms for novel purposes.<sup>82</sup> Oman also issued the Royal Decree No. 82/2000 Promulgating the Patent Law of Oman as supplementary to the Unified Patent System of the Gulf Cooperation Council (GCC). The Royal Decree was adopted because of the accession negotiation since the GCC patent law did not satisfy the demands of the members of the Working Party on the accession of Oman. The Royal decree extended availability of patent to new applications of known industrial methods<sup>83</sup>.

Most countries exclude the patent protection of computer programs and business methods. It is a matter of domestic legislation to determine whether to grant or not patents in these cases. Patenting of these kinds of subject matter is not required under the TRIPS Agreement, to the extent that they may not be deemed an invention -because they lack a technical effect•or are not industrially applicable. However, at

least one country (Cambodia) has made a statement in the accession process indicating that *'algorithms used in computer programs, not the programmes per se, were ineligible for patent protection, and that "schemes or methods for doing business" were only ineligible for patent protection to the extent that they were lacking industrial application'*.<sup>84</sup>

The TRIPS Agreement left members the freedom to protect plant varieties under an effective sui generis system, patents or a combination of both (article 27.3(b)). They have, hence, considerable leeway to determine how to protect such varieties. However, as mentioned above, Cambodia has made commitments to adhere to the UPOV Convention<sup>85</sup>. This implies that plant varieties should be protected in Cambodia under breeders' rights in accordance with the 1991 Act of that Convention<sup>86</sup>. Other countries have also indicated that they have ratified or intend to ratify the UPOV.

As noted, compulsory licenses constitute one of the main flexibilities in the TRIPS Agreement. In accordance with article 31, as confirmed by the Doha Declaration, Members can determine the grounds for the granting of such licenses, while they must comply with the conditions set out by the Agreement in case of grant. Various accession documents reflect tensions on the grounds and conditions for the application of compulsory licenses.<sup>87</sup> In some cases specific indications were made e.g. Oman, Moldova and Lithuania to consider importation as sufficient to justify the 'exploitation' of a patent, thereby drastically limiting situations in which a compulsory could be granted due to lack/insufficiency of working.<sup>88</sup> Other countries like Armenia, Estonia, Saudi Arabia, and Jordan have also adopted similar laws allowing importation to justify the working requirement. Ecuador, on the other hand allowed such justification because of the standards under its regional Andean Community laws. Conversely, Croatia maintained that the patent owner would be considered not using or insufficiently using the patent if, inter alia, domestic demand was satisfied by importation to a great extent, or

### Box 7 : Main Provisions on Undisclosed Information

- Undisclosed information is to be protected against unfair commercial practices (in the framework of article 10bis of the Paris Convention), if the information is secret, has commercial value and is subject to steps to keep it secret.
- Undisclosed test data necessary for the approval of pharmaceutical and agrochemical products, which are the result of a significant effort, relating to new chemical entities must be protected against unfair commercial use and against disclosure by governments.

the importation of the products manufactured according to the protected invention hampered or obstructed the industrial application in the country.<sup>89</sup>

Finally, a number of countries (Estonia, Macedonia, and Panama) supplied information indicating to further extend the term of patents covering pharmaceuticals, agrochemicals, or processes for their preparation,

to compensate for administrative delays in general for up to five years.<sup>90</sup> Albania, Chinese Taipei and Moldova also reflected in their laws the allowance of extension of patent terms. This is another TRIPS-plus standard that has become a common feature –at least with regard to pharmaceuticals in Free Trade Agreements (FTAs) signed with the USA in the last five years.<sup>91</sup>

## G. Trade Secrets and Data Protection

The TRIPS Agreement requires Members to protect undisclosed information of commercial value (generally known as ‘trade secrets’), as well as undisclosed test data that is necessary to submit to obtain marketing approval of pharmaceutical or agrochemical products (see Box 7). Particularly controversial has been the interpretation of article 39.3 of the TRIPS Agreement. Although it clearly set out a standard of protection based on the discipline of unfair competition –which does not create exclusive rights<sup>92</sup>–the USA, EU and the originator pharmaceutical industry have argued that the only or best way of providing the required protection is through the recognition of an exclusivity period during which the data cannot be used or relied upon by third parties without the consent of the originator of the test data.

Like in the case of FTAs signed with the USA by a number of developed and developing countries, the recognition of a TRIPS-plus

period of exclusivity for test data has been an important issue in some accession processes. For instance, the Working Party took note of the commitments of China for the

*“introduction and enactment of laws and regulations to make sure that no person, other than the person who submitted [undisclosed test or other] data, could, without the permission of the person who submitted the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which China granted marketing approval to the person submitting the data. During this period, any second applicant for market authorization would only be granted market authorization if he submits his own data. This protection of data would be available to all pharmaceutical and agricultural products which utilize new chemical entities, irrespective of whether they were patent-protected or not.”<sup>93</sup>*

Cambodia also committed to introduce similar standards for the protection of undisclosed and other data submitted for approval purposes<sup>94</sup>. Saudi Arabia adopted the required legislation during the WTO accession process for the protection of undisclosed and other data submitted for approval purposes against unfair commercial use, thereby providing for a minimum exclusivity period of five years from the date of obtaining the approval.<sup>95</sup> This kind of standard excludes the possibility of approving generic versions of a pharmaceutical or agrochemical product, even if off-patent, generally for five years for pharmaceuticals<sup>96</sup> and ten years for agrochemicals counted from the date of the approval in the country where commercialization is sought. Albania, Lithuania, Nepal, Georgia, Oman and Bulgaria have entered non-specific indications of interest to adopt the necessary laws in this regard.<sup>97</sup>

In its bilateral exchange of letters with the United States regarding conditions for

accession to the WTO, Russia accepted to implement a six-year term of protection for undisclosed pharmaceutical regulatory data, similar to the commitment made by China, but with even an express prohibition against “public” use of such data.<sup>98</sup>

However, Nepal declared to the Working Party that as a WTO Member, Nepal would be entitled to the flexibilities provided in the Doha Declaration on the TRIPS and Public Health (WT/MIN(01)/DEC/2)<sup>99</sup>. Brazil, supported by India and Malaysia, issued a statement supporting the right of Nepal, or for that matter any developing country or LDC, in accordance with said Declaration<sup>100</sup>.

In some cases, the referenced exclusivity period is associated with another TRIPS-plus measure, the linkage between patents regarding pharmaceutical products and the marketing approval of these products with national health authorities. Such linkage essentially prevents national health authorities from granting marketing approval to third parties

*Box 8 : Main Provisions on Industrial Designs and Layout Designs of Integrated Circuits*

- Protection must be conferred to industrial designs which are new or original.
- Requirements for protection of textile designs should not impair the opportunity to seek and obtain such protection.
- Exclusive rights can be exercised against acts for commercial purposes, including importation.
- The layout designs (topographies) of integrated circuits shall be protected according to the provisions of the Washington Treaty of 1989, except those specifically excluded by the Agreement (e.g. provisions on compulsory licenses).
- Protection shall extend to layout designs as such and to the industrial articles that incorporate them.
- Bona fide purchase of products involving infringing layout designs shall be liable to pay compensation to the rights-holder after notification.
- The minimum term of protection shall be ten years for both types of designs.

that did not obtain the consent of the patent owner, if one or more product patent exists. Such a linkage may require those authorities to enforce patent rights (which are of private nature), even in cases where the validity of the invoked patents may be doubtful, as is often the case. The patent-registration *linkage* goes even beyond the standards applied in developed countries. In Europe, for instance, there is complete independence between intellectual property protection and registration of pharmaceuticals.<sup>101</sup>

The establishment of patent-registration linkage mechanisms has been committed in the case Cambodia and indicated by Saudi Arabia. Unlike the provisions typical in FTAs, which refer to granted pharmaceutical patents, in the case of Saudi Arabia the requirement applies to pending patent applications, while in Cambodia it applies to patents for both pharmaceutical and agro-chemical products.<sup>102</sup>

## H. Industrial Designs and Layout Designs (topographies) of Integrated Circuits

The TRIPS Agreement contains obligations regarding the protection of industrial designs of an aesthetic character, as well as the protection of layout designs/topographies of integrated circuits (see Box 6). It is worth noting that in both cases Members are left freedom to determine the modality of protection to be applied. It may be organized under *sui generis* regimes, or in the context of other existing regimes, such as copyright, provided that the minimum standards set forth in the Agreement are complied with.

Commitments regarding industrial designs and layout designs were made only to adopt the relevant TRIPS-consistent laws. However, there are several varieties of information

provided, reflecting the great variation that still exists internationally regarding the modes of protection of industrial designs.<sup>103</sup> The proposed term of protection also exceeds in some cases the TRIPS standard, notably in the case of Moldova, which provided protection for a five years term renewable up to four times for consecutive periods of five years<sup>104</sup>. Moldova also provided an additional information indicating non-forfeiture of industrial designs. Finally, several countries (Chinese Taipei, Croatia, Estonia, Georgia, Kyrgyz, and Oman,) have adopted protection for layout designs (topographies) under a separate system of protection, although, as mentioned, there is no obligation under TRIPS to adopt a particular form of protection.

### III. IPRs Enforcement and Transparency

Part III of the TRIPS Agreement contains a detailed set of provisions on enforcement. Given the large number of covered issues, the lack of comprehensive information on national laws, and the complexity of determining the TRIPS-plus nature of the standards committed in the acceding process by different countries, it is not possible to undertake here a detailed analysis of the extent to which such process has led to an expansion of the obligations in this area as compared to the requirements in the TRIPS Agreement. Table 9 in the Annex (not attached, available later), however, shows a general picture of the situation, and clearly indicates, as discussed below, that TRIPS-plus nature of some of the commitments and information provided by the acceding countries.

It is worth noting that some countries have made commitments not only regarding specific procedures and remedies, but more generally regarding the administration of rights, committing themselves, for instance, to rationalization or centralization in a single agency the administration of rights subject to grant and registration, such as patents, trademarks and industrial designs. Moreover, in some cases (Cambodia, and Nepal) general commitments to substantially reduce infringement or to ensure that the rate of infringement will not increase can also be found.<sup>105</sup>

In its bilateral agreement with the United States, Russia has agreed to TRIPS-plus obligations with respect to civil and criminal enforcement activities.<sup>106</sup>

#### A. Civil Remedies

In the area of civil remedies, the commitments made by China are limited to confirming TRIPS standards. However, several acceding countries provided information reflected in their respective laws adopting TRIPS-plus standards. The main aspects where such is the case include the following:

a. Calculation of damages independent of the resulting pecuniary damage of the infringement, including recovery of lost profit, application of pre-established damages at the choice of the right holder, and determination of damages based on retail price. These requirements clearly exceed what is mandated under article 45 of the TRIPS Agreement<sup>107</sup>;

b. Destruction of materials, implements and the closure of market places, shops and manufacturing plants. This is not required under article 46 or any other provision of the Agreement.<sup>108</sup>

Chinese Taipei committed only:

*“to provide patent owners and his/her exclusive licensees the right to request destruction or other necessary disposition of the infringing goods, raw materials or instruments used, in connection with the infringement, so as to meet the requirement of Article 46 of the TRIPS Agreement which calls for giving the judicial authority to order disposition outside the channels of commerce.”<sup>109</sup>*

## B. Criminal Enforcement

Criminal procedures and penalties are required under the TRIPS Agreement only ‘in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale’ (article 61). Several acceding countries have gone beyond this provision and what is, in fact, the actual practice in many developed countries and indicated the application of criminal sanctions for infringements of intellectual property rights other than trademarks and copyrights.<sup>110</sup>

China made additional commitments with respect to the threshold for bringing criminal sanctions followed by its judicial authorities

*“Some members of the Working Party expressed concerns that criminal proce-*

*dures could not be used effectively to address piracy and counterfeiting. In particular, the monetary thresholds for bringing a criminal action, as currently applied, were very high and seldom met. Those thresholds should be lowered so as to permit effective action that would deter future piracy and counterfeiting. In response, the representative of China stated that China’s administrative authority would recommend that the judicial authority make necessary adjustments to lower the thresholds so as to address these concerns. The Working Party took note of this commitment”*

In addition, at least, in the case of one acceding country, criminal investigations should be initiated *ex-officio*, without a complaint by the right holder.<sup>111</sup>

## C. Border Measures

A number of TRIPS-plus standards relating to border measures can also be identified, namely:

a. Limiting the evidence threshold, establishing a legal presumption that the applicant is the right holder and limiting the security to be deposited by the right holder to a ‘reasonable security’. For instance, in Lithuania only 5% of the value of the goods should be considered to determine the amount of such security.<sup>112</sup>

b. Border measures include goods in transit and goods for exportation, while article 51 of the TRIPS Agreement is only mandatory with regard to importation.<sup>113</sup>

c. Border measures include infringement of intellectual property rights other than trademark counterfeit and copyright piracy, the only two cases under which such measures are mandatory in accordance with article 51 of the TRIPS Agreement.<sup>114</sup>

## D. Transparency and Publication

Some acceding countries have made commitments indicating that no law or regulation related to international trade/intellectual property would become effective prior to publication,<sup>115</sup> that publication of laws should include date of entry into force and that a translation should be made available.<sup>116</sup> Although these commitments are made generally and more often in relation to the GATT, China, Chinese Taipei, Saudi Arabia, Cambodia and Nepal have

made commitments specifically referring to publications of laws related to the TRIPS Agreement. These commitments clearly exceed the transparency obligations set out in article 63 of the TRIPS Agreement. The various levels of commitments with respect to transparency include the following:

1. Commitment for prompt or expedited publications: China, Nepal, Saudi Arabia, and Chinese Taipei. Unlike the TRIPS

- Agreement that only requires publication, these commitments are for publications with the qualification that they should be *prompt* and sometimes *expedited*.<sup>117</sup>
2. Undertaking that only those laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange that are *published* and *readily available* to other WTO Members, individuals and enterprises, shall be enforced: China, Saudi Arabia, and Cambodia. This commitment is TRIPS-plus, since unlike the TRIPS Agreement that requires publication for transparency purpose, the commitment renders publication as a validity requirement for the enforcement of laws, regulations and other measures. It also imposes a standard of being *readily available* in addition to being *published* for the enforcement of the laws, regulations and other measures;<sup>118</sup>
  3. Commitment with respect publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex to include the effective date of these measures: China, Nepal and Cambodia as well as Saudi Arabia for all laws without specifically referring to TRIPS.<sup>119</sup>
  4. Commitment for translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, and to the maximum extent possible, making these laws, regulations and other measures available before they were implemented or enforced, but in no case later than 90 days after they were implemented or enforced: China and Chinese Taipei;<sup>120</sup>
  5. Commitment for the establishment of enquiry points, or information centres on TRIPS or generally on intellectual property rights: Nepal.
- The same applies to a commitment (made by Cambodia) to circulate legislation to WTO Members for comment with specified time limits, and to establish or designate an official journal or website, published or updated on a regular basis and readily available to WTO Members, individuals and enterprises, dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services, and TRIPS.<sup>121</sup>

## IV. Policy Implications

In assessing the public policy implications of TRIPS-related provisions in accession agreements, the different legal mechanisms involved in the process are significant. In most cases, acceding countries do not make specific commitments on TRIPS-plus elements, although there are notable exceptions. However, the national legislation put in place during the accession process and reported or notified to the Members often contains TRIPS-plus elements outside the label of specific commitments.

An acceding country is “bound” only with respect to “commitments” in the context of dispute settlement. However, an acceding country runs the risk of being the subject of a non-violation complaint brought on the basis of its Protocol of Accession, if such complaints are finally deemed applicable in the context of matters related to intellectual property

### A. Public Health

The potential impact of TRIPS Agreement rules on national health policy has generated intensive debate within and outside the WTO. The WTO has responded by adopting a variety of measures, including the Doha Declaration on the TRIPS Agreement and Public Health and the August 30, 2003 Waiver and subsequent Amendment on exports under compulsory license.

The TRIPS Agreement provides flexibility for Members to determine their own approach regarding the relationship between IPRs and access to medicines in the number of ways. First, it permits Members to define the nature of invention and to regulate the criteria of patentability within the broad framework of TRIPS Agreement rules. Second, it permits Members to establish exceptions to patent rights. Third, it permits Members to grant government use and compulsory licenses. Fourth, it allows a range of options with

protection. Perhaps more important from a practical standpoint, the acceding country faces the prospect of diplomatic representations from economically important WTO Members regarding its failure to maintain the legislation adopted or announced during the accession process, even if technically the acceding country is free to change that legislation and to limit the level of protection to what is required by the TRIPS Agreement<sup>122</sup>. The importance of economic diplomacy outside the specific context of WTO dispute settlement should not be discounted. That diplomacy may be combined with threats relating to suspension of trade preferences or economic aid packages.

The public policy implications of both bound commitments and legislative changes undertaken without specific commitment are considered in the following assessment.

respect to the protection of data submitted for regulatory purposes. Fifth, it permits Members to determine their own policies with respect to exhaustion of rights, and to allow parallel importation of medicines. Sixth, its rules regarding protection of undisclosed test data are limited in a number of ways, including by direction to “*unfair commercial use*”.

In the accession process, Members have made substantial concessions in terms of relinquishing elements of the foregoing flexibilities. On the positive side of the equation, most (but not all) of these concessions are not part of the bound commitments made as part of the Protocol of Accession. In this regard, the commitments made by China and Cambodia are important exceptions.

On the negative side of the equation, a number of acceding countries have



incorporated limitations on TRIPS flexibilities in their national legislation and have reported them to the respective Working Parties in the accession processes. For example, Saudi Arabia modified its law to establish patent-regulatory review linkage based even upon patent applications that are not yet approved.

The incorporation of high levels of IPRs protection for pharmaceuticals and other health-related materials and equipment virtually by definition will increase the price of new products on the national market. The developed Members of the WTO justify these higher prices by reference to the high research and development costs associated with them.

Whether it is appropriate for a particular acceding country to accept paying higher prices for medicines and other public health supplies is context-specific. A country such as Saudi Arabia, with a high level of petroleum export revenues and a relatively sophisticated public-health system, might make a concession on public-health-sector costs without a significant adverse effect on the public. For acceding countries with more limited public health budgets, concessions on pharmaceutical and other health-related supply prices may have far-reaching consequences for the public.

Research and development expenses represent between 10 and 20% of research-based pharmaceutical company budgets. Pharma companies spend substantial portions of their revenues on advertising and promotion, as well as on general administrative costs. On the whole, these companies earn high levels of profit. The decision by an acceding country to pay higher prices for pharmaceuticals and other health-related supplies is unlikely to affect in a significant manner industry's levels of research and development, as 90% of sales occur in developed countries<sup>123</sup>. It is more so a decision to invest in high levels of health-

related advertising and promotion in the developed countries.

A number of acceding countries have limited the grounds upon which compulsory licenses of patents may be granted. These limitations may influence pricing decisions made by patent holding pharmaceutical companies. If price-setting is done outside the shadow of compulsory licensing, prices are likely to be higher. Acceding countries generally appear to have maintained the flexibility to issue government use licenses, which is extremely important for the protection of the national interest.

Of particular note are decisions by acceding countries to provide fixed periods of marketing exclusivity based on the submission of pharmaceutical regulatory data. Such marketing exclusivity is likely to have adverse effects on pricing in the national market. Depending on the specific terms of the marketing exclusivity rules, such rules are likely to cover a range of products that are not protected by patent. In some contexts, the price and budget effect of marketing exclusivity rules may be materially higher than patent rules.

There is no indication that acceding countries have adopted legislation which precludes the parallel importation of patented medicines. Such legislation would prevent importers from seeking the lowest prices available on the world market. It is not clear why a developing country would choose to cut off potential sources of lower cost medicine supplies. While there is good reason for all countries to be concerned about the safety of medicines supplies, parallel imported medicines are no less legitimate than other medicines. It is important for all countries to maintain vigilance over the safety of imported medicines, whether or not parallel imported.

## B. Food Security

Over the course of the past two decades funding for research and development in agriculture has shifted in a significant way from the public to the private sector. As a consequence, patent and plant variety protection for agricultural-related resources has grown in importance. In many developing countries, the agricultural sector forms the backbone of the economy and is a major source of employment. In order to satisfy their subsistence needs and be competitive on the world market, and even on the local market, farmers must have access to new plant varieties and seeds at affordable prices.

The TRIPS Agreement provides WTO Members with options regarding the way in which new plant varieties may be protected. Under Article 27.3(b), Members may provide patent or *sui generis* plant variety protection, or a combination of these.

A plant patent authorizes its holder to prevent third parties from making or using the plant variety, including its seeds. Only a limited number of countries permit the patenting of plant varieties. A plant patent may preclude farmers from using seeds saved from crops grown from a protected variety. A country may decide to establish an exception from the rights of patent holders allowing farmers to replant with saved seeds<sup>124</sup>. Although this exception may be controversial, particularly if it is perceived to interfere with the economic returns to the patent holder, it may be deemed one of the permissible exceptions under article 30 of the TRIPS Agreement. A patent may also limit the use of the protected material for further research and breeding, but an exception for this purpose<sup>125</sup> can also be established and justified under the three step test of said article 30.

A country which adopts a *sui generis* plant variety protection system, on the

other hand, has more flexibility to authorize the saving and replanting of seeds (the so called '*farmers*' privilege). Such flexibility is recognized in both versions (1978 and 1991) of the UPOV Convention, although the later version of UPOV defers to national legislation the establishment of such privilege. The 1991 version of UPOV also provides a longer term of protection and requires protection for varieties in all species.

The TRIPS Agreement does not mandate that a Member adhere to any version of the UPOV Convention. A country acceding to the WTO may adopt its own unique form of plant variety protection without reference to a multilateral agreement other than the TRIPS Agreement.<sup>126</sup>

It is for each acceding country to decide on its own best policy with respect to the protection of plant varieties. For developing countries which are highly dependent on agricultural production, the adoption of patent protection for plant varieties may create substantial risks that farmers will be unable to obtain or use seeds at affordable prices, as well as limit (if exceptions are not provided) seeds saving and further research and breeding on protected varieties. While adopting patent protection for plant varieties has questionable merits for developing countries, if such protection is adopted, it is important to consider the exceptions that will be built into the legislation.

For many developing countries, the additional flexibility and shorter period of protection afforded under the 1978 version of UPOV may be more consistent with the national interest than the corresponding provisions of the 1991 version. However, the option to join the 1978 version of UPOV is already closed and new UPOV members must adhere to the 1991 version.

## C. Biodiversity

The preponderance of the world's bio-diverse resources is located in developing countries. The Convention on Biological Diversity is designed to protect the interests of developing countries in their biological resources by requiring prior informed consent (PIC) for bio-prospecting and the equitable benefit sharing (EBS) from the commercialization of biological resources. Concerns have repeatedly been voiced by developing countries regarding lack of compliance, in some cases, with CBD-related obligations by companies bio-prospecting for biological material that contains commercially useful active ingredients.

A number of developing countries with substantial bio-diverse resources have sought

to promote compliance with PIC and EBS by implementing a requirement that patent applicants disclose the source and/or origin of biological materials incorporated in their inventions. Such disclosure requirements are permitted under the Paris Convention, TRIPS Agreement and relevant WIPO agreements.

Some acceding countries may be asked to incorporate in their patent legislation rules that directly or indirectly preclude a requirement of disclosure of the source and/or origin of biological materials, for example, through provisions that generally limit disclosure obligations. Acceding countries should pay close attention to requests to limit patent applicant disclosure requirements.

## D. Public Domain

Information which is not protected by intellectual property is generally available for use by the public. Developing countries which are acceding to the WTO should recall that the vast preponderance of intellectual property ownership resides in the developed countries. Extending the scope of ownership rights in intellectual property will almost certainly benefit foreign nationals to a greater extent than local nationals. This not only has implications for the outflow of financial resources, i.e., IPRs-based royalties or rent payments. It also has implications for public access to information more generally. Because IPRs protected information is likely to be more costly than public domain information, IPRs protection may place information out of the reach of the local population.

Countries acceding to the WTO should pay attention to extensions of copyright protection beyond those required by the Berne Convention and TRIPS Agreement. The TRIPS Agreement requires that countries provide, for individual authors, a copyright term of the author's life plus 50 years. Some

WTO Members have extended the national copyright term to the author's life plus 70 years. Such an extension clearly limits access by the public to expressive material. For developing countries, it would be difficult to justify extension of the copyright term given the preponderance of copyright ownership in the developed countries.

Today, the Internet is a basic information resource for people around the world. A substantial amount of attention is paid by developed country copyright owners to restricting to a paying audience access to material on the Internet. One of the principal means for limiting the audience is by promoting adoption of high standards of protection for Internet-based content, and by making illegitimate the use of technologies which facilitate access to content. The TRIPS Agreement does not require WTO Members to adhere to the WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT). It is, of course, for each country to decide whether it wishes to be party to these multilateral agreements.

If an acceding Member joins either or both of the WCT or WPPT, it should exercise care in implementing its obligations so as to avoid

unnecessarily limiting the public domain and so as to avoid interfering with legitimate rights of the users of expressive materials.

## E. Administrative Resource Commitment

As noted at the outset of this paper, most countries newly acceding to the WTO require a substantial commitment of resources to bring their national intellectual property regimes into compliance with the TRIPS Agreement. For many developing countries, protection of IPRs is not, nor should it be, a national priority. Financial resources are better invested in public infrastructure projects, such as water purification and power generation

The TRIPS Agreement requires WTO Members to provide adequate and effective protection for IPRs. It also requires them to provide criminal penalties for willful copyright piracy and trademark counterfeiting on a commercial scale as a deterrent to such conduct. It does not, however, require them to alter the distribution of resources

as between enforcement of IPRs and enforcement of other laws.

Some WTO Members may negotiate for more specific commitments in the area of criminal enforcement, and for the establishment of specific tribunals to hear IPRs infringement cases. Recognizing that the costs of TRIPS compliance are in general high, acceding countries should exercise caution in negotiating with respect to establishing additional regulatory infrastructure to deal with IPRs. While developed country business enterprises may logically seek to increase their profitability in the developing world, it may not make sense (except for fiscal purposes) from a public policy standpoint for developing countries to invest, for example, in the criminal prosecution of IPRs infringers.

## F. Dispute Settlement Liability

As noted earlier, there are two types of complaints that may be brought with respect to compliance with WTO obligations. The first is a “violation” complaint and the second is a “non-violation” complaint.

Newly acceding Members face the prospect of violation complaints with respect to “commitments” made in respect to TRIPS. If a WTO Member loses a violation case, it is expected to modify or withdraw the measures which were found to be inconsistent with its WTO obligations. If it fails or refuses to modify the measures, the prevailing Member may withdraw concessions sufficient to offset its losses.

A prevailing Member is not limited in the withdrawal of concessions to the area in which the violation has occurred. If a newly acceding Member fails to protect patents in the manner prescribed, and fails to remedy a violation, it may find that concessions are

withdrawn in the field of agriculture. This possibility for cross-withdrawal of concessions was one of the reasons developed countries negotiated to move IPRs protection into the WTO.

Again, as noted earlier, if non-violation cases could be brought in relation to matters covered by the TRIPS Agreement — *an issue which is not settled yet* — and an acceding Member loses a non-violation case, it is not expected to modify or withdraw the offending measure. If it does not do that, however, it is nevertheless subject to the withdrawal of concessions by the prevailing Member. For many developing members, loss of a non-violation case will be as serious as loss of a violation case.<sup>127</sup> Until now there has been no developing country support for introducing non-violation causes of action under the TRIPS Agreement, and very little support among developed countries for such a step.

## Endnotes

- 1 Art. II:2, WTO Agreement.
- 2 Throughout this paper prospective Members will routinely be referred to as countries or states as a matter of convenience, recognizing that autonomous customs territories may also be Members of the WTO.
- 3 See World Bank, *Global Economic Prospects and the Developing Countries 2002*, Ch 5 and Table 5.1. See also J. Michael Finger, *The Doha Agenda and Development: A View from the Uruguay Round*, Study for the Asian Development Bank 2002, at 13–19, 25. Finger notes that for six countries (United States, Germany, Japan, France, United Kingdom and Switzerland) the net increase in patent rents from TRIPS implementation is estimated by the World Bank at \$40 billion per year. Total net payment outflows (including other forms of IP) based on full implementation are estimated at \$60 billion per year. These estimates are based on full collection, and need to be discounted based on the level of compliance.
- 4 WTO Appellate Body, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, AB-1997-5, WT/DS50/AB/R, 19 Dec. 1997.
- 5 See, Letter from USTR Susan Schwab to Russian Minister of Trade German Gref, dated November 19, 2006, available at [http://www.ustr.gov/assets/World\\_Regions/Europe\\_Middle\\_East/Russia\\_the\\_NIS/asset\\_upload\\_file148\\_10011.pdf](http://www.ustr.gov/assets/World_Regions/Europe_Middle_East/Russia_the_NIS/asset_upload_file148_10011.pdf) (“Exchange of Letters”).
- 6 Art. IX:1, WTO Agreement.
- 7 Art. XIII:1&3, *id.*
- 8 WT/ACC/10/Rev. 3, at paras. 172-84. The Secretariat Technical Note is not legally binding and it should not be assumed that only those matters identified as commitments by the Secretariat will be considered commitments by all Members.
- 9 For example, the China Protocol of Accession provides at paragraph 1(2), *inter alia*: “This Protocol, which shall include the commitments referred to in paragraph 342 of the Working Party Report, shall be an integral part of the WTO Agreement.” WTO Ministerial Conference, Accession of the People’s Republic of China, Decision of 10 November 2001, WT/L/432, 23 Nov. 2001.
- 10 Article I:1 & Appendix I(A), DSU. A contrary view would be that Appendix I of the DSU contains an exhaustive list of the agreements as adopted at the conclusion of the Uruguay Round, and that their obligations cannot be expanded by a Ministerial decision. If this were correct, the enforceability of TRIPS-plus commitments made by acceding countries under the DSU might be questioned.
- 11 Although the subject has not often been addressed, most commentators conclude that the provision constituting the Protocol of Accession an “integral part” or the WTO Agreement is sufficient to bring it within the category of subject matter subject to the DSU which expressly covers “settlement of disputes between Members concerning the rights and obligations under the provisions of the Agreement Establishing the World Trade Organisation ... taken in isolation or in combination with any other covered agreement (Art. I;1, WTO Dispute Settlement Understanding). This is reinforced by the fact that Article XII of the WTO Agreement expressly contemplates further agreements with acceding parties “on terms” between [the acceding country] and the WTO. Such accession shall apply to this Agreement and to the Multilateral Trade Agreements annexed thereto. See discussion of commentators in Steve Charnovitz Mapping the Law of WTO Accession, in WTO AT TEN; GOVERNANCE, DISPUTE SETTLEMENT AND DEVELOPING COUNTRIES, M. Janow, V. Donaldson & A. Yanovich, eds., Juris Publishing Inc., Forthcoming Available at SSRN: <http://ssrn.com/abstract=95765>. Referring along this line, e.g., to Claus-Dieter Ehlermann & Lothar Ehring. Decision-Making in the World Trade Organisation, 8 J. INT’L ECON. L. 51.57 (2005). Charnovitz disagrees with this line of legal analysis because, in his view, WTO Members may not amend the terms of the WTO Agreement without recourse to the formal amendment procedures of its Article X, which are not followed in the case of accession. Nonetheless, Charnovitz concludes that the Protocols of Accession are binding and enforceable as permissible “modifications” to the WTO Agreement -- new international agreements enforceable by virtue of the terms of Article XII of the WTO Agreement that contemplates such modifications.
- 12 On different interpretations about the legal situation created by such failure, see UNCTAD-ICTSD, Resource Book on TRIPS and Development, [quote].
- 13 It should also be noted that the distinction between these two categories of obligations may be controversial. For instance, the USA and the EU have argued that the provision of ‘data exclusivity’ is an implementation of article 39.3 of the TRIPS Agreement, and not a TRIPS-plus obligation
- 14 Each acceding Member has agreed to comply with the TRIPS Agreement, in some cases with a short transition, and there is nothing unusual about this from a legal standpoint. That is, all Members are required to comply with the TRIPS Agreement.
- 15 This focus was identified by the WTO Appellate Body in the *India-Mailbox* case.
- 16 Recall that Article I.1 of the TRIPS Agreement provides flexibility for Members to implement their obligations in light of their own legal system and practice. In the *India-Mailbox* decision, the Appellate Body recognized this flexibility.
- 17 Art. 26, WTO DSU.

- 18 WT/MIN(01)/DEC/1, 20 Nov. 2001, at paras. 9 & 42.
- 19 Briefing Note, Summary of 11 September 2003, Day 2: Cambodia and Nepal membership sealed as ministers start negotiations, [http://www.wto.org/english/thewto\\_e/minist\\_e/min03\\_e/min03\\_11sept\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_11sept_e.htm).
- 20 Research regarding changes to national legislation in the context of the accession process was substantially performed by Ermias Biadgleng. The authors have relied on this research in the preparation of the following discussion.
- 21 See, e.g., WTO (2000), Report of the working party on the accession of Croatia to the world trade organization, WT/ACC/HRV/59. It reports the Amended Copyright Law of Croatia, had been submitted to the legislative procedure ensuring protection for phonogram producers and broadcasting organizations in accordance with the requirements of the TRIPS Agreement. However, many of the reports claiming TRIPS compliance by amendment of laws reveals that the amendments are beyond what is required by the TRIPS Agreement.
- 22 As available in the WIPO's collection of laws for electronic access (CLEA).
- 23 WTO (1999), Report of the Working Party on the Accession of the Hashemite Kingdom of Jordan, WT/ACC/JOR/33 and WT/MIN(99)/9, para. 192.
- 24 *Id.*, Table 15.
- 25 The Box is developed by Professor Zhang Naigen (2003), China Intellectual Property Regime and the WTO, available at [http://www.ipsmart.cn/viewnews.php?sort\\_superid=17](http://www.ipsmart.cn/viewnews.php?sort_superid=17), last visited on 8 October 2006.
- 26 See, e.g., WTO (2000), Report of the Working Party on the accession of Oman, WT/ACC/OMN/26, para., 131.
- 27 This includes Latvia, Lithuania, Estonia, and Macedonia.
- 28 Many of the European countries that acceded to the WTO are either in the accession process or have opted to comply with EU standards.
- 29 They can be subject, however, to some exceptions. See articles 3 and 4 of the TRIPS Agreement.
- 30 For example, the Kyrgyz Republic committed to provide national treatment in respect of all fees charged for the granting of intellectual property rights by the time of accession to the WTO. See, WTO (1998), Report of the Working Party on the Accession of the Kyrgyz Republic, WT/ACC/KGZ/26, para. 140.
- 31 See, WTO (2003), Report of the Working Party on the Accession of the Kingdom of Nepal, WT/ACC/NPL/16, para 137 and Table 10: Action Plan for the Implementation of the Agreement on Trade Related Aspects of Intellectual Property Protection.
- 32 See, for example, WTO (2001), Report of the Working Party on the Accession of China, WT/MIN(01)/3, para. 261-163.
- 33 See WTO(2005), Report of the Working Group on the Accession of the Kingdom of Saudi Arabia, WT/ACC/SAU/61, para. 251.
- 34 See article 66.1 of the TRIPS Agreement.
- 35 However, LDCs are obliged to ensure that any changes in their laws, regulations and practice made during the additional transitional period do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement.
- 36 "Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least Developed Country Members for Certain Obligations with respect to Pharmaceutical Products" (IP/C/25).
- 37 In fact, with some exceptions for special or additional commitments and for the cases of Ecuador, Cambodia and Nepal, as noted below, acceding countries were obliged to implement their commitments by the date of accession.
- 38 WTO (2003), Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21, para. 204
- 39 *Id.* para. 205.
- 40 *Id.* para. 204.
- 41 *Id.*
- 42 WTO (2003), WT/ACC/NPL/16, *op. cite.*, fn [], para. 136, 137 and 138.
- 43 *Id.*, para. 137 and WTO (2003), WT/ACC/KHM/21, *op. cite.*, fn [], para. 205.
- 44 It is to be noted that eight LDCs are currently in the process of accession to the WTO. They are: Bhutan, Cape Verde, Ethiopia, Laos, Samoa, Sudan, Vanuatu and Yemen. Equatorial Guinea and Sao Tome & Principe are WTO Observers.
- 45 As examined below, Cambodia also accepted to apply TRIPS-plus protection with regard to test data.
- 46 2005 estimate. See <http://en.wikipedia.org/wiki/Cambodia>. See also trade statistics relating to Cambodia in <http://stat.wto.org/CountryProfile/WSDBCcountryPFView.aspx?Language=E&Country=KH>.
- 47 See articles 3.1, 9, 14.6 and 35 of the TRIPS Agreement.
- 48 Within 5 to 7 years from accession for Jordan.

- 49 Within 5 to 7 years from accession for Jordan.
- 50 *Idem.*
- 51 *Idem.*
- 52 *Idem.*
- 53 For instance, Albania with regard to the ratification of WPPT, WCT and UPOV in 2005.
- 54 WTO (2001), Report of the Working Party on the Accession of the Republic of Moldova, WT/ACC/MOL/37, para. 166.
- 55 WTO ( ), Report of the Working Party on the Accession of the Mongolia, WT/ACC/MNG/9, para. 53
- 56 WTO (2003), WT/ACC/NPL/16, *op. cite.*, fn [], para. 122.
- 57 *Id.*, para 137 and Table 10.
- 58 A more elaborated analysis would require to examine the situation of ratification by each acceding country of intellectual property treaties before the accession process. Such analysis is, however, beyond the scope of this study.
- 59 WTO (2003), Report of the Working Party on the Accession of the Former Yugoslav Republic of Macedonia, WT/ACC/807/27, para. 211
- 60 See for example, WTO (2003), Report of the Working Party on the Accession of the Republic of Armenia, WT/ACC/ARM/23, para. 172 and the new law of Armenia on copyright available at the TRIPS council database of notification of laws, IP/N/1/ARM/C/1.
- 61 *Id.*
- 62 Exchange of Letters, *supra* note 5.
- 63 , WT/MIN (01)/3, *op. cite*, fn [], para 263.
- 64 *Id.*, para. 259 and Copyright law of the People's Republic of China (2001), Article 10.12 and 41, as reported to the WTO, WTO (2002), Notification of Laws, IP/N/1/CHN/C/1.
- 65 See, e.g., on these treaties M Ficsor (2002), *The Law of Copyright and the Internet: The 1996 WIPO Treaties, their Interpretation and Implementation*, Oxford University Press.
- 66 See, for example, WTO (1998 ), Report of the Working Party on the Accession of Latvia, WT/ACC/LVA/32, para. 113.
- 67 However, the copyright law notified by Macedonia to the WTO still provides for 20 years.
- 68 See, WT/MIN(01)/3, *op. cite*, fn [], para. 263 and WTO (2002), and, WT/ACC/807/27, *op. cite.*, fn [], para. 214. In case of China commitments on certification and collective marks go deeper than IP issues, see para. 196 (b) of WT/MIN(01)/3.
- 69 WT/MIN(01)/3, *op. cite*, fn [], para. 263.
- 70 There is no information about Cambodia and Nepal.
- 71 WTO (1999), Report of the Working Party on the Accession of Georgia, WT/ACC/GEO/31, para. 141 and its trademark law adopted in 1999 based on the standards of the TRIPS Agreement and the EC.
- 72 WT/MIN(01)/3, *op. cite*, fn [], para. 262-263 and Provisions on the Determination and Protection of Well-know Marks of China (Issued by the State Administration for Industry and Commerce on April 17, 2003), Article 2 and 13.
- 73 Committed to implement provisions similar to those contained in the Joint Recommendation Concerning Provisions on the Protection of Well-known Marks (1999).
- 74 *Id.*
- 75 WT/ACC/MOL/37, *op. cite*, fn [], para. 182. See also WT/ACC/807/27, *op. cite*, fn [], para. 214-215 and the Consolidated Industrial Property law of Macedonia, 2000, Article 126 (1) (7). The latter lists geographical origins without distinction between wines and sprits and other agricultural and foodstuff for absolute *ex officio* cancellation of trademarks that conflict with such origins.
- 76 In accordance with articles 22.2 and 23.2 of the TRIPS Agreement *ex officio* action is only required if the Member's 'legislation so permits'. See WT/ACC/HRV/59, *op. cite*, fn [] para. 182.
- 77 Saudi Arabia has indicated that no GIs protection will be conferred for wines and spirits.
- 78 See for example, WT/ACC/MOL/37, *op. cite*, fn [], para. 166, and 184,
- 79 WT/MIN(01)/DEC/W/2, 14 November 2001.
- 80 WT/MIN(01)/3, *op. cite*, fn [], para. 270 and 275.
- 81 In accordance with the methodology set out in the Vienna Convention on the Law of the Treaties (article 31 and 32).

- 82 See WTO (1999), Report of the Working Party on the Accession of Estonia, WT/ACC/EST/28, para. 120 and its consolidated law, 1994 (as amended 1998), Article 6 available both at the TRIPS notification of laws database and WIPO collection of laws and treaties for electronic access. The possibility of patenting second pharmaceutical indications opened by such commitments may have implications for the access to drugs and public health policies, as examined below.
- 83 See also, WT/ACC/MOL/37, *op. cite.*, fn [], para. 188 for Moldova.
- 84 See, WT/ACC/KHM/21, *op. cite.*, fn [], para. 185.
- 85 In the case of Cambodia, the WTO working party was informed that a draft Law on Plant Variety Protection was in preparation with the assistance of UPOV, WT/ACC/KHM/21, *op. cite.*, fn [], para., 188.
- 86 While many developing countries have adhered to the 1978 UPOV Convention, since April 1998 new members can only join the UPOV Convention, as revised in 1991.
- 87 See, e.g., WT/MIN(01)/3, *op. cite*, fn [], para. 272-275.
- 88 See, WT/ACC/OMN/26, *op. cite*, fn [], para. 136, WT/ACC/MOL/37, *op. cite*, fn [], para. 193 and WT/ACC/LTU/52, para. 163.
- 89 Croatia registered unspecific commitment to harmonize its legislation on compulsory licensing with Article 31 of the TRIPS Agreement in the new Law on Patents. See WT/ACC/HRV/59, *op. cite.*, fn [], para. 187.
- 90 Up to seven years in the case of China. See, WT/ACC/807/27, *op. cite*, fn [], para, 220, WT/ACC/EST/28, *op. cite*, fn [], para. 120, and WT/ACC/PAN/19, para. 104.
- 91 See, e.g., F Abbott, The Doha Declaration on the TRIPS Agreement and Public Health and the Contradictory Trend in Bilateral and Regional Free Trade Agreements, Frederick Abbott (QUNO) April 2004; available at <http://www.quno.org/geneva/pdf/economic/Occasional/TRIPS-Public-Health-FTAs.pdf>; C Correa (2006), 'Implications of bilateral free trade agreements on access to medicines, Bulletin of the World Health Organization, Volume 84, Number 5, May.
- 92 See C Correa (2002), Protection of data submitted for the registration of pharmaceuticals. Implementing the standards of the TRIPS Agreement, South Centre/WHO, Geneva.
- 93 WT/MIN(01)/3, *op. cite*, fn [], para. 284.
- 94 WT/ACC/JOR/33, *op. cite.*, fn [], para. 215 and WT/ACC/KHM/21, *op. cite*, fn [], para. 205.
- 95 WT/ACC/SAU/61, *op. cite*, fn [], para. 261.
- 96 The exclusivity period is of six years in the case of China.
- 97 With respect to Nepal the progress report indicate specific commitment similar to the language of the Cambodia's accession document. However, the final report reduced the commitment merely for the adoption of the necessary laws. See WT/ACC/SPEC/NPL/5/Rev.1. Nepal also declared its right to use the flexibility provided under the Doha Declaration on the TRIPS Agreement and Public Health.
- 98 See Exchange of Letters, *supra*, note 5.
- 99 WT/ACC/NPL/16, *op. cite*, fn [], para. 129.
- 100 WTO (2003), Working Party on the Accession of Nepal, Statements, WT/ACC.NPL/17.
- 101 See, e.g., C Correa (2004), 'Bilateralism in intellectual property: defeating the who system for access to medicines', Case Western Reserve Journal of International Law, vol. 36, No. 1, Winter.
- 102 WT/ACC/KHM/21, *op. cite*, fn [], para. 205 and WT/ACC/SAU/61, *op. cite*, fn [], para. 261.
- 103 Thus, in some countries (Armenia, Georgia, Saudi Arabia, Panama) protection is provided through patents (in some cases for a term shorter than the twenty years required by article 33 of the TRIPS Agreement). Others (Bulgaria, Oman) have adopted specific industrial design regimes.
- 104 WT/ACC/MOL/37, *op. cite*, fn [], para. 185.
- 105 In the case of Cambodia and Nepal, for instance, the governments 'will ensure that existing rates of infringement would not significantly increase and that any infringement of IP rights would be addressed immediately in cooperation with the assistance from affected right holders'. See, WT/ACC/KHM/21, *op. cite*, fn [], para. 205 and WT/ACC/NPL/16, *op. cite*, fn [], para. 137.
- 106 Exchange of Letters, *supra* note 5.
- 107 See, ACC/SAU/61, *op. cite*, fn [], para. 266 and WT/MIN (01)/3, para. 289 and 292.
- 108 See, e.g., WT/ACC/OMN/26, *op. cite*, fn [], para. 138.
- 109 See., WT/ACC/TPKM/18, para. 198.
- 110 See, e.g., WT/ACC/TPKM/18, para. 200 and 202. Under the Chinese Taipei law importers and manufacturers are required



to include information relating to the name and address of the manufacturer on product labels. In addition, persons using false designations could be liable under Article 339 of the Criminal Code as having committed the offence of forgery. Furthermore, investigation can be launched against Chinese Taipei residents who infringe copyrights in mainland China

- 111 *Id.*, 202.
- 112 See, e.g., WT/ACC/LTU/52, para. 165.
- 113 WT/ACC/TPKM/18, para. 200, 201 and 202.
- 114 *Id.*, 205.
- 115 See, for e.g., WT/ACC/SAU/61, *op. cite*, fn [], para. 305.
- 116 In the case of Cambodia, for instance, it is stated that ‘the publication of such regulations and other measures would include the effective date of these measures and, where appropriate or possible, list the products and services affected by the particular measure, identified by appropriate tariff line and classification. He added that Cambodia would post the contents of current and past editions of the Official Journal on the government website and keep them current’. See, *Id* and WT/ACC/KHM/21, *op. cite*, fn [17], para. 217.
- 117 See for example, WT/ACC/TPKM/18, para 216 and 217.
- 118 See China’s accession protocol Para. 2(C) (1).
- 119 See for example, WT/MIN(01)/3, *op. cite*, fn [], para. 331.
- 120 *Id.*, para. 334.
- 121 WT/ACC/KHM/21, *op. cite*, fn [], para. 217
- 122 See article 1.1 of the TRIPS Agreement.
- 123 In addition, only between 5% and 7% of profits are generated in low and middle income countries See PhRMA’s Pharmaceutical Industry Profile 2005 •From Laboratory to Patient: Pathways to Biopharmaceutical Innovation (available at <http://international.phrma.org/publications/publications/17.03.2005.1142.cfm>).
- 124 See, e.g. article 11 of the European Directive on Biotechnological Inventions (98/44/EC, July 6, 1998).
- 125 See, e.g. article 22 of the Industrial Property Law of Mexico.
- 126 It is important to recall that the TRIPS Agreement requires national and most-favored-nation treatment, regardless of the specific terms of the national legislation.
- 127 There are, as noted, limits to the permissible withdrawal of concessions. The extent of withdrawal of concessions is subject to arbitration under the DSU.

# Tables and Analysis by Ermias Tekeste Biadgleng

## Introduction

The following tables are organised in order to assess comparatively the TRIPS-plus implications of the accession process. The first columns of Table 2- 9 provide a brief description of point of references for comparative analysis of the TRIPS-plus implications. By looking at the accession protocol, working party reports and domestic laws and regulations revised as a result of the accession process entry is made for each reference and country stating 'Committed', 'No Commitment' and 'Indicated.'

Committed means – the acceding country has accepted a specific request or offered to undertake a specific obligation and the working party has taken note of the commitment. Under the following tables 'Committed' used only the context of TRIPS-plus standards under the working party reports to which the working parties took note of the commitments and, hence, form part of the conclusion of the Working Party Report as well as cross-referenced under the accession protocols.

'No Commitment', means either there was no information provided or that the information provided on specific issue does not amount to TRIPS-plus standards.

Indicated- refers to information supplied to the Working Party of each of the acceding countries on specific issues with TRIPS-plus effect but No Commitment was taken note by the Working Party. In some cases it was found important to refer to the content of the laws revised, adopted or amended during the accession process. Often the acceding countries report the amendment, revision or adoption of laws as part of the accession process. However, the particulars of the amendment, revision and adoption of laws are not always reflected in the reports. As a result, some of the entries on the tables below can be found in the amended, revised or adopted laws that are also reported to each Working Party and deposited at the TRIPS Council under procedures for notification of laws. 'Indicated' is different from 'Commitment,' since the latter refers only to those specific issues that the working party took note of the information provided as commitment. It is also different from 'No Commitment', since the latter indicate either there was no information provided or that the information provided on specific issue does not amount to TRIPS-plus standards. Entry is made under the tables as 'Indicated' when the information provided is not taken as commitment by each working party but reveals the reporting of TRIPS-plus standard during the accession process.

## I. Classification of acceding Countries by Political-Economy of Countries

Acceding Country	Date of Accession	Acceding Country	Date of Accession
<b>A. Transition Economies</b>			
Armenia	February, 2003	Georgia	June, 2000
Macedonia	April, 2003	Estonia	November, 1999
Lithuania	May, 2001	Latvia	February, 1999
Moldova	July, 2001	Kyrgyz	December, 1998
Albania,	September, 2000	Mongolia	January, 1997
Croatia	November, 2000	Bulgaria	December, 1996
<b>B. Developing Countries</b>			
Saudi Arabia	December, 2005	Jordan	April, 2000
Oman	November, 2000	Panama	September, 1997
Chinese Taipei	January, 2002	Ecuador	January, 1996
China	December, 2001		
<b>C. LDCs</b>			
Cambodia	October, 2004	Angola	November, 1996
Nepal	April, 2004		

## 2. General commitments and Information Provided: Implementation, Accession to Treaties and other Commitments

## a. Armenia, Macedonia, Lithuania, Lithuania Albania and Croatia.

TRIPS-plus Commitments	Armenia	Macedonia	Lithuania	Moldova	Albania,	Croatia
Implementation by the date of accession.	Committed	Committed	Committed	Committed	Committed	Committed
National Treatment with respect to agency requirements	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment
National treatment with respect to fees	Indicated.	Indicated	No Commitment	Indicated	No Commitment	No Commitment
Ratification or plan for the ratification treaties	Indicated for Rome Geneva (phonograms)	Indicated for Brussels (signals) Rome WCT and WPPT	Indicated for Rome Geneva (phonograms) UPOV (indicated to be ratified)	Indicated for Rome, WPPT, WCT, UPOV and its intention to accede to Lisbon	Indicated for Rome and Geneva (phonograms) Ratified WPPT, WCT, and UPOV in 2005. However, there is no clear link with its accession process.	Indicated for Brussels; Rome, and UPOV
Ratification of treaties for the Acquisition and maintenance of IP rights	Indicated for Madrid Protocol	Indicated for Madrid and its Protocol, Nice, Locarno, PCT Hague, Strasbourg, Budapest,	Indicated for Madrid Protocol; Nice, PCT, Budapest, TLT, PCT	Indicated for Strasbourg, PCT, Madrid and its Protocol, the Hague, Budapest, Vienna, Nice, Locarno, TLT and its intention to accede to New Act of the Hague, Madrid – on Deceptive Indications and PLT	Indicated for Budapest, Nice; Madrid and its protocol and PCT	Indicated for Madrid, Nice, Locarno, PCT, the Hague

## b. Georgia, Estonia, Latvia, Kyrgyz, Mongolia, Bulgaria

	Georgia	Estonia	Latvia	Kyrgyz	Mongolia	Bulgaria
Implementation by the date of accession	Committed	Committed	Committed	Committed. <i>It also indicated to develop a system of IP protection based on the developed markets model</i>	Committed	Committed
National Treatment with respect to agency requirements	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment
National treatment with respect to fees	Indicated that there were no fees for the protection of copyrights	No Commitment	No Commitment	Indicated	No Commitment	No Commitment
Ratification of treaties	Indicated to ratify Rome and Budapest	Indicated to accede to Geneva (phonograms) UPOV, Rome	Indicated- Geneva (phonograms) And accede to: UPOV;WCT; WPPT;	Indicated - UPOV, and to accede to: WCT, Rome, Geneva (phonograms); WPPT; and Washington	Indicated the intention of acceding in the near future to the relevant intellectual property conventions on patents	No Commitment (later reported the ratification of UPOV)
Ratification of treaties for the acquisition and maintenance of IP rights	Indicated- Madrid Protocol; PCT and to ratify: Budapest	Indicated- Madrid Budapest	Indicated- Madrid and its Protocol	Indicated- Madrid and the PCT, and plan to accede to Locarno, Strasbourg, Vienna and Nice Agreement	No Commitment	Indicated its intention to join the Hague Agreement Concerning the International Deposit of Industrial Designs of 6 November 1925

## c. Saudi Arabia, Oman, Chinese Taipei, China, Jordan, Panama and Ecuador

	Saudi Arabia	Oman	Chinese Taipei	China	Jordan	Panama	Ecuador
Implementation by the date of accession	Committed	Committed	Committed	Committed Special Transition period is established for review of the implementation of China's Commitment	Committed	Committed	No- one Year transition period during which legislations for the full implementation of TRIPS will be adopted
National Treatment with respect to agency requirements	No Commitment	No Commitment	No Commitment	Indicated	No Commitment	No Commitment	No Commitment
National treatment with respect to fees	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment
Ratification of treaties	No Commitment	No Commitment Oman ratified WCT and WPPT which are not indicated under working party report	No Commitment The bilateral agreement on protection of copyright with the United States was reported	No Commitment Most ratification is before 1993- outside the context of WTO accession	Indicated to accede within 5 to 7 years to Rome convention	Indicated - UPOV	Indicated to ratify UPOV
Ratification of treaties for the Acquisition and maintenance of IP rights	No Commitment	Indicated- PCT	No Commitment	No Commitment PCT and the Nice were ratified in 1994, whereas Budapest, Madrid Protocol, Locarno, and Strasbourg were ratified between 1995 and 1997. No Commitment to ratify WCT or WPPT	Indicated- to accede within 5 to 7 years to the following: Madrid and its Protocol, Nice, PCT	No Commitment	No Commitment

## d. Cambodia and Nepal

	Cambodia	Nepal
Implementa- tion	<p>Implementation of Article 3-5 of the TRIPS right from the date of accession</p> <p>-data protection immediately after its accession, 1 January 2007 for the rest of the TRIPS provisions</p> <p>- TRIPS-consistent measures already in place should not be subject to transitions</p> <p>During the transition period Cambodia Committed to:</p> <ul style="list-style-type: none"> <li>• protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person who submitted such data may, without the permission of the latter person, rely on such data in support of an application for product approval for a period of at least five years from the date on which Cambodia granted marketing approval to the person that produced the data.</li> <li>• action plan for adoption of relevant laws to adhere to the TRIPS during the transition period</li> <li>• ensure that any change made in its laws, regulations and practice during the transition period will not result in a lesser degree of consistency with the provisions of the TRIPS Agreement that existed on the date of accession;</li> <li>• not to grant patents, trademarks, or copyrights, or marketing approvals for pharmaceuticals or agricultural chemicals inconsistent with the provisions of the TRIPS Agreement;</li> <li>• ensure that existing rates of infringement would not significantly increase and that any infringement of IP rights would be addressed immediately in cooperation with the assistance from affected right holders;</li> <li>• seek out all available technical assistance to ensure that its capacity to fully enforce its TRIPS-consistent legal regime upon expiration of the transition periods is assured and</li> <li>• make available TRIPS legislation in draft and promulgated form to the WTO Secretariat for circulation to interested WTO Members.</li> </ul> <p>Prior to the issuance of marketing approval of any pharmaceutical and agricultural chemical products, the relevant Ministries in Cambodia will determine the existence of a patent covering a product for which an application for marketing approval had been filed by a party other than the patentee, and will not approve such application for marketing approval until the date of the expiration of such patent</p>	<p>Implementation of Article 3-5 of the TRIPS right from the date of accession.</p> <p>1 January 2007 for the rest of the TRIPS provisions; TRIPS-consistent measures already in place should not be subject to transitions,</p> <p>Nepal also committed</p> <ul style="list-style-type: none"> <li>• action plan for adoption of relevant laws to adhere to the TRIPS during the transition period</li> <li>• action plan for establishment of information centres, adoption of laws on plant variety protection, training of lawyers and judges, computerisation of IP office and enhances public awareness.</li> <li>• ensure that any change made in its laws, regulations and practice during the transition period will not result in a lesser degree of consistency with the provisions of the TRIPS Agreement that existed on the date of accession; - ensure that existing rates of infringement would not significantly increase and that any infringement of IP rights would be addressed immediately in cooperation with the assistance from affected right holders;</li> <li>• would seek out all available technical assistance to ensure that its capacity to fully enforce its TRIPS-consistent legal regime upon expiration of the transition periods is assured and</li> <li>• would make available TRIPS legislation in draft and promulgated form to the WTO Secretariat for circulation to interested WTO Members</li> </ul>
National treatment with respect to fees	No Commitment	Committed

	Cambodia	Nepal
Accession to treaties	During the transition period Cambodia Committed to introduce laws to: obtain the membership of UPOV Geneva (phonograms) and Brussels Not later than 1 January 2006 Indicated to adhere to WCT and WPPT in 2005, Convention upon enactment of the relevant domestic laws	During the transition period Nepal Committed to ratify Rome and Washington no later than January 2006. Indicated to explore the possibility of joining other WIPO and IP related Conventions, such as the Geneva Phonograms Convention, UPOV 1991, WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, in terms of national interest and explore the possibility of joining them in the future, as appropriate)
Ratification of treaties for the Acquisition and maintenance of IP rights	Committed to ratify PCT	No Commitment

**Note:** Abbreviations for treaties shall read as follows:

1. Bern- Bern Convention for the Protection of Literary and Artistic Works as amended on September 28, 1979;
2. Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite adopted at Brussels on May 21, 1974;
3. Budapest- Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure as amended, October 1, 2002)
4. Geneva Phonogram- Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, of October 29, 1971;
5. Hague- The Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925;
6. Lisbon- Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979
7. Locarno- Agreement Establishing an International Classification for Industrial Designs, as amended on September 28, 1979
8. Madrid - Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, as of 1967;
9. Madrid- Agreement Concerning the International Registration of Marks of April 14, 1891, as last revised at Stockholm on July 14, 1967 and amended on September 28, 1979
10. Madrid Protocol- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989
11. Nice- Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as amended on September 28, 1979
12. Paris- Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Stockholm on July 14, 1967, and as amended on September 28, 1979
13. PCT- Patent Cooperation Treaty, as in force from January 1, 2004;
14. Rome- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, October 26, 1961;
15. Strasbourg- Agreement Concerning the International Patent Classification of March 24, 1971, as amended on September 28, 1979;
16. TLT-Trademark Law Treaty adopted at Geneva on October 27, 1994
17. UPOV- International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991
18. Vienna- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, as amended on October 1, 1985;
19. Washington -Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on May 26, 1989
20. WCT- WIPO Copyright Treaty and Agreed Statements Concerning the WIPO Copyright Treaty December 20, 1996;
21. WPPT- WIPO Performances and Phonograms Treaty and Agreed Statements Concerning the WIPO Performances and Phonograms Treaty (adopted in Geneva on December 20, 1996)

### 3. Commitment and Information Provided with respect to Copyright and Related Rights

#### a. Armenia, Macedonia, Lithuania, Albania and Croatia, Georgia, Estonia, Latvia, Kyrgyz, Mongolia, Bulgaria

Acceding Countries	Life plus more than 50 years of protection of copyright	More than 50 years of protection for legal persons	Exclusive rights on communication to the public by wire or wireless means) (WCT Article 8 and article 14 WPPT)	TRIPS-plus reproduction rights (WCT Article 8 and WPPT)	Restriction on reproduction and other exceptions	Protection for broadcasting organisations	TPMs
Armenia	No Commitment	Indicated-under the its law discussed by the working party	No Commitment	Indicated-under the its law discussed by the working party	Indicated - its laws.	Indicated-	No Commitment
Macedonia	Indicated-also as a result of the EC Terms Directives	Indicated-also as a result of the EC Terms Directives	No Commitment Macedonia is committed to amend its laws in order to comply with the TRIPS Agreement and all other relevant conventions in the area of intellectual property it has ratified. It has also indicated- to accede to WCT and WPPT	No Commitment But Indicated- to accede to WCT and WPPT	Indicated-according to the revised law	Indicated under the Working party report but the copyright law notified to the WTO provides 20 years	Indicated—the ratification of WCT and WPPT
Lithuania	Indicated-also as a result of the EC Terms Directives	EC Terms Directives	No Commitment	No Commitment	Indicated-according to the revised law	Indicated - according to the revised law	No Commitment
Moldova	No Commitment	No Commitment	No Commitment But Indicated- to accede to WCT and WPPT	No Commitment But Indicated- to accede to WCT and WPPT	Indicated-according to the revised law	No Commitment	No Commitment But Indicated- to accede to WCT and WPPT
Albania	Indicated-also as a result of the EC Terms Directives	EC Terms Directives	No Commitment	No Commitment	No Commitment	Indicated- for 50 years	No Commitment
Croatia	No Commitment <sup>1</sup>	No Commitment	No Commitment	No Commitment	Indicated-according to the revised law reported to the Working Party	Indicated-according to the law for 50 years	No Commitment
Georgia	Indicated	No Commitment	No Commitment	Indicated-the law includes temporary or permanent storage	Indicated- by its law with respect to reproduction of computer programmes	Indicated - for 50 years	No Commitment

1. Croatia announced that intends to introduce a new Law on Copyrights and Neighbouring Rights to harmonize its legislation with all aspects of existing international standards. Accordingly Croatia introduced its new law in 2003. But the accession negotiations were based on the amendments introduced in 1999. The analysis here is limited to the extent provided under the 1999 amendments.



Acceding Countries	Life plus more than 50 years of protection of copyright	More than 50 years of protection for legal persons	Exclusive rights on communication to the public by wire or wireless means) (WCT Article 8 and article 14 WPPT)	TRIPS-plus reproduction rights (WCT Article 8 and WPPT)	Restriction on reproduction and other exceptions	Protection for broadcasting organisations	TPMs
Estonia	Indicated- also as a result of the EC Terms Directives	EC Terms Directives	No Commitment	No Commitment	Indicated- according to its law with respect to reproduction of computer programmes	Indicated -for 50 years	No Commitment
Latvia	Indicated- also as a result of the EC Terms Directives	EC Terms Directives	No Commitment But Indicated- to accede to WCT and WPPT	No Commitment	No Commitment	Indicated	No Commitment But Indicated- to accede to WCT and WPPT
Kyrgyz	No Commitment	No Commitment	No Commitment But Indicated- to accede to WCT and WPPT	No Commitment But Indicated- to accede to WCT and WPPT	Indicated- by its law with respect to reproduction of computer programmes	Indicated	No Commitment But Indicated- to accede to WCT and WPPT
Mongolia	No Commitment	Indicated - for 75 years	No Commitment	No Commitment	No Commitment libraries covered under reproduction of work for public interest	No Commitment	No Commitment
Bulgaria	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	Indicated- for 50 years	No Commitment

## b. Saudi Arabia, Oman, Chinese Taipei, China,

Note: Ecuador, Jordan and Panama are excluded from the table, since there is no specific commitment or information provided by the countries to their respective working groups on adherence to TRIPS –plus commitment on copyright and related rights.

Acceding Countries	Life plus more than 50 years of protection of copyright	More than 50 years of protection for legal persons	Exclusive rights on communication to the public by wire or wireless means) (WCT Article 8 and article 14 WPPT)	TRIPS-plus reproduction rights (WCT Article 8 and WPPT)	Restriction on reproduction and other exceptions	More than 20 years of protection for broadcasting organisations	TPMs
Saudi Arabia	No Commitment	No Commitment	No Commitment	Indicated- a reproduction right to the full extent (which includes digital reproduction)	No Commitment	No Commitment	No Commitment But Saudi indicated that its law protect digital reproduction
Oman	No Commitment	No Commitment	No Commitment- But Oman has ratified the WPPT	No Commitment- But Oman has ratified the WPPT	No Commitment	Indicated	No Commitment But Oman has ratified the WPPT
Chinese Taipei	No Commitment <sup>2</sup>	No Commitment	No Commitment	No Commitment	Indicated the revision of its law deleting provisions concerning compulsory licenses for translation	No Commitment	No Commitment
China	No Commitment	No Commitment	No Commitment. China is committed to ensure TRIPS consistency. However, the copyright law introduced provisions substantially similar to Article 8 of the WCT and 14 of the WPPT <sup>3</sup>	No Commitment	No Commitment	Indicated	No Commitment

<sup>2</sup> The Commitment by Chinese Taipei with respect to copyright and related rights is:

“The representative of Chinese Taipei committed that Chinese Taipei would amend relevant Articles to protect computer programs as literary works and to extend the term of protection to life plus 50 years or 50 years from date of publication. The Working Party took note of these commitments”

## c. Cambodia and Nepal

Cambodia is indicated its intention to accede to WPPT and WCT. Nepal, on the other hand promised for the adoption of Cyber Act by September 2005 in order to address the digital dimension of copyrights.

## 4. Commitments with respect to trademarks

## a. Armenia, Macedonia, Lithuania, Lithuania Albania and Croatia.

There are TRIPS-plus commitments or information provided by any of the countries under this group with respect well-known marks.

Commitments	Armenia	Macedonia-	Lithuania	Lithuania	Albania,	Croatia-
Terms of Protection of Trademarks: 10 years, renewable for successive periods of 10 years	Indicated	Indicated	Indicated	Indicated	Indicated -according to the amendment of the trademark law	Indicated
Removal of conditions that signs should be visually perceptible: extending protection for sound based marks	Indicated	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment
Extension of trademark protection for certification marks	No Commitment	Indicated	No Commitment	Indicated	Indicated	Indicated

## 3 The Commitment by China with respect copyright and related rights is

*“The representative of China responded that, realizing that there were some existing differences between China’s copyright laws and the TRIPS Agreement, the amendment to the Copyright Law had been accelerated. The proposed amendments would clarify the payment system by broadcasting organizations which use the recording products and also include the following provisions: rental rights in respect of computer programs and movies, mechanical performance rights, rights of communication to the public and related protection measures, protection of database compilations, provisional measures, increasing the legitimate compensation amount and strengthening the measures against infringing activities. China’s copyright regime including Regulations for the Implementation of the Copyright Law and the Provisions on the Implementation of the International Copyright Treaty would be amended so as to ensure full consistency with China’s obligations under the TRIPS Agreement. The Working Party took note of these commitments.” See WT/MIN (01)/3, para. 259.*

## b. Georgia, Estonia, Latvia, Kyrgyz, Mongolia, Bulgaria

There are TRIPS-plus commitments or information provided by any of the countries under this group with respect well-known marks and extension of trademark protection for certification marks.

	Georgia	Estonia	Latvia	Kyrgyz	Mongolia	Bulgaria
10 years, renewable for successive periods of 10 years	Indicated	Indicated	Indicated	Indicated	Indicated	Indicated
Removal of conditions that signs should be visually perceptible: extending protection for sound based marks	Indicated-by the law	No Commitment	Indicated	No Commitment	No Commitment	No Commitment

## c. Saudi Arabia, Oman, Chinese Taipei, China, Jordan, Panama and Ecuador

	Saudi Arabia	Oman	Chinese Taipei	China	Jordan	Panama	Ecuador
10 years, renewable for successive periods of 10 years	Indicated	Indicated	Indicated	Indicated	Indicated	Indicated	Indicated
Removal of conditions that signs should be visually perceptible: extending protection for sound based marks	No Commitment	No Commitment	No Commitment	No Commitment.	No Commitment	No Commitment	No Commitment
Extension of trademark protection for certification marks	No Commitment	No Commitment	No Commitment	Committed	No Commitment	Indicated	No Commitment
Well Known mark: a narrow scope of determination of relevant public sector	No Commitment	No Commitment	No Commitment	Indicated <sup>4</sup>	No Commitment	Indicated – to the group of consumers at which it is directed.	No Commitment
Factors for the determination of well-known marks	No Commitment	No Commitment	No Commitment	Indicated- the law adopted to certain extent similar to the Joint Recommendation Concerning Provisions on the Protection of Well-known Marks (1999)	No Commitment	No Commitment	No Commitment
Scope of protection of well-known marks as including protection from conflicting business identifier	No Commitment	No Commitment	No Commitment	Indicated- its law that includes protection against conflicting business names, - Art. 13 Trademark Law and Article 13 of the Provisions on Well-known marks	No Commitment	No Commitment	No Commitment

<sup>4</sup> Provisions on the Determination and Protection of Well-know Marks, State Administration for Industry and Commerce of China, April 17, 2003, Article 2. the definition refers to 'operators' of the concerned goods or services instead of the 'business circle' dealing with the goods and services to which the mark applies used by the Joint Recommendation concerning Provisions on the Protection of Well-known Marks of WIPO (1999).

## d. Cambodia and Nepal

With Respect to Cambodia and Nepal the information available under the accession documents and the TRIPS notification of laws database commitment or indications to adhere to TRIPS-plus standards are not available.

## 5. Commitments on GIs

## a. Armenia, Macedonia, Lithuania, Lithuania Albania and Croatia.

**Note:** There are no specific TRIPS-plus commitments or information provided by Albania with respect to the protection of GIS.

TRIPS-plus commitment	Armenia	Macedonia-	Lithuania	Moldova	Croatia-
GIs as absolute and mandatory grounds for <i>ex officio</i> refusal or denial of registration of trademarks of a nature as to mislead the public as to the true place of origin	Indicated-according to the revised law	Indicated-according to the revised law	Indicated-according to the revised law	Indicated-according to the revised law	Indicated-according to the law reported
GIs as absolute and mandatory grounds for <i>ex officio</i> refusal or denial of registration of trademarks for wines	Indicated-according to the revised law	No Commitment	Indicated-according to the revised law	No Commitment	Indicated-according to the law reported
Solution for conflicting homonymous GIs to be extended for all GIs	No Commitment	Indicated-according to the revised law	No Commitment	Indicated-according to the revised law	Indicated-according to the law reported
Extend additional protection of wines and sprit to all GIs	No Commitment	Indicated- according to the revised law	No Commitment	No Commitment	No Commitment
Accepting as if the country was member of the WTO since 1994 for calculating the period for the determination of the continued use of non-confirming trademarks	Indicated-according to the revised law	No Commitment	No Commitment	Indicated-according to the revised law	Indicated-according to the law reported
Accepting as if the country was member of the WTO since 1994 for calculating the period for the determination of eligibility for or validity of the registration of non-confirming trademarks	Indicated-according to the revised law	No Commitment	No Commitment	Indicated-according to the revised law	Indicated-according to the law reported

## b. Georgia, Estonia, Latvia, Kyrgyz, Mongolia, Bulgaria

**Note:** There are no TRIPS-plus commitments and information provided by Kyrgyz and Monogolia with respect the protection of Gis.

TRIPS-plus commitment	Georgia-	Estonia-	Latvia	Bulgaria
GIs as absolute and mandatory grounds for <i>ex officio</i> refusal or denial of registration of trademarks of a nature as to mislead the public as to the true place of origin	Indicated	Indicated	Indicated	Indicated
GIs as absolute and mandatory grounds for <i>ex officio</i> refusal or denial of registration of trademarks for wines	No Commitment	No Commitment	No Commitment	No Commitment
Solution for conflicting homonymous GIs to be extended for all GIs	Indicated	No Commitment	No Commitment	No Commitment
Extend additional protection of wines and sprit to all GIs	Indicated	No Commitment	No Commitment	No Commitment
Accepting as if the country was member of the WTO since 1994 for calculating the period for the determination of the continued use of non-confirming trademarks	Indicated	Indicated	No Commitment	No Commitment
Accepting as if the country was member of the WTO since 1994 for calculating the period for the determination of eligibility for or validity of the registration of non-confirming trademarks	Indicated	No Commitment	No Commitment	No Commitment
The extension of the period for claims of GIs protection against the use or registration of trademarks	No Commitment	No Commitment	No Commitment	No Commitment

## c. Saudi Arabia, Oman, Chinese Taipei, China, Jordan, Panama and Ecuador

Note: There are no TRIPS-plus commitments and information provided by Panama and Ecuador with respect to the protection of GIs.

Commitment	Saudi Arabia	Oman	Chinese Taipei	China	Jordan
GIs as absolute and mandatory grounds for <i>ex officio</i> refusal or denial of registration of trademarks of a nature as to mislead the public as to the true place of origin	No Commitment	No Commitment	No Commitment	Indicated-	Indicated-according to the revised law
GIs as absolute and mandatory grounds for <i>ex officio</i> refusal or denial of registration of trademarks for wines	No GIs protection for wines and spirits	No Commitment	No Commitment	No Commitment	Indicated-according to the revised law
Solution for conflicting homonymous GIs to be extended for all GIs	No Commitment	Indicated the law that does not specifically refer to wines	No Commitment	No Commitment	No Commitment
Extend additional protection of wines and spirit to all GIs	No Commitment	Indicated	No Commitment	No Commitment	No Commitment
Accepting as if the country was member of the WTO since 1994 for calculating the period for the determination of the continued use of non-confirming trademarks	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment
Accepting as if the country was member of the WTO since 1994 for calculating the period for the determination of eligibility for or validity of the registration of non-confirming trademarks	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment

## d. Cambodia and Nepal

Cambodia does not protect GIs at the time of accession. It promised to promulgate the relevant laws. Nepal, also committed to cover geographic indications under a new act.

## 6. Commitments with respect to Patents and Plant varieties Protection

## a. Armenia, Macedonia, Lithuania, Lithuania Albania and Croatia.

Commitment	Armenia	Macedonia	Lithuania	Moldova	Albania,	Croatia-
Patentability criteria: requirement to issue 'use' patent, incremental changes and/or Secondary use patents	Indicated- according to the revised law -The subject matter of an invention covers the use of a known device, process, substance or strain for a new purpose	No Commitment	Indicated- the law provides that inventions shall be patentable if they are new, involve an inventive step and are industrially applicable.	Indicated- The law provides that an invention may concern ... the use of a known product or process for new purposes.	No Commitment	No Commitment
Limited exclusion from patentability to TRIPS- Article 27.2 and 3	Indicated- according to the revised law - <i>"The subject matter of an invention may be a device, a process, a substance, a strain of micro organism, a strain of plant and animal cells..."</i>	No Commitment	No Commitment	No Commitment	Indicated- according to the revised law substances and devices for use in any of the methods excluded from patentability are patentable.	No Commitment
Protection of Plant varieties under UPOV or patent	Indicated- according to the revised law - <i>Sui generis</i> protection of plant varieties	Indicated- patents	Indicated- a - <i>Sui generis</i> protection of plant varieties	Indicated - law on the protection of plant varieties and UPOV	No Commitment	Indicated- law on the protection of plant varieties and UPOV
No requirement for the indication of the best mode for carrying out the invention	Indicated- according to the revised law	Indicated	Indicated- according to the revised law	No Commitment	Indicated- according to the revised law	Indicated- according to the revised law
Grounds for compulsory license	Indicated- National security, interest of society, non-commercial use by the State, dependant patent and non/ insufficient working	Indicated- only for non/ insufficiency of working and dependant patents	Indicated- Grounds recognised under the TRIPS	Indicated- Grounds recognised under the TRIPS	Indicated- Non- /insufficient working, exploitation by government or authorised third parties.	Indicated- Grounds recognised under the TRIPS and non/insufficient working
Importation shall satisfy local working requirement for patents	Indicated to revise its laws for this purpose	No Commitment	Indicated	Indicated	No Commitment	Indicated- by the law reported
Further protection of patents covering pharmaceuticals, agrichemicals, or processes for their preparation	No Commitment	Indicated- according to the law for an additional five years	No Commitment	Indicated- the law that provides up to five years	Indicated- Up to five years	No Commitment

## b. Georgia, Estonia, Latvia, Kyrgyz, Mongolia, Bulgaria

Commitment	Georgia-	Estonia-	Latvia	Kyrgyz	Mongolia	Bulgaria <sup>5</sup>
Patentability criteria: requirement to issue 'use' patent, incremental changes and/or Secondary use patents/	No Commitment	Indicated the law that Patent protection available to equipment, methods, substances or micro-organism strains, including their combination and use for novel purposes	Indicated the law that includes a new use if the use itself is not compromised at technical level, a new use of known devices, processes, substances and micro-organisms for meeting other public needs for which they were not intended	Indicated the law that provides the subject matter of an invention may be the use of a known device, process or strain for a new purpose, or any other new achievement in any technical or technological field	No Commitment	No Commitment
Limited exclusion from patentability, to protect the public interest than provided by the TRIPS-Article 27	No Commitment	No Commitment <sup>6</sup>	Indicated the law that provides Patentability shall be excluded for discoveries etc only if patent protection is claimed for these objects as such.	Indicated the law that provides that the patentability of an invention shall not be affected by the presence in that invention of algorithms and computer programs if the latter form an integral part of the invention	No Commitment	No Commitment
Protection of Plant varieties under UPOV or patent	Indicated—the law on the protection of plant varieties and UPOV	No Commitment	No Commitment	Indicated law on the protection of plant varieties and UPOV		Indicated law on the protection of plant varieties
No requirement for the indication of the best mode for carrying out the invention	No Commitment	Indicated the law that does not require	Indicated the law that does not require	Indicated the law that does not require	Indicated the law that does not require	No Commitment
grounds for compulsory license	No Commitment / indication	Indicated the law referring to insufficient working, TRIPS grounds and if the patent prevents the grant of protection to a plant variety	Indicated the law referring only to non-/insufficient working.	Indicated the law referring to non-/insufficient working, and grounds recognised by TRIPS <sup>7</sup>	Indicated the law referring to -TRIPS, non/insufficient working in the country.	No Commitment
Importation shall satisfy local working requirement for patents	No Commitment	Indicated the law	No Commitment	No Commitment	No Commitment	No Commitment
Further protection of patents covering pharmaceuticals, agrichemicals, or processes for their preparation	No Commitment	Indicated—the law providing up to five years	No Commitment	No Commitment	No Commitment	No Commitment

5 The Bulgarian patent law of 1993 as amended in 1996 in relation to the WTO accession is note available at the WTO,WIPO or EPO databases.The patent law as amended in 1999 is available both at the WIPO and EPO website.The 1999 version does not show what provisions are added because of the 1999 amendment or what are provisions included by the 1996 amendment.The only commitment of Bulgaria on a record with respect to patent was to introduce the law for the protection of plant varieties. See WT/ACC/BGR/2, May 1995.

6 Estonia excludes the following biotechnological inventions from patent protection: 1. processes for cloning human beings; 2) processes for modifying the genetic identity of human beings; 3) processes for using human embryos for commercial purposes, including processes prohibited by the Artificial Insemination and Embryo Protection Act; 4) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to the health care of human beings or animals, and also animals resulting from the use of such processes; 5) processes which are biological in essence and are used for deriving biological materials, producing plant or animal varieties, except microbiological processes for deriving microorganisms; 6) biotechnological inventions that can be used solely for one particular plant or animal variety. If the biological material has been patented, the exclusive right of the patentee shall extend to any other biological material with the same qualities which has been derived from that biological material through propagation or multiplication in an identical or divergent form. If the process of obtaining of the biological material has been patented, the exclusive right of the patentee shall extend to any other biological material with the same qualities which has been derived from the biological material produced by the patented process through propagation or multiplication in an identical or divergent form.

7 Additional laws enacted on December 24, 1998 on compulsory license are No Commitment at the WIPO/WTO databases.



## c. Saudi Arabia, Oman, Chinese Taipei, China, Jordan, Panama and Ecuador

Commitment	Saudi Arabia <sup>8</sup>	Oman <sup>9</sup>	Chinese Taipei	China	Jordan	Panama	Ecuador
Patentability criteria: requirement to issue 'use' patent, incremental changes and/or Secondary use patents/	No Commitment	Indicated-its law includes new application for known industrial methods.	No Commitment	No Commitment	No Commitment	Indicated-its law includes a special use or non-obvious use.	No Commitment
Limited exclusion from patentability to protect the public interest than provided by the TRIPS-Article 27	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment <sup>10</sup>
Protection of Plant varieties under UPOV or patent	Indicated-Patent	Indicated-Plant Variety law	No Commitment	Indicated-Plant Variety law and UPOV- 1978	Indicated-Plant Variety law	Indicated-Plant Variety law	Indicated-Plant Variety law <sup>11</sup>
No requirement for the indication of the best mode for carrying out the invention	No Commitment	Not required	No Commitment	No Commitment. Its law does not specifically require such a disclosure	No Commitment	No Commitment	No Commitment
Grounds for compulsory license	No Commitment	Indicated-its law includes Non-working, suspension of utilisation, and anti-competitive practices	Indicated-its law includes Non-working, TRIPS grounds	Indicated – for TRIPS grounds	Indicated the law for Non-working and TRIPS grounds except dependant patents.	No Commitment	Indicated-TRIPS grounds but does not include non or insufficient working , and dependant patents
Importation shall satisfy local working requirement for patents	Indicated	Indicated	No Commitment	No Commitment	Indicated.	No Commitment	Indicated-also as a result of Andean Community Decision 344
Further protection of patents covering pharmaceuticals, agrichemicals, or processes for their preparation	No Commitment	No Commitment	Indicated-the law provides for two (2) to five (5) years.	No Commitment But according to its laws the extension may not exceed by more than 7 years	No Commitment	Only when the original patent was not for a full term	No Commitment

8 The laws of Saudi Arabia on patent and the amendment issued in order to satisfy the requirements of the accession negotiation are said to be notified to the WTO. However no Saudi law is available either in the WTO or WIPO database. The documents in GCC are not translated.

9 The analysis is based on the Royal Decree No. 82/2000 promulgating the Patent Law of Oman which supplements the Unified Patent System of the Gulf Cooperation Council. The Royal Decree is the result of the accession negotiations. Any TRIPS-plus provisions of the Unified Patent system of the GCC are not included since it was not part of any concession.

10 The exceptions include processes for cloning human beings, the human body and its genetic identity, the use of human embryos for industrial or commercial purposes; and processes for the genetic modification without any substantial medical benefits.

11 Ecuador introduced its law in 1997 on patent amending the Andean common regime for industrial property by Decision 344 (later amended by Decision 486) as part of the negotiation process. The Ecuadorian law is available only in Spanish. The WIPO database contains compilation of Ecuadorean laws as of 1998- to years after Ecuador's accession- that was translated by the International Bureau itself. The concessions of Ecuador is analysed based on such translation.

## d. Cambodia and Nepal

Commitments	Cambodia	Nepal <sup>12</sup>
Patentability criteria: requirement to issue 'use' patent, incremental changes and/or Secondary use patents/	No Commitment	No Commitment
Limited exclusion from patentability to protect the public interest than provided by the TRIPS- Article 27	Indicated that- algorithms used in computer programs, not the programmes per se, were ineligible for patent protection, and that "schemes or methods for doing business" were only ineligible for patent protection to the extent that they were lacking industrial application	No Commitment
Protection of Plant varieties under UPOV or patent	Indicated that -a draft Law on Plant Variety Protection was in preparation with the assistance of UPOV	Indicated – its adoption of Plant Resources Act in December 2003 and Access to Genetic Resources Act- April 2004 Seeds (First Amendment) Act 2002

<sup>12</sup> The representative of Nepal declared that, as a WTO Member, Nepal would be entitled to the flexibilities provided in the Doha Declaration on the TRIPS Agreement and Public Health.

## 7. Commitments with Respect to Industrial Designs and integrated circuits

## a. Armenia, Macedonia, Lithuania, Lithuania Albania and Croatia.

	Armenia	Macedonia	Lithuania	Moldova	Albania,	Croatia-
<u>Design</u> or patent protection for more than 10 years	Indicated - as patent	No Commitment- 10 years	No Commitment	Indicated -protection for five years renewable up to four times for consecutive periods of five years	No Commitment	Indicated- 10 years
Protection of <i>integrated circuits and topographies</i> as patents or copyrights or through separate laws of its own	No Commitment	No Commitment	No Commitment	No Commitment- topographic layout designs are excluded from patent-ability	No Commitment	Indicated- separate laws of its own
Presumption of originality	Indicated- according to the revised law	No Commitment		No Commitment	No Commitment	No Commitment

## b. Georgia, Estonia, Latvia, Kyrgyz, Mongolia, Bulgaria

Note: There are no TRIPS-plus commitments and information provided by Mongolia and Bulgaria in the protection of designs and integrated circuits.

	Georgia	Estonia	Latvia	Kyrgyz
<u>Design</u> or patent protection for more than 10 years	Indicated - Patent - 15 years	Indicated terms for 5 years, renewable three times	Indicated- Patent	No Commitment
Protection of integrated circuits and topographies as patents or copyrights or through separate laws of its own	Indicated- separate laws of its own	Indicated- separate laws of its own	No Commitment	Indicated- separate laws of its own
Presumption of originality	Indicated	Indicated	Indicated	No Commitment

## c. Saudi Arabia, Oman, Chinese Taipei, China, Jordan, Panama and Ecuador

Commitments	Saudi Arabia	Oman	Chinese Taipei	China	Jordan	Panama
<u>Design</u> or patent protection for more than 10 years	Indicated- Patent- up to 10 years	Indicated- <i>Sui generis</i> - up to 10 years	Committed- patent for design patents for 12 years	Indicated- Patent	No Commitment	Indicated Patent - ten years
Protection of integrated circuits and topographies as patents or copyrights (as opposed to <i>sui generis</i> system)	Indicated Patent	Indicated- separate laws of its own	Indicated- separate laws of its own	No Commitment	No Commitment	No Commitment
Presumption of originality	No Commitment	Indicated	No Commitment	No Commitment	No Commitment	No Commitment

## d. Cambodia and Nepal

Both Cambodia and Nepal provide patents protection for industrial design for ten years. During the accession process the representative of Cambodia said that the integrated circuits and topographies would be protected through a new Law on Layout Designs of Integrated Circuits. Cambodia was seeking technical assistance on the matter. Nepalese law at the time of accession did not cover the protection of layout designs of integrated circuits.

## 8. TRIPS-Plus Commitments with respect to the protection of Pharmaceutical and Agro-chemical Undisclosed Information

### a. Transition Economies

	Bulgaria	Mongolia	Kyrgyz	Latvia	Estonia	Georgia	Croatia	Albania	Moldova	Lithuania	Macedonia	Armenia	TRIPS-plus commitment
Exclusivity	Indicated that it is under consideration	No Commitment	No Commitment	No Commitment	No Commitment	Indicated - to adopt the necessary law.	No Commitment	No Commitment	No Commitment	Non-specific - Commitment to adopt relevant law.	No Commitment	No Commitment <sup>13</sup>	
Prohibit second applicant from relying on the data without permission for a specific period	-	No Commitment	No Commitment	No Commitment <sup>14</sup>	No Commitment	-	No Commitment	Indicated	No Commitment	protection of data or the term of such protection is linked to the patent term	No Commitment	No Commitment	
Prohibit authorities from relying on the data for approval of second applications	-	No Commitment	No Commitment	No Commitment	No Commitment	-	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	
No approval based on foreign applicants- or unless the second applicant submits the data	-	No Commitment	No Commitment	No Commitment	No Commitment	-	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment	
Additional commitment	-	-	-	-	-	-	-	-	Indicated <sup>15</sup>	-	-	-	

<sup>13</sup> No Commitment was registered or request was made to expand the existing protection under the domestic law.

<sup>14</sup> Lithuania, Albania, Latvia and Estonia currently provides 6 or 5 years for pharmaceutical test and other data and 10 years for agricultural test and other data, prohibit second applicants and the government from relying on such data for approval purpose. But there was no such commitment during their accession.

<sup>15</sup> Law of the Republic of Moldova No.1079-XIV of 23.06.2000 on Amending Various Laws included the provision of Article 39.3 of the TRIPS Agreement without change. Moldova confirmed to the accession Working party that Moldovan legislation does not require the submission of undisclosed test or other data as a condition of approving the marketing of products in question, but if the importer requires protection of undisclosed information, the Ministry of Health or the Ministry of Agriculture shall provide such protection according to the legislation in force. In order to import and sell agricultural chemicals in Moldova, an importer has to obtain an import licence and a certificate of hygienic conformity. For the importation of pharmaceuticals, Moldovan legislation requires an import licence. The National Pharmaceutical Institute of the Ministry of Health has issued an information leaflet for foreign producers describing in detail the registration procedures.

## b. Developing and Least-developed Countries

TRIPS-plus commitment	Saudi Arabia	Oman	Chinese Taipei	China	Jordan	Panama	Ecuador	Cambodia	Nepal
Exclusivity	Indicated	Indicated –only to adopt relevant laws.	No Commitment	Committed	Indicated	No Commitment	No Commitment <sup>16</sup>	Committed	Indicated-to adopt relevant laws <sup>17</sup>
Prohibit second applicant from relying on the data without permission for a specific period.	Indicated-5 years	No Commitment	No Commitment	Committed-6 years	Indicated-6 or 10	Committed-5 years	No Commitment	Committed for 5 years	No Commitment
Prohibit authorities from relying on the data for approval of second applications.	Indicated	No Commitment	No Commitment	Committed	Indicated	No Commitment	No Commitment	Committed	No Commitment
No approval based on foreign approvals- or unless the second applicant submits the data	Indicated	No Commitment	No Commitment	Committed	Indicated	No Commitment	No Commitment	Committed	No Commitment
Additional Commitments	No registration of generics if a patent application is pending <sup>18</sup>	-	-	-	-	-	-	Linkage of marketing approval with the status of patent. <sup>19</sup>	

16 Protect for five years in accordance with the Andean Pact Article 266 of decision 486 dated 12/1/2000. Also committed that a pending patent application that has not been published shall be treated as undisclosed information and protected as such under this Law.

17 The earlier version of the Working Party Report WT/ACC/SPEC/NPL/5/Rev.1 dated 8 August 2003 included in bracket commitment:

[He further confirmed that during the transition period, Nepal would protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person who submitted such data may, without the permission of the latter person, rely on such data in support of an application for product approval for a period of at least five years from the date on which Nepal granted marketing approval to the person that produced the data. Prior to the issuance of marketing approval of any pharmaceutical and agricultural chemical products, the relevant Ministries in Nepal will determine the existence of a patent covering a product for which an application for marketing approval had been filed by a party other than the patentee, and will not approve such application for marketing approval until the date of the expiration of such patent.]

18 If a patent application related to a pharmaceutical were pending with KACST, the Ministry of Health would not register a generic form of pharmaceutical unless there was no possibility that the patent would be granted..

19 Prior to the issuance of marketing approval of any pharmaceutical and agricultural chemical products, the relevant authority will determine the existence of a patent covering a product for which an application for marketing approval had been filed by a party other than the patentee, and will not approve such application for marketing approval until the date of the expiration of such patent.

## 9. TRIPS-plus Committeeman and Information Provided (Indicated) on Enforcement

## a. Transition Economies

There are no TRIPS-plus commitments or information provided with respect to enforcement of intellectual property by Latvia and Bulgaria.

Commitments	Armenia	Macedonia	Lithuania	Moldova	Albania,	Croatia-	Georgia-	Estonia-	Kyrgyz	Mongolia
Calculation of damages independent of the resulting pecuniary damage of the infringement – include recovery of lost profit, and full compensation	Indicated	Indicated	NC	NA <sup>20</sup>	NC	NC	NC	Indicated	Indicated	NC
Obligation for the destruction of materials, implements and the closure of market places, shops and manufacturing plants	NC <sup>21</sup>	NC	NC	NC	NC	NC	NC	NC	NC	NC
Limiting the evidence threshold, legal presumption that the applicant is the right holder and limiting the security to be deposited to a 'reasonable security'	Indicated <sup>22</sup>	NC	NC <sup>23</sup>	NC	NC <sup>24</sup>	NC	NC	NC	NC	NC
Border measures include goods in transit	NC	NC	NC	NC	Indicated	Indicated <sup>25</sup>	NC	NC	NC	NC
Border measures include goods for exportation from their territories	NC	NC	Indicated	NC	NC	NA	NC	NC	NC	NC
Border measures include protection of intellectual property rights other than trademark and copyright	Indicated	NC	Indicated	NC	NC	NC	Indicated-GIs	NC	NC	NC
Mandatory adoption of ex officio authority	NC	NC	C	NC	NC	NA	NC	NC	NC	NC
Criminal sanction for infringement of intellectual property rights other than trademarks and copyrights	Indicated	Indicated	Indicated	Indicated	Indicated <sup>26</sup>	NC	NC	NC	NA	NC

20 NA- is an abbreviation used in this table for 'No Commitment'.

21 NC- is an abbreviation used in this table for 'No Commitment'.

22 Only 5% of the value of the goods for security in relation to border measures

23 Including placing in a free zone or free warehouse.

24 In case of suspension of the importation of goods the applicant is only required to make down payment to cover the administrative costs.

25 In accordance with International Convention on the Harmonization of Border Controls of Goods

26 including all other violations of copyright other than importation, reproduction and circulation Includes translation, adoption, sound or visual recording, the entry of special instruments for recording sounds and/or images, radio and/or television broadcasting or transmission other than through radio or television, or the transmission of an artistic work by any other means without the authorization of its author or the agency to which the rights have been transferred by the author, which conflicts with the provisions of this law or the international conventions ratified by the Republic of Albania, when the author's moral and economic rights have been infringed, constitutes a criminal work and is penalized by fine or imprisonment up to one year.

## b. Developing Countries

Except the extension of criminal sanctions for intellectual property rights other than trademarks and copyright and related rights Panama has not committed or provided information for TRIPS-plus enforcement standard. Ecuador has not provided any TRIPS-plus commitment or information with respect to enforcement standards.

TRIPS-Plus	Saudi Arabia	Oman	Chinese Taipei	China	Jordan
Calculation of damages independent of the resulting pecuniary damage of the infringement – include recovery of lost profit, and full compensation	Indicated	No Commitment	No Commitment	No Commitment	No Commitment
Obligation for the destruction of materials, implements and the closure of market places, shops and manufacturing plants.	No Commitment	Indicated	No Commitment	Indicated	No Commitment
Border measures include goods for exportation from their territories	No Commitment	No Commitment	Committed for software, CD, DVD etc	No Commitment	No Commitment
Border measures include protection of intellectual property rights other than trademark and copyright	No Commitment	No Commitment	Committed <sup>27</sup>	Committed <sup>28</sup>	Indicated
Mandatory adoption of ex officio authority	No Commitment	No Commitment	No Commitment	No Commitment	No Commitment
Criminal sanction for infringement of intellectual property rights other than trademarks and copyrights	No Commitment	No Commitment	Indicated <sup>29</sup>	Indicated	No Commitment
Criminal Investigation without the complaint by the right holder	No Commitment	No Commitment	Indicated	No Commitment	No Commitment
Use of export license and quality control mechanisms to prevent the export of infringing goods	No Commitment	No Commitment	Indicated	No Commitment	No Commitment
Certification of origin for importation of alcohol and beverage	No Commitment	No Commitment	Committed	No Commitment	No Commitment

27 Court order is required for all intellectual property rights except for copyright in which case the right holder is required only the posting of an appropriate bond could petition the Customs to seize imports reasonably suspected to be infringing copies.

28 The working party took note of china's commitment to provide holders of intellectual property rights with procedures related to border measures that complied fully with the relevant provisions of the TRIPS Agreement (Articles 51 to 60).

29 Under Chinese Taipei law importers and manufacturers are required to include information relating to the name and address of the manufacturer on product labels. In addition, persons using false designations could be liable under Article 339 of the Criminal Code as having committed the offence of forgery. Furthermore, investigation can be launched against Chinese Taipei residents infringe copyrights in mainland China.

## c. Cambodia and Nepal

Commitments	Cambodia	Nepal
Damages: calculation to be based on the value of the profit lost and on the duration of the infringement act, consideration to be give to retail prices and to make mandatory the use of pre-established/statutory damage.	Indicated- to the calculation of damage to be based on lost profits and the duration of the infringement.	No Commitment
Border measures including goods in transit	No Commitment	No Commitment
Discovery/Disclosure/Seizure of documentary evidence related to infringement with authority to sanction failure to comply with such order.	Indicated	No Commitment

d.

Transparency: Armenia, Lithuania, Moldova, Albania, Croatia, Georgia, Estonia, Kyrgyz

Acceding Countries	No law or regulation related to international trade/intellectual property would become effective prior to publication	Publication of laws to include date of entry into force	Translation required into the Working language of the WTO	The submission of draft laws to WTO member states for comments, and publication for public review prior to implementation
Armenia	Indicated – in general to those related to trade	Indicated – in general to those related to trade	No Commitment	Indicated- publications for public review for trade in goods and services
Lithuania	Indicated generally to those related to trade	Indicated- that publications may stipulate the date of entry	No Commitment	No Commitment
Moldova	Indicated – in relation to GATT	No Commitment	No Commitment	No Commitment
Albania	Indicated generally to those related to international trade	No Commitment	No Commitment	No Commitment
Croatia	Indicated generally to those related to international trade	No Commitment	No Commitment	No Commitment
Georgia-	Indicated- generally to all laws	No Commitment	No Commitment	No Commitment
Estonia	Indicated- generally to all laws	No Commitment	No Commitment	No Commitment
Kyrgyz	Indicated- to amend its laws to ensure the publication of all laws	No Commitment	No Commitment	No Commitment

e.

Transparency: China, Chinese, Taipei, Saudi Arabia, Jordan, Nepal, and Cambodia

**Note:** Jordan, Nepal and Cambodia have also indicated that all laws which were amended to comply with the WTO Agreements contained provisions which require such publication.

Acceding Countries	No law or regulation related to international trade/intellectual property would become effective prior to publication	Publication of laws to include date of entry into force	Translation required into the Working language of the WTO	The submission of draft laws to WTO member states for comments, and publication for public review prior to implementation	Official website updated on a regular basis and readily available and dedicated to the publication pertaining to or affecting TRIPS
Saudi Arabia	Committed- specifically including those related to IP rights	Committed- for all measures and laws	No Commitment	No Commitment- with respect to 'submission'. But Saudi is committed to make such laws available through a website	Committed- including for publication prior to enactment.
Chinese Taipei	Committed-	No Commitment	Committed – to translate and published in an official WTO language no later than 90 days after enactment or issuance	Committed both for WTO Members and the public –at least 60 calendar days before such measures were implemented.	No Commitment
China	Indicated- that only those laws, regulations and other measures pertaining to or affecting TRIPS or that are published and readily available to WTO Members shall be enforced”	Committed- publication pertaining to or affecting TRIPS would include the effective date of these measures	Committed- translations into one or more of the official languages of the WTO, to the maximum extent possible before implementation or enforcement, but in no case later than 90 days after they were implemented or enforced.	Indicated – and also to WTO Members, upon request, before their implementation or enforcement. <sup>30</sup>	No Commitment
Jordan	Indicated	Indicated	No Commitment	No Commitment	No Commitment
Nepal	Committed	Committed	No Commitment	Indicated for both WTO Members and the public at large- with a reasonable period, e.g. no less than 15 days, for comment	Indicated
Cambodia	Committed	Committed	No Commitment		Committed- to establish or designate an official journal or website

30 China also committed to “establishes or designate one or more enquiry points where all information relating to the laws, regulations and other measures pertaining to or affecting...TRIPS or the control of forex, as well as the published texts, could be obtained and would notify the WTO of any enquiry point and its responsibility. The information would include the names of national or sub-national authorities (including contact points) responsible for implementing a particular measure.”



## f. Other Commitments: China, Chinese Taipei, Cambodia and Nepal.

Acceding Countries	Rationalization and other measures with respect to the institutional arrangement for the administration and enforcement of rights	Public awareness and promotional activities	Training of judges and law enforcement agencies	To substantially reduce counterfeit and copyright infringement
Chinese Taipei	Indicated	No Commitment	Indicated	Indicated- and also submitted action plan <sup>31</sup>
China	Committed- under its protocol of accession to apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS	Indicated	No Commitment	No Commitment The working party took note of the commitment of China that “the administrative authorities at all levels were putting emphasis on strengthening anti-piracy work. In addition, the administrative authorities were also enhancing the legal publication and education of the general public in a bid to ensure that the legal environment of China would be able to meet the requirements for enforcing the TRIPS Agreement”
Cambodia	No Commitment	No Commitment	Committed- action plan for capacity building of key personnel. action plan that form the understanding of Cambodia and the Working Group and as a blueprint for technical assistance	Committed -, during the transition period, to ensure that existing rates of infringement would not significantly increase and that any infringement of IP rights would be addressed immediately in cooperation with the assistance from affected right holders
Nepal	Committed- action plan for Establishment and Strengthening Nepal Copyright Registrar Office, Trademark Information Centre/ Industrial Design Information Centre/ Industrial Patent Information Centre/ and Layout-designs Information Centre Computerization and networking of Patent Office, Computerization of Intellectual Property Office, Reorganization and establishment of Intellectual Property Offices	Committed- action plan to enhancing public awareness on the protection of intellectual property rights No later than 1 January 2007	Committed- action plan for training of personnel, customs officials and police and orientation of judges and lawyers. action plan that form the understanding of Cambodia and the Working Group and as a blueprint for technical assistance	Committed -, during the transition period, to ensure that existing rates of infringement would not significantly increase and that any infringement of IP rights would be addressed immediately in cooperation with the assistance from affected right holders

31 Chinese Taipei also indicated the use of export license and quality control mechanisms for enforcement mechanisms and Committed- to use Certification of origin for importation of alcohol and beverage

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