

**REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)
OF THE TRIPs AGREEMENT
?
DRAFT COMMUNICATION ON THE RELATIONSHIP BETWEEN THE CBD AND
THE TRIPs AGREEMENT**

UNICE PRELIMINARY COMMENTS

UNICE shares the view that it is time to address the issues of defining/protecting traditional knowledge and encouraging satisfactory contractual arrangements in order to avoid losses on all sides.

European industry believes that these questions have to be regarded as major regulatory challenges linked to identification of forthcoming development and use of intellectual property rights in the field of genetic resources and environment. In that context, UNICE considers that WIPO would be the most appropriate body to deal with these issues.

UNICE supports:

- The Commission's acknowledgement that the regimes existing under the Rio Convention on Biological Diversity and the TRIPs Agreement generate two different bodies of law, which exist in parallel. These texts complement each other since they do not govern the same subject matter and, therefore, must be implemented alongside each other;
- The Commission's position that the review of Art 27.3 (b) is not the right forum, and should not be the vehicle, for addressing the widely differing issues which have been voiced by a number of countries;
- The Commission's view that technical assistance needs to be further provided to support developing countries in the approximation of their legislation in order to promote the objectives of Article 15 of the CBD and to avoid the creation of a climate conducive to the implementation of inequitable arrangements.

UNICE welcomes the Commission's Draft Communication which endorses pro-active involvement from the EU side in this field. In view of the above, UNICE would like the Commission to consider drawing up recommendations on the most appropriate means of recognising and protecting traditional knowledge as subject matter for intellectual property rights. Such recommendations should aim to establish guidelines for a legal framework based on an accessible set of legal instruments and a reliable mechanism relying on clearly identified granting authorities. UNICE is further of the opinion that the Commission should maintain its participation in the ongoing drafting of guidelines within CBD.

However, some aspects of the Commission's Draft raise concerns, in particular:

- The usefulness of introducing an obligation for patent applicants to specify the origin of a biological material relied on in a patent application (e.g. items 22 and 39). Given that this aspect is highly complicated, UNICE believes that the Commission should deal with this subject matter only after further study;
- The references made to bringing biodiversity related issues into a possible new WTO Round. UNICE believes that this issue needs to be further discussed.

In such a context where there is need for cooperation, UNICE hopes that the European Commission will closely involve all stakeholders in drafting of the above-mentioned recommendations. UNICE remains committed to supporting Commission initiatives in this field.

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