

**DOHA WORK PROGRAMME – THE OUTSTANDING IMPLEMENTATION ISSUE
ON THE RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE
CONVENTION ON BIOLOGICAL DIVERSITY**

Communication from Brazil, India, Pakistan, Peru, Thailand and Tanzania

The following communication, dated 29 May 2006, is being circulated at the request of the delegation of India also on behalf of the delegations of Brazil, Pakistan, Peru, Thailand and Tanzania.

In the Doha Ministerial Declaration, Ministers agreed that negotiations on outstanding implementation issues shall be an integral part of the Work Programme they established. The relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) is an outstanding implementation issue. In addition to the intensive technical work in the TRIPS Council since then, the Director General has undertaken dedicated consultations through his Friends, including more recently through Mr. Rufus Yerxa, Deputy Director General. There have been extensive discussions in these processes on the introduction into the TRIPS Agreement of a mandatory requirement for the disclosure of origin of biological resources and/or associated traditional knowledge used in inventions for which intellectual property rights are applied for.

In the Hong Kong Ministerial Declaration, the Ministers requested the Director General to intensify the consultations and to report to each regular meeting of the TNC and the General Council. Further, the Ministers instructed that the General Council shall review progress and take any appropriate action no later than 31 July 2006. In order to enable the Members to take appropriate action by this date, a number of Members have proposed moving towards text-based negotiations on the disclosure of origin requirement. Accordingly, this communication presents a proposal for such a text, taking into account the objectives of the requirement as well as the questions, comments and concerns raised by various Members in the negotiations so far. The proposed text will assist the consultations being undertaken by the Director General.

The said text is attached.

Article 29bis

Disclosure of Origin of Biological Resources and/or Associated Traditional Knowledge

1. For the purposes of establishing a mutually supportive relationship between this Agreement and the Convention on Biological Diversity, in implementing their obligations, Members shall have regard to the objectives and principles of this Agreement and the objectives of the Convention on Biological Diversity.

2. Where the subject matter of a patent application concerns, is derived from or developed with biological resources and/or associated traditional knowledge, Members shall require applicants to disclose the country providing the resources and/or associated traditional knowledge, from whom in the providing country they were obtained, and, as known after reasonable inquiry, the country of origin. Members shall also require that applicants provide information including evidence of compliance with the applicable legal requirements in the providing country for prior informed consent for access and fair and equitable benefit-sharing arising from the commercial or other utilization of such resources and/or associated traditional knowledge.

3. Members shall require applicants or patentees to supplement and to correct the information including evidence provided under paragraph 2 of this Article in light of new information of which they become aware.

4. Members shall publish the information disclosed in accordance with paragraphs 2 and 3 of this Article jointly with the application or grant, whichever is made first. Where an applicant or patentee provides further information required under paragraph 3 after publication, the additional information shall also be published without undue delay.

5. Members shall put in place effective enforcement procedures so as to ensure compliance with the obligations set out in paragraphs 2 and 3 of this Article. In particular, Members shall ensure that administrative and/or judicial authorities have the authority to prevent the further processing of an application or the grant of a patent and to revoke, subject to the provisions of Article 32 of this Agreement, or render unenforceable a patent when the applicant has, knowingly or with reasonable grounds to know, failed to comply with the obligations in paragraphs 2 and 3 of this Article or provided false or fraudulent information.
