

# **Intellectual Property Rights, the WTO and Developing Countries**

## The TRIPS Agreement and Policy Options

CARLOS M CORREA

Zed Books Ltd.  
London and New York

**TWN**  
Third World Network  
Penang, Malaysia

# Contents

Acronyms and Abbreviations	xi
Foreword	xiii
<b>CHAPTER I</b>	<b>1</b>
<hr/>	
<b>GENERAL CONTEXT</b>	
<i>What is TRIPS?</i>	1
<i>The Context</i>	3
<i>The North-South Asymmetries</i>	5
<i>The Limits of the TRIPS Agreement</i>	6
<i>The TRIPS Agreement as a Ceiling</i>	8
<i>Transitional Arrangements</i>	9
<i>Unilateral or Multilateral?</i>	11
<i>Main Substantive Provisions</i>	12
<i>Transfer of Technology</i>	18
<i>Conclusion</i>	21
<b>CHAPTER II</b>	<b>23</b>
<hr/>	
<b>IMPLICATIONS FOR DEVELOPING COUNTRIES</b>	
<i>Introduction</i>	23
<i>Welfare Effects</i>	25
<i>Foreign Direct Investments</i>	26
<i>Transfer of Technology</i>	30
<i>Impact on Domestic Markets</i>	36
<i>Innovation</i>	37
<i>i) General</i>	37
<i>. ii) The case of pharmaceuticals</i>	42
<i>Main Conclusions</i>	44

## CHAPTER III

49

### IMPLEMENTING THE TRIPS AGREEMENT IN THE PATENT FIELD: OPTIONS FOR THE DEVELOPING COUNTRIES

<i>The Scope of Patentability</i>	50
<i>Definition of invention</i>	51
<i>Requirements of protection</i>	57
<i>Exceptions to patentability</i>	61
<i>Scope of Claims</i>	70
<i>Disclosure</i>	72
<i>Claim Interpretation</i>	74
<i>Exceptions to Exclusive Rights</i>	75
<i>Experimental exception</i>	76
<i>"Bolar" exception</i>	77
<i>Parallel imports</i>	81
<i>Prior use</i>	88
<i>Patents on life forms</i>	89
<i>Compulsory Licences</i>	89
<i>Reversal of the Burden of Proof</i>	94
<i>Transitional Periods and Provisions</i>	95
<i>Conclusions</i>	97

## CHAPTER IV

707

### CHANGING NATIONAL LAWS: THE CASE OF LATIN AMERICA AND THE CARIBBEAN

<i>Introduction</i>	101
<i>Incorporation into National Law</i>	102
<i>Interpretation</i>	104
<i>Implementation Problems</i>	107
<i>Normative dimension</i>	107
<i>Administrative dimension</i>	108
<i>Political dimension: Facing trade retaliation</i>	108
<i>Changes in Latin American and Caribbean Legislation</i>	111
<i>Copyright and related rights</i>	111
<i>Trademarks</i>	112
<i>Geographical indications</i>	114
<i>Industrial designs</i>	115
<i>Patents</i>	115

<i>Integrated circuits</i>	118
<i>Undisclosed information</i>	118
<i>Breeders' rights</i>	119
<i>Enforcement</i>	120
<i>Main Conclusions</i>	120

## **CHAPTER V** 123

### **INTELLECTUAL PROPERTY RIGHTS AND INFORMATION TECHNOLOGIES**

<i>Introduction</i>	123
<i>New Developments</i>	124
<i>ITs and Intellectual Property Law</i>	126
<i>Protecting computer programs</i>	128
<i>Multimedia products</i>	138
<i>Integrated circuits</i>	140
<i>Digital information</i>	143
<i>Implications for Developing Countries</i>	149
<i>Access, acquisition and use</i>	149
<i>Impact of IPRs</i>	150
<i>Software</i>	152
<i>Hardware</i>	156
<i>Information</i>	158
<i>Main Conclusions</i>	160

## **CHAPTER VI** 767

### **ACCESS TO PLANT GENETIC RESOURCES AND INTELLECTUAL PROPERTY RIGHTS**

<i>Introduction</i>	167
<i>From "Free" to "Shared" Access</i>	169
<i>Access to PGRs under Patent Laws</i>	173
<i>Plant biotechnology patents</i>	173
<i>Do patents restrict access ?</i>	175
<i>Patents on biological materials</i>	177
<i>Patents on genes</i>	179
<i>Patents on varieties</i>	183
<i>Can patents and access for R&amp;B be reconciled?</i>	185
<i>Access under Plant Breeders' Rights</i>	195
<i>Scope of protection</i>	196

<i>Infringement</i>	197
<i>Deposited materials</i>	198
<i>Access under the Regime on Undisclosed Information</i>	198
<i>Conclusions</i>	200

## **CHAPTER VII** 207

### **UPCOMING REVIEW OF THE TRIPS AGREEMENT**

<i>Introduction</i>	207
<i>Identifying National Interests</i>	208
<i>Transitional Periods</i>	209
<i>Built-in Agenda</i>	211
<i>Review of the Agreement</i>	214
<i>Negotiating strategies</i>	214
<i>Policy-oriented approaches</i>	215
<i>Other issues</i>	218

## **ANNEX** 223

### **OPTIONS FOR IMPLEMENTING THE TRIPS AGREEMENT IN DEVELOPING COUNTRIES**

<i>Introduction</i>	223
<i>Purpose and scope</i>	224
<i>Patent Provisions</i>	226
<i>The concept of "invention"</i>	226
<i>Exceptions to patentability</i>	228
<i>Criteria of patentability</i>	231
<i>Rights conferred</i>	233
<i>Disclosure</i>	234
<i>Interpretation of claims</i>	237
<i>Foreign applications and grants</i>	238
<i>Exceptions to exclusive rights</i>	238
<i>Compulsory licences</i>	240
<i>Reversal of the burden of proof</i>	245
<i>Transitional periods and provisions</i>	247
<i>Undisclosed Information</i>	249
<i>Computer Programs</i>	250
<i>Databases</i>	251
<i>Restrictive Practices in Contractual Licences</i>	252