



## Trade and Environment: TRIPS and the CBD

*This is one of a series of position papers on trade and environment. BirdLife International is focusing on key environmental issues that are significant to the 5<sup>th</sup> Ministerial Session of the WTO in Cancún, Mexico, September 2003. We believe that mutually reinforcing and supportive multilateral systems for international trade and environmental protection are essential to sustainable development and well-being. Without positive outcomes for both the environment and developing countries, the so-called 'Doha Development Round' of the WTO will fail to meet both its own sustainable development mandate and the needs of present and future generations.*

### **Summary position:**

**BirdLife International believes that the Doha Round must deliver a multilateral trade system that reflects the concerns of civil society and works for the common good - people and the environment. It must support poverty eradication and have sustainable development at its heart.**

To ensure this, BirdLife believes that:

- Intellectual property right (IPR) laws should be designed, *inter alia*, to support conservation, sustainability, equitable benefit sharing and transfer of environmentally sound technologies. To this end, the precautionary principle must be applied in the context of IPRs to minimise risk of environmental harm.
- Amendments to the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) are essential for its implementation to be harmonious with and mutually supportive of the Convention on Biological Diversity (CBD), its Biosafety Protocol and the Bonn Guidelines on access and benefit sharing. To help achieve this, it must be stated within TRIPS that its provisions are supportive of and do not run counter to the objectives of these Multilateral Environmental Agreements (MEAs).
- TRIPS Article 27 should be amended to require any patent applicant(s) as a condition of acquiring a patent right to:
  - a) Disclose evidence of the source and country of origin of the biological resource and of the traditional knowledge used in the invention;
  - b) Provide evidence of prior informed consent (PIC) through approval of authorities under the relevant national regime; and
  - c) Provide evidence of fair and equitable benefit sharing under the relevant national regime.
- These amendments must be included in patent law.
- Compliance with the TRIPS agreements is highly onerous for developing countries, thus the transition period should be extended, and further support and capacity building afforded.
- Under TRIPS Article 27.3(b), governments, particularly from developing countries, should be further *enabled* to develop *sui generis* systems for plant variety protection that support national priorities and CBD-related objectives.
- The CBD should be given observer status to the WTO Committee on Trade and Environment (CTE) and to the TRIPS Council, further establishing formal mechanisms for cooperation.
- Any trade and environment conflicts must be addressed in an open, inclusive and transparent way.

1.0 **The Doha Declaration (2001)** in paragraph 19 instructs the 'Council for TRIPS, in pursuing its work programme... ..to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments... ..In undertaking this work, the TRIPS Council shall... ..take fully into account the development dimension.'

**2.0 BirdLife believes that the relationship between TRIPS and the CBD is unclear.** The Doha Declaration provided WTO members with a mandate to address this, taking fully into account ‘the development dimension’ (paragraphs 17 and 32).

**3.0 We believe that IPR laws should be designed, *inter alia*, to support conservation, sustainability, equitable benefit sharing, and transfer of environmentally sound technologies.**

**4.0 We believe that the precautionary principle must be applied in the context of IPRs to minimise risk of environmental harm,** such as erosion of agro-biodiversity or negative impacts of transgenic crops. To this end, Article 27.3(b) for TRIPS should be extended to exclude microorganisms and products and processes thereof, from patentability. Specifically, countries should be allowed to exclude all life forms from patenting if it is deemed potentially harmful to biodiversity or rural communities

**5.0 In our view, enough questions exist concerning the costs and benefits of IPR protection, the potential conflict with the CBD, the possible impacts of life-form patenting on agricultural biodiversity, and the lack of capacity in some developing countries to ensure implementation of TRIPS, to warrant no further expansion of the Agreement.** Instead, the current mandated review of TRIPS should assess the Agreement’s impacts on biodiversity and development with a view to, where necessary, rolling back aspects of the Agreement and ensuring that enough room exists to allow countries to pursue development and biodiversity conservation objectives as well as to protect the rights of traditional knowledge holders.

**6.0 We support the more robust framework for biodiversity conservation and fair and equitable sharing of benefits from biological resources that is provided by the CBD, its Cartagena Protocol on Biosafety and the Bonn Guidelines on access and benefit sharing.** We recognize that there are imbalances between the CBD and TRIPS that needs to be addressed both within the CBD and within TRIPS. Specifically, the TRIPS regime contains stronger enforcement mechanisms than the CBD, and its actual impact is, therefore, far more powerful. Such imbalances need to be addressed to ensure that CBD provisions can be fully implemented without being undermined by the enforcement of TRIPS.

**7.0 It is important that developing countries benefit from the use of genetic and biotechnology resources if they are expected to conserve their biological patrimony, the primary source of much of the genetic material used by the biotechnology industry.** As the most bio-diverse areas on the planet fall almost entirely within the developing world, this is particularly important for biological conservation. In working out the relationship between TRIPS and the CBD, the knowledge and innovations of indigenous peoples and local communities should be protected - a key element in the CBD. Appropriate IPR or *sui generis* systems should be developed in an open and transparent way with full participation and consultation of rights holders and stakeholders.

**7.1 Compliance with the TRIPS agreements is highly onerous for developing countries; we believe that the transition period should be extended, and further support and capacity building afforded.** This will enable developing countries to develop IPR laws that conform with their own interests and support the CBD, its Biosafety Protocol and the Bonn Guidelines.

**7.2 Under TRIPS Article 27.3(b), we believe that governments, particularly from developing countries, should be enabled to develop *sui generis* systems for plant variety protection that support national priorities and CBD-related objectives.** Such systems should ensure implementation of Article 8(j) of the CBD relating to indigenous and local communities; ensure that the full range of environmental and ethical concerns about IPRs on life forms are addressed in an open and participatory way; and support the implementation of the CBD’s Biosafety Protocol which enters into force on 11<sup>th</sup> September 2003.

**8.0 As a crucial element in achieving sustainable development and to fulfil the commitment to the interests of developing countries, we believe that amendments are necessary to the TRIPS Agreement.**

Specifically that:

- (i) To ensure harmonious and mutually supportive implementation of TRIPS and the CBD, its Biosafety Protocol and the Bonn Guidelines on access and benefit sharing, it must be stated within TRIPS that TRIPS provisions are supportive of and do not run counter to the objectives of these MEAs.
- (ii) If biological process and products are to be patented, TRIPS should be amended to require any patent applicant(s) as a condition of acquiring a patent right to:
  - a) Disclose evidence of the source and country of origin of the biological resource and of the traditional knowledge used in the invention;
  - b) Provide evidence of prior informed consent (PIC) through approval of authorities under the relevant national regime; and
  - c) Provide evidence of fair and equitable benefit sharing under the relevant national regime.

This is in support of developing countries and the interests of indigenous communities and would play a significant role in ensuring equity and preventing bio-piracy and misappropriation<sup>1</sup>. It should be noted that such additional conditions do not violate the principle of non-discrimination; it is an established principle that treating dissimilar fields of technology differently will not be contrary to this principle<sup>2</sup>. This information would already be part of any patent research so would not constitute any unnecessary burden<sup>3</sup>.

**9.0 To be effective and more than a formality these amendments must be included in patent law.** It is an established principle of patent law in most jurisdictions that a false representation of material information could lead to revocation of a patent; the same must be true for these new requirements.

**10.0 Of important note, we believe that voluntary contracts for PIC and fair and equitable benefit sharing would be ineffective.** Such proposals should not be supported. Power gaps, for example, where the parties to the contracts are of vastly unequal bargaining strengths (as would be the case with traditional communities and commercial interests) could bias outcomes.

**11.0 The CBD should be given, at least, observer status to the WTO CTE and to the TRIPS Council, further establishing formal mechanisms for co-operation.** This is an important issue being addressed under paragraph 31(ii) of the Doha declaration.

**12.0 The environmental and developmental impacts of IPRs should be established through an open and transparent multidisciplinary review involving both stakeholders and rights holders, and the TRIPS Agreement should be re-examined and revised based on this review to ensure no negative impacts.**

---

<sup>1</sup> Submission to the TRIPS Council from India on behalf of Brazil, Bolivia, Cuba, Dominican Republic, Ecuador, Thailand, Peru and Venezuela, 28 May 2003 (IP/C/W403)

<sup>2</sup> Submission to the TRIPS Council (IP/C/W403) - paragraph 11

<sup>3</sup> Submission to the TRIPS Council (IP/C/W403) - paragraphs 12 & 13

**For further information, please contact:**

**Joanna Phillips** - Email: [Joanna.Phillips@rspb.org.uk](mailto:Joanna.Phillips@rspb.org.uk)

**Alexandra González-Calatayud** - Email: [Alexandra.Gonzalez@rspb.org.uk](mailto:Alexandra.Gonzalez@rspb.org.uk)

The Royal Society for the Protection of Birds (RSPB) Trade and Development Team, Environmental Policy, The Lodge, Sandy, Bedfordshire, SG19 2DL, UK; or visit: [www.rspb.org](http://www.rspb.org)

**Muhtari Aminu Kano** – Email: [aminukano@infoweb.abs.net](mailto:aminukano@infoweb.abs.net)

**Alberto Yanosky** – Email: [ayanosky@guyra.org.py](mailto:ayanosky@guyra.org.py)

BirdLife International, Wellbrook Court, Girton Road, Cambridge, CB3 0NA, UK; or visit: [www.birdlife.net](http://www.birdlife.net)

All position papers have been written and produced by the RSPB in consultation with BirdLife International's Secretariat (Cambridge).

---

***BirdLife International** is a global Partnership of conservation organisations, working in more than 100 countries worldwide. The BirdLife Partnership strives to conserve birds, habitats and global biodiversity, joining local communities around the world to achieve awareness of our natural resources and how to use them sustainably.*

***The Royal Society for the Protection of Birds** is Europe's largest wildlife conservation organisation with over a million members and the UK partner of BirdLife International. Through research, advocacy and land management, we strive to link national and international policies for sustainability with local concerns in both the South and the North. We have extensive programmes of work in many policy areas including agriculture, trade, climate change, energy, transport, the marine environment, fisheries, education and capacity building.*

***The RSPB and BirdLife International** are working to ensure that international trade and international trade rules provide a positive contribution towards achieving sustainable development and thus do not adversely affect the natural environment.*

---

Registered charity no 207076

July 2003