

TRIPS - TEN YEARS LATER

Talking Points by Wolfgang Starein, Director, Enforcement and Special Projects Division, WIPO

Panel on "Ten Years of the TRIPS Agreement
Taking Stock" (Brussels, June 23, 2004)

The World Intellectual Property Organization (WIPO) appreciates the initiative by the European Commission. We, at WIPO, took due note of the points to be examined when taking stock of the TRIPS Agreement after a decade and since I have the honor to represent WIPO in this conference, I should like to make a few comments thereon and some remarks on technical assistance.

Regarding the question raised in the program for this panel, whether developing countries have experienced TRIPS as an obstacle or a booster for economic development, I would like to point out that it is indeed one of the aims of WIPO to explain to Governments of developing countries the importance of the intellectual property (IP) system for economic development and poverty eradication. We firmly believe that all countries have to gain a lot from an effective IP system. The reasons are set out in a book by our Director General entitled Intellectual Property - A Power Tool for Economic Growth.

A number of senior politicians in developing countries have been convinced in the last years that the IP system has the potential of fostering economic development. More experience would be needed, however, in order for these countries to draw the conclusion that economic development was due to, or would depend on, implementation of the TRIPS Agreement. Developing countries other than least-developed countries had to comply with the majority of requirements under the TRIPS Agreement only by January 1, 2000, and quite a number were obliged to make use of the available period of time to adopt or modernize their IP legislation. Consequently, there has not yet been sufficient time for demonstrating economic benefits of the new legislation. Furthermore, developing countries were also in need of technical assistance to modernize their administrative infrastructure to apply the new legislation effectively.

The General Assembly of WIPO mandated the International Bureau already in its 1994 and 1995 sessions to study and to provide assistance to the Member States of WIPO on matters related to WTO, particularly on the TRIPS Agreement.

The aforementioned resolutions of the General Assembly of WIPO in 1994 and 1995 also led to the Agreement Between the World Intellectual Property Organization and the World Trade Organization (WIPO-WTO Agreement) of 1995, which came into force on January 1, 1996. This Agreement specifically provides for cooperation between WIPO and WTO on legal-technical assistance to developing countries with regard to the TRIPS Agreement.

Pursuant to the mandate of the WIPO General Assembly and the WIPO-WTO Agreement, the International Bureau has carried out extensive activities related to the TRIPS Agreement since January 1, 1996. These activities have been mostly incorporated into the WIPO's ongoing cooperation for development programs, which have been organized mainly in response to requests received from developing country Members of WIPO. Such activities included legislative advice, awareness building and human resource development, institution building and modernization of the

intellectual property system and enforcement. Additionally, they include studies and publications as well as the activities under the WIPO-WTO Agreement, which, in particular, led to the joint initiatives launched by the two Organizations in July 1998, and in June 2001.

The conclusion of the TRIPS Agreement facilitated the tasks of WIPO in the field of rendering **legislative advice** to some extent. A number of basic standards and a number of modern features of IP law became minimum requirements and the issue for non-member countries was no longer whether or not the country should accept certain provisions but whether or not it wanted to become a member of the World Trade Organization. On the other hand, the number of requests increased and the TRIPS Agreement required careful consideration. WIPO rendered intensive legislative advice in the implementation of the TRIPS Agreement and assisted in the preparation and finalization of hundreds of IP laws and even secondary legislation such as Implementing Regulations by drafting same on request or by commenting on texts elaborated and submitted by Governments.

The **human resource development** program of WIPO has always been a central part of its cooperation for development program. It was re-oriented, however, to include specific provisions of the TRIPS Agreement. Its activities involve, in particular, organizing hundreds of regional meetings, including "Mega" meetings in various regions of the world, sub-regional and national meetings, including training courses, and interregional courses and seminars. Preparation of periodicals, studies and reference materials to promote awareness of protection of intellectual property rights in general and of the TRIPS Agreement in particular has also been undertaken. The establishment of the WIPO Worldwide Academy shows the importance WIPO places on human resources development in order to provide a more complete assistance to developing countries and least-developed countries (LDCs) in the area of intellectual property.

Another important area is to assist developing countries **build up or upgrade** their intellectual property offices with adequate institutional **infrastructure** and resources, qualified staff, modern management techniques and access to information technology support systems. In this connection, WIPO sends advisory missions to many developing countries, sponsors visits of a large number of officials from developing countries to offices in industrialized countries to study various aspects of modernization and renders extensive assistance and equipment for computerization

Enforcement of intellectual property rights, as an integral part of the TRIPS Agreement, has been incorporated into the WIPO programs since January 1996. In order to raise awareness of enforcement in the area of intellectual property rights, WIPO has organized more than hundred interregional, regional, sub-regional and national meetings concentrating wholly or partly on the enforcement provisions of the TRIPS Agreement. Effective enforcement of IP rights means that right holders should be in the position to obtain decisions which are well founded, rendered within a reasonable period of time and affordable, taking into account fees of courts, administrative bodies and attorneys.

Next week, the WIPO Advisory Committee on enforcement will focus on the role of the judiciary, quasi-judicial authorities and of the prosecution in the field of IP enforcement. A series of presentations by top judges and senior government officials from different regions will make presentations examining key questions related to the theme. These will include, among others, the importance of continued judicial training and specialization in the field of intellectual property; civil and criminal actions and remedies; the determination of damages in different legal systems; and concepts to reduce IP litigation costs, such as effective case management by the judiciary, the integration of mediation procedures within judicial structures, and the streamlining of procedures in IP litigation.

In order to administer this Advisory Committee on Enforcement and to coordinate and intensify education and training activities in the field of IP enforcement, WIPO established the Enforcement and Special Projects Division in 2002. The Division also has the task of raising the awareness of the social and economic implications of intentional violations of IP rights, taking into account that it is not possible to reap the benefits from the IP system if a considerable and increasing percentage of world trade is lost to counterfeiting and piracy activities. Such activities have resulted in a business estimated at some 400 to 500 billion Euro per year, which is no longer limited to luxury goods and is considered to be significantly influenced by organized crime. This is to the disadvantage of industrialized and developing countries alike. For this reason, the entry into force of the Council Regulation (EC) No.1383/2003 of July 22, 2003 concerning border measures and the adoption of the Directive No. 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights of April 29, 2004 have been widely applauded. And it is against this background that the First Global Congress on Combating Counterfeiting, co-organized by the World Customs Organization and Interpol, with the support and participation of WIPO and other organizations, was held last month in Brussels.

Almost all developing countries have benefited from the legal-technical assistance programs and activities of WIPO that either dealt entirely with the TRIPS Agreement or were undertaken with a view to facilitate implementation of that Agreement. As a result, a number of countries have strengthened or embarked upon modernization of their legal and administrative infrastructures, and greater attention has been given to the protection and enforcement of intellectual property rights.

As stated by the representative of the World Trade Organization, a number of developing countries is concerned about the access to affordable drugs, which led to the Doha Declaration on the TRIPS Agreement and Public Health in 2001, and they increasingly voice their interest in obtaining what they consider equitable benefit sharing for the use of genetic resources and traditional knowledge. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is examining the questions related thereto and will focus in its future work, in particular, on a consideration of the international dimension.

It is certainly one of the most noticeable negative developments in the last decade that the number and thereby the economic impact of counterfeiting and piracy activities have increased significantly regardless of the fact that many countries have adopted legislation implementing obligations under the TRIPS Agreement. There is certainly a need to improve this situation. We contribute in many respects to the efforts that IP rights are better respected. Being in charge of IP enforcement matters myself, it would be an interesting task to examine in more detail which steps can be taken to achieve this result. However, in view of the fact that questions relating to the enforcement of IP rights will be dealt with in another panel tomorrow morning, and in light of the limited time available, I do not intend to elaborate further on this point.