INTERNATIONAL COUNCIL OF CHEMICAL ASSOCIATIONS

Position on

TRIPs and the Environment

June 22, 1999

World chemical industry production exceeds US$1.6 trillion annually, and almost 30% of this production is traded internationally. Within global trade in manufacturing, world trade in chemicals is second only to automobiles, far outpacing computers and related technology in third place.

The International Council of Chemical Associations (ICCA) is an organization of leading trade associations representing almost 80% of chemical manufacturers worldwide. ICCA members include: Conselho das Associações da Indústria Quimica do Mercosul (CIQUIM) [representing Argentina and Brazil][*] the European Chemical Industry Council (CEFIC), the Japan Chemical Industry Association (JCIA), Asociácion Nacional de la Industria Quimica (ANIQ) [representing Mexico], Canadian Chemical Producers' Association (CCPA), and Chemical Manufacturers Association (CMA) [representing the USA], the New Zealand Chemical Industry Council (NZCIC), and the Plastics and Chemical Industry Association (PACIA) [representing Australia].

Important Features for the Chemical Industry

Trade-related Aspects of Intellectual Property Rights ("TRIPs") and the Environment is a question involving many different issues. It is part of the crucial debate taking place in society.

The Environment – Responsible Care®

The chemical industry has for many years been committed to continued improvement of industry performance in environmental protection. This commitment is reflected in its Responsible Care initiative, developed and adopted by chemical companies to improve continuously the environmental, health and safety performances of their operations and products in a manner responsive to the concerns of the public.

Sustainable Development

ICCA supports the concept of sustainable development, which reconciles economic growth and social aims with the need to protect the environment for ourselves and for future generations. ICCA members are committed to implementing this concept by fulfilling industry's primary role as a vital element of the global economy in a way increasingly in harmony with environmental needs while providing human and social benefits.

[*] CIQUIM has taken a reservation on the portion of this position that addresses "TRIPs and the Rio Convention on Biodiversity" pending a review of current Brazilian law.

Council Secretary:
FREDERICK L. WEBBER *1300 Wilson Blvd., Arlington, VA 22209 USA* *Tel: +1-703-741-5100* *Fax: +1-703-741-6070*

Trade and the Environment

Maintaining an open free trade system as well as achieving sound environmental policies are both important goals for the chemical industry. The aim is to enable the development of policies to ensure improvement of environmental performance, while maintaining free trade. The existing fundamental rules of GATT/WTO are the basic principles for the conduct of international trade. To allow breaches of these rules on the basis of certain "demands" which are unreasonable could lead to protectionism in the guise of environmental protection. This could well lead to the weakening of the existing multilateral trade system.

Patents - TRIPs

Patents are crucial to the chemical industry. They are the key to translating inventions into concrete developments. The chemical industry is based upon a commitment to research and development, to deliver new products and processes, improving environmental performance, enhancing the quality of life, and sustaining a competitive edge. This is only possible if effective patent legislation is in place. Patents provide the means to establish the necessary cycle of investment, research, innovation and re-investment.

Obtaining more effective industrial property protection, in particular regarding patents, for products and processes throughout the world was a priority of the chemical industry in the GATT/Uruguay Round. The different levels of protection concerning industrial property constituted a distortion in trade, hindering companies from either exporting or investing in some countries with little or no protection. ICCA supports the current TRIPs Agreement and considers it to be a genuine advance for the world economy.

In view of the negotiations that took place on the occasion of the Uruguay Round, and the TRIPs Agreement resulting from it, the chemical industry does not support any weakening of TRIPs in reply to unrealistic demands.

Some non-governmental organisations have requested that the TRIPs Agreement be amended or even not respected by countries when drafting their industrial property legislation. The chemical industry urges National Authorities and International Bodies to reject those demands since industrial property rights such as patents not only foster innovation supporting sustainable development, but also directly contribute to the dissemination of environment-friendly technologies, *inter alia* by early publication of patent specifications.

Furthermore, environment considerations have already been integrated in the TRIPs Agreement. Article 27 allows the exclusion from patentability of inventions, the prevention within a territory of the commercial exploitation of which is necessary to protect public order or morality, including to avoid serious prejudice to the environment.

ICCA submits that this Article should be strictly interpreted by WTO Members when drafting patent legislation:

- Discrimination should not be made as to the place of invention, the field of technology and whether the products are imported or locally produced.
- General exclusions—as for example, biotechnological inventions--are clearly not in conformity with TRIPs.

TRIPs and the Rio Convention on Biological Diversity

Some government and non-governmental organisations are requesting the weakening of TRIPs, alleging that the Biodiversity Convention supersedes the TRIPs Agreement.

The chemical industry is of the opinion that there is no disharmony between these two international instruments and that TRIPs must not be weakened.

The Biodiversity Convention deals with a body of law completely separate from that which is the subject of TRIPs. It is based upon the premise that States have sovereign rights over their own biological resources and has as its objectives the conservation of biological diversity, its sustainable use, and benefit sharing by access to resources and transfer of technology.

TRIPs, on the other hand, requires States to protect intellectual property, which is recognised as a private right.

These are perfectly compatible with each other, and neither is to be applied in such a way as to undermine the objectives of the other. In particular, the transfer of technology provisions of the Convention state that access to and transfer of technology will be provided on terms that recognise and are consistent with the adequate and effective protection of intellectual property rights. Parties are supposed to ensure that, subject to national legislation and international law (e.g., TRIPs), industrial property rights are supportive of and do not run counter to the objectives of the Convention.

It is the view of the chemical industry that strong patent protection as required by TRIPs actually supports the objectives of the Biodiversity Convention.

Patents and the protection of the environment: patents are an important element contributing to the environment and its preservation. For the chemical industry, this means, for example, patents concerning inventions: to preserve the ozone layer; to use less energy; for pesticides to meet increasingly higher environmental demands; to grow plants able to absorb more carbon dioxide; to abandon old-fashioned products and processes having a negative impact on the environment.

Patents do not prevent traditional practices from continuing: the chemical industry acknowledges the laudable aim of the Convention to respect, preserve and protect indigenous and traditional knowledge but submits that it would work counter to the objectives of the Biodiversity Convention to use this as an excuse to exclude the patenting of novel, innovative products and processes based on material originally existing in nature.

A patent cannot validly cover that which is already known. A first requirement (even repeated in TRIPs) for patenting an invention is that it is novel. Consequently, it is impossible for companies from industrialised countries to obtain patents for traditional agriculture practices or medicines that could prevent indigenous people from continuing with their traditional practices.

Patents do not lead to a reduction in genetic diversity: another concern is that patenting may lead to a reduction in genetic diversity. Biodiversity means the richness of the living world and, in particular, the diverse nature of its genetic heritage. Genetic diversity has been decreasing since the beginning of the century. Factors involved in this decrease include agriculture practices and urbanisation, but certainly not patenting.

Patents can only be awarded for inventions. Therefore, natural resources or genetic material are not destroyed through patenting. For example, innovation may improve the preservation of scare natural resources by replacing their use with the use of more abundant ones. Also patenting of biotechnological inventions to some degree provides additional *ex situ* conservation through the deposition of such material for patenting purposes.

Furthermore, of course, patents do not provide the patentee with any rights to exploit his invention. This is regulated by other legal instruments concerning products or production approval, etc. Patents merely give the right to prevent others from exploiting the invention.

Patents and genetic resources: the issue of rights to source material--for example, plant material--from any location is an issue governed by the Biodiversity Convention and not by patent law.

Patents and bioprospecting: there are concerns that "gene-prospecting" scientists can access genetic resources from the more biodiverse regions of the world, taking what they want without consent or payment of any kind. Once again, this is not a question of patent law but must be regulated through the national implementation of laws governing the ownership of natural resources and linked to contractual solutions in the individual cases.

Patents and the transfer of technology: if effective patents are not granted, there will be an inhibiting effect on the transfer of technology and ultimately on research and development. Even though industrialised countries have agreed to facilitate technology transfer to help other countries to preserve and use sustainable biological diversity, such technology transfer should be carefully organised. There would be no effective transfer of technology unless adequate patent legislation is in place. This is necessary to give the confidence to enter into negotiations. If there is compulsory transfer, either at an unfairly low price or at no price at all, the technology will neither be transferred nor even, at worst, be developed.

To underline this, the European Union, in its interpretative declaration to the Convention, stated that such transfer will only be carried out if compliance with rules for protection of intellectual property is ensured.

Encouraging the Development of Environmental Technology

ICCA fully supports the suggestion made by one of the WTO contracting parties to the WTO Committee on Trade and Environment to encourage by international law the generation of environmentally sound technologies and products. This aim has been pursued by the chemical industry for many years. However, this should not mean refusal, revocation or cancellation of patents nor free use of technology, depriving the inventor of the normal reward for the efforts and investment made.
Industrial property rights, including patents, pose no danger to the environment. On the contrary, with effective implementation of TRIPs, patents will foster innovation, including environmentally sound technology and products (and their transfer), and consequently promote the sustainable use of the earth's resources.