

TRIPs AND ITS IMPACT ON CANADIAN INTELLECTUAL PROPERTY LEGISLATION

By

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Brief History of TRIPs

GATT is a general international framework for establishing tariffs in order to foster trade between countries and reduce the effect of national legislation which may constitute an obstacle to free and fair trade. It also provides for dispute mechanisms and contains rules, for example, with respect to dumping. One of the underlying principles of GATT is the “most favoured nation” principle, which, briefly stated, provides that trading advantages accorded to one nation must be extended to all other member nations. The purpose of this is to eliminate trade barriers and to “level to playing field”, so that countries may trade with each other knowing that there will not be any discrepancies in the rules from one country to the other.

GATT itself does not contain any provisions with respect to intellectual property. However, in the 1978 Round of talks aimed at improving GATT there was an increasing awareness of the phenomenon of counterfeit goods, and a proposal was made to GATT to allow the seizure, at the border, of counterfeit products. This proposal did not succeed, but by the time the Uruguay Round opened in 1985, this idea had expanded into a series of measures dealing not only with counterfeiting, but with the protection of intellectual property as a whole.

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Thus, in December 1993, the Uruguay Round of negotiations on the General Agreement on Tariffs and Trade (GATT) reached an agreement called Agreement Establishing the World Trade Organisation (WTO). This agreement includes a body of provisions on intellectual property called Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPs). As of September 1996, 123 countries were members of the WTO, and another 31 had requested to join (The WTO publishes an updated list of Member countries at their WWW site: http://www.unicc.org/wto/memtab2_wpf.html).

TRIPs itself builds on the existing multilateral treaties for the protection of intellectual property. Among them are the Paris Convention for the Protection of Industrial Property (1883), the Berne Convention for the Protection of Literary and Artistic Works (1886), and the Treaty on Intellectual Property in Respect of Integrated Circuits (Washington, 1989). These treaties were the "toile de fond" for the international protection of intellectual property rights prior to the coming into force of the TRIPs agreement. For patents, note also the existence of the Patent Cooperation Treaty (PCT), which provides a system for an international patent application, allowing the possibility of designating approximately 80 countries.

Over twenty Canadian federal statutes will be amended as a result of the World Trade Organization Agreement Implementation Act (S.C. 1994, c. 47) sanctioned last December 12, 1994. These include changes to intellectual property laws, which came into effect on January 1, 1996.

GENERAL PRINCIPLES OF TRIPs

The Agreement is divided into seven parts:

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| Part I | General Provisions and Basic Principles |
| Part II | Standards Concerning the Availability, Scope and Use of Intellectual Property Rights |
| Part III | Enforcement of Intellectual Property Rights |
| Part IV | Acquisition and Maintenance of Intellectual Property Rights and Related Inter-Partes Procedures |
| Part V | Dispute Prevention and Settlement |
| Part VI | Transitional Arrangements |
| Part VII | Institutional Arrangements; Final Provisions |

The Agreement sets out minimum standards that must be implemented in the Member countries, but does not prohibit Members from establishing higher standards.

The Agreement recognizes that varying standards in protection and enforcement of intellectual property rights and the lack of multilateral mechanisms dealing with international trade in counterfeit goods are an irritant and a barrier to legitimate trade between Member countries.

In order to address these issues, the Agreement recognizes the need for rules and disciplines recognizing the applicability of the basic principles of GATT 1994 and those of relevant international intellectual property agreements; the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights; the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights; and the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments. The Agreement also includes transitional provisions.

Article 7 of the Agreement sums up the objectives:

“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”

An important aspect of the Agreement is the national treatment clause, whereby nationals of another country must be given treatment no less favourable than that accorded to a member’s own nationals with respect to the protection of intellectual property. The Agreement also contains a most-favoured nation clause under which any advantage a member gives to the nationals of one country must be extended to the nationals of all other members, even if such treatment is more favourable than the nationals of the home country receive.

SUBSTANTIVE PROVISIONS

How are these objectives achieved? Part II “Standards Concerning the Availability, Scope and Use of Intellectual Property Rights” of the Agreement is what I would consider the “meat” of the Agreement. This is where the minimum requirements are set out for various aspects of intellectual property, ensuring that adequate standards of intellectual property protection exist in all member countries.

Copyright

Section 1 of Part II of TRIPs deals with copyright and reestablishes the cardinal rule of copyright, that is that it extends to the expression of a thing, not to its idea, procedure, method of operation or mathematical concept.

In Canada, copyright protection is extended to citizens or ordinary residents of countries member of the World Trade Organization (WTO), in addition to those of the Berne Convention (1886, or any of its revisions) and the Universal Copyright Convention (1952 or 1971 versions) (see section 2 and paragraph 5(1) of the Copyright Act, R.S.C. 1985, ch. C-42). These will be known as treaty countries. Where a country joins the Berne Convention or the WTO after the date of making or of publication of a work, such membership is deemed retroactive to that date of making or publication, provided that copyright protection of the work has not already expired at the actual date of joining Berne or WTO (ss.5(1.01), ss.5(1.02) of the Copyright Act).

Term of protection for a copyrighted work, other than a photographic work or a work of applied art, if it is calculated on a basis other than the life of the natural person, will be no less than fifty years from the end of the calendar year of the authorized publication or within fifty years from the end of the calendar year of making if there has been no authorized publication within fifty years of making (Article 12 of the Agreement).

An important requirement of TRIPs is that copyright as a literary work extends to computer programs, whether in source or object code (Article 10 of the Agreement). The Agreement also addresses the issue of protection of databases: a database shall be protected as such; copyright will not extend to the data as such, but rather to the whole arrangement, and without prejudice to any copyright subsisting in the data or material itself (Article 10 of the Agreement).

Another important addition to existing Canadian rules is the provision on rental rights (Article 11 of the Agreement). Authors of computer programmes and producers of cinematographic works now have the right to authorize or prohibit the commercial rental of originals or copies of their copyrighted works. In respect of films, members can be excepted from this obligation unless the rental has led to widespread copying of the works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. Producers of sound recordings have the right to authorize or prohibit the commercial rental of their works to the public (Article 14 of the Agreement).

Live performances of pre-existing artistic, dramatic, musical or literary works, and live improvisations of such types of works become subject to performers' rights (Article 14 of the Agreement). The performer has the sole right to fix (by means of a record or other sound reproducing contrivance) such a performance or any substantial part thereof, to reproduce the fixation and to communicate it or any reproduction thereof in whole or in substantial part, to the public by telecommunication, and to authorize any such acts (s.14.01 of the Copyright Act). Performers (referring now to what is known as performer's rights), are protected from unauthorized recording, reproduction and broadcast (bootlegging) of live performances for no less than 50 years following the end of the calendar year in which the performance takes place (s. 14.01(5)). Such a performance must take place in a WTO country on or after January 1, 1996 and the day on which that country joins the WTO. Pre-WTO performances are given protection with respect to reproductions of fixed performances.

This recognition of performers' rights is accompanied by new provisions on their infringement, with exceptions such as fair dealing for the purposes of private study or review, etc., the making of a temporary fixation of the performance for purposes of newspaper reporting of a public lecture, the reproduction of a fixation for national archives and the like (s.28.02). In addition to civil recourses, criminal liability is incurred for the infringement of performers' rights (s.43.1). Related amendments provide for the protection of rights and the possibility of compensation where a person has, before a country becomes a treaty country, incurred expenditures or liabilities in connection with an act which will constitute infringement once the country acquires the status of treaty country (s.28.03, s.29). The Canadian Copyright Board will have power to determine the amount of compensation for restoration of copyright or of performers' rights under such circumstances (s.70.8)

To round out the new scheme of protection for performances, unlawful fixations or reproductions about to be imported into Canada are included in the works for which interim government custody may be obtained. Thus, if a copyright owner is aware that a shipment of counterfeit works will be entering the country, the owner may ask Customs to seize and detain the counterfeit works pending a determination by a Court of infringement.

Trademarks

Section 2 of the Agreement deals with trade marks and impact of the Trade Marks Act, R.S.C. 1985, c. T-13.

The Agreement defines what can be protectable as a trademark and what the minimum rights conferred must be. Members may require, as a condition of registration, that signs be visually perceptible. This may stop applications such as the one filed by Harley-Davidson, Inc. in the United States for sound trade mark, i.e. the sound of the Harley-Davidson motorcycle (application no. 74-

485223 filed February 1, 1994) Members must have a registration system, publication of the mark, and means for opposing the registration of a mark.

Marks that have become well-known in a particular country enjoy additional protection with the 1967 Revision of the Paris Convention.

WTO members are now extended the benefits (priority, right to registration on the basis of home registration and use, protection of flags or emblems) previously given applicants from countries of the Union for the Protection of Industrial Property constituted under the Paris Convention.

In keeping with TRIPS, amendments to the Trade-marks Act provide a comprehensive code for protecting geographical indications in Canada. These are defined in section 2 of the Act as indications for wines and spirits which identify these products as originating in the territory or region or locality of a WTO member, where a quality, reputation or other characteristic of the wine or spirit is essentially attributable to its origin, and where it is protected by the laws applicable to that WTO member.

The Registrar of Trade-marks will keep the list of geographical indications. These will have been published in the Canada Gazette (not in the Trade Marks Journal), with relevant information (s.11.12). It will be possible to file a statement of objection to entry of the indication on the Registrar's list, within three months of publication. However, the only possible ground for objection is that the indication is not a geographical indication, presumably in accordance with the definition of section 2 (s.11.13). Subsequent steps in the objection proceedings follow grosso modo those provided in trade-mark oppositions.

The adoption and use of a protected geographical indication for wines and spirits, or of a translation thereof in any language, are prohibited (s.11.14, s.11.15). Exceptions are provided in the case of personal names, comparative advertising, prior use by a Canadian with respect to wares or services in a continuous manner in good faith since April 15, 1994 or for at least 10 years before that date (s.11.16, s.11.17). Other exceptions are the falling into disuse of the indication or the cessation of protection under the WTO country's laws, as well as an identity between the indication and a customary term used in Canada, or the customary name of a grape variety (s.11.18). A further and important exception to the prohibition of the adoption and use of a

protected geographical indication relates to the generic names for wines (e.g. champagne, port, chablis, claret) and spirits (e.g. ouzo, sambuca, schnapps, bitters) listed in section 11.18; this list may from time to time be amended by the Governor in Council.

Patents

Articles 27 to 34 deal with set out the basic requirements for patent protection in the member countries, and will impact on the Patent Act, R.S.C. 1985, c. P-4.

The most important international treaty relating to patents and other industrial property, prior to TRIPs, was the Paris Convention. Among the provisions of this treaty is Article 4 which states that the patent applicant in a country of the Paris Union is entitled, for the purposes of filing subsequent applications in other countries of the Convention within one year, to claim the priority of the first application (see s. of the Patent Act).

However, some aspects of patent law had not been addressed, such as the mandatory first-to-file principle and the introduction of a one year grace period for the applicant with regard to his own publication of the invention. The first-to-file principle states that if two applications are filed for the same invention, the person who filed first will get the patent. This is in marked contrast with the situation in the United States, where the person who invented first will get the patent. Canada move from a first to invent system to a first to file system in 1989. Also, in Canada and in the United States, applicants for a patent benefit from a one year grace period following the public disclosure of their invention before having to file a patent application. All other countries operate on the principle of absolute novelty, where any public disclosure of the invention prior to the filing of a patent application will be a bar to obtaining a valid patent.

Many countries and organisations desire far-reaching harmonisation of patent laws, as world business is impeded by significant differences between national patent laws. For this reason, TRIPs is important as it provides minimum standards, but it is not a draft model law. Higher standards are allowed and the terms "shall" and "may" are carefully used.

Patent protection should be available for any invention, products or processes, in all fields, as long as the basic standards for patentability are met: novelty, non-obviousness and industrial applicability (usefulness). Patents must be available and enforceable without discrimination as to the place the invention was made, the technical field and whether products are imported

or produced locally. As well, the disclosure must be sufficiently clear and complete for a person skilled in the art to carry out the invention, and the "best-mode requirement" of US law is not mandatory.

Since TRIPs forbids discrimination against foreigners, US law changed January 1, 1996 so that its "first to invent" requirement will no longer restrict conception and reduction to practice of an invention to those occurring on US territory.

An interesting statement in TRIPs is that member countries may exclude from patentable subject matter inventions to protect "ordre public" and morality, such as the protection of human, animal or plant life or health and the environment (Article 27). Members may also exclude from patentability diagnostic, therapeutic and surgical methods for the treatment of humans or animals, plant and animals other than microorganisms and essentially biological processes for the production of plant or animals other than microbiological processes (Article 27). In Canada, methods for the treatment of the human body are not patentable; however, the law is unclear with respect to methods that are purely cosmetic in nature. In the United States, the Patent Office is far more liberal with respect to the treatment of humans and animals.

Patent term is twenty years from the filing date (Article 33).

Member countries may require compliance with reasonable procedures and formalities, but patents must be granted within a reasonable period so as to minimize the unwarranted shortening of the patent term.

In view of the fact that developing countries as well as least developed countries will enjoy a five to ten year transitional period before applying the TRIPs provisions, there are important provisions for the pharmaceutical and agrochemical industry. Notwithstanding the transitional period, member countries should provide as from the date of entry into force of the WTO Agreement (January 1, 1995), a means by which patent applications claiming pharmaceutical and agrochemical products can be filed. The normal criteria for patentability is to be applied to these applications and patent protection should be provided as from the grant of the patent (after the transitional period expires) and for the remainder of the patent term (no less than twenty years from date of filing). These patents are referred to as "black box" or "mail box" patent applications as they become known and effective only later.

If a product is the subject of a "black box" or "mail box" patent application, exclusive marketing rights shall be granted for a period of five years after obtaining market approval in that member country, or until the corresponding

patent, based on that application, is granted or rejected, whichever period is shorter (Article 70). This is subject to the proviso that a patent has been granted (filed after January 1, 1995) in another member country and marketing approval obtained there.

The patent owner has the exclusive rights, in the case of a product patent, to prevent third parties from making, using, offering for sale, selling or importing that product, and in the case of a process patent, to prevent third parties from using, offering for sale, selling or importing the product directly obtained by the patented process (Article 28). If indeed the subject matter of a patent is a process for obtaining a product, the authorities of that member have the authority to order the defendant to prove that the process to obtain the identical product is different from the patented process (Article 34). Thus, in the case of an identical product and in the absence of proof to the contrary, the product will be deemed to have been obtained by the patented process if the product obtained by the patented process is new or if there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable, through reasonable efforts, to determine the process actually used. However, when looking at proof to the contrary, the legitimate interests of the defendant in protecting manufacturing and business secrets are to be taken into account.

The patent owner also has the right to assign, or transfer by succession, the patent and to conclude licencing agreement (Article 28).

These rights, which essentially correspond to the rights granted in most countries where there is an established patent system, are subject to exceptions and compulsory licences.

The exception contained in Article 30 of TRIPs reads as follows: "Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of third parties".

With respect to compulsory licences, the conditions for granting and the scope of such a licence are detailed in Article 31:

- (A) each case should be considered on its individual merits
- (B) compulsory licences may be permitted only, except in case of a national emergency or other extreme urgency or non-commercial public use where the patent owner should be promptly informed, if the compulsory licensee has made efforts to obtain authorisation from the

patentee on reasonable commercial terms and if such efforts have not been successful within a reasonable period of time;

(C) the scope and duration shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology, shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(D) shall be non-exclusive

(E) shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(F) such use will be authorized predominantly for the supply of the domestic market

(G) authorisation is liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which lead to it cease to exist or exist and are unlikely to recur

(H) the right holder will be adequately remunerated

(I) any decision relating to the authorisation shall be subject to judicial review

(J) any decision relating to remuneration shall be subject to judicial review

(K) if a compulsory licence is granted in order to remedy an anti-competitive practice, the member is not obliged to apply conditions (B) and (F)

National laws of some countries discriminate against foreigners by enabling a competitor to obtain a compulsory licence because the patentee is not manufacturing the product within the country, but is working by importing the product. Such a provision will no longer be allowed, as importation will satisfy local working requirement for compulsory licencing purposes.

In Canada, these provisions do not affect the Patent Act deeply. A definition of the term "country" is added to section 2 of the Act, providing that the term includes a Member of the World Trade Organization. This amendment widens the scope of "country" with respect to the priority filing date for instance.

Sections 19 and 19.1 of the Patent Act presently provide a mechanism for the Commissioner of Patents to authorize the government of Canada or the government of a Canadian province to use a patented invention under certain conditions. A new subsection 19.1(4) states that the Commissioner may not, however, authorize any use of semi-conductor technology other than a public non-commercial use.

While adherence to the WTO will cause, in the United States, an extension of the term of patent protection from seventeen years from date of grant to twenty years from the earliest U.S. filing date for filings made after June 7, 1995, the Canadian Patent Act already provides for such a twenty-year term (s. 44).

Industrial Designs

A new subsection 29(2) in the Industrial Design Act (R.S.C. 1985, c. I-9) gives the following definition for the expression "foreign country": a country that by treaty, convention or law affords a priority privilege to citizens of Canada with respect to the effective date of an application for registration of an industrial design, and includes a WTO Member. As well, an amendment to subsection 29(1) effectively enlarges the basis of a priority claim to applications filed not only in a foreign country, but also for a foreign country, thereby including applications made through the international registration system of the Hague Convention (1925), a revision of the Paris Convention dealing with Industrial Designs.

Integrated Circuit Topographies

TRIPs provides for a minimum of ten years protection (Article 38), and incorporates a good deal of the Treaty on Intellectual Property in respect of Integrated Circuits (IPIC) (Washington).

The right holder shall have the exclusive right to: import, sell or otherwise distribute for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout design. An exception exists for a person performing or ordering such acts did not know or had no reasonable ground to know, when acquiring the integrated circuit or the article incorporating it, that it incorporated an unlawfully reproduced layout design (Article 36).

A new section 2.1 of the Act subjects the Canadian federal and provincial governments to the Integrated Circuit Topography Act (R.S.C. 1985, c. I-14.6). In addition, protection is granted to nationals of WTO Members without necessity of a particular agreement or of publication of a notice of reciprocity in the Canada Gazette (subsection 4(1)(c)(iv)).

The amendments also provide a code for governmental use of topographies. In accordance with subsection 7.1(1), the Commissioner of Patents (rather than the Registrar of Topographies) may, upon application by the government of Canada or the government of a province, authorize the public non-commercial use of a registered topography by that government. The Commissioner must set the period and other terms of such use in accordance with the following principles:

- (a) the scope and duration of use will be limited to the purpose for which the use is authorized;
- (b) the authorized use will be non-exclusive; and
- (c) any use will be authorized predominantly to supply the domestic market (ss.7.1(2)).

In accordance with subsection 7.1(3), the Commissioner must notify the topography owner of any such permitted use and the owner will be paid adequate remuneration set by the Commissioner. The authorized use may be terminated upon application by the owner and after all parties have had the opportunity of being heard, if the Commissioner is satisfied that the circumstances that led to the granting of the authorization have ceased to exist and are unlikely to recur. The Commissioner may set conditions for the protection of the authorized user's legitimate interests (ss. 7.1(5)). Any decision made by the Commissioner under sections 7.1 and 7.2 is subject to appeal to the Federal Court under the Patent Act.

Protection of trade secrets

The Agreement recognizes that one aspect of the protection of industrial property is trade secrets belonging to a natural or legal person. Therefore, the members must provide for the protection of trade secrets.

The Agreement states that natural or legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices (including, but not limited to breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were

grossly negligent in failing to know, that such practices were involved in the acquisition), as long as the information (Article 39):

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information to keep it secret.

In the case of pharmaceutical or agricultural products requiring approval of their marketing, the submission of undisclosed test or other data will be protected by Members against unfair commercial use. Members shall protect this data against disclosure, except where necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.

Licensing/Anticompetitive practices

With regard to licensing practices and contractual provisions which may adversely affect trade, transfer of technology and competition, member countries are allowed to specify in their national laws practices and provisions that may constitute an abuse of intellectual property rights.

Although the measures adopted by governments in this context must be consistent with other TRIPs provisions, there is a danger that they themselves may be abused by discriminating against patents of foreign patentees. Consultations between member countries concerned have therefore been established in order to ensure fair treatment of foreign right owners.

Enforcement of Intellectual Property Rights

Enforcement procedures should be available to permit effective action against infringement, including remedies to prevent infringement. Enforcement procedures should be fair and equitable, not unreasonably lengthy nor unnecessarily complicated or costly. Decisions should be based only on evidence on which the parties have been heard. Each party shall have the opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in national laws concerning the importance of a case, at least the legal aspects of initial judicial decision on the merits of the case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

The judicial authorities should have the power to impose injunctions of the accused infringer. They should also have the authority to order an infringer who knew or had reasonable grounds to know that he was infringing, to pay damages adequate to compensate the injury suffered and the infringees expenses which may include attorney's fees. In appropriate cases, member countries may authorise the judicial authorities to order recovery of profits or damages even when the infringer has no knowledge or reasonable grounds to know that there is infringement.

Judicial authorities should also have the power to order the destruction or disposal of infringing goods with no compensation to the infringer.

In the event of abuse of enforcement procedures, judicial authorities may provide adequate compensation for the injury suffered by the defendant, including reimbursement of attorney's fees.

Members must provide for criminal procedures and penalties at least in the cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies must include imprisonment or fines sufficient to act as a deterrent (Article 61).

Border Measures

Members must provide a mechanism whereby rights holders can obtain assistance of customs authorities to prevent the importation (or exportation) of counterfeit and pirated goods, particularly in the case of trademarks and copyright, but in other areas as well as long as the requirements are met.

A right holder must be able to show prima facie that, under the laws of its country, there is infringement of the intellectual property and supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities.

The right holder may be required to furnish security.

Dispute prevention and settlement

The Council for Trade-Related Aspects of Intellectual Property Rights monitors the operation of the agreement and government's compliance with it (Article 68).

IMPACT

TRIPs itself did not have much of an impact in Canadian legislation under the WTO as the TRIPs agreement was incorporated almost verbatim into NAFTA. There is one exception: patent protection for pharmaceutical products was extended from 17 years to 20 years, notwithstanding the intense political lobbying from the Canadian generic drug market.

The Agreement is widely expected to promote world business in various ways. For Canadians, this means that a rules-based protection of intellectual property provides more certainty for the export of Canadian high-technology products and artistic works, and creates a better investment climate in Canada for research and development (R&D).

For patents, a reliable system throughout the world for obtaining and enforcing valid patents will promote R&D, especially in technical fields where

it is expensive and time-consuming. Pharmaceutical and agrochemical products require market approval of national authorities: the immense cost can be recovered only if there is a limited but reasonable period of patent protection. Many countries have insufficient patent laws with no protection for new products, with the consequence that local companies make use of the most successful inventions made in other countries by counterfeiting and without investing in R&D. TRIPs will improve this situation, albeit after the transitional periods. Many of those countries will become attractive for national and international investment in the area of research and manufacture.

Furthermore, harmonisation of national laws is desired. TRIPs is not perfect and complete, but it is a basis for further development in harmonizing laws, legal decisions and regulations, with less and less discrimination against foreigners.

In a final note, on December 22, 1995, WIPO and the WTO entered into an agreement which provides for mutual support and cooperation between these organisations, notably through WIPO making its extensive collection of legal texts available to the WTO, and the provision by WIPO of technical and legal assistance to developing countries that are members of the WTO, with respect to TRIPs.

SELECTED BIBLIOGRAPHY

"Canadian Patent Law Under GATT - What's Coming Next", Philip C. Mendes da Costa, 11 C.I.P.R. 62.

"La propriété intellectuelle à l'heure de l'import/export", François Painchaud, Léger Robic Richard

"Implementation of TRIPs in Canada", Diane Leduc-Campbell, (1995) 9 WIPR no.4

"WTO Implementation: Amendment of Patent, Industrial Design and Integrated Circuit Topography Statutes", Diane Leduc-Campbell, (1995) 9 WIPR no.

"The Future of the Traditional Intellectual Property Conventions in the Brave New World of Trade-Related Intellectual Property Rights", Sam Ricketson, (1995) 26 IIC 872.

"TRIPs - Development and Transfer of Technology", S.K. Verma, (1996) 27 IIC 331.

A copy of the TRIPs Agreement has been published at (1994) 25 IIC 209.

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