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## **1 ARTICLE 27**

### **1.1 Text of Article 27**

#### *Article 27*

##### *Patentable Subject Matter*

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.<sup>5</sup> Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

*(footnote original)* <sup>5</sup> For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

### **1.2 Article 27.3**

1. At its meeting of 1-2 December 1998, the Council for TRIPS agreed to initiate the review due under Article 27.3(b) of the provisions of that subparagraph through an information-gathering exercise. In this connection, the Council invited Members that were already under an obligation to apply Article 27.3(b) to provide information on how the matters addressed in this provision were presently treated in their national law. Other Members were invited to provide such information on a best endeavours basis. While it was left to each Member to provide information as it saw fit, having regard to the specific provisions of Article 27.3(b), the Council requested the Secretariat to provide an illustrative list of questions relevant in this regard, in order to assist Members prepare their contributions. The Council also requested the Secretariat to establish contact with the FAO, the Secretariat of the Convention on Biological Diversity and UPOV, to request factual information on their activities of relevance. It was understood that this information-gathering was without prejudice to the nature of the review provided for in Article 27.3(b).<sup>1</sup> At its meeting of 2 to 5 April 2001, the Council agreed that the Secretariat re-issue the illustrative list of questions and invited

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<sup>1</sup> [IP/C/M/21](#), para. 111. The Secretariat note was circulated as [IP/C/W/122](#).

Members to provide their responses to it, if they had not yet done so.<sup>2</sup> At its meeting of 17-19 September 2002, the Council requested the Secretariat to update the synoptic tables annexed to its note with the list, based on the further information submitted by Members.<sup>3</sup>

2. In paragraph 19 of the Doha Ministerial Declaration, adopted on 14 November 2001, Ministers "instruct[ed] the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, 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 raised by Members pursuant to Article 71.1."<sup>4</sup> In paragraph 44 of the Hong Kong Ministerial Declaration, Ministers "[took] note of the work undertaken by the Council for TRIPS pursuant to paragraph 19 of the Doha Ministerial Declaration and agree[d] that this work shall continue on the basis of paragraph 19 of the Doha Ministerial Declaration and the progress made in the Council for TRIPS to date". They instructed the General Council to report on its work in this regard to their next Session."<sup>5</sup>

3. In paragraph 39 of the Hong Kong Ministerial Declaration, Ministers *inter alia* "[took] note of the work undertaken by the Director-General in his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits and those related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity", and "request[ed] the Director-General, without prejudice to the positions of Members, to intensify his consultative process on all outstanding implementation issues under paragraph 12(b)".<sup>6</sup>

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<sup>2</sup> [IP/C/M/30](#), para. 186. The illustrative list of questions and an informal note prepared by the Secretariat was reissued as [IP/C/W/273](#).

<sup>3</sup> [IP/C/M/37/Add 1](#), para. 195. The Secretariat note was updated and circulated as [IP/C/W/273/Rev.1](#).

<sup>4</sup> The text of the Declaration can be found in [WT/MIN\(01\)/DEC/1](#).

<sup>5</sup> The text of the Declaration can be found in [WT/MIN\(05\)/DEC](#).

<sup>6</sup> The text of the Declaration can be found in [WT/MIN\(05\)/DEC](#).