

The general approach to the preparation of the Resource Book

The Resource Book is conceived as a practical guide to the TRIPS Agreement. It provides background and technical information with two broad objectives in mind: to facilitate an informed participation by developing countries in the ongoing negotiations on IPRs issues including the WTO and to assist national authorities, in general, in the implementation and adoption of IPRs policies in the broad context of growth and development. To achieve these objectives periodic updating of the Book will be required.

To achieve the above objectives, the Resource Book deals with each provision of the TRIPS Agreement, aiming at a thorough understanding of Members' rights and obligations. However, this is not intended to be an academic exercise. The purpose is to clarify the TRIPS implications for developing and least-developed countries, especially highlighting the areas in which the TRIPS Agreement leaves some leeway to WTO Members for the pursuit of their own policy objectives, according to their respective levels of development. In doing so, the Resource Book does not produce tailor-made prescriptions but gives guidance on the implications of specific issues and on the options available.

The structure of the Resource Book

The Resource Book is divided into six main parts, following more or less the structure of the TRIPS Agreement (cf. the table of contents of this Resource Book). More specifically, it deals with:

Part 1: Nature of Obligations, Principles and Objectives *(This part covers Art. 1 – 8 TRIPS and the preamble: the characterization of the TRIPS rules as minimum standards; the discretion of Members as to the method of implementation; those intellectual property rights embraced by TRIPS; the national treatment and most-favoured-nation clauses; the controversial issues of exhaustion and of the TRIPS objectives and principles as laid down in Art. 7, 8 and the preamble.)*

Part 2: Substantive Obligations *(Corresponds to Sections 1 – 7 of Part II of the TRIPS Agreement. It deals in great detail with all substantive rights covered by the TRIPS Agreement, especially sensitive issues such as patents and related matters like the access to medicines and the Doha Declaration on the TRIPS Agreement and Public Health. Another patent issue concerns the ongoing negotiations under Art. 27.3(b) on the patentability of life forms, where a thorough analysis of implementing options is presented, accompanied by a summary of Members' respective positions in the current review of this provision. Moreover, the reader is provided with a detailed analysis of the TRIPS provisions on geographical indications, facilitating the understanding of the ongoing negotiations in the TRIPS Council. Part 2 is one of the core chapters of the Resource Book.)*

Part 3: Intellectual Property Rights and Competition *(Art. 8.2 and Section 8 of Part II of the TRIPS Agreement, Art. 40).*

Part 4: Enforcement, Acquisition and Maintenance of Rights *(This part comprises Parts III and IV of the TRIPS Agreement. It is in this area that developing countries face considerable implementation challenges concerning the establishment of appropriate enforcement procedures.)*

Part 5: Interpretation and Dispute Prevention and Settlement *(It deals with Part V of the TRIPS Agreement on transparency and dispute settlement and, on the methods of interpretation employed by WTO panels and the Appellate Body. The section on dispute settlement explains in detail*

the WTO dispute settlement system under the DSU and provides insight into the problems of a possible introduction of "non-violation complaints" to TRIPS-related disputes. Essential to the successful handling of disputes before the WTO.)

Part 6: Transitional and Institutional Arrangements *(This covers Parts VI and VII of the TRIPS Agreement. The main areas of interest for developing countries are the sections on transitional periods, on technical cooperation and transfer of technology and especially on the hotly debated issues of the mailbox provision and exclusive marketing rights under Art. 70.8 and 9. Up-to-date information on the most recent decisions of the TRIPS Council and the General Council is provided.)*

The analysis of the individual TRIPS provisions

The TRIPS provisions are analysed according to the following structure:

1. Introduction: Terminology, Definition and Scope *(This section contains general observations to make the reader acquainted with the problems at issue.)*

2. History of the Provision

2.1 Situation pre-TRIPS *(Shows if and how the subject-matter was dealt with prior to the TRIPS Agreement.)*

2.2 Negotiating History *(Explains the origin of the different positions adopted during the negotiations of the Uruguay Round and thus the background to the provisions of the TRIPS Agreement.)*

3. Possible Interpretations *(Its contains a technical analysis of the respective provision, providing, as far as possible, legal arguments for a development-friendly interpretation.)*

4. WTO Jurisprudence *(Summarizes and analyses, in the light of the previous section, those parts of panel and Appellate Body reports dealing with the respective provision. Highlights those interpretations that may serve developing country Members' interests in future disputes.)*

5. Relationship with other International Instruments *(Specifies how the respective subject-matter is dealt with under other agreements and how this could influence the TRIPS Agreement.)*

5.1 WTO Agreements

5.2 Other International Instruments

6. New Developments *(Provides for a comparison of the approaches taken by various legislations and provides, where possible, an outlook on new and emerging issues.)*

6.1 National Laws

6.2 International Instruments

6.3 Regional and Bilateral Contexts

6.4 Proposals for Review *(Provides information on the latest stage of WTO negotiations on the respective subject-matter.)*

7. Comments, including Economic and Social Implications *(This concluding subsection provides additional information with respect to policy options and broad considerations on the possible economic and social implications of the respective.)*