

Bilateral agreements imposing TRIPS-plus intellectual property rights on biodiversity in developing countries

GRAIN ▪ update of August 2005 ▪ www.grain.org/go/bilats-tp

AFRICA & MIDDLE EAST

European Free Trade Association¹

- EFTA-Algeria FTA | **under exploration**
- EFTA-Egypt FTA | **under negotiation**
- EFTA-GCC² FTA | **under preparation**

- EFTA-Jordan FTA | **2001 | in force**

Jordan must join UPOV and accede to Budapest Treaty by 2006. Jordan must also ensure "adequate and effective patent protection for inventions in all fields of technology on a level similar to that prevailing in the European Patent Convention" which allows the patenting of transgenic plants and animals.³

- EFTA-Lebanon FTA | **2004 | in force**

Lebanon must join UPOV (1978 or 1991 Act) and accede to the Budapest Treaty by 2008.⁴

- EFTA-Morocco FTA | **2000 | in force**

Morocco must join UPOV and accede to Budapest Treaty by 2000. Morocco must also provide "adequate and effective patent protection for inventions in all fields of technology on a level similar to that prevailing in the European Patent Convention" which allows the patenting of transgenic plants and animals.⁵

- EFTA-Palestinian Authority FTA | **1998 | in force**

Palestinian Authority must implement the "highest international standards" of IPR protection.⁶

- EFTA-SACU⁷ FTA | **under negotiation**

*Following civil society protests against the potential TRIPS-plus provisions of the EFTA proposal regarding patents on pharmaceuticals and seeds, South Africa Trade Minister Mandisi Mpahlwa has stated that SACU will not allow substantive provisions on IPR to form part of the agreement.*⁸

- EFTA-Tunisia FTA | **2004 | in force**

Tunisia must join UPOV (1978 or 1991 Act) and accede to the Budapest Treaty by 2010. Tunisia will also do its utmost to accede to all IPR treaties to which EFTA states are party.⁹

European Union

- Cotonou Agreement | **2000 | in force**

The parties recognise the need to ensure adequate and effective protection of patents on plant varieties and on biotechnological inventions.¹⁰

- EU-Algeria FTA | **2002 | agreed**

Algeria shall accede to and implement UPOV (1991 Act) within 5 years of entry into force, although accession can be replaced by implementation of an effective *sui generis* system if both parties agree.¹¹ Algeria must accede to Budapest Treaty.¹²

- **EU-Egypt FTA | 2001 | agreed**

Egypt must join UPOV and accede to Budapest Treaty within 5 years of entry into force.¹³

- **EU-GCC FTA | under negotiation**

- **EU-Iran FTA | under negotiation**

- **EU-Jordan FTA | 1997 | in force**

Jordan must join UPOV and accede to Budapest Treaty by 2007.¹⁴

- **EU-Lebanon FTA | 2002 | interim agreement in force since March 2003**

Lebanon must join UPOV (1991 Act) and accede to Budapest Treaty by 2008.¹⁵

- **EU-Morocco FTA | 2000 | in force**

Morocco must join UPOV (1991 Act) and accede to Budapest Treaty by 2004.¹⁶

- **EU-Palestinian Authority FTA | 1997 | in force**

Palestinian Authority must implement the "highest international standards" of IPR protection.¹⁷

- **EU-South Africa FTA | 1999 | in force**

South Africa shall ensure adequate and effective protection for patents on biotechnological inventions. South African must also implement "highest international standards" of IPR protection and undertake to go beyond TRIPS standards of IPR protection.¹⁸

- **EU-Syria FTA | 2004 | agreed**

Syria shall follow the "highest international standards" including, not limited to, the TRIPS Agreement. (*Annex VI, with the details, not yet available.*)¹⁹

- **EU-Tunisia FTA | 1998 | in force**

Tunisia must join UPOV (1991 Act) and accede to Budapest Treaty by 2002. Tunisia must also implement "highest international standards" of IPR protection.²⁰

United States

- **African Growth & Opportunities Act | 2000 | in force**

US trade benefits to 38 AGOA-eligible countries are unilaterally gauged on extent to which they go beyond TRIPS standards of IPR protection.²¹

- **US-Bahrain FTA | 2004 | signed**

Bahrain must join UPOV upon entry into force and accede to Budapest Treaty within one year of entry into force.²²

- **US-Jordan FTA | 2000 | in force**

Jordan must implement and join UPOV within one year of entry into force and partially implement Budapest Treaty. Jordan may not exclude plants or animals from patent law.²³

- **US-Morocco FTA | 2004 | signed**

Morocco must provide patents on plants and animals. Morocco must also ratify UPOV Convention (1991) and Budapest Treaty by 2006.²⁴

- **US-Oman FTA | under negotiation**

- **US-SACU FTA | under negotiation**

The "far reaching" intellectual property provisions of the US proposal are one reason why the talks broke down between July 2004 and July 2005.²⁵

- **US-United Arab Emirates FTA | under negotiation**

ASIA & PACIFIC

European Free Trade Association

- **EFTA-China FTA | study to be launched**

- **EFTA-Korea FTA | 2005 | agreed**
(Text not yet available.)

- **EFTA-Thailand FTA | negotiations start Sep 2005**

European Union

- **Cotonou Agreement | 2000 | in force**

The parties recognise the need to ensure adequate and effective protection of patents on plant varieties and on biotechnological inventions.²⁶

- **EU-Bangladesh FTA | 2001 | in force**

Bangladesh must endeavour to join UPOV (1991 Act) and to accede to the Budapest Treaty by 2006.²⁷

- **EU-Korea FTA | 2001 | in force**

Korea shall make efforts to accede as soon as practicable to the UPOV Convention (1991 Act) and to the Budapest Treaty.²⁸

- **EU-Sri Lanka FTA | 1995 | in force**

Sri Lanka shall implement the "highest international standards" of IPR protection.²⁹

Switzerland

- **Switzerland-Viet Nam IPR Agreement | 1999 | in force**

Viet Nam must join UPOV (1991 Act) by 2002.³⁰

United States

- **US-Cambodia IPR Agreement | 1996 | in force**

Cambodia must join UPOV.³¹

- **US-Korea IPR Agreement | 1986 | in force**

Korea must join Budapest Treaty.³²

- **US-Laos BTA | 2003 | in force**

Laos must join UPOV (1978 or 1991 Act) "without delay". Laos must also provide patents for inventions in all fields of technology, without exclusion for plants or animals.³³

- **US-Mongolia TRA | 1991 | in force**

No exclusions for plants or animals from patent law permitted.³⁴

- **US-Singapore FTA | 2003 | in force**

Singapore must join UPOV (1991 Act) within six months of entry into force or by end 2003, whichever sooner. Singapore must also allow patents on all forms of plants and animals ("each Party may exclude inventions from patentability only as defined in Articles 27.2 and 27.3(a) of the TRIPS Agreement").³⁵

- **US-Sri Lanka IPR Agreement | 1991 | in force**

No exclusions for plants and animals from patent law permitted.³⁶

- **US-Thailand FTA | under negotiation**

- **US-Viet Nam FTA | 2000 | in force**

Viet Nam must implement and make best effort to join UPOV. Viet Nam must also provide patent protection on all forms of plants and animals that are not varieties, as well as on inventions that encompass more than one variety.³⁷

LATIN AMERICA & CARIBBEAN

European Free Trade Association

- **EFTA-Chile FTA | 2003 | in force**

Chile must join the UPOV Convention (1978 or 1991 Act) by 2007 and accede to the Budapest Treaty by 2009.³⁸

- **EFTA-Mexico FTA | 2000 | in force**

Mexico must join UPOV and accede to the Budapest Treaty by 2002.³⁹

European Union

- **Cotonou Agreement | 2000 | in force**

The parties recognise the need to ensure adequate and effective protection of patents on plant varieties and on biotechnological inventions.⁴⁰

- **EU-Andean Community FTA | under negotiation**

- **EU-MERCOSUR⁴¹ FTA | under negotiation**

- **EU-Mexico FTA | 2000 | in force**

Mexico must accede to Budapest Treaty within three years of entry into force. Mexico shall also provide "highest international standards" of IPR protection.⁴²

United States

- **Andean Trade Preferences Act | 1991 | in force**

US trade benefits to Bolivia, Ecuador, Colombia and Peru unilaterally gauged on extent to which they go beyond TRIPS standards of IPR protection.⁴³

- **Caribbean Basin Trade Partnership Act | 2000 | in force**

US trade benefits for up to 24 eligible countries unilaterally gauged on extent to which they go beyond TRIPS standards of IPR protection.⁴⁴

- **Free Trade Area of the Americas | under negotiation**

US negotiating position is "no exclusions" for plants or animals from patent law. Actual negotiating text contains many proposals to enforce UPOV, patent plants and animals and put traditional knowledge under IPR regimes.⁴⁵

- **North America Free Trade Agreement | 1994 | in force**

Mexico must implement and join UPOV within two years of entry into force.⁴⁶

- **US-Andean FTA | under negotiation**

The US proposal was that the Andean countries will grant patents on plants and animals,⁴⁷ despite Andean Community law prohibiting this.

- **US-Dominican Republic-Central America FTA | 2004 | signed**

Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua must join UPOV (1991 Act) or provide patents on plants. Those that do not provide patents on plants by the time of entry into force must make "all reasonable efforts" to do so. Those that do provide patents on plants, before or after entry into force, must maintain that policy.⁴⁸

- **US-Chile FTA | 2003 | in force**

Chile must join UPOV (1991 Act) and provide patents on any invention in any field of technology without exception. "Each Party will undertake reasonable efforts...to develop and propose legislation within 4 years from the entry into force of this Agreement that makes available patent protection for plants that are new, involve an inventive step, and are capable of industrial application".⁴⁹

- **US-Ecuador IPR Agreement | 1993 | signed but not in force**

Ecuador must conform with UPOV if it does not grant patents on plant varieties.⁵⁰

- **US-Nicaragua IPR Agreement | 1998 | in force**

Nicaragua must join UPOV. Nicaragua may not exclude plants or animals from patent law.⁵¹

- **US-Panama FTA | under negotiation**

- **US-Trinidad & Tobago IPR Agreement | 1994 | in force**

Trinidad & Tobago must implement and make best effort to join UPOV.⁵²

- ¹ Composed of Iceland, Norway, Switzerland and Liechtenstein.
- ² Gulf Cooperation Council: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates.
- ³ EFTA-Jordan Free Trade Agreement, Art 17, http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Jordan/JO/JO_FTA.pdf and Annex VI, http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/JO/Annexes/10-Annex_VI.pdf
- ⁴ Free Trade Agreement EFTA - Republic of Lebanon, Annex V, http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/LB/LB_RUAP/annexes/LB_Annex_V.pdf
- ⁵ EFTA-Morocco Free Trade Agreement, http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Morocco/MA/MA_FTA_EN.pdf [Art 16] and http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/MA/Annexes/14-Annex_V.pdf [Annex V]
- ⁶ Interim Agreement between the EFTA States and the PLO for the Benefit of the Palestinian Authority, http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Palestinian_Authority/PLO/PLO_FTA.pdf [Art 15]
- ⁷ Southern African Customs Union: Botswana, Lesotho, Namibia, South Africa and Swaziland.
- ⁸ See Berne Declaration, "Southern African countries have taken a firm stand against EFTA demands on intellectual property rights in free trade agreement", Zuerich, 4 March 2005. http://www.evb.ch/index.cfm?page_id=3473
- ⁹ Free Trade Agreement between the States of the European Free Trade Association and the Republic of Tunisia, 17 December 2004, Annex V, http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/TN/TN_RUAP_EN/TN%20annexes%20and%20protocols%20%28English%29/TN_FTA_Annex_V.pdf
- ¹⁰ Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, CE/TFN/GEN/23-OR, ACP/00/0371/00, 8.2.00. http://www.bilaterals.org/article.php3?id_article=27 [Art 45]
- ¹¹ Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part – Annexes 1 to 6 and Protocols Nos 1 to 7, Council of the European Union, Brussels, 12 April 2002, 6786/02 ADD1 AL1, Annex 6, Art 3 http://www.bilaterals.org/article.php3?id_article=413
- ¹² *Ibid*, Annex 6, Art 1.
- ¹³ Proposal for a Council and Commission Decision on the conclusion of a Euro-Mediterranean Association Agreement between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, COM (2001) 184 final, Official Journal of the European Communities C 304 E/2 of 30 October 2001, http://www.bilaterals.org/article.php3?id_article=408 [Art 37 and Annex VI].
- ¹⁴ Euro-Mediterranean Association Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, signed on 24 November 1997 and entered into force on 1 May 2002, Official Journal of the European Communities L 129 of 2002, http://www.bilaterals.org/article.php3?id_article=409 [Art 56 and annex VII]
- ¹⁵ Interim agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Lebanon, of the other part, Official Journal of the European Communities L 262/2 of 30 September 2002 http://www.bilaterals.org/article.php3?id_article=414. [Annex 2.2]
- ¹⁶ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, Official Journal of the European Communities (OJ) L 070 of 18 March 2000, p. 0002-0204. http://www.bilaterals.org/article.php3?id_article=415 [Annex 7, Art 1]
- ¹⁷ Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, Official Journal L 187 of 16 July 1997, p. 0003-0135. http://www.bilaterals.org/article.php3?id_article=417 [Title II, Art 33]
- ¹⁸ Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, Official Journal L 311 of 4 December 1999 p. 0003-0297. http://www.bilaterals.org/article.php3?id_article=419 [Art 46]
- ¹⁹ Proposal for a Council Decision on the conclusion of a Euro-Mediterranean Association Agreement between the European Community and its Member States of the one part, and the Syrian Arab Republic, of the other part, COM (2004) 808 final, Brussels, 17 December 2004. http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0808en01.pdf Article 72 and Annex VI
- ²⁰ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, Official Journal L 097 of 30 March 1998 p. 0002-0183. http://www.bilaterals.org/article.php3?id_article=418 [Annex 7]
- ²¹ Trade and Development Act of 2000. http://www.agoa.gov/agoa_legislation/agoatext.pdf [Sec B.211.5.b.ii]
- ²² US-Bahrain Free Trade Agreement, 2004, http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/Section_Index.html [Art 14.1.2 and 14.11]
- ²³ Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area. http://www.bilaterals.org/article.php3?id_article=248 [Art 4.1(b), Art 4.18, Art 4.21 and Art 4.29(b)].
- ²⁴ US-Morocco Free Trade Agreement, 2004, http://www.ustr.gov/Trade_Agreements/Bilateral/Morocco_FTA/Section_Index.html [Art 15.9.2]
- ²⁵ Carli Lourens, "New optimism about meeting SA-US trade talks deadline", *Business Day*, Johannesburg, 23 July 2004. <http://www.thedti.gov.za/news/newsitem.asp?current=1&folderid=6&itemid=20771>
- ²⁶ Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, CE/TFN/GEN/23-OR, ACP/00/0371/00, 8.2.00. http://www.bilaterals.org/article.php3?id_article=27 [Art 45]
- ²⁷ Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development, OJ C143 of 21 May 1999. [Art 4.5] Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development, Official Journal L 118, 27/04/2001 P. 0048 – 0056. http://www.bilaterals.org/article.php3?id_article=407
- ²⁸ Framework Agreement for Trade and Cooperation between the European Community and its Member States, on the one hand, and the Republic of Korea, on the other hand, Brussels, 30 March 2001, <http://trade-info.cec.eu.int/doclib/html/111835.htm>, Article 9 and Annex 1.

- ²⁹ Council Decision of 27 March 1995 concerning the conclusion of the Cooperation Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on Partnership and Development. http://www.bilaterals.org/article.php3?id_article=808 [Art 8.1.a]
- ³⁰ Abkommen zwischen dem Schweizerischen Bundesrat und der Sozialistischen Republik Vietnam über den Schutz des geistigen Eigentums und über die Zusammenarbeit auf dem Gebiet des geistigen Eigentums. <http://www.admin.ch/ch/d/ff/2000/1521.pdf> [Art 2 and Annex 1]
- ³¹ Agreement between the United States of America and the Kingdom of Cambodia on Trade Relations and Intellectual Property Rights Protection. http://www.bilaterals.org/article.php3?id_article=387 [Art XI.1]
- ³² Record of Understanding on Intellectual Property Rights. http://www.bilaterals.org/article.php3?id_article=388 [Sec. B.6]
- ³³ Agreement between the United States of America and the Lao People's Democratic Republic on Trade Relations. http://www.bilaterals.org/spip_redirect.php3?id_article=809 [Art 13 and 18]
- ³⁴ Agreement on Trade Relations between the Government of the United States of America and the Government of the Mongolian People's Republic. http://www.bilaterals.org/ecdire/articles.php3?id_article=810 [Art 9(c)i]
- ³⁵ US-Singapore Free Trade Agreement, May 2003. http://www.bilaterals.org/ecdire/articles.php3?id_article=247 [Art 16.1 and Art 16.7]
- ³⁶ Agreement on the Protection and Enforcement of Intellectual Property Rights between the United States of America and the Democratic Socialist Republic of Sri Lanka. http://www.bilaterals.org/ecdire/articles.php3?id_article=389 [Sec 2c]
- ³⁷ Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations. <http://usembassy.state.gov/vietnam/www/hbta.html> [Chpt II: Art 1.3 and Art 7.2(c)]
- ³⁸ EFTA-Chile Free Trade Agreement, Article 46, http://secretariat.etta.int/Web/ExternalRelations/PartnerCountries/Chile/CL/CL_FTA.pdf and Annex XII, http://secretariat.etta.int/Web/ExternalRelations/PartnerCountries/CL/CL_RUAP/Annexes/Annex_XII.pdf
- ³⁹ EFTA-Mexico Free Trade Agreement. http://secretariat.etta.int/Web/ExternalRelations/PartnerCountries/Mexico/MX/MX_FTA.pdf [Art 16] and http://secretariat.etta.int/Web/ExternalRelations/PartnerCountries/MX/Annexes/30-Annex_XXI.pdf [Annex XXI]
- ⁴⁰ Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, CE/TFN/GEN/23-OR, ACP/00/0371/00, 8.2.00. http://www.bilaterals.org/article.php3?id_article=27 [Art 45]
- ⁴¹ Common Southern Market: Argentina, Brazil, Paraguay and Uruguay.
- ⁴² Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, Official Journal L 276/45 of 28 October 2000. http://www.bilaterals.org/ecdire/articles.php3?id_article=416 [Art 12.1]. Decision No 1/-- of the Joint Council. http://www.bilaterals.org/ecdire/articles.php3?id_article=416 [Title IV, Art 36.2 and 36.4].
- ⁴³ Andean Trade Preferences Act. <http://www.mac.doc.gov/atpa/webmain/legislation1.htm> [Sec 3202(d)9 and 3202(c)2b.ii]
- ⁴⁴ US-Caribbean Trade Partnership Act of 2000. <http://www.mac.doc.gov/CBI/Legislation/cbileg-00.htm> [Sec B.211.5.b.ii]
- ⁴⁵ Free Trade Area of the Americas, Third Draft Agreement, 21 November 2003, Chapter on Intellectual Property Rights, http://www.ftaa-alca.org/FTAADraft03/ChapterXX_e.asp. The US negotiating position as of early 2001: <http://www.ustr.gov/regions/whemisphere/intel.html>.
- ⁴⁶ North America Free Trade Agreement, Chapter 17, Intellectual Property. http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?ArticleID=168 [Art 1701.2 and Annex 1701.3]
- ⁴⁷ Ricardo Santamaría Daza, "Serias peticiones de Estado Unidos en patentes, *La República*, Bogotá, 1ero de septiembre de 2004. http://www.la-republica.com.co/noticia.php?id_notiweb=16964&id_subseccion=88&template=noticia&fecha=2004-09-01_11:59pm
- ⁴⁸ Central American Free Trade Agreement, 2004, http://www.ustr.gov/Trade_Agreements/Bilateral/DR-CAFTA/Section_Index.html [Chapter 15, Art 15.1 and 15.9]
- ⁴⁹ US-Chile Free Trade Agreement, 2003 http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html [Art 17.1 and 17.9]
- ⁵⁰ Agreement between the Government of the United States of America and the Government of Ecuador Concerning the Protection and Enforcement of Intellectual Property Rights. http://www.bilaterals.org/article.php3?id_article=384 [Art 6.1(c)]
- ⁵¹ Agreement between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning Protection of Intellectual Property Rights. http://www.bilaterals.org/article.php3?id_article=392 [Art 1.2 and Art 7.2]
- ⁵² Memorandum of Understanding between the Government of the United States of America and the Government of Trinidad and Tobago Concerning Protection of Intellectual Property Rights. http://www.bilaterals.org/article.php3?id_article=395 [Art 1.2]