

**Biotecnologia - privado - FTAA**  
**#DIREITOS DE PROPRIEDADE INTELECTUAL, PATENTES**

**FTAA - NEGOTIATING GROUP ON INTELLECTUAL PROPERTY RIGHTS**

**UNITED STATES**

**REFERENCES TO THE TRIPS AGREEMENT IN THE FTAA CHAPTER ON INTELLECTUAL PROPERTY**

393517936. The United States submits this note to assist the Chair in preparing its document concerning the incorporation of rights and obligations under the World Trade Organization (WTO) Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement) into the FTAA Chapter on Intellectual Property Rights (IPRs).

393517937. In the view of the United States, the FTAA IPR Chapter should not incorporate the rights and obligations already assumed by the parties in the TRIPS Agreement, for several reasons.

393517938. First, there is no point in simply duplicating rights and obligations that already exist among the parties. The significance of the FTAA IPR Chapter will be in what it adds to the existing rights and obligations of the parties, not in simply duplicating the work already accomplished under the auspices of the WTO.<sup>1</sup>

393517939. Second, the TRIPS Agreement is subject to the dispute resolution procedures of the WTO, in which WTO panels and the WTO Appellate Body resolve disputes concerning specific provisions of the TRIPS Agreement. If those same provisions are also subject to dispute resolution in the FTAA, there is a substantial risk that TRIPS Agreement rights and obligations will be given different meanings through the FTAA dispute resolution procedures, on the one hand, and the WTO dispute resolution procedures, on the other. Given its specialized and complex nature, the TRIPS Agreement should be subject to a single set of clarifications as developed by the WTO in general and through the WTO dispute settlement understanding in particular. This avoids subjecting FTAA parties to potentially conflicting rulings concerning how the TRIPS Agreement should be read.<sup>2</sup>

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<sup>1</sup> In the event that certain FTAA parties are not WTO Members when the FTAA enters into force, the FTAA could simply require that such parties comply with the substantive obligations of the TRIPS Agreement. This approach is consistent with that taken in the TRIPS Agreement to address the situation in which certain WTO Members are not parties to the Agreements cited in the TRIPS Agreement.

<sup>2</sup> The United States does not believe that stating in the FTAA that the legal effects of the FTAA obligation are identical to those of the TRIPS obligation will address this issue for several reasons. Most significantly, an

393517940. Third, under the principles of treaty interpretation enunciated in the Vienna Convention, the TRIPS Agreement is to be interpreted in accordance with the ordinary meaning of the terms of the Agreement, in their context, and in light of the object and purpose of the TRIPS Agreement. Incorporating specific TRIPS Agreement obligations by reference removes those obligations from their context, and so risks changing the interpretation to be given to them.

393517941. In sum, in the view of the United States, there are considerable risks, and no gain, in simply incorporating TRIPS Agreement rights and obligations into the FTAA.