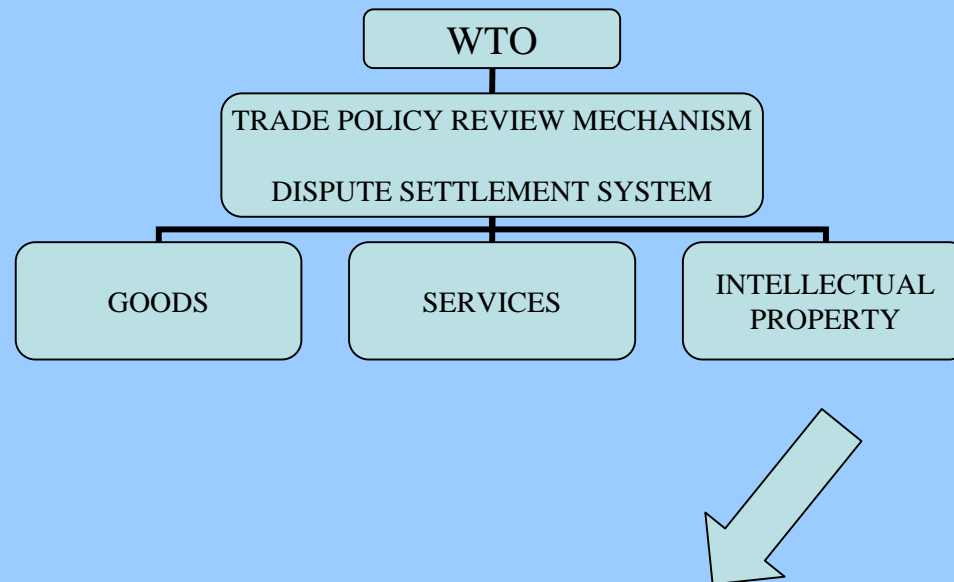




CARIFORUM Seminar
EPAs:
the Intellectual Property context

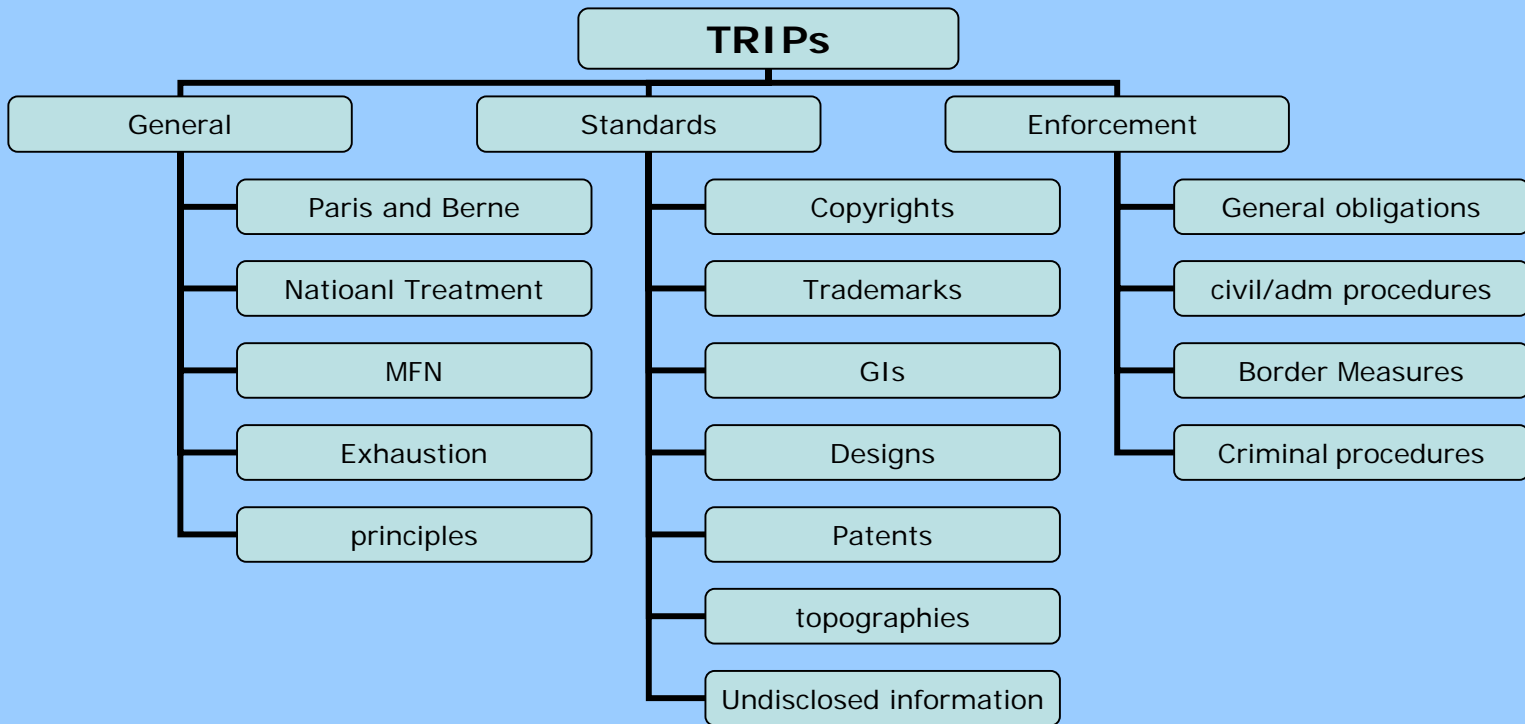
Christophe DE VROEY

I. TRIPs and the WTO agreements



TRIPS: most comprehensive IP agreement ever

Objective: promote technological innovation and technology transfer to the mutual advantage of producers and users => social and economic welfare

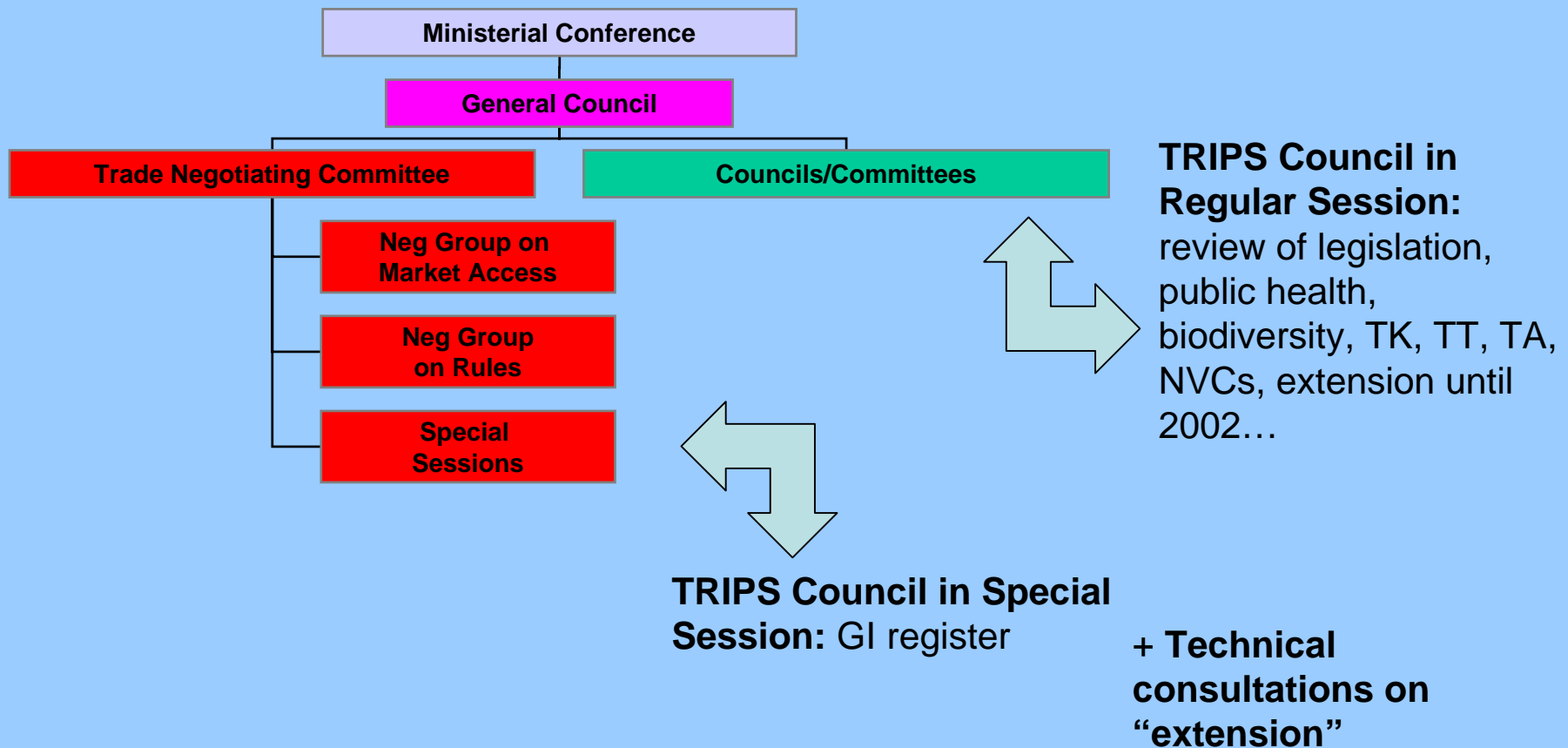


TRIPS: main elements

- **Applicability of basic principles of GATT, of other IP agreements, plus specific principles:**
 - Non discrimination (MFN, NT)
 - Balanced protection (Art.7 & 8)
 - Free method of implementing minimum protection (Art.1)
 - Private enforcement
- **Minimum standards of protection of IPRs**
- **Enforcement of IPRs**
- **Prevention and settlement of disputes**
- **Transitional arrangements**

TRIPS negotiations

DDA & TRIPS Council



TRIPs and ...

- **Public Health**
 - compulsory licences
 - 30 August 2003 decision
 - EC proposal for a Regulation on compulsory licensing
 - Also Tiered Pricing Regulation
- **Geographical Indications**
 - EC proposals for Register and Extension
- **Biodiversity**
 - Genetic resources and traditional knowledge (TK) can be used in patentable inventions
 - obligation to disclose the origin of the genetic resource or TK in patent applications

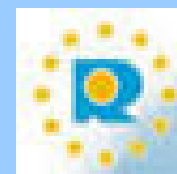
II. Regional approaches: the EU and IPR



- **EU single market:** eliminate restrictions to free movement and distortions of competition => environment conducive to innovation and investment
- **How?**
 - Harmonisation of national laws and/or
 - Creation of Community IPRs: one application, EC-wide protection
- **Lisbon agenda:** establishing a “knowledge economy”

Regional approaches: the EU and IPR

- **Copyright and related rights:** significant harmonisation of copyright law; towards collective management of copyright across EU (↔ national collecting societies). EC in WIPO treaties
- **Geographical Indications:** depending on product, from Community GI to no harmonisation except TRIPS
- **Trademarks and Designs:** harmonisation of national laws & creation of Community TM (OHIM). June 04: EC accedes to Madrid Protocol
- **Patents:** national patent systems harmonised through international conventions. Two supra-national approaches:
 - European Patent System based on Munich Convention, which established the EPO. Not in “Community” legal order!
 - Proposal for the Community Patent in 2000: not yet agreed



Regional approaches: the EU and enforcement

- **Enforcement in the EU:** progress in harmonisation of approach across the EU: Action Plan 2000 and Green Paper, followed by the **EU Enforcement Directive 2004/48/EC**.
 - Applies to all EU-regulated IPRs
 - Applies mainly to infringements with «commercial purpose» or «causing significant harm»
 - «minimum standard », i.e. member states may go further
- **Council Regulation 1383/2003**, in force on 1 July 2004: conditions for intervention by the customs authorities
- **EU enforcement strategy in third countries:** various actions to confront a complex problem. Current survey on priority countries

Regional approaches: ACP

Article 46 of Cotonou Agreement:

- Objective: ensure adequate and effective protection of IPR in line with international standards with a view to reducing distortions and impediments to bilateral trade.
- Special provision: may consider agreements on TMs & GIs
- IPRs covered: copyright & related rights inc. computer programmes, utility models, patents including for biotech & plant varieties, designs, TMs, GIs, topographies of ICs, databases, protection against unfair competition and disclosure of confidential information
- Co-operation and technical assistance: preparation of legislation, enforcement, capacity building including on a regional basis

Regional approaches: EPAs, what is next?

- Regional approach: integration pays off => need to look at ways in which regional co-operation could help in setting up IP administrations, adopting laws, establishing protection systems
- IPRs to be covered => Cotonou
- Particular attention to be paid to GIs, and to their relation to TMs
- Enforcement: rules make sense if they are enforced
- Technical cooperation: EPA negotiations should contribute to capacity building and stronger IP systems in every country participating.

Useful WebSites

- **WIPO** <http://www.wipo.int/about-ip/en/overview.html>
- **WTO** http://www.wto.org/english/tratop_e/trips_e/trips_e.htm
- **EC helpdesk** <http://www.ipr-helpdesk.org/index.htm>
Trade
http://europa.eu.int/comm/trade/issues/sectoral/intell_property/index_en.htm
Markt http://europa.eu.int/comm/internal_market/en/index.htm
Taxud http://europa.eu.int/comm/taxation_customs/index_en.htm
- **OHIM** <http://oami.eu.int/en/default.htm>
- **EPO** <http://www.european-patent-office.org/index.en.php>