In accordance with the TRIPS Agreement, WTO member States must provide patent protection for most biotechnological inventions; as well as an ‘effective sui generis system’ for the protection of plant varieties. This analysis will seek to identify the minimum requirements that the TRIPS Agreement establishes, and which the States must comply with in order to have a TRIPS-compatible legislation.

Chapter 8 will present the relevant parts of the TRIPS Agreement, as well as the context for understanding the TRIPS Agreement, in accordance with the Vienna Convention on the Law of Treaties. The analysis will be based on four legal elements. First, patent eligibility and the legal criteria of novelty, inventive step and industrial applicability. Second, the possible exclusions from patentability. Third, the legal consequences, in other words the legal protection the right holder can enjoy. Fourth, the possible exceptions from these exclusive rights.

Chapter 9 provides first an analysis of the two most recent Acts of the UPOV Convention (UPOV 1978 and UPOV 1991). Then there will be an analysis of the term ‘effective sui generis system’, identifying the requirements that must be met for a protection of plant varieties in accordance with Article 27.3(b) of TRIPS. The four elements identified above will be the basis for the analysis.

This analysis will therefore be limited to these two categories of protection, while acknowledging that there is an increased awareness as to whether farming-dependent developing States should alternatively avail themselves of other categories of intellectual property recognized in TRIPS.\(^1\)

---

1. Article 27.3(b) of TRIPS allows for excluding plants, animals and essentially biological processes for the production of plants and animals.

2. See Escudero 2001, Ragnekar 2003 and Opoku Awuku 2005, p. 80, in support of the view that geographical indications might be appropriate for ensuring the interests of farming communities of developing States; see also Pires de Carvalho 2005, p. 232: “Geographical indications […] has traditional knowledge as its subject matter.” A footnote refers to WIPO 2001 paragraph 28. See Sampath and Tarasofsky 2002, p. 15, Stevenson 2002 and Chambers and Kambu 2004 in support of a view that traditional knowledge belonging to local and indigenous communities can be protected as undisclosed information (trade secrets). For an alternative view, see Jacoby and Weiss 1997 p. 101 and Girsberger 1998, doubting that such communities are able to maintain the secrecy of their knowledge.