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Intellectual Property: Discrepancies Between CBD and Trips, Impacts on Brazil

Propriedade Intelectual: Discrepâncias entre CDB e Trips, Impactos Sobre o Brasil

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ABSTRACT

This article aims to present the importance of the Agreement on Aspects of Trade-Related Intellectual Property Rights - TRIPS, in the context of the main discussion that is its conflict with the Convention on Biological Diversity - CBD, of international law. It is relevant to make a brief history, from the beginning to the present, discussing the governing principles, the main effects of the agreement in developed and developing countries, particularly in Brazil. The internalization of the agreement on the Brazilian legal system, especially its application, its beginning, its effects, and the discussions about it, to understand the problem with the necessary amplitude.

Keywords: Intellectual Property Law; Competitiveness; Developing countries; TRIPS and CBD.

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RESUMO

Este artigo tem o objetivo de apresentar a importância do Acordo sobre Aspectos dos Direitos de Propriedade Intelectual Relacionados ao Comércio - TRIPS, no contexto da discussão principal que é o conflito deste com a Convenção sobre Diversidade Biológica - CDB, de Direito Internacional. É relevante fazer um breve histórico, do início ao presente, percorrendo sobre os princípios regentes, os principais efeitos do acordo nos países desenvolvidos e em desenvolvimento, particularmente o Brasil, e a internalização do acordo no ordenamento jurídico brasileiro, sua aplicação, o início, os efeitos e as discussões sobre ele para entender o problema com a amplitude necessária imprescindível para a sua compreensão.

Palavras-chave: Direito de Propriedade Intelectual; Competitividade; Países em desenvolvimento; TRIPS e CDB.

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1. Introduction

After World War II the intellectual property rights have undergone significant transformations. Before that, the international system of protecting those rights arose from the Unions of Paris (1883) and Berne (1886), which stood almost unchanged for longer than fifty years. The structures and the features that originated from the Unions were archaic and did not cover the real needs of intellectual property rights protection but left a legacy for International Law.

With the evolution and emergence of an international organization, a new discussion on the international community has become necessary about this protection. The Stockholm Convention, in 1967, established the World Intellectual Property Organization, based on Genève and, due to the relevance of the new organization, the appeal for the universal coverage of intellectual property rights and the trans-nationality of its relations, was considered in 1974, as a UN particular agency (DOMINGUES, 2005).

The World Intellectual Property Organization (WIPO) came as a response to the international community that needed to organize itself according to new needs and changes in the post-war. Basso (2000, p. 146) asserts that, until the establishment of the World Trade Organization – WTO, "WIPO was considered the main international center of promotion of intellectual property rights."

In the international relations context, as observed by Polido (2011), the World Intellectual Property Organization has dominated until TRIPS Agreement creation and the Council for TRIPS' consequent creation on the World Trade Organization's institutional framework.

However, WIPO had a defined role on ensuring the respect of authors' and inventors' rights. This international organization could not impose sanctions. So, Del'Omo explains (2015, p.261) that the "industrialized countries felt the need to review the treaties to set dispute settlement mechanisms."

Under the United States' sponsorship, around 1947, the United Nations Economic and Social Council held a Conference on Trade and Employment, where the General Agreement on Tariffs and Trade – GATT was written, basically, by England and the United States (REGO, 2001). In 1930, GATT proposed multilateral rules for international trade to avoid the recurrence of the trade war.

The protection of intellectual property rights and the multilateral trade regime became a slight concern only mentioned by some articles. This treaty did not have specific norms on intellectual property rights protection. It provided only hypotheses that determined goods protected by intellectual property rights would not be barriers to legitimate trade (POLIDO, 2011).

The importance of narrowing the relationships among trade and intellectual property by creating a more effective system of protection demanded a broader technological development and more direct investments for trade, a fact that did not happen before the insertion of TRIPS on GATT.

The deepening of intellectual property protection on international order stands on the new substantial harmonization established on many levels – multilateral and regional – with the

adoption of protection expansionist standards and consequential limitations on users of technology goods and information rights (POLIDO, 2011, p. 83).

The Uruguay Round of negotiations, the broadest and most complex of all GATT's rounds, brought up intellectual property rights protection to the discussion, characterized by the divergences among the developed and developing countries (DOMINGUES, 2005).

The interest in completing the deficiencies of the intellectual property protection system of WIPO and the need to link the subject to trade (BASSO, 2000) were, among others, the main reasons for TRIPS' inclusion on GATT.

Developed countries, especially the United States, tried to take intellectual property to GATT's scope "on the sense of seeking a larger protection to intellectual property rights" (BASSO, 2003, p. 18). However, the developing countries did not accept because they knew they would be most harmed.

It can be observed that the insertion of intellectual property rights on the scope of multilateral trade was one of the most significant results of Uruguay's round, with the creation of the World Trade Organization – WTO and the adoption of the TRIPS Agreement. Furthermore, "when placing the intellectual property on WTO, it became the object of mandatory dispute settlement mechanisms" (ALBUQUERQUE, 2004, p. 39).

As mentioned above, the enforcement on January 01, 1995, of the TRIPS Agreement's international treaty, signed in the Uruguay Round, which created the WTO, determined that the WTO's Member-States' permanent binding provided the progressive observance of the intellectual property protection norms.

Therefore, the endorsement of the TRIPS Agreement became a compulsory requirement, for instance, to affiliate with the World Trade Organization. Based on this analysis, Almeida e Knewitz (2013) emphasize that a country that wished to compose the international market should join the standards set by TRIPS.

Basso (2000, p.159) highlights two reasons that determined the inclusion of TRIPS on GATT, specifically: "the interest in supplementing the deficiencies on WIPO's intellectual property protection system" and the need to link the subject on international trade."

WTO's constitutive scenario, as pointed out by Maristela Basso, can be stressed on the following terms:

Annexes 1, 2, and 3 of WTO's Agreement incorporate the group named "Multilateral Trade Agreements" and are mandatory to Member-States. Annex 4 is composed of "Pluri-lateral Trade Agreements," which are optional, binds only the countries that accepted them (BASSO, 2000, p. 173).

TRIPS compose the Annex 1-C of the General Agreement that establishes WTO, integrating a complex of Multilateral Trade Agreements. The WTO is an independent economic-commercial international organization and not a UN's particular agency.

The TRIPS are contracts that differ from law treaties, once the member-States do not need to play the legislator's role.

The 'contract-treaties' creates international conduct duties on international order and not on the internal order of Member-States that only can be required by other or others

treaty's member-States. The ones who are not members cannot demand its fulfillment, as happens with contracts, on the Civil Law of Obligations (BASSO, 2000, p. 174).

According to Barbosa (1998, p.87), "the recipients of 'TRIPS' norms are the WTO's member-States. No subjective right results for private parts, on the validity and application of 'TRIPS'".

The member States of the TRIPS Agreement committed to implementing minimum protection standards set in common (BASSO, 2000). Therefore, they appointed the most appropriate way of fulfilling the rules set on the agreement.

Despite the internal procedures to be adopted by WTO's member states, Baptista (1996, p.17) explains that the member-States should "create a legislation that observes a ground" and put an internal norm of juridical operation in place. Thus, the countries are free to adapt the Agreement norms to their law systems' current rules.

Article 1 of the TRIPS Agreement establish the nature and the coverage of the duties obligation brought specifically on their contractual essence:

1.1 The members shall take effect the disposed on this agreement. The Members might, but will not be enforced to provide in its legislation, protection broader than that required by this agreement, provided that such protection does not contravene the provisions on this agreement. The Members will freely determine the appropriate form to deploy the provisions on this agreement on the scope of their corresponding law system and legal practice (INPI, 1994).

Under this context, a violation of the TRIPS Agreement will be typified when the member-States do not fulfill the minimum standards established in the agreement.

The fundamental basis of TRIPS Agreement is the "cooperation among the States-parties and, if necessary, the multilateral trade agreement can go through the jurisdiction of WTO's Dispute Settlement Mechanism" (POLIDO, 2013, p.110), when there is not a common understanding among constituent parts of the agreement or if there is a violation of minimum standards established on the agreement.

The Dispute Settlement Mechanism analyzes the consultations and discussions related to the operation principles of any agreement granted by the World Trade Organization. As taught by Caparroz (2016, p.136),

The Dispute Settlement Mechanism emerged as an answer to the need to grant legal security and effectiveness for the provisions on the multilateral agreements, so that the countries that felt harmed by the commercial practice of other WTO member could settle the dispute through a good agreement or, ultimately, by applying appropriate sanctions.

As Barbosa teaches (2003, p.55), the TRIPS Agreement has the following structure: a) General Provisions and Basic Principles; b) Standards Concerning the Availability, Scope, and Use of Intellectual Property Rights; c) Enforcement of Intellectual Property Rights; d) Acquisitions and Maintenance of Intellectual Property Rights and Related *Inter-Parties* Procedures; e) Dispute Prevention and Settlement; f) Transitional Agreements; g) Institutional Arrangements; Final Provisions.

The intellectual property rights contents that compose the minimum standards of protection are located on Section II of the Agreement: Copyright and Related Rights;

Trademarks; Geographical Indications; Industrial Designs; Patents; Layout Designs (Topographies) of Integrated Circuits; Protection of Undisclosed Information; Control of Anti-Competitive Practices in Contractual Licenses.

Nowadays, TRIPS represents a key milestone in strengthening the intellectual property rights of contemporary international society and binding those rights to international trade.

2. Development and Scope

Before the TRIPS Agreement came into force on the international level, the intellectual property norms were connected to internal law.

The TRIPS agreement solved two primary concerns: one was the need to supplement the deficiencies of the protection system brought by WIPO; the other one was to bind, definitively, the intellectual property rights protection to international trade.

Pursuing the reduction of "the distortions and obstacles to international trade," as well as "the need to promote an effective and suitable protection of intellectual property rights" (INPI, 1994), the TRIPS agreement are primary goals widely discussed on the Uruguay Round, that are expressly provided on its preamble.

The TRIPS Agreement preamble indicates that the Member-States must ensure that "measures and procedures to intellectual property rights observance cannot serve as a barrier to legitimate trade." It is recognized that, through this overview, intellectual property rights protection would become an obstacle to legitimate trade in case of not being inserted in a system of general standards.

In this scenario, TRIPS arises as a multilateral organization of understanding and dispute settlement, responsible for five main points reinforced by Caparroz (2016, p.145), specifically:

To enforce basic principles of trade and other intellectual property agreements; provide adequate protection for intellectual property rights; the countries must ensure those rights on their territory; settle disputes on the intellectual property among WTO members; the use of special transition agreements during the new system introduction phase.

Article 7 of the TRIPS Agreement reasserts the social purpose that the rules of protection of intellectual property rights must mainly have to observe the public objects of social and economic welfare:

The protection and application of norms of intellectual property rights protection must contribute to technological innovation promotion, and for technology transfer and diffusion, on mutual benefit of users and producers of technological knowledge in a way that leads to social and economic welfare and a balance among rights and duties (INPI, 1994).

TRIPS establishes that the Members must endow and vest in local authorities – legal and administrative – specific powers and capacities to adopt intellectual property rights protection (POLIDO, 2013).

The agreement aimed to reduce tensions among the member-states by committing to settle disputes regarding intellectual property, using multilateral procedures brought by article 64 and by annex 2 of the General Agreement.

A fair balance of rights and duties must exist among manufacturers and technology users. Seeking economic and social welfare are critical features of the 'TRIPS' norms (BARBOSA, 2003).

One of the main goals of the agreement's creation is to reduce the trade barriers among its States Parties, through the adoption of cooperation policies, as article 67 sorts:

To facilitate the agreement's application, developed countries Members shall provide technical and financial cooperation to developing country Members and least-developed Members upon request and on mutually agreed terms and conditions. Such cooperation shall include assistance in the development of laws and regulations on the protection and enforcement of intellectual property rights and the prevention of their abuse. It shall include support for establishing and strengthening national offices and agencies competent in such matters, including In staff training (INPI, 1994).

Basso (2000) informs that the TRIPS Agreement is based on norms of cooperation, consensus, loyalty, and prudence, under the scope of conducting a joint enterprise to promote a shared interest.

Therefore, it is asserted that TRIPS was arranged with the goal of "reducing the differences on how the rights related to Intellectual Property are protected all over the world, and to bring them under common international rules" (ALMEIDA; KNEWITZ, 2013, p. 196). In this way, it seeks to balance long-term benefits and short-term costs to international society.

The 'TRIPS' norms are addressed to the WTO's Member-States and no right subjective results for privates from the validity and application of the agreement, as disposed of in article 1.1, already transcribed in this chapter.

It demonstrates, based on this mechanism, two immediate consequences from the agreement: the first one brings the idea that those norms are a minimum ground of rights ensured to the assignee; and the second is about the agreement's applicability time, which should not be immediate, but be implemented according to constitutional systems of Member-States.

On this subject, Maristela Basso consigned that many countries, especially the developed ones, "have ratified TRIPS, and because of its non-executory or no *self-executing* nature, have adopted laws to incorporate the Agreement's dispositions on their legislation" (BASSO, 2000, p.177).

It is emphasized that for Member-States, it is optional to provide, in national laws, broader protection than that which is predicated on the treaty. TRIPS provisions are not independent and cannot be directly applied because they dictate the minimum criteria of protection, not the exact content of those rights (BASSO, 2000).

3. The Diverse Principles and Interests

To understand the TRIPS Agreement's guiding principles, it must be stressed that it is based on the incorporated principles of the Paris Union Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works⁴.

The principles are sources of law that must also be applied to international treaties, including the TRIPS Agreement. It is essential to underline that the TRIPS Agreement principles must be following the World Trade Organization's Constitutive Agreement and are compulsory to signatory countries.

Under the clarifying point of view of Roberto Caparroz, both fundamental principles of GATT succeed, "which sustains all negotiations base under the scope of the World Trade Organization: the National Treatment (Article III) and the Most Favored Nation Clause (article IV)" (CAPARROZ, 2016, p.147).

The TRIPS Agreement integrates norms from Paris and Berne Conventions, enhancing the traditional systems on intellectual property rights protection under international trade's regulatory framework.

Nonetheless, the international treaties involving essential rules regarding the conflicts of laws in space do not comprehensively regulate the matter, suggesting, in this way, that other elements fill their gaps.

Thereby, there is the need to rely on the common principles of the TRIPS Agreement and the World Trade Organization to solve those agreements' deficits.

4. The Single Undertaking Principle

The single undertaking principle is provided explicitly on lines 2 and 3 of article 2nd of the Uruguay Round Final Act. It determines that TRIPS is an inseparable part of the World Trade Organization. It is a fundamental principle to understand the WTO's approach, according to which TRIPS does not allow reservations.

Basso (2000, p.179) clarifies that "it is not possible to join only part of the Agreements, under penalty of breaking its structural balance and logic, with the exception made for the 'Pluri-lateral Trade Agreements,' from Annex 4". The unity of the system runs from this principle, explaining why TRIPS must be considered within the World Trade Organization structure.

5. The National Treatment Principle

Acknowledged as guiding all the WTO's establishing agreements, this principle integrated GATT's structural layout in 1947 on articles I and III. The National Treatment principle is a contumacious rule on international treaties of intellectual property that forces the member-States

⁴ The Paris Union Convention (Industrial Property) was signed in 1883 and the Berne Convention (Literary and Artistic Works) was formed in 1886. Both major conventions established the international system of intellectual property rights protection.

to concede no less favorable treatment than the one provided for their nationals concerning protecting the rights due to intellectual creation.

As well pointed out by Almeida (2013, p.192), "the imported products must receive the same tax treatment as their national equivalent to oppose protective or discriminatory measures."

Foreign countries, as disposed on article 3 of 'TRIPS' agreement, must comply with the rules imposed to nationals on the following terms:

Each member shall grant nationals from other Members no less favorable treatment than the conferred to their own nationals related to intellectual property right protection, except for those already foreseen cases, respectively, on the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and on the Treaty of Intellectual Property in Respect of Integrated Circuits. This duty applies only to rights provided on this agreement regarding performing artists, phonogram producers, and broadcasting organizations. Every member that makes use of the possibilities provided in article 6 of the Berne Convention and at paragraph 1(b) from article 16 of the Rome Convention will notify, according to those dispositions, to TRIPS Council.

Polido (2013, p.55) makes critical comments regarding national treatment:

On edge, the national treatment principle contributed as a paradigm not only for the progressive development of the International Law of Intellectual Property but also to protect the intellectual property owners' interests, that could indistinctively claim on the protection of inventive and creative activity at all frameworks of 'TRIPS' Members under the same standards granted to nationals on developing countries.

According to this principle, unequal treatment among national and imported products is forbidden when the goal is to discriminate against the imported product impairing the competition with the national product (BRASIL, n.d), given that both members can exercise the right.

The National Treatment is imposed on internal legislations to avoid discrimination on property rights against foreigners. Furthermore, the non-discrimination principle established by the Paris and Berne Conventions, later invigorated by the TRIPS Agreement, is "based on the premise that national laws are the ones that grant protection to intellectual property rights" (LUCESI, 2007, p.374).

It is also important to stress that, as article 5 of the TRIPS Agreement determines, this principle does not apply to procedures provided on multilateral agreements closed under the auspices of the WIPO related to obtaining and maintaining the intellectual property rights (BASSO, 2000).

It can be deduced from the quoted article that TRIPS recognizes, in case of disagreement, the supremacy of rights and duties established under the scope of the World Intellectual Property Organization (CAPARROZ, 2016).

6. Most Favored Nation Principle

Article 4 of the TRIPS Agreement focuses on one of the WTO's most important principle that establishes that, regarding intellectual property protection, every benefit, favoring,

privilege, or immunity that a Member grants to nationals of every other country will be awarded immediate and unconditionally to nationals of all other Members (INPI, 1994).

On the clarifying point of view of Almeida (2013), this principle disposes that any commercial concession made in benefit of a Member State must be extended to all signing countries.

It is considered one of the World Trade Organization pillars and a part of the history of the GATT/1947. The exceptions to this principle are listed on the final part of the Article 4, on the following terms:

- (a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not mainly confined to the protection of intellectual property; (b) granted following the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but the treatment accorded in another country;
- (c) in respect of the rights of performers, producers of phonograms, and broadcasting organizations not provided under this agreement;
- (d) deriving from international agreements related to the protection of intellectual-property, which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against other members' nationals. (INPI, 1994).

The equality protection must exist among all Members of 'TRIPS' Agreement. No Member State must receive preference, regardless of economic power and development level. Therefore, if any advantage is granted to any of the States members of the agreement, it has to be extended to the others, taking into account the exceptions.

7. Principle of Exhaustion of rights

According to the principle of Exhaustion of rights, or international exhaustion, the intellectual property rights on specific products are exhausted when the owner, or a third party with his consent, inserts it on a given local market, whether commercializing or selling it.

Under the lessons of Polido (2013), without the application of the Exhaustion of rights, it would be possible to perpetuate the control on the sale or distribution of protected intangible goods; therefore, the act of the first sale or commercialization is fundamental to establish the end of the control on the product that the owner exercises.

It should be noted that this Exhaustion can be national when it happens on the internal market of a country, and international when the product is commercialized in any place of the world, once the sale and importations of these products are open on the importing Estate which the trademark has been registered to. There is still a supranational Exhaustion in the European Common Market (BASSO, 2000).

On this matter, Barbosa (2003, p.59) explains the principle of Exhaustion of rights, namely:

It is the doctrine under which once the owner has earned the exclusive economic benefit (set in trade), though, for example, the sale of a patented product, the patent owner's rights cease. Remain only the reproduction exclusivity.

The 6th article of the TRIPS Agreement provides that, to solve disputes on the scope of this agreement, and without harming what is disposed on articles 3 and 4, nothing on this agreement will be used to deal with the matter of intellectual property rights exhaustion (INPI, 1994).

This principle sets, under the interpretation of Basso (2000, p.182), the "possibility to legally import a product protected by intellectual property rights, since it is introduced, on the Market of any other country, by its owner, with his consent."

In Brazil, the national Exhaustion is regulated on article 43, IV and the international Exhaustion, on article 188, II, of the Law 9.279, published on May 14, 1996, as follows:

Art. 43. The provisions of the previous article do not apply to (...)

IV – a manufactured product according to a process patent or product that entered the local market directly by its patent owner or with his consent;

(...)

Art. 188. Commits a crime against registration of an industrial designer who:

(...)

II – imports a product incorporating industrial design registered in the country, or substantial imitation that can mislead or confuse, for the purposes set on the preceding paragraph, which has not been placed on the foreign market directly by the owner his consent.

Under Polido's (2013, p.487) lessons, "Brazil is free to apply the international exhaustion on its intellectual property local system," which includes new legislative proposals and new case law decisions.

The Brazilian law allows in article 68 paragraphs 3 and 4, the import of products manufactured according to process patent or product by third parties, provided that they have been inserted on the market directly by its owners or with their consent, and yet, that the product was not manufactured in Brazil, in other words, the owner is merely importing (BRAZIL, 1996).

8. The Transparency Principle

The transparency principle reflects substantially the pressure to protect some sectors of the national economy. According to Almeida and Knewitz, the protection "shall be achieved by the use of differentiated tariffs, that represent a clear and unmistakable value of the protectionism degree aimed, without the use of subterfuge or non-tariff barriers" (2013, p.192-193).

It is one of the core principles of the GATT/OMC system, and remains applicable, on the whole, to trade in goods, services, and technologies.

Article 63 is considered fundamental on WTO's structure and the TRIPS Agreement, once it plays an essential role in conducting transparency of signing parts. Under the lessons of Basso (2000), the "Council for Trade-Related Aspects of Intellectual Property Rights" – TRIPS Council's role is to oversee the implementation of the agreement; therefore, the publicity of the regulations is indispensable.

The signing parts pledge to notify the TRIPS Council of the law and regulations above referred to help in its functions. The Council will try to minimize the members' onus on fulfilling this obligation. It may even dismiss them, if complete with WIPO, to understand the establishment of a standard registry (BASSO, 2000, p.184).

Thus, this principle's main implication is the external control on the reach of those measures, adopted by the members on exercising their sovereignty, restricting the potential deviating effects regarding the multilateral trade system unity.

9. The International Cooperation Principle

The TRIPS Agreement provides, respectively, in articles 67 and 69 regarding technical cooperation and international cooperation among WTO's members, the precognition to eliminate from trade the goods that break intellectual property rights.

Article 67 of the agreement provides that the developed countries should make available to less developed countries technical and financial assistance for adequate protection to intellectual property rights:

To facilitate the application of the present agreement, the developed countries Members, if asked, and under terms and conditions mutually agreed, will provide technical and financial cooperation to developing countries' members and less developed countries' members. This cooperation shall include assistance on law and regulations development on intellectual property rights protection and the prevention of its abuse, and shall include support on the establishment and strengthening of national offices and agencies responsible for those matters, including the staff training (INPI, 1994).

The cooperation principle is referred to in the TRIPS preamble, and it is set up in article 69 (BASSO, 2000). This article's original purpose was to benefit cooperation among the World Trade Organization members to "reduce violation practices of intellectual property rights on international economic traffic" (POLIDO, 2013, p.394).

Article 69 of the agreement provides the members' obligation to establish contact points in their administrations to exchange information about, control, and eliminate the trade of goods with infringed marks or pirated on-trade channels.

The Members agree on cooperating among themselves to sweep international trade of goods that violate intellectual property rights away. For this purpose, contact points in its respective national administration shall be established, from which it will notify and be ready to exchange information on the trade of transgressor goods. Remarkably, the exchange of information and cooperation among customs authorities regarding the trade of goods with infringed marks and pirated goods shall be promoted (INPI, 1994).

Included in every treaty that constitutes WTO, the international cooperation principle is one of the essential structures. Its primary purpose is to promote common interest through cooperation norms.

International cooperation is the mechanism to be used to banish the harmful effects and the externalities of piracy and counterfeiting practices. TRIPS aimed to assure, according to Polido (2013, p.395), the creation of "contact points" by the Members to which they should perform the tasks of exchanging and notifying information related to the trade of counterfeit goods.

In this regard, Basso (2000, p.185) classifies cooperation as internal and external. Internal cooperation is the one that occurs among WTO's Member States; external cooperation is the one that happens among TRIPS and WIPO and other international organizations that deal with intellectual property rights protection.

10. The Principle of Interaction between International Treaties on the Matter

The TRIPS Agreement did not arise with the pretension of substituting treaties that preceded it. It represents a complementary character regarding the other documents that recognize the mission of protecting intellectual property rights.

This commitment is acknowledged in article 2 of the agreement:

21. In respect of Parts II, III, and IV of this Agreement, Members shall comply with Articles 1 through 12 and Article 19 of the Paris Convention (1967).

22. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention, and the Treaty on Intellectual Property in Respect of Integrated Circuits. (INPI,1994).

It is important to stress that the obligations undersigned in the Paris Convention prevail over TRIPS (BASSO, 2000) so that there is no break between the treaties once they neither exclude each other nor dispute the preference on regulating the legal relationship; on the contrary, they add up and complete each other, always prevailing good judgment.

The systemic interaction among trade and intellectual property exceeds the substantive and procedural rules to protect the goods from creative and innovative activity. It gives space to international dispute settlement related to breaches of obligations of those treaties, while its norms are expressly incorporated by reference on TRIPS (POLIDO, 2013).

On this dynamic, Basso (2000, p.187) understands that:

Both documents represent the current protection of intellectual property rights. Its relations are of interaction, not "conflict," because we are under the international law of cooperation, not coexistence, where are typical the conflicts among sources.

The Paris Convention does not intend to regulate international property rights, while TRIPS aims to this topic.

11. The Evolutionary Treaty Interpretation Principle

The clauses of the TRIPS Agreement must be interpreted according to the evolution matter. This is the reason why one of the main characteristics of this agreement is its dynamism.

The minimum standards set by the TRIPS must be followed by the Member States, which "shall be incorporated on their local legislations, through its own mechanism, considering that this is not a self-enforcing agreement" (BASSO, 2000, p.188).

Based on economic, social, and cultural reality and its law system, each state must observe the agreement's fundamental principle. If a multiple clause interpretation occurs, the decisions of WTO's Dispute Settlement Mechanism (DSM) shall be observed as a standard for a common interpretation.

12. Impacts in Developed and Developing Countries

The entry into force of the TRIPS Agreement marked the start of an essential phase in intellectual property rights protection. During the Uruguay Round, the negotiations occurred among developed and developing countries and established the organization of technology transference on the international scenario.

The TRIPS' inclusion on GATT stressed the importance of intellectual property rights for the multilateral trade system. On the same line, Maristela Basso states that before the inclusion,

The relations between intellectual property were neither precise nor determined, nor could the consequences of coming to be perceived, on the international market, of a more effective protection system, which could bring more technological development, more foreign direct investments, and more trade (BASSO, 2000, p.155).

The developed countries, led by the United States, endowed by significant industries and transnational companies, sustained and defended intellectual property protection as a tool of innovation and investments on markets (POLIDO, 2013), regardless of the degree of economic development of each country (BASSO, 2000).

On the other hand, the developing countries demonstrated asymmetries among Northern and Southern countries regarding the capacity of technology and investment transference.

According to Basso (2000, p.165), the developing countries "had the concern of ensuring the secure access to modern technology through a larger protection of intellectual property rights." However, they did not know who would have this access in practice.

Some developed countries such as Japan and the European Community members emphasized the "need to promote intellectual property rights protection on the multilateral system" (POLIDO, 2013, p.43). However, eventual abuse on exercising the right of exclusivity or practices considered obstacles to legitimate trade should be avoided (BASSO, 2000).

Nonetheless, the international effort to apply for the intellectual property protection equal to the member states of the agreement, each member's difficulties, and realities is different.

The developing countries usually do not have resources to invest in technology and research, while the developed countries invest vast amounts in developing new technologies (PEREIRA, 2007).

In the conflict of divergences, the interests of developed countries prevailed. Coelho points out that "the industry lobby was powerful and even with heavy opposition from Brazil and India, TRIPS was approved" (ALMEIDA, 2013, p.234).

Sherwood (1992, p.159) defends the protection of intellectual property rights for developing countries after analyzing a case involving Brazil and Mexico, which provides a perspective on the economic aspects of those rights, specifically:

The adequate protection of intellectual property will help developing countries to walk in two directions: one in the sense of participating in the emergent technology global networks; the other one in the direction of strengthening human creativity on the country's economic scope. Intellectual property protection is available to any developing country that wants to receive its benefits.

The giant companies that create technology are located mainly in wealthier countries. The protection of intellectual property rights primarily carries on investments in the research and development of new products.

However, the developing countries, for lacking state of the art companies, need to establish policies to promote research so that they do not depend too much on foreign countries and can define a more substantial technologic basis (CAPARROZ, 2016).

On the subject, Gontijo (2005, p.12) reinforces this understanding about developing countries:

The standardization of intellectual property rights at a high level does not bring benefits to companies of developing countries and, in contrast, stimulates the inventions of companies of developed countries, freezing and perpetuating a technical distance situation that only tends to increase.

TRIPS, in article 69, already referred to in this chapter, seeks consensus and cooperation among the States that compose it. Both developed and developing countries won and lost something.

The developed ones aimed for more protection for intellectual property rights. On the other hand, the developing countries aimed to assure technology dissemination, pointing out the asymmetries between North and South and "committed to implementing effective and appropriate measures to apply norms for the protection of those rights related to trade" (BASSO, 2000, p.169).

13. The Internalization of the Agreement on Brazilian's Law System

The Brazilian Constitution assures the protection of intellectual property both in the form of copyright and in the modality of industrial property, in article 5, lines XXIX and XXVIII, respectively:

Art. 5th Everyone is equal before the law, without any distinction, assuring to Brazilian and foreigners residing in the country the inviolability of the right to life, freedom, equality, security, and property, under the following terms:
XXVII – the authors, have the exclusive right to use, publish or reproduce their Works, which may be transmitted to the heirs for the time fixed by law;
XXIX – the law will grant to industrial inventors a temporary privilege for their use and protection to industrial creations, trademark ownership, company names, and other distinctive signs because of the social interest and technological and economic development of the country.

Item XXIX of article 5th determines the legal protection of industrial property rights limited by social and public interest.

On the opinion of Araújo (2015, p.4), the "Brazilian policy of intellectual property has always been tied to international development on this matter," since Brazil signed and ratified the most important international conventions on the matter, expressly: the Paris and Berne Conventions for the protection of industrial property and literary and artistic Works, respectively; the Agreement Concerning the International Patent Classification; the Patent Cooperation Treaty; the International Union for the Protection of New Varieties of Plants; and the TRIPS Agreement (BASSO, 2003).

It is essential to clarify that Brazil has taken part in World Intellectual Property Organization – WIPO, as Casella elucidates (2008, p.97), for a long time and "has been aligned with the action on several of multilateral organizations and the range of the so-called 'United Nations' family."

As mentioned before, the TRIPS Agreement, Brazil is a signer, is part of a more comprehensive international agreement that establishes the World Trade Organization – WTO.

Precisely, Basso (2003, p.27) stresses that the norms of TRIPS Agreement entail two kinds of effects: external, which "are related to obligations undertaken with WTO"; and the internal effects, regarding "the entry into force on Brazilian law and executing in Brazil."

The effects mentioned by the referred author relate to the coming into force of the TRIPS rules in Brazil.

According to what the TRIPS Agreement provides, it was observed the Brazilian system for the approval of international treaties, so that the National Congress approved the Agreement Establishing WTO, through the legislative decree n° 30, of December 15, 1994, enacted by the presidential decree n° 1355/94, which incorporated the Final Act of Uruguay Round of Multilateral Negotiations of GATT.

After published in the Official Journal of the Union on December 31, 1994, an internal process of reviewing and adapting the legislation on intellectual property was initiated in Brazil to observe the minimum standards of protection and TRIPS requirements.

Despite being enacted in 1994, TRIPS became effective on January 01, 2000, only five years later, since it established a transition period estimated for developing Member-States, a condition applied to Brazil.

Brazil notified WTO in 1997, clarifying that it benefitted from the transition period, which was made *ad cautelam*, in benefit of transparency, because, in a meeting on February 22, 1997, the TRIPS Council registered that the transition period's benefit would occur regardless of formal communication by the Member States to WTO (BASSO, 2003, p.28).

It can be said, in general lines, that the validity and enforceability of TRIPS are set based on general (general transition regime) and specific (especial transition regime) criteria.

The General Transition Regime, 65.1 of the TRIPS Agreement, benefits all the agreement's signatory States without distinction. The referred article prescribes that the enforcement of obligations provided on TRIPS will not be required before the general deadline of a year after the Agreement Establishing WTO entering into force.

Article 65.2 establishes the Special Transition Regime deadline for developing Member-States, which can benefit from a four-year additional period, exception made on articles 3, 4, and 5 of the TRIPS Agreement. Therefore, the total of this particular transitory period is of five years (BASSO, 2003).

One more time, it is essential to emphasize that the TRIPS Agreement does not create obligations to privates because it is a contract-treaty applied only to the Signing-States (BARBOSA, 2003).

Some laws related to industrial property protection and copyright arose after the enactment of the TRIPS Agreement. On this matter, the background of Brazilian law of intellectual property lists:

1. Law nº 9.279, of May 14: Regulates the Rights and Obligations Related to Industrial Property;
2. Law nº 9.456, of April 25, 1997: Discipline the Crops Protection and Give Other Arrangements;
3. Law nº 9.610, of February 19, 1998: Changes, Updates and Consolidates the Legislation on Copyright and Give Other Arrangements;
4. Law nº 9.609, of February 19, 1998: On the Intellectual Property Protection of Computer Software, its commercialization on the Country and Give Other Arrangements.

It is important to stress that, once the transition deadline elapsed, discrepancies between TRIPS and the national legislation will have to be adapted to the agreement's disposition, under the penalty of submission of the country to the Dispute Settlement Mechanism of WTO (BASSO, 2003).

On the matter, Basso (2000, p.305) clarifies that "Violation of TRIPS Agreement will only be characterized if the States do not do so and, in the case of the developing Signing-States such as Brazil if do not do so, once the transition period is over."

The signing States must incorporate the agreement's rules in their legislation, observing the transition period established for the developing and less developed countries.

In general, Brazil internalized the principles and dispositions of TRIPS, but specialists criticized the way such internalization occurred on the subject, who pointed out an excessive inflexibility of the agreement's prescriptions brought to Brazilian law (YAMAMURA; SALLES FILHO e CARVALHO, 2008).

Barbosa (2004, p.16) emphasizes, as an example, the lack of use of more important deadlines to harmonize the national law granted to less developed countries. According to the author, Brazil gave in to "American's unilateral pressure, without taking advantage of fairness gains that came along with TRIPS."

14. Final Considerations

This article concludes that the most influential states converge on decisions that benefit their sectors, although much scientific knowledge, mainly involving medical drugs, comes from traditional knowledge.

Countries with important biodiversity are interested in protecting this heritage. There are two paths to follow: The TRIPS Agreement and the CBD. The interests of developed countries protected by TRIPS are continually being defended and imposed by the strength of this power's capacity that is almost always unbearable. Developing countries have tried in international forums to establish alternatives that support their interests.

TRIPS is the legal basis that oversees intellectual property at the WTO. However, signatory States, especially developing countries, are obliged to follow the agreement's political rules that harm their interests. Developed countries are the biggest beneficiaries of the TRIPS Agreement.

The Convention on Biological Diversity, ratified by Brazil on February 28, 1994, is responsible for counterbalancing the TRIPS Agreement by sharing the sustainable use of biodiversity and the traditional knowledge of local communities.

In Brazil, as in other emerging countries, intellectual property regulation, consolidated after a series of technological advances, is influenced by the principles established in international treaties that the country recognized. However, concerning Brazilian biodiversity and its legal title, it can be said that there was no priority in the scope of intellectual property regulation.

The importance of the rules of procedure for these international agreements by each Member State is highlighted. As a way of regulating access to genetic resources and traditional knowledge, Law 13.123 / 2015 was issued in Brazil, regulated by Decree nº 8.772 / 2016, in order to ease the action of researchers, simplifying access to Brazil's biodiversity, aiming to guarantee the conservation of biological diversity, the traditional knowledge of communities, indigenous peoples and farmers, establishing the sharing of the results obtained with the products.

Biodiversity is one of the issues that most highlights the clash with the issue of intellectual property. However, the survey revealed that the CBD is at a disadvantage at the international level. It does not have clauses that establish sanctions or provide coercion mechanisms contrary to what TRIPS provide.

At this point, the conflict between the Agreements is apparent. The debate on the reform of TRIPS seeks to revise Article 27.3. (B), To include the patent obtained, directly or indirectly, from the biodiversity of their countries valued as a norm of obligation, not negative permission.

It is recognized that this conflict is related to the regulation of access to genetic resources and traditional knowledge and the need to create a sui generis system appropriate to the issue of intellectual property rights, capable of offering rewards to individuals and local communities.

Also, the legal order of intellectual property would not remove the need to create a protection system complementary to TRIPS. However, developed countries insist on refuting the claim by the developing countries regarding the incompatibility between the CBD rules and the TRIPS rules, refusing any change in the text of this agreement.

As can be seen from everything available, to harmonize the two international agreements, the TRIPS Agreement provisions must be revised and amended to reconcile with the rules brought by the CBD.

15. References

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- ADAMY, Pedro. **Instrumentalização do Direito Tributário**. In Fundamentos do Direito Tributário. Org. Humberto Ávila. São Paulo: Marcial Pons, 2012.
- ALBUQUERQUE, Roberto Chacon de. **Qual é o conflito entre a Convenção da Biodiversidade (CDB) e o Acordo Relativo aos Direitos de Propriedade Intelectual (Acordo TRIPS)?**. Revista da ABPI, n. 69, Apr, 2004.
- ALMEIDA, Paulo Roberto de. **Propriedade Intelectual: os novos desafios para a América Latina**. Estudos Avançados. pp.187- 203. 1991.
- ALMEIDA, Wilson. **Direito Internacional Econômico e os Novos Desafios da Globalização**. Rockyville, MD: Globalsouth Press, 2013.
- _____. **Integração Regional e Comércio Internacional: novos temas e novos paradigmas**. Rockyville, MD: Globalsouth Press, 2013.
- _____. **Mercosul: efeitos da integração assimétrica**. Goiânia, Deescubra, 2003.
- AMARAL JÚNIOR, Alberto do. **Comércio Internacional e a Proteção do Meio Ambiente**. São Paulo: Atlas, 2011.
- ANTUNES, Paulo de Bessa. **Diversidade biológica e conhecimento tradicional associado**. Rio de Janeiro: Lumen Júris, 2002.
- ARAÚJO, Daniel de Oliveira. **Uma avaliação sobre o impacto do acordo TRIPS na ordem jurídica brasileira**. Available at: <<http://www.publicadireito.com.br/artigos/?cod=9d740bd0f36aaa31>> Access Nov, 2015.
- BARBIERI, José Carlos; CHAMAS, Cláudia Inês. **O Acordo Sobre Direitos de Propriedade Intelectual Relacionados ao Comércio (TRIPS) e as Políticas Públicas de Saúde e de Defesa da Biodiversidade**. READ. 59 ed. Vol. 14. n.1. 2008.
- BARBOSA, Cláudio R. **Propriedade Intelectual: introdução à propriedade intelectual como informação**. Rio de Janeiro: Elsevier, 2009.
- BARBOSA, Denis Borges. **Propriedade Intelectual: a aplicação do Acordo TRIPS**. Rio de Janeiro: Lumen Juris, 2003.
- _____. **Trips e a experiência brasileira**. Simpósio Franco-brasileiro sobre a Propriedade Intelectual no Domínio da Saúde: aspectos econômicos, jurídicos e legislativos.
- BASSO, Maristela. **O direito internacional da propriedade intelectual**. Porto Alegre: Livraria do Advogado, 2000.
- _____. **Os fundamentos atuais do direito internacional da propriedade intelectual**. R.Cej. Brasília, n. 21, p.16-30, Jun, 2003.
- BERTOOGNA, Viviane Alves; CIBIM, Juliana Cassano. **Acesso aos recursos genéticos e conhecimentos tradicionais associados: proteção de direitos e repartição de benefícios**. In: Salem Hikmat Nasser, Fernando Rei (organizadores). **Direito** EALR, V. 12, nº 1, p. 121-142, jan-abr, 2021

Internacional do Meio Ambiente. São Paulo: Atlas, 2006.

BOFF, Salete Oro. **Acesso aos conhecimentos tradicionais: repartição de benefícios pelo “novo” marco regulatório.** Revista Direito Ambiental e Sociedade, v.5, n.2, p.110-127, 2015.

BRASIL. **Decreto nº 635, de 21 de agosto de 1992.** Constituição Federal, Brasília, 1992. Available at: < http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D0635.htm>. Access Sep 19, 2016.

_____. **DECRETO nº 2.519/98, de 16 de março de 1998.** Constituição Federal. Promulga a Convenção sobre Diversidade Biológica, assinada no Rio de Janeiro em 1992. Available at: <http://www.planalto.gov.br/ccivil_03/decreto/D2519.htm>. Access Out 02, 2016.

_____. **Decreto nº 8.772, de 11 de maio de 2016.** Regulamenta a Lei nº 13.123, de 20 de maio de 2015, que dispõe sobre o acesso ao patrimônio genético, sobre a proteção e o acesso ao conhecimento tradicional associado e sobre a repartição de benefícios para conservação e uso sustentável da biodiversidade. Available at: <http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Decreto/D8772.htm> . Access Nov 02, 2016.

_____. **Lei 9.279, de 14 de maio de 1996.** Regula direitos e obrigações relativos à propriedade industrial. Available at: < http://www.planalto.gov.br/ccivil_03/leis/L9279.htm> . Access Out 09, 2016.

_____. **Lei 9610, de 19 de fevereiro de 1998.** Altera, atualiza e consolida a legislação sobre direitos autorais e dá outras providências. Available at: < http://www.planalto.gov.br/ccivil_03/leis/19610.htm> . Access Nov 17, 2015.

_____. **Lei 13.123, de 20 de maio de 2015.** Regulamenta o inciso II do §1º e o §4º do art.225 da Constituição Federal, o Artigo 1, a alínea *j* do Artigo 8, a alínea *c* do Artigo 10, o Artigo 15 e os §§ 3º e 4º do Artigo 16 da Convenção sobre Diversidade Biológica, promulgada pelo Decreto nº 2.519, de 16 de março de 1998; dispõe sobre o acesso ao patrimônio genético, sobre a proteção e o acesso ao conhecimento tradicional associado e sobre a repartição de benefícios para conservação e uso sustentável da biodiversidade; revoga a Medida Provisória nº 2.186-16, de 23 de agosto de 2001; e dá outras providências. Available at: <http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13123.htm>. Access November 01, 2016.

CAPARROZ, Roberto. **Comércio Internacional e legislação aduaneira esquematizado.** In: LENZA, Pedro (Coord.). 3.ed. São Paulo: Saraiva, 2016.

CASELLA, Paulo Borba. **Registro internacional de marcas, o Brasil e o Protocolo de Madri.** In: Patrícia Luciane de Carvalho (coord.). Propriedade Intelectual. v.2.2. ed. Curitiba: Juruá, 2008.

CERQUEIRA, João da Gama. **Tratado da propriedade Industrial.** v.I. Rio de Janeiro: Revista Forense, 1946.

COSTA E SILVA, Eugênio. **Breves considerações sobre o Acesso a Recursos genéticos e** EALR, V. 12, nº 1, p. 121-142, jan-abr, 2021 139

- alguns assuntos correlatos.** Revista da ABPI, Rio de Janeiro: n. 28, p. 41-51, 1997.
- COSTA E SILVA, Eugênio da. **A Propriedade Intelectual e a Liberalização do Comércio Internacional.** In: CASELLA, Paulo Borba(org.). Guerra comercial ou integração mundial pelo comércio? A OMC e o Brasil. São Paulo: LTR, 1998.
- DEL NERO, Patrícia Aurélia. **Propriedade Intelectual: A Tutela Jurídica da Biotecnologia.** 2. ed. São Paulo: Revista dos Tribunais, 2004.
- DEL'OLMO, Florisbal de Souza. **Curso de direito internacional privado.** 11ªed. rev., atual. e ampl. Rio de Janeiro: Forense, 2015.
- INPI. BRASIL. **Decreto Legislativo nº 30, de 15 de dezembro de 1994,** a Ata Final que Incorpora aos Resultados da Rodada Uruguai de Negociações Comerciais Multilaterais do GATT, assinada em Maraqueche, em 12 de abril de 1994.
- KNEWITZ, Denise Cousin Souza; ALMEIDA, Wilson. **Acordos da OMC: TRIPS e TRIMS.** In Wilson Almeida (Org). Direito Internacional Econômico e os Novos Desafios da Globalização. Rockyville, MD: Global South. 2013.
- LAFER, Celso. **A OMC e a regulamentação do comércio internacional: uma visão brasileira.** Porto Alegre: Livraria do Advogado, 1998.
- LIMA, Salomão de Barros Loureiro. **Biopirataria e propriedade intelectual: a proteção da biodiversidade brasileira.** Maceió: EDUFAL, 2013.
- LOPES, Luciana Figueiredo Bomfim. **Proteção de conhecimentos tradicionais associados à diversidade biológica: possibilidades e desafios.** Revista de Estudos e Pesquisas, FUNAI, Brasília, v.4, n.1, p.255-289, 2007.
- LONDE, C. R. O. **A Construção do Atual Sistema de Propriedade Intelectual. II. GATT, OMC, TRIPS, as Negociações Bilaterais e suas Consequências na Indústria.** Revista Fitos. Vol. 02. Nº 02, Sep, 2006. Páginas
- MASCARENHAS, Gilberto. **A Biodiversidade Brasileira no Âmbito do Acordo TRIPS.** Revista Brasileira de Inovação. V.3. n.2.2004. páginas
- OLIVEIRA, Carlos Augusto Oliveira. **O Tratamento internacional da Propriedade Intelectual: Um panorama das divergências e Complementaridades entre OMPI e OMC.** Revista dos Estudantes de Direito da Universidade de Brasília, n. 8, p. 175-179, 2009.
- OLIVEIRA, Liziane Paixão Silva. **Globalização e soberania: o Brasil e a biodiversidade Amazônica.** Brasília: Fundação Milton Campos. Conselho de Reitores das Universidades Brasileiras, 2002.
- PAIVA, Ricardo Bacelar. **O patrimônio cultural brasileiro e a propriedade intelectual.** In: Patrícia Luciane de Carvalho (coord). Propriedade Intelectual. 2.ed. Curitiba: Juruá, 2008.
- POLIDO, Fabrício Bertini Pasquot. **Direito internacional da propriedade intelectual – fundamentos, princípios e desafios.** Rio de Janeiro: Renovar, 2013.

- REGO, Elba Cristina Lima. **Do GATT à OMC: o que mudou, como funciona e para onde caminha o sistema multilateral de comércio**. Revista de BNDS, Rio de Janeiro, nº Dez 06, 2001, p.4. Available at: <<http://www.bndes.gov.br/conhecimentorevista/gatt.pdf>>. Access May 11, 2015.
- REZENDE, Enio Antunes. **Biopirataria ou Bioprospecção? Uma análise crítica da gestão do saber tradicional no Brasil**. Tese de Doutorado. Universidade Federal da Bahia. 2008.
- RODRIGUES JUNIOR, Edson Beas. **Tutela jurídica da biodiversidade, dos conhecimentos tradicionais e do folclore: uma abordagem de desenvolvimento sustentável**. Rio de Janeiro: Elsevier, 2010.
- ROHRMANN, Carlos Alberto; NORTON, Lyssandro. **Biodiversidade e Propriedade Intelectual: Um Exame Jurídico do Conhecimento Tradicional**. IV Anuário Brasileiro de Direito Internacional. V.1.2009.
- SANTILLI, Juliana. **Sociambientalismo e novos direitos: proteção jurídica à biodiversidade biológica e cultural**. São Paulo: Petrópolis. 2005.
- SHERWOOD, Robert M. **Propriedade intelectual e desenvolvimento econômico**. São Paulo: Editora da Universidade de São Paulo, 1992.
- SHIVA, Vandana. **Biopirataria**. Petrópolis: Vozes, 2001.
- SILVA, Letícia Borges da. **Os conhecimentos Tradicionais das comunidades indígenas e locais face aos direitos de propriedade intelectual**. In: Patrícia Luciane de Carvalho (coord.). Propriedade Intelectual. 1 ed. Curitiba: Juruá, 2006.
- SIQUEIRA, Majoe de Meirelles. **Biodiversidade brasileira: uma visão sobre os instrumentos legais destinados a sua proteção**. Available at: <http://app.vlex.com/#WW/search/*/biodiversidade/WW/vid/75745311>. Access September 11, 2015.
- TACHINARDI, Maria Helena. **A guerra das Patentes: o conflito Brasil x EUA sobre propriedade intelectual**. Rio de Janeiro: Paz e Terra, 1993.
- VALOIS, Afonso Celso Candeira. **Biodiversidade, Biotecnologia e Propriedade Intelectual (Um Depoimento)**. Cadernos de Ciência & Tecnologia. Brasília. V.15. p. 21-31, 1998.
- VARGAS, Everton Vieira. **A construção recente do direito internacional do meio ambiente: uma visão brasileira**. In: Salem Hikmat Nasser, Fernando Rei (organizadores). Direito Internacional do Meio Ambiente. São Paulo: Atlas, 2006.
- WANDSCHEER, Clarissa Bueno. **Biodiversidade e conhecimento tradicional**. In: Patrícia Luciane de Carvalho (coord). Propriedade Intelectual. 2.ed. Curitiba: Juruá, 2008.
- WORLD INTELLECTUAL PROPERTY ORGANIZATION. **Inside WIPO**. Available at: <<http://www.wipo.int/about-wipo/en/>>. Access September 25, 2016.
- WORLD TRADE ORGANIZATION. **Understanding the WTO: members and observers**.

Available at:<https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm>. Access September 29, 2016.

YAMAMURA, Simone; SALLES FILHO, Sérgio Luiz; CARVALHO, Sérgio Medeiros Paulino de. **Propriedade intelectual e plantas transgênicas: quadro regulatório e implicações sobre pesquisa e inovação no Brasil**. In: Patrícia Luciane de Carvalho (coord.). Propriedade Intelectual. v.2.2. ed. Curitiba: Juruá, 2008.

ZANIRATO, Silvia Helena; RIBEIRO, Wagner Costa. **Conhecimento tradicional e propriedade intelectual nas organizações multilaterais**. Revista Ambiente e Sociedade, Campinas, v. X, n. 1, p.39-55, Jun, 2007.