

Inclusion of national interests in FTA : the US -Peru FTA in the area of biodiversity, IP and TK

Manuel Ruiz

SPDA

Initial considerations ...

- Impacts of FTA on the multilateral trading system ...
- IP inclusions : consequence of GATT ?
- Strengthening IP protection in all areas - patents are not the incentive for innovation and research - access to knowledge
- Effects on consumers, health
- Limited internal capacities to take advantage of the FTA (in the area of IP)
- Public participation - consultation
- **Political considerations** v. technical views FTA does not respond to internal needs and interests)

Tradition in the Andean Community to link biodiversity, traditional knowledge and IP...

- Decision 345 (1993) - plant breeders rights (mandate to negotiate an access and benefit sharing regime)
- Decision 391 (1996) - access to genetic resources and benefit sharing (disclosure principles and linkages between access, TK and IP)
- Decision 486 (2000) - IP regime (IP subject to respect to biodiversity and TK laws - disclosure requirements)

Positions of Andean countries in international forums

- WIPO (IGC, SPLT, PCT), TRIPS Council, CBD ... disclosure measures ...review of article 27.3.b / 69 of TRIPS ... protection of TK ...
- FTA Andean countries - US : (Peru) : working group led by INDECOPI (IP authority) - Disclosure and D 486 provisions as the maximum goal on TK, biodiversity, IP issues ... inclusion of biodiversity / TK in IP Chapter ... enhancing patent searches (cooperation) ... legal protection of TK

What has been achieved in the FTA in the case of biodiversity, TK ?

- Chapter 18 (Environment), Side Letter (Letter of Understanding)
- Recognition of biodiversity, genetic resources, TK as critical issues (C 18 - SL)
- Relation to IP - building of databases and enhance capacities of IP offices to undertake “better” patent searches (SL)
- Bilateral cooperation under Chapter 18 mechanisms

What to do ?

- Proactive / innovative approaches to all issues under the FTA
- National plans/strategies for R&D under existing circumstances (biodiversity located *in situ*) - research in areas where data/technologies are not protected ...initial basic research
- National commitments - incentives for and investment in R&D ... institutional change - clear national development objectives