

# LES ACCORDS COMMERCIAUX CRIMINALISENT LES SEMENCES DES AGRICULTEURS



La lutte contre le CAFTA au Costa Rica a vraiment été un combat contre le brevetage de la richesse unique du pays en biodiversité et contre l'UPOV elle-même. (Source: Fighting FTAs)

Quoi de plus normal que de conserver les semences d'une saison à l'autre ? Après tout, c'est bien comme ça que nous faisons pousser les plantes dans nos fermes et nos jardins.

Et pourtant, du Guatemala au Ghana, du Mozambique à la Malaisie, cette pratique courante est transformée en délit, pour permettre à une demi-douzaine de grandes multinationales de faire des semences une propriété privée et d'en tirer de l'argent.

GRAIN présente un set de données actualisé qui illustre comment les accords de soi-disant libre-échange (les ALE) sont en train de privatiser les semences dans le monde entier. Mais les gens réagissent et dans plusieurs pays, la mobilisation populaire force déjà les gouvernements à mettre les plans de privatisation des semences en attente.

Les accords commerciaux sont devenus l'outil idéal pour les gouvernements, qui travaillent main dans la main avec les lobbies des grandes entreprises, pour faire passer les nouvelles règles destinées à restreindre le droit des paysans à se servir des semences. Jusqu'à relativement récemment, le plus important de ces accords était l'Accord de l'Organisation mondiale du Commerce (l'OMC) sur les aspects des droits de propriété intellectuelle qui touchent au commerce (ADPIC). Adopté en 1994, l'accord sur les ADPIC était, et c'est encore le cas, le premier traité international à établir des normes mondiales pour les droits de « propriété intellectuelle » concernant les semences.<sup>1</sup> Le but est de garantir que des sociétés comme Monsanto ou Syngenta, qui dépensent de l'argent pour la sélection végétale et le génie génétique, puissent contrôler ce qui arrive à leurs semences en empêchant les agriculteurs de les réutiliser, ce qui ressemble fort aux procédés employés par Hollywood ou Microsoft pour essayer d'empêcher les gens de copier ou de partager les films ou les logiciels en attachant des verrous juridiques ou technologiques à leurs produits.

Mais les semences ne sont pas des logiciels. L'idée même de « breveter le vivant » suscite une énorme contestation. Pour cette raison, l'accord de l'OMC formait une sorte de compromis mondial entre gouvernements. L'accord stipule que les pays ont le droit d'exclure les végétaux et les animaux (autres que les

microorganismes) de leurs lois sur les brevets, mais qu'ils doivent fournir une forme de protection de la propriété intellectuelle sur les obtentions végétales, sans toutefois spécifier comment faire.

Les accords commerciaux négociés en-dehors de l'OMC, en particulier ceux qui émanent des puissantes économies du Nord, ont tendance à aller beaucoup plus loin. Ils exigent souvent que les pays signataires brevètent les plantes et les animaux, ou suivent les règles de l'Union pour la protection des obtentions végétales (UPOV), basée à Genève, qui crée des droits similaires à un brevet sur les obtentions végétales. Que ce soit sous la forme de lois sur les brevets ou l'UPOV, ces règles décrètent généralement qu'il est illégal pour les paysans de conserver, échanger, vendre ou modifier les semences qu'ils ont gardées quand elle proviennent de variétés soi-disant protégées.<sup>2</sup> En fait en 1991, la Convention de l'UPOV a été modifiée pour donner encore plus de monopole aux entreprises d'agrobusiness, aux dépens des communautés de petits agriculteurs et des populations autochtones. C'est cette version 1991 de l'UPOV que promeuvent aujourd'hui largement les accords commerciaux.

1. La "propriété intellectuelle" est un droit de monopole exercé par les gouvernements. Il sert à garantir que les gens paient le droit d'utiliser quelque chose pendant un certain temps, de façon que l'inventeur puisse récupérer son investissement. Une "obtention végétale" fait référence à des semences qui vont évoluer en une espèce spécifique de plante qui présente des caractéristiques spécifiques.

2. Dans le cadre du système de l'UPOV, les paysans peuvent quelquefois conserver des semences de variétés protégées pour les réutiliser. Cela dépend de la version de la Convention UPOV qui a été signée par le pays et de la volonté du gouvernement de choisir ou non cette option. L'autorisation se limite parfois à laisser le paysan replanter les semences sur ses propres terres ou à certaines cultures seulement ou peut être soumise au paiement d'une licence. Avec le système des brevets, il est tout simplement illégal d'utiliser des semences brevetées sans les payer, même si elles ont été lâchées dans votre champ par un oiseau !





Manifestation de septembre 2013 contre les ALE: en Thaïlande, les mouvements populaires s'opposent à ce que les négociations relatives à un accord de libre-échange entre la Thaïlande et l'UE aboutissent à l'imposition de l'UPOV aux paysans du pays. (Photo: FTA Watch)

### L'attaque implacable des ALE

Vers l'époque où l'accord sur les ADPIC était en voie d'être conclu, l'Accord de libre-échange nord-américain – signé par le Mexique, le Canada et les États-Unis – fut l'un des premiers accords commerciaux à être négocié hors de l'arène multilatérale pour resserrer l'étau autour de la privatisation des semences. Il obligeait le Mexique à rejoindre le club UPOV des pays qui accordaient des droits exclusifs aux entreprises semencières pour empêcher les agriculteurs de recycler et de réutiliser les semences vendues par les entreprises. Le précédent était établi pour tous les accords de libre-échange américains qui allaient suivre, tandis que l'Union européenne, l' Association européenne de libre-échange et le Japon s'empressaient de prendre le même chemin.<sup>3</sup>

Un système incessant de pressions diplomatiques et financières pour amener « en coulisse » les pays à privatiser les semences (ces accords commerciaux sont en effet négociés en secret) est en place depuis. Les enjeux sont importants pour l'industrie des semences. Au niveau mondial, 10 entreprises contrôlent à elles seules 55 % du marché des semences commerciales.<sup>4</sup>

3. L'AELE (EFTA) comprenait l'Islande, le Lichtenstein, la Norvège et la Suisse.

4. ETC Group, "Ä qui appartient la nature ?", 2008. <http://www.etcgroup.org/files/publication/717/01/wonfrancais01-23-2009web.pdf>

Pour ces grandes entreprises toutefois, cette part de marché n'est encore pas suffisante. Partout en Asie, en Afrique et en Amérique latine, quelque 70 à 80 % des semences utilisées par les paysans sont des semences paysannes, qu'ils obtiennent dans leurs propres fermes, chez des voisins ou auprès de communautés avoisinantes. Dans ces territoires qui restent à conquérir, les géants de l'agrobusiness veulent remplacer la sauvegarde des semences par des marchés des semences et prendre le contrôle de ces marchés. Pour se faciliter la tâche, ils réclament aux gouvernements des protections légales, pour créer et renforcer le monopole des grandes sociétés sur les semences. C'est là que les accords de libre-échange interviennent comme l'instrument parfait pour forcer les pays à changer leurs lois.

### Dernières tendances

GRAIN a mené l'enquête pour démontrer comment depuis 15 ans, les accords commerciaux signés hors de la sphère multilatérale forcent les pays à se conformer aux souhaits de l'industrie concernant les droits de propriété intellectuelle pour les semences et ce faisant, renforcent les normes internationales. Une mise à jour



Même les Colombiens qui vivent loin du pays ont été choqués de voir comment les accords commerciaux avec les États-Unis et l'UE ont poussé Bogotá à criminaliser les semences des paysans et sont descendus dans les rues de Melbourne en signe de solidarité. (Photo: Erik Anderson/Flickr)

récente de notre set de données montre que cette tendance est loin de se calmer. En réalité, des signes très inquiétants apparaissent à l'horizon.

Récemment, les bénéfices les plus importants engrangés par Monsanto, Dupont, Limagrain et Syngenta – les plus gros semenciers mondiaux – proviennent des nouveaux accords commerciaux acceptés par les pays d'Amérique latine. En 2006, les États-Unis (patrie de Monsanto et de Dupont) ont conclu des accords majeurs avec le Pérou et la Colombie, obligeant l'un comme l'autre à adopter l'UPOV<sup>9</sup>. Les États de l'AELE ont fait la même chose en 2008 et l'UE (patrie de Limagrain) en 2012.<sup>5</sup> En Amérique centrale, le même scénario s'est déroulé : Les États-Unis ont réussi à mettre en place en 2007 un Accord de libre-échange très important avec l'Amérique centrale, qui force tous les pays à adhérer à l'UPOV<sup>91</sup>. L'AELE a fait de même l'an dernier.

L'Afrique a récemment fait un pas de plus vers le renforcement des marchés de semences propriétaires. Après dix ans de pourparlers, des Accords de partenariat

économique (APE) ont été conclus entre l'UE et les pays d'Afrique subsaharienne en 2014. La plupart ne font « que » libéraliser le commerce des biens pour l'instant, mais ils contiennent également un engagement à négocier des normes de propriété intellectuelle communes avec Bruxelles. L'idée est que ces normes seront fondées sur ce que les États caribéens ont déjà accepté dans leur APE de 2008, à savoir l'obligation d'au moins considérer la possibilité de rejoindre l'UPOV. Ceci est un point important car jusqu'à présent, les États africains n'avaient aucune obligation d'adopter l'UPOV comme norme et ont réellement essayé de mettre au point leurs propres systèmes de protection des obtentions végétales.<sup>6</sup> Et s'il est vrai que des organismes africains comme l'Organisation régionale africaine de la propriété intellectuelle (l'ARIPO, anglophone) et l'Organisation africaine de la propriété intellectuelle (l'OAPI, francophone) sont déjà en train de rejoindre l'UPOV, ce serait cette fois, dans le cadre des accords commerciaux avec

5. L'Équateur est actuellement aussi en pourparlers avec l'UE, sur la base du texte signé avec la Colombie et le Pérou.

6. L'Organisation de l'Unité Africaine, par exemple, a mis au point son propre modèle juridique de protection des obtentions végétales sur la base des droits des communautés.





Selon l'accord commercial qu'il a signé avec les États-Unis, le Guatemala est obligé d'adhérer à la Convention UPOV. Le gouvernement a récemment mis au point une loi qui va dans ce sens. Mais pour beaucoup de Guatémaliens, c'est une manière de protéger les intérêts de Monsanto, la société transnationale américaine, devenue synonyme de destruction de la souveraineté alimentaire et des droits des agriculteurs dans le monde. (Photo: Raúl Zamora)

l'UE, les pays eux-mêmes qui rejoindraient l'UPOV. À un peu plus long terme, l'harmonisation en Afrique se fait de l'intérieur, avec la fusion et la réunion des blocs commerciaux subrégionaux pour former une seule zone de libre-échange sur le continent, prévue en principe pour 2017. Cette évolution devrait provoquer en même temps une harmonisation interne des lois de propriété intellectuelle sur tout le continent, ce qui risque de resserrer encore davantage l'état.

L'Accord de partenariat transpacifique (TPP) est très probablement le plus effrayant des ALE en cours de négociation, si l'on considère les conséquences qu'il peut avoir sur les droits des paysans à contrôler les semences en Asie et dans les pays du Pacifique. Les États-Unis qui mènent les discussions avec 11 autres pays riverains du Pacifique ont en effet décidé d'employer la manière forte. Une fuite montre, dans un document de négociation de mai 2014, que les États-Unis réclament non seulement l'application de l'UPOV 91 dans tous les pays concernés par le TPP, mais aussi carrément le brevetage des plantes et des animaux. Nous ne savons pas encore si ces demandes apparaîtront également dans le Partenariat transatlantique de

commerce et d'investissement (TTIP) qui est actuellement en cours de négociation entre les États-Unis et l'UE, car les textes ne sont pas à la disposition du public.

Tandis que les limites de tout ce qui doit être privatisé ne cessent de s'accroître, les sanctions appliquées en cas de non-respect des normes se multiplient. Dans le cadre de nombreux ALE, les pays comme les États-Unis exigent que les agriculteurs qui enfreignent ces nouveaux droits de propriété intellectuelle sur les semences soient poursuivis au pénal, et non selon le droit civil. Dans certains cas, tels l'Accord économique et commercial global (AECG, ou CETA en anglais) récemment conclu entre l'UE et le Canada, un simple soupçon d'infraction peut faire saisir les biens d'un agriculteur ou geler ses comptes bancaires.<sup>7</sup>

7. Voir l'Union nationale des fermiers (NFU) See National Farmers' Union, "CETA + Bill C-18 = too much power for seed companies", juin 2014, <http://www.nfu.ca/sites/www.nfu.ca/files/CETA%20and%20C-18%20Fact%20Sheet%20-%20June%202014.pdf>  
En français: <http://www.nfu.ca/sites/www.nfu.ca/files/C-18%20-%20Une%20loi%20pour%20les%20multinationales%20agroindustrielles.pdf>, février 2014



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### La mobilisation se durcit

La bonne nouvelle, c'est que les mouvements sociaux ne se laissent pas faire. Ils sont de plus en plus actifs, se font beaucoup entendre, deviennent plus hardis et mieux organisés. En 2013, les Colombiens de toutes classes sociales ont été choqués quand ils ont vu par eux-mêmes comment les ALE américains et européens pouvaient amener leur propre gouvernement à détruire brutalement des tonnes de semences qui avaient été conservées par des agriculteurs ignorants des nouvelles règles. L'indignation, arrivant au beau milieu d'une grève agraire nationale, a été si forte que le gouvernement a de fait accepté de suspendre temporairement la loi et de réexaminer la question directement avec les représentants des mouvements paysans.<sup>8</sup>

En 2014, c'est au tour du Guatemala d'être bouleversé quand le grand public réalise que le gouvernement

essayait de faire passer de force l'adoption de l'UPOV 91 sans véritable débat, à cause d'accords commerciaux comme le CAFTA.<sup>9</sup> Les gens ont été furieux de voir que les communautés autochtones n'avaient pas été consultées, comme le veut la loi, surtout quand le but de cette loi, en fin de compte, est de remplacer les semences indigènes par les semences commerciales d'entreprises étrangères comme Monsanto ou Syngenta. Après des mois de pressions, le gouvernement a reculé et annulé la loi.<sup>10</sup> Cependant, de même qu'en Colombie, le retrait n'a qu'une valeur temporaire, pendant que d'autres mesures sont en examen. Dans d'autres parties d'Amérique latine, au Chili et en Argentine par exemple, de nouvelles lois visant à mettre en place l'UPOV 91 et que

8. GRAIN, "Soulèvement des agriculteurs colombiens : les semences sous les feux de l'actualité", September 2013, <http://www.grain.org/article/entries/4781-soulevement-des-agriculteurs-colombiens-les-semences-sous-les-feux-de-l-actualite>

9. L'accord AELE-Amérique centrale de 2013 qui exprime les mêmes exigences que le CAFTA, ne semble pas avoir beaucoup attiré l'attention du public.

10 Voir EFE, "Guatemala repeals plant breeder rights law", 5 septembre, <http://www.bilaterals.org/?guatemala-repeals-plant-breeder>. Voir aussi <http://www.bilaterals.org/?guatemala-sous-la-pression-des>



les gens appellent souvent les « lois Monsanto » provoquent une résistance farouche et qui porte ses fruits parmi les mouvements sociaux.

De même, en Afrique, des vagues de protestation publique s'élèvent contre les régimes de protection des obtentions végétales que les pays sont aujourd'hui en train d'adopter. Au Ghana, une campagne très dynamique est lancée pour empêcher le pays d'adopter la législation UPOV 91.<sup>11</sup> Dans d'autres pays, des réseaux de mouvements civils tels que l'Alliance pour la souveraineté alimentaire en Afrique (ASAA), une coalition qui réunit des tendances très variées, introduisent des recours pour empêcher l'ARIPO d'adopter une législation fondée sur l'UPOV et de rejoindre l'Union.<sup>12</sup>

Les groupes de pression des grandes entreprises ont été trop loin dans leurs efforts de privatisation de ce que

les gens considèrent comme un bien commun. Ils ne se sont pas limités aux semences. Le même processus se répète avec la terre, les minéraux, les hydrocarbures, l'eau, le savoir, l'Internet, et même certains microorganismes importants, comme la grippe aviaire il y a quelques années ou le virus Ebola aujourd'hui. Les populations réagissent pour empêcher que tout cela ne soit soumis au contrôle exclusif de quelques grandes entreprises ou des ministères de la défense. Un bon moyen de participer à cette lutte est de rejoindre les campagnes organisées pour mettre un terme aux nouveaux accords commerciaux comme le TTIP, l'AECG, le TPP et les ALE, et de faire abroger les anciens, comme les accords américains et européens passés avec le Mexique, l'Amérique centrale, la Colombie et le Chili. C'est dans les accords commerciaux que sont écrites bon nombre de ces règles et c'est là qu'il faut les effacer.

11. Voir le site Internet de Food Sovereignty Ghana <http://foodsovereigntyghana.org/> et de Panafricanist International <http://www.panafricanistinternational.org/>.

12. "AFSA appeals to ARIPO, AU and UNECA for protection of farmers' rights & right to food", 2 juillet 2014, <http://www.acbio.org.za/index.php/media/64-media-releases/462-alliance-for-food-sovereignty-in-africa-media-briefing-afsa-appeals-to-aripo-au-and-uneca-for-protection-of-farmers-rights-a-right-to-food>

En français : [http://www.grain.org/fr/bulletin\\_board/tags/226-souverainete-alimentaire](http://www.grain.org/fr/bulletin_board/tags/226-souverainete-alimentaire)

*Pour examiner la situation actuelle des accords commerciaux qui imposent la privatisation des semences, vous pouvez télécharger le set de données de novembre 2014 de GRAIN [en anglais]:*

*"Trade agreements privatising biodiversity"[Les accords commerciaux qui privatisent la biodiversité]:* <http://www.grain.org/e/5070>

## Pour approfondir

— GRAIN, "Lois sur les semences en Amérique latine : une offensive qui se poursuit", octobre 2013 <http://www.grain.org/article/entries/4807-lois-sur-les-semences-en-amerique-latine-une-offensive-qui-se-poursuit-et-une-resistance-qui-s-intensifie-et-se-multiplie> (disponible aussi en anglais et en espagnol)

— Biodiversidad, "Leyes de semillas y otros pesares", septembre 2014, <http://www.grain.org/e/5002> (en espagnol seulement).

— Mises à jour quotidiennes sur les accords commerciaux : <http://bilaterals.org> ou @bilaterals\_org ou <https://www.facebook.com/bilaterals.org> (EN, ES, FR)

# Trade agreements privatising biodiversity

This table shows how so-called free trade agreements (FTAs) negotiated outside the World Trade Organisation (WTO) are used to go beyond global standards towards the privatisation of seeds and try to set new ones.

The 1994 WTO agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was and still is the first global treaty to establish common norms of private property rights over seeds. The goal is to ensure that companies like Monsanto or Syngenta, which spend money on plant breeding and genetic modification to bring new seeds to market, can make a profit on those seeds by preventing farmers from re-using them – a bit the way Hollywood or Microsoft try to stop people from copying and sharing films or software. The very notion of “patenting life” is hotly contested and so the WTO agreement is a kind of compromise between governments. It says that countries may exclude both plants and animals (other than micro-organisms) from their patent laws but they must provide some form of intellectual property protection over plant varieties, without specifying how to do that.

FTAs negotiated outside the WTO, especially those initiated by powerful economies in the global North, tend to go much further. They often require countries to (a) patent plants or animals, (b) follow the rules of the Union for the Protection of New Plant Varieties (UPOV) to provide a patent-like system for seeds and/or (c) join the Budapest Treaty on the recognition of deposits of micro-organisms for the purpose of patent protection. These measures give strong monopoly powers to agribusiness companies at the expense of small and indigenous farming communities. For example, UPOV and patenting generally make it illegal for farmers to save, exchange or modify seeds from so-called protected varieties.

This table focuses on “what” must be privatised according to the different trade deals. It does not account for enforcement (seizure of goods, imprisonment, etc), which in many FTAs also goes beyond the norms agreed to at WTO and is becoming a bigger and bigger headache for rural communities.

Most of these agreements are bilateral in nature, but some are unilateral or plurilateral. And while most of them are trade agreements, some are sectoral intellectual property cooperation agreements.

This dataset is a work in progress. If there are any additions or corrections you would like to share, please contact us at [grain@grain.org](mailto:grain@grain.org). Thank you.

## AFRICA & MIDDLE EAST

### European Free Trade Association<sup>1</sup>

#### EFTA-Algeria FTA | under exploration

#### EFTA-Egypt FTA | 2007 | in force

Egypt is obliged to join UPOV (1978 or 1991 Act) and accede to the Budapest Treaty by 2011. Patents must be provided in “all fields of technology” (“at least” those covered under the TRIPS Agreement).<sup>2</sup>

#### EFTA-Gulf Cooperation Council<sup>3</sup> FTA | 2009 | in force

GCC must conclude negotiations with EFTA on an Annex containing provisions on intellectual property by January 2016.<sup>4</sup>

1. Composed of Iceland, Norway, Switzerland and Liechtenstein.

2. EFTA-Egypt Free Trade Agreement, 2007, Art 23 <http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/EG/EG%20%28Folder%29/EG-FTA.pdf> and Annex V, [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/EG%20%28Folder%29/Annexes/EG\\_FTA\\_Annex\\_V.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/EG%20%28Folder%29/Annexes/EG_FTA_Annex_V.pdf)

3. Gulf Cooperation Council: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates.

4. Free trade agreement between the EFTA States and the Member States of the Co-operation Council for the Arab States of the Gulf, <http://www.efta.int/media/documents/legal-texts/free-trade-relations/gulf-cooperation-council-GCC/EFTA-GCC%20Free%20Trade%20Agreement.pdf> [Art 5.1.6]



### **EFTA-Jordan FTA | 2001 | in force**

Jordan must join UPOV and accede to Budapest Treaty by 2006. Jordan must also ensure "adequate and effective patent protection for inventions in all fields of technology on a level similar to that prevailing in the European Patent Convention" which allows the patenting of transgenic plants and animals.<sup>5</sup>

### **EFTA-Lebanon FTA | 2004 | in force**

Lebanon must join UPOV (1978 or 1991 Act) and accede to the Budapest Treaty by 2008.<sup>6</sup>

### **EFTA-Morocco FTA | 2000 | in force**

Morocco must join UPOV and accede to Budapest Treaty by 2000. Morocco must also provide "adequate and effective patent protection for inventions in all fields of technology on a level similar to that prevailing in the European Patent Convention" which allows the patenting of transgenic plants and animals.<sup>7</sup>

### **EFTA-Palestinian Authority FTA | 1998 | in force**

Palestinian Authority must implement the "highest international standards" of IPR protection.<sup>8</sup>

### **EFTA-Tunisia FTA | 2004 | in force**

Tunisia must join UPOV (1978 or 1991 Act) and accede to the Budapest Treaty by 2010. Tunisia will also do its utmost to accede to all IPR treaties to which EFTA states are party.<sup>9</sup>

## **European Union**

### **Cotonou Agreement | 2000 | in force**

The parties recognise the need to ensure adequate and effective protection of patents on plant varieties and on biotechnological inventions.<sup>10</sup>

### **EU-Algeria FTA | 2002 | in force**

Algeria shall accede to and implement UPOV (1991 Act) by 2010, although accession can be replaced by implementation of an effective sui generis system if both parties agree.<sup>11</sup> Algeria must accede to Budapest Treaty.<sup>12</sup>

### **EU-Central Africa<sup>13</sup> EPA | under negotiation**

Only Cameroon signed and ratified an interim EPA which establishes a basis for negotiation of rules on intellectual property rights.<sup>14</sup> These are expected to be modelled on the EU-Caribbean EPA.

### **EU-East African Community<sup>15</sup> EPA | 2007 | initialled**

Under a rendezvous clause of a framework EPA initialled in 2007, but never signed, the EAC member states

5. EFTA-Jordan Free Trade Agreement, Art 17, [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Jordan/JO/JO\\_FTA.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Jordan/JO/JO_FTA.pdf) and Annex VI, [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/JO/Annexes/10-Annex\\_VI.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/JO/Annexes/10-Annex_VI.pdf)

6. Free Trade Agreement EFTA - Republic of Lebanon, Annex V, [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/LB/LB\\_RUAP/annexes/LB\\_Annex\\_V.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/LB/LB_RUAP/annexes/LB_Annex_V.pdf)

7. EFTA-Morocco Free Trade Agreement. [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Morocco/MA/MA\\_FTA\\_EN.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Morocco/MA/MA_FTA_EN.pdf) [Art 16] and [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/MA/Annexes/14-Annex\\_V.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/MA/Annexes/14-Annex_V.pdf) [Annex V]

8. Interim Agreement between the EFTA States and the PLO for the Benefit of the Palestinian Authority. [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Palestinian\\_Authority/PLO/PLO\\_FTA.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Palestinian_Authority/PLO/PLO_FTA.pdf) [Art 15]

9. Free Trade Agreement between the States of the European Free Trade Association and the Republic of Tunisia, 17 December 2004, Annex V. [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/TN/TN\\_RUAP\\_EN/TN%20annexes%20and%20protocols%20%28English%29/TN\\_FTA\\_Annex\\_V.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/TN/TN_RUAP_EN/TN%20annexes%20and%20protocols%20%28English%29/TN_FTA_Annex_V.pdf)

10. Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, CE/TFN/GEN/23-OR, ACP/00/0371/00, 8.2.00. [http://www.bilaterals.org/article.php3?id\\_article=27](http://www.bilaterals.org/article.php3?id_article=27) [Art 45]

11. Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part - Annexes 1 to 6 and Protocols Nos 1 to 7, Council of the European Union, Brussels, 12 April 2002, 6786/02 ADD1 AL1, Annex 6, Art 3 [http://www.bilaterals.org/article.php3?id\\_article=413](http://www.bilaterals.org/article.php3?id_article=413)

12. Ibid, Annex 6, Art 1.

13. Cameroon, Chad, Congo, Equatorial Guinea, Gabon and São Tomé and Príncipe

14. Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, 15 January 2009, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2009:057:FULL&from=EN> [Art 3 and Chpt 3]

15. Burundi, Kenya, Rwanda, Tanzania, Uganda

agreed to further negotiate rules on intellectual property.<sup>16</sup> These are expected to be modelled on the EU-Caribbean EPA .

#### **EU-Eastern and Southern Africa<sup>17</sup> EPA | 2009 | provisionally applied**

Under a rendezvous clause of an interim EPA signed in 2009 and provisionally applied since 2012, Madagascar, Mauritius, Seychelles and Zimbabwe agreed to further negotiate rules on intellectual property.<sup>18</sup> These are expected to be modelled on the EU-Caribbean EPA .

#### **EU-West Africa<sup>19</sup> EPA | 2014 | agreed**

Under a rendezvous clause of an interim EPA concluded in 2014, the parties agreed to further negotiate rules on intellectual property, including traditional knowledge and genetic resources.<sup>20</sup> These are expected to be modelled on the EU-Caribbean EPA.

#### **EU-Egypt FTA | 2001 | agreed**

Egypt must join UPOV and accede to Budapest Treaty within five years of the agreement's entry into force.<sup>21</sup> This deal is to be expanded, post-2012, by a Deep and Comprehensive Free Trade Agreement through which the EU aims to further "align" intellectual property rules.<sup>22</sup>

#### **EU-GCC FTA | under negotiation**

#### **EU-Iran FTA | under negotiation**

#### **EU-Jordan FTA | 1997 | in force**

Jordan must join UPOV and accede to Budapest Treaty by 2007.<sup>23</sup> This deal is to be expanded, post-2012, by a Deep and Comprehensive Free Trade Agreement through which the EU aims to further "align" intellectual property rules.<sup>24</sup>

#### **EU-Lebanon FTA | 2002 | in force**

Lebanon must join UPOV (1991 Act) and accede to Budapest Treaty by 2008.<sup>25</sup>

#### **EU-Morocco FTA | 2000 | in force**

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16. Agreement Establishing a Framework for an Economic Partnership Agreement between the European Community and its Member States, on the one part, and the East African Community Partner States on the other part, 2007, [http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc\\_145792.pdf](http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145792.pdf) [Art 37]

17. Comoros, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe

18. Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, August 2009, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2012:111:TOC> [Art 53]

19. Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

20. Draft joint text after conclusion of negotiations by Senior Officials, February 2014, Economic Partnership Agreement (EPA) between the West African States, ECOWAS and WAEMU, of the one part and the European Community and its Member States of the other part, [Art 106.2]

21. Proposal for a Council and Commission Decision on the conclusion of a Euro-Mediterranean Association Agreement between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, COM (2001) 184 final, Official Journal of the European Communities C 304 E/2 of 30 October 2001, [http://www.bilaterals.org/article.php3?id\\_article=408](http://www.bilaterals.org/article.php3?id_article=408) [Art 37 and Annex VI].

22. European Parliament resolution on the EU Trade and Investment Strategy for the Southern Mediterranean following the Arab Spring revolutions, 10 May 2012, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012IP0201&rid=33> [Para 30]

23. Euro-Mediterranean Association Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, signed on 24 November 1997 and entered into force on 1 May 2002, Official Journal of the European Communities L 129 of 2002, [http://www.bilaterals.org/article.php3?id\\_article=409](http://www.bilaterals.org/article.php3?id_article=409) [Art 56 and annex VII]

24. European Parliament resolution on the EU Trade and Investment Strategy for the Southern Mediterranean following the Arab Spring revolutions, 10 May 2012, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012IP0201&rid=33> [Para 30]

25. Interim agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Lebanon, of the other part, Official Journal of the European Communities L 262/2 of 30 September 2002 [http://www.bilaterals.org/article.php3?id\\_article=414](http://www.bilaterals.org/article.php3?id_article=414). [Annex 2.2]



Morocco must join UPOV (1991 Act) and accede to Budapest Treaty by 2004.<sup>26</sup> This deal is to be expanded by a Deep and Comprehensive Free Trade Agreement, currently under negotiation, through which the EU aims to further "align" intellectual property rules.<sup>27</sup>

#### **EU-Palestinian Authority FTA | 1997 | in force**

Palestinian Authority must implement the "highest international standards" of IPR protection.<sup>28</sup>

#### **EU-South Africa FTA | 1999 | in force**

South Africa shall ensure adequate and effective protection for patents on biotechnological inventions. South African must also implement "highest international standards" of IPR protection and undertake to go beyond TRIPS standards of IPR protection.<sup>29</sup>

#### **EU-Southern Africa Development Cooperation<sup>30</sup> EPA | 2014 | concluded**

The SADC states may consider entering into negotiations on intellectual property with the EU at a later stage.<sup>31</sup>

#### **EU-Syria FTA | 2004 | agreed**

Syria shall follow the "highest international standards" including, not limited to, the TRIPS Agreement. Syria shall also accede to the Budapest Treaty and the UPOV Convention (1991) within 5 years of applicability of Annex 6. However, Syria may replace accession to UPOV with implementation of an "adequate and effective" system for protection of plant varieties.<sup>32</sup>

#### **EU-Tunisia FTA | 1998 | in force**

Tunisia must join UPOV (1991 Act) and accede to Budapest Treaty by 2002. Tunisia must also implement "highest international standards" of IPR protection.<sup>33</sup> This deal is to be expanded, post-2012, by a Deep and Comprehensive Free Trade Agreement through which the EU aims to further "align" intellectual property rules.<sup>34</sup>

#### **EU-West Africa<sup>35</sup> EPA | 2014 | agreed**

Under a rendezvous clause, the West African states have agreed to further negotiate rules on intellectual

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26. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, Official Journal of the European Communities (OJ) L 070 of 18 March 2000, p. 0002-0204. [http://www.bilaterals.org/article.php?id\\_article=415](http://www.bilaterals.org/article.php?id_article=415) [Annex 7, Art 1]

27. European Parliament resolution on the EU Trade and Investment Strategy for the Southern Mediterranean following the Arab Spring revolutions, 10 May 2012, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012IP0201&rid=33> [Para 30]

28. Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, Official Journal L 187 of 16 July 1997, p. 0003-0135. [http://www.bilaterals.org/article.php?id\\_article=417](http://www.bilaterals.org/article.php?id_article=417) [Title II, Art 33]

29. Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, Official Journal L 311 of 4 December 1999 p. 0003-0297. [http://www.bilaterals.org/article.php?id\\_article=419](http://www.bilaterals.org/article.php?id_article=419) [Art 46]

30. Southern Africa Development Community, involving Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland, Tanzania and South Africa. See Section 10, Articles 10-11 of the draft EU-SADC Economic Partnership Agreement dated June 2007 at [http://www.bilaterals.org/article.php?id\\_article=9719](http://www.bilaterals.org/article.php?id_article=9719)

31. Economic Partnership Agreement between the European Union and its member states, of the one part, and the SADC EPA states, of the other part, text agreed to and under legal scrub as of September 2014, <http://www.bilaterals.org/?eu-sadc-epa-as-of-sep-2014> [Art 67-II.6]

32. Proposal for a Council Decision on the conclusion of a Euro-Mediterranean Association Agreement between the European Community and its Member States of the one part, and the Syrian Arab Republic, of the other part, COM (2004) 808 final, Brussels, 17 December 2004. [http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004\\_0808en01.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0808en01.pdf) Article 72 and Annex VI

33. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, Official Journal L 097 of 30 March 1998 p. 0002-0183. [http://www.bilaterals.org/article.php?id\\_article=418](http://www.bilaterals.org/article.php?id_article=418) [Annex 7]

34. European Parliament resolution on the EU Trade and Investment Strategy for the Southern Mediterranean following the Arab Spring revolutions, 10 May 2012, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012IP0201&rid=33> [Para 30]

35. Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. See Section 10, Articles 10-11 of the draft EU-ECOWAS Economic Partnership Agreement dated April 2007 in English ([http://www.bilaterals.org/article.php?id\\_article=9721](http://www.bilaterals.org/article.php?id_article=9721)) or in French ([http://www.bilaterals.org/article.php?id\\_article=9745](http://www.bilaterals.org/article.php?id_article=9745)).

property. These are expected to be modelled on the EU-Caribbean EPA .

## United States

### **African Growth & Opportunities Act | 2000 | in force**

US trade benefits to 38 AGOA-eligible countries are unilaterally gauged on extent to which they go beyond TRIPS standards of IPR protection.<sup>36</sup>

### **US-Bahrain FTA | 2004 | in force**

Bahrain must join UPOV upon entry into force and accede to Budapest Treaty within one year of entry into force.<sup>37</sup>

### **US-Jordan FTA | 2000 | in force**

Jordan must implement and join UPOV within one year of entry into force and partially implement Budapest Treaty. Jordan may not exclude plants or animals from patent law.<sup>38</sup>

### **US-Morocco FTA | 2004 | in force**

Morocco must provide patents on plants and animals. Morocco must also ratify UPOV Convention (1991) and Budapest Treaty by 2006.<sup>39</sup>

### **US-Oman FTA | 2006 | signed**

Oman must join UPOV (1991 Act) and accede to the Budapest Treaty by the time the FTA enters into force. And while it may exclude animals (other than microorganisms) from its patent law, Oman must allow patents on plants.<sup>40</sup>

### **US-Southern African Customs Union<sup>41</sup> FTA | negotiations suspended**

(The "far reaching" intellectual property provisions of the US proposal were one reason why the talks broke down in 2006. In 2008, the parties signed a Trade and Investment Cooperation Agreement meant to keep discussions going.)

### **US-United Arab Emirates FTA | negotiations suspended**

## AMERICAS

### **European Free Trade Association**

#### **EFTA-Central America FTA | 2013 | in force**

Costa Rica and Panama must implement the provisions of UPOV (1991 or 1978 Act, depending).<sup>42</sup> Negotiations with Guatemala and Honduras currently on hold.

#### **EFTA-Chile FTA | 2003 | in force**

Chile must join the UPOV Convention (1978 or 1991 Act) by 2007 and accede to the Budapest Treaty by 2009.<sup>43</sup>

36.Trade and Development Act of 2000. [http://www.agoa.gov/agoa\\_legislation/agoatext.pdf](http://www.agoa.gov/agoa_legislation/agoatext.pdf) [Sec B.211.5.b.ii]

37.US-Bahrain Free Trade Agreement, 2004, [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Bahrain\\_FTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/Section_Index.html) [Art 14.1.2 and 14.11]

38.Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area. [http://www.bilaterals.org/article.php?id\\_article=248](http://www.bilaterals.org/article.php?id_article=248) [Art 4.1(b), Art 4.18, Art 4.21 and Art 4.29(b)].

39.US-Morocco Free Trade Agreement, 2004, [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Morocco\\_FTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Morocco_FTA/Section_Index.html) [Art 15.9.2]

40.US-Oman Free Trade Agreement, 2006, [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Oman\\_FTA/Final\\_Text/asset\\_upload\\_file715\\_8809.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Oman_FTA/Final_Text/asset_upload_file715_8809.pdf) [Art 15.1.2 and Art 15.8.2]

41.South Africa, Botswana, Namibia, Lesotho and Swaziland

42.Free Trade Agreement between the EFTA States and the Central American States, 24 June 2013, <http://www.efta.int/media/documents/legal-texts/free-trade-relations/central-america/annexes-en/annex-xix-ipr.pdf> [Annex XIX, Art 2.2.d]. If a party is already member of UPOV 1978 and chose not to subscribe to UPOV 1991, they may implement UPOV 1978 under the terms of the FTA.

43.EFTA-Chile Free Trade Agreement, Article 46, [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Chile/CL/CL\\_FTA](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Chile/CL/CL_FTA).



### **EFTA-Colombia FTA | 2008 | in force**

Colombia must join the UPOV Convention (1978 or 1991 Act) and accede to the Budapest Treaty by July 2011.<sup>44</sup>

### **EFTA-Mexico FTA | 2000 | in force**

Mexico must join UPOV and accede to the Budapest Treaty by 2002.<sup>45</sup>

### **EFTA-Peru FTA | 2008 | in force**

Peru must join the UPOV Convention (1978 or 1991 Act) and accede to the Budapest Treaty by July 2011.<sup>46</sup>

## **European Union**

### **Cotonou Agreement | 2000 | in force**

The parties recognise the need to ensure adequate and effective protection of patents on plant varieties and on biotechnological inventions.<sup>47</sup>

### **EU-Andean Community FTA | 2012 | provisionally applied**

Colombia and Peru shall implement UPOV (1991), including the so-called "farmers' privilege" (to re-use protected seed while respecting the rights of the breeder).<sup>48</sup> (Extension of the agreement to Bolivia and Ecuador being explored.)

### **EU-Caribbean<sup>49</sup> EPA | 2008 | in force**

Obliges the Caribbean states to accede to the Budapest Treaty and to consider acceding to UPOV (1991 Act). Commits the parties to further develop legal protection of traditional knowledge and genetic resources within the frame of patent law.<sup>50</sup>

### **EU-Mercosur<sup>51</sup> FTA | under negotiation**

### **EU-Mexico FTA | 2000 | in force**

Mexico must accede to Budapest Treaty within three years of entry into force. Mexico shall also provide "highest international standards" of IPR protection.<sup>52</sup>

### **EU-US FTA | under negotiation**

## **Japan**

### **Japan-Chile FTA | 2007 | in force**

Chile must join UPOV (1991) by 2009.<sup>53</sup>

### **Japan-Colombia FTA | under negotiation**

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pdf and Annex XII, [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/CL/CL\\_RUAP/Annexes/Annex\\_XII.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/CL/CL_RUAP/Annexes/Annex_XII.pdf)

44. Free Trade Agreement between the Republic of Colombia and the EFTA States, <http://www.efta.int/media/documents/legal-texts/free-trade-relations/colombia/EFTA-Colombia%20Free%20Trade%20Agreement%20EN.pdf> [Art 6.4.2]

45. EFTA-Mexico Free Trade Agreement. [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Mexico/MX/MX\\_FTA.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Mexico/MX/MX_FTA.pdf) [Art 16] and [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/MX/Annexes/30-Annex\\_XXI.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/MX/Annexes/30-Annex_XXI.pdf) [Annex XXI]

46. Free Trade Agreement between the Republic of Peru and the EFTA States <http://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/peru/EFTA-Peru%20Free%20Trade%20Agreement%20EN.pdf> [Chpt 6, Art. 6.4.2]

47. Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, CE/TFN/GEN/23-OR, ACP/00/0371/00, 8.2.00. [http://www.bilaterals.org/article.php3?id\\_article=27](http://www.bilaterals.org/article.php3?id_article=27) [Art 45]

48. Trade agreement between the European Union and its member states, of the one part, and Colombia and Peru, of the other part, [http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc\\_147704.pdf](http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf) [Sec 7, Art 232]

49. Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

50. Economic Partnership Agreement between the CARIFORUM states, of the one part, and the European Community and its member states, of the other part, as initialled on 16 December 2007 and signed on 15 October 2008. [http://www.bilaterals.org/article.php3?id\\_article=10956](http://www.bilaterals.org/article.php3?id_article=10956)

51. Common Southern Market: Argentina, Brazil, Paraguay, Uruguay and Venezuela.

52. Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, Official Journal L 276/45 of 28 October 2000. [http://www.bilaterals.org/ecrire/articles.php3?id\\_article=416](http://www.bilaterals.org/ecrire/articles.php3?id_article=416) [Art 12.1]. Decision No 1/-- of the Joint Council. [http://www.bilaterals.org/ecrire/articles.php3?id\\_article=416](http://www.bilaterals.org/ecrire/articles.php3?id_article=416) [Title IV, Art 36.2 and 36.4].

53. Agreement between Japan and the Republic of Chile for an Economic Strategic Partnership, March 2007, <http://www.mofa.go.jp/region/latin/chile/joint0703/agreement.pdf> [Art 162]

## United States

### **Andean Trade Promotion and Drug Eradication Act | 2002 | in force**

US trade benefits to Bolivia, Ecuador, Colombia and Peru unilaterally gauged on extent to which they go beyond TRIPS standards of IPR protection.<sup>54</sup>

### **Free Trade Area of the Americas | negotiations suspended**

US negotiating position is "no exclusions" for plants or animals from patent law. Actual negotiating text contains many proposals to enforce UPOV, patent plants and animals and put traditional knowledge under IPR regimes.<sup>55</sup>

### **North America Free Trade Agreement | 1994 | in force**

Mexico must implement and join UPOV within two years of entry into force.<sup>56</sup>

### **Trans-Pacific Partnership Agreement<sup>57</sup> | under negotiation**

According to the latest leaked draft, it is proposed that all parties be obliged to join UPOV (1991 Act) and the Budapest Treaty. The US, Japan and Singapore also propose that all parties shall make patents available for plants and animals, or alternatively for plant-related inventions (which would include plant varieties, although Australia wants that restricted to varieties not eligible for UPOV protection). The Agreement may also establish legal restrictions on the circulation and use of genetic resources as well as traditional knowledge pertaining to biodiversity.<sup>58</sup>

### **US-Caribbean Basin Trade Partnership Act | 2000 | in force**

US trade benefits for up to 24 eligible countries unilaterally gauged on extent to which they go beyond TRIPS standards of IPR protection.<sup>59</sup>

### **US-Chile FTA | 2003 | in force**

Chile must join UPOV (1991 Act) and provide patents on any invention in any field of technology without exception. "Each Party will undertake reasonable efforts...to develop and propose legislation within 4 years from the entry into force of this Agreement that makes available patent protection for plants that are new, involve an inventive step, and are capable of industrial application".<sup>60</sup>

### **US-Colombia FTA | 2006 | in force**

Colombia must join UPOV (1991 Act) by 2008 or entry into force, whichever later, and accede to the Budapest Treaty. Colombia must also make "all reasonable efforts" to provide patents on plants. Once it does, it cannot reverse this policy.<sup>61</sup>

### **US-Dominican Republic-Central America FTA | 2004 | in force**

Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua must join UPOV (1991 Act) or provide patents on plants. Those that do not provide patents on plants by the time of the agreement's entry

54. Andean Trade Promotion and Drug Eradication Act, [http://otexa.ita.doc.gov/AGOA-CBTPA/H3009\\_CR.pdf](http://otexa.ita.doc.gov/AGOA-CBTPA/H3009_CR.pdf) [Div C, Title XXI, Sec 3103]

55. Free Trade Area of the Americas, Third Draft Agreement, 21 November 2003, Chapter on Intellectual Property Rights, [http://www.ftaa-alca.org/FTAADraft03/ChapterXX\\_e.asp](http://www.ftaa-alca.org/FTAADraft03/ChapterXX_e.asp). The US negotiating position as of early 2001: <http://www.ustr.gov/regions/whemisphere/intel.html>.

56. North America Free Trade Agreement, Chapter 17, Intellectual Property. [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?ArticleID=168](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?ArticleID=168) [Art 1701.2 and Annex 1701.3]

57. Currently being negotiated between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, US and Vietnam.

58. TPP Intellectual Property [Rights] Chapter, consolidated text, 16 May 2014, <http://www.bilaterals.org/?tpp-draft-ip-chapter-may-2014> [Art Q.Q.A.8, Q.Q.E.1 and Q.Q.E.23]

59. US-Caribbean Trade Partnership Act of 2000. <http://www.mac.doc.gov/CBI/Legislation/cbileg-00.htm> [Sec B.211.5.b.ii]

60. US-Chile Free Trade Agreement, 2003 [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Chile\\_FTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html) [Art 17.1 and 17.9]

61. US-Colombia Trade Promotion Agreement, signed on 27 February 2006: [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Colombia\\_FTA/Draft\\_Text/asset\\_upload\\_file337\\_9394.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Colombia_FTA/Draft_Text/asset_upload_file337_9394.pdf) [Chapter 16, Art



into force must make "all reasonable efforts" to do so. Once they do, they must maintain that policy.<sup>62</sup>

#### **US-Ecuador FTA | negotiations suspended**

#### **US-Ecuador IPR Agreement | 1993 | signed but not in force**

Ecuador must conform with UPOV if it does not grant patents on plant varieties.<sup>63</sup>

#### **US-Nicaragua IPR Agreement | 1998 | in force**

Nicaragua must join UPOV. Nicaragua may not exclude plants or animals from patent law.<sup>64</sup>

#### **US-Panama FTA | 2006 | in force**

Panama must join UPOV (1991 Act) by 2010 or entry into force, whichever later, and accede to the Budapest Treaty. Panama must also make "all reasonable efforts" to provide patents on plants. Once it does, it cannot reverse this policy.<sup>65</sup>

#### **US-Peru FTA | 2005 | in force**

Peru must join UPOV (1991 Act) by 2008 or entry into force, whichever later, and accede to the Budapest Treaty. Peru must also make "all reasonable efforts" to provide patents on plants. Once it does, it cannot reverse this policy.<sup>66</sup>

#### **US-Trinidad & Tobago IPR Agreement | 1994 | in force**

Trinidad & Tobago must implement and make best effort to join UPOV.<sup>67</sup>

## ASIA & PACIFIC

### **European Free Trade Association**

#### **EFTA-China FTA | study to be launched**

#### **EFTA-Hong Kong FTA | 2011 | in force**

Hong Kong must implement UPOV (1978 or 1991 Act) and the Budapest Treaty.<sup>68</sup>

#### **EFTA-India FTA | under negotiation**

#### **EFTA-Indonesia FTA | under negotiation**

#### **EFTA-Korea FTA | 2005 | signed**

Korea is obliged to patent plants and animals.<sup>69</sup>

#### **EFTA-Malaysia FTA | under negotiation**

#### **EFTA-Russia, Belarus and Kazakhstan FTA | under negotiation**

#### **EFTA-Thailand FTA | under negotiation**

### **European Union**

#### **Cotonou Agreement | 2000 | in force**

The parties recognise the need to ensure adequate and effective protection of patents on plant varieties and on

62.US-Dominican Republic-Central America Free Trade Agreement, 2004, [http://www.ustr.gov/Trade\\_Agreements/Bilateral/DR-CAFTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/DR-CAFTA/Section_Index.html) [Chapter 15, Art 15.1 and 15.9]

63.Agreement between the Government of the United States of America and the Government of Ecuador Concerning the Protection and Enforcement of Intellectual Property Rights. [http://www.bilaterals.org/article.php3?id\\_article=384](http://www.bilaterals.org/article.php3?id_article=384) [Art 6.1(c)]

64.Agreement between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning Protection of Intellectual Property Rights. [http://www.bilaterals.org/article.php3?id\\_article=392](http://www.bilaterals.org/article.php3?id_article=392) [Art 1.2 and Art 7.2]

65.US-Panama Free Trade Agreement, draft of December 2006. [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Panama\\_FTA/Draft\\_Text/asset\\_upload\\_file360\\_10350.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Panama_FTA/Draft_Text/asset_upload_file360_10350.pdf) [Art 15.3 and 15.9.2]

66.US-Peru Trade Promotion Agreement, draft of 6 January 2006 (subject to legal review), Articles 16.1.2, 16.1.3 and 16.9.2. [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Peru\\_TPA/Final\\_Texts/asset\\_upload\\_file509\\_8706.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/asset_upload_file509_8706.pdf)

67.Memorandum of Understanding between the Government of the United States of America and the Government of Trinidad and Tobago Concerning Protection of Intellectual Property Rights. [http://www.bilaterals.org/article.php3?id\\_article=395](http://www.bilaterals.org/article.php3?id_article=395) [Art 1.2]

68.EFTA-Hong Kong China Free Trade Agreement, 21 June 2011, <http://www.efta.int/free-trade/free-trade-agreements/hong-kong> [Annex XII, Art 2]

69.Free Trade Agreement between the EFTA States and the Republic of Korea, 15 December 2005, [http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/KR/KR\\_RUAP/annexes/KR\\_Annex\\_XIII\\_-\\_IPR.pdf](http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/KR/KR_RUAP/annexes/KR_Annex_XIII_-_IPR.pdf) [Annex XIII, Article 2(a)]

biotechnological inventions.<sup>70</sup>

#### **EU-ASEAN<sup>71</sup> FTA | under negotiation**

#### **EU-Bangladesh Cooperation Agreement | 2001 | in force**

Bangladesh must endeavour to join UPOV (1991 Act) and to accede to the Budapest Treaty by 2006.<sup>72</sup>

#### **EU-India FTA | under negotiation**

Leaks of negotiating drafts show the parties seeking agreement on providing protection for plant varieties as per their respective domestic laws.<sup>73</sup>

#### **EU-Korea Trade and Cooperation Agreement | 2001 | in force**

Korea shall make efforts to accede as soon as practicable to the UPOV Convention (1991 Act) and to the Budapest Treaty.<sup>74</sup>

#### **EU-Korea FTA | 2011 | in force**

Korea shall comply with UPOV (1991).<sup>75</sup>

#### **EU-Malaysia FTA | under negotiation**

#### **EU-Pacific<sup>76</sup> EPA | under negotiation**

#### **EU-Singapore EPA | 2013 | initialled**

The parties reaffirm their commitment to UPOV 1991, including the so-called farmers' privilege (to re-use protected seed while respecting the rights of the breeder).<sup>77</sup>

#### **EU-Sri Lanka Cooperation Agreement | 1995 | in force**

Sri Lanka shall implement the "highest international standards" of IPR protection.<sup>78</sup>

#### **EU-Thailand FTA | under negotiation**

#### **EU-Vietnam FTA | under negotiation**

### **Japan**

#### **Japan-Brunei FTA | 2007 | in force**

Brunei shall endeavour to become party to UPOV and the Budapest Treaty.<sup>79</sup>

#### **Japan-Malaysia FTA | 2005 | in force**

Malaysia must "recognise the importance of protecting new plant varieties in a manner consistent with internationally harmonised system. For this purpose, [Malaysia] shall ensure that rights relating to new plant varieties are adequately protected."<sup>80</sup>

70.Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, CE/TFN/GEN/23-OR, ACP/00/0371/00, 8.2.00. [http://www.bilaterals.org/article.php3?id\\_article=27](http://www.bilaterals.org/article.php3?id_article=27) [Art 45]

71.Association of South East Asia Nations: Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam.

72.Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development, OJ C143 of 21 May 1999. [Art 4.5] Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development, Official Journal L 118 , 27/04/2001 P. 0048 - 0056. [http://www.bilaterals.org/article.php3?id\\_article=407](http://www.bilaterals.org/article.php3?id_article=407)

73.Relevant texts available at [bilaterals.org](http://www.bilaterals.org/?-eu-ftas-): <http://www.bilaterals.org/?-eu-ftas->

74.Framework Agreement for Trade and Cooperation between the European Community and its Member States, on the one hand, and the Republic of Korea, on the other hand, Brussels, 30 March 2001, <http://trade-info.cec.eu.int/doclib/html/111835.htm>, Article 9 and Annex 1.

75.Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, 6 October 2010, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2011.127.01.0001.01.ENG#L\\_2011127EN.01000601](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2011.127.01.0001.01.ENG#L_2011127EN.01000601) [Art 10.39]

76.Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

77.Free Trade Agreement between the European Union and the Republic of Singapore, 20 September 2013, [http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151761.pdf](http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151761.pdf) [Chpt 11, Art 11.35]

78.Council Decision of 27 March 1995 concerning the conclusion of the Cooperation Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on Partnership and Development. [http://www.bilaterals.org/article.php3?id\\_article=808](http://www.bilaterals.org/article.php3?id_article=808) [Art 8.1.a]

79.Agreement between Japan and Brunei Darussalam for an Economic Partnership, 16 June 2007, <http://www.mofa.go.jp/region/asia-paci/brunei/epa0706/agreement.pdf> [Art 97c]

80.Agreement between the Government of Japan and the Government of Malaysia for a Free Trade Agreement, December 2005, <http://>



### **Japan-Thailand FTA | 2007 | in force**

Thailand shall "recognise the importance of protecting new varieties of plants in a manner based on international standards. For this purpose, [Thailand] shall ensure that rights relating to new varieties of plants are adequately protected." Furthermore, Thailand "shall ensure that any [Japanese patent] application shall not be rejected solely on the grounds that the subject matter claimed in the application is related to a naturally occurring micro-organism."<sup>81</sup>

### **Japan-Indonesia FTA | 2007 | in force**

Indonesia shall comply with and endeavour to join UPOV (1991).<sup>82</sup>

### **Japan-Mongolia FTA | under negotiation**

### **Japan-Vietnam FTA | 2011 | in force**

Vietnam shall endeavour to provide intellectual property protection for all plant species in accordance with UPOV (1991).<sup>83</sup>

## **Switzerland**

### **Switzerland-Viet Nam IPR Agreement | 1999 | in force**

Viet Nam must join UPOV (1991 Act) by 2002.<sup>84</sup>

## **United States**

### **Trans-Pacific Partnership Agreement<sup>85</sup> | under negotiation**

According to the latest leaked draft, it is proposed that all parties be obliged to join UPOV (1991 Act) and the Budapest Treaty. The US, Japan and Singapore also propose that all parties shall make patents available for plants and animals, or alternatively for plant-related inventions (which would include plant varieties, although Australia wants that restricted to varieties not eligible for UPOV protection). The Agreement may also establish legal restrictions on the circulation and use of genetic resources as well as traditional knowledge pertaining to biodiversity.<sup>86</sup>

### **US-Cambodia IPR Agreement | 1996 | in force**

Cambodia must join UPOV.<sup>87</sup>

### **US-Korea FTA | 2007 | in force**

Korea must join both UPOV (1991) and the Budapest Treaty, and may not exclude plants, plant varieties or animals from patent protection.<sup>88</sup>

### **US-Korea IPR Agreement | 1986 | in force**

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[www.mofa.go.jp/region/asia-paci/malaysia/epa/content.pdf](http://www.mofa.go.jp/region/asia-paci/malaysia/epa/content.pdf) [Art 123]

81. Japan-Thailand Economic Partnership Agreement, as signed on 3 April 2007, <http://www.mofa.go.jp/region/asia-paci/thailand/epa0704/agreement.pdf> [Art 135.1 and 130.3] A side letter signed by both governments attempts to "clarify" that Art 130.3 does not oblige either party to patent naturally-occurring microorganisms and their components. See <http://www.mofa.go.jp/region/asia-paci/thailand/epa0704/letter.pdf>

82. Agreement between Japan and Indonesia for an Economic Partnership, as signed on 20 August 2007. <http://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/agreement.pdf> [Art 106.3 and 116]

83. Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership, 25 December 2008, <http://www.mofa.go.jp/region/asia-paci/vietnam/epa0812/agreement.pdf> [Art 90]

84. Abkommen zwischen dem Schweizerischen Bundesrat und der Sozialistischen Republik Vietnam über den Schutz des geistigen Eigentums und über die Zusammenarbeit auf dem Gebiet des geistigen Eigentums. <http://www.admin.ch/ch/d/ff/2000/1521.pdf> [Art 2 and Annex 1]

85. Currently being negotiated between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, US and Vietnam.

86. TPP Intellectual Property [Rights] Chapter, consolidated text, 16 May 2014, <http://www.bilaterals.org/?tpp-draft-ip-chapter-may-2014> [Art Q.Q.A.8, Q.Q.E.1 and Q.Q.E.23]

87. Agreement between the United States of America and the Kingdom of Cambodia on Trade Relations and Intellectual Property Rights Protection. [http://www.bilaterals.org/article.php3?id\\_article=387](http://www.bilaterals.org/article.php3?id_article=387) [Art XI.1]

88. Free trade agreement between the United States of America and the Republic of Korea, 30 June 2007, [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset\\_upload\\_file273\\_12717.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file273_12717.pdf) [Art 18.1.3 and 18.8].

Korea must join Budapest Treaty.<sup>89</sup>

#### **US-Laos BTA | 2003 | in force**

Laos must join UPOV (1978 or 1991 Act) "without delay". Laos must also provide patents for inventions in all fields of technology, without exclusion for plants or animals.<sup>90</sup>

#### **US-Malaysia FTA | under negotiation**

#### **US-Mongolia TRA | 1991 | in force**

No exclusions for plants or animals from patent law permitted.<sup>91</sup>

#### **US-Singapore FTA | 2003 | in force**

Singapore must join UPOV (1991 Act) within six months of entry into force or by end 2003, whichever sooner. Singapore must also allow patents on all forms of plants and animals ("each Party may exclude inventions from patentability only as defined in Articles 27.2 and 27.3(a) of the TRIPS Agreement").<sup>92</sup>

#### **US-Sri Lanka IPR Agreement | 1991 | in force**

No exclusions for plants and animals from patent law permitted.<sup>93</sup>

#### **US-Thailand FTA | under negotiation**

#### **US-Vietnam BTA | 2000 | in force**

Vietnam must implement and make best effort to join UPOV. Vietnam must also provide patent protection on all forms of plants and animals that are not varieties, as well as on inventions that encompass more than one variety.<sup>94</sup>

## EUROPE

### **European Free Trade Association**

#### **EFTA-Bosnia and Herzegovina FTA | 2013 | signed but not in force**

Bosnia and Herzegovina must join the UPOV Convention (1991 Act) by end of 2013.<sup>95</sup>

#### **EFTA-Macedonia FTA | 2000 | in force**

Macedonia must join the Budapest Treaty by 2001 and the UPOV Convention by 2002.<sup>96</sup>

#### **EFTA-Montenegro FTA | 2011 | in force**

Montenegro must join the UPOV Convention (1991 Act) by end of 2012.<sup>97</sup>

#### **EFTA-Serbia FTA | 2009 | in force**

Serbia must join the UPOV Convention (1991 Act) by end of 2010.<sup>98</sup>

89.Record of Understanding on Intellectual Property Rights. [http://www.bilaterals.org/article.php3?id\\_article=388](http://www.bilaterals.org/article.php3?id_article=388) [Sec. B.6]

90.Agreement between the United States of America and the Lao People's Democratic Republic on Trade Relations. [http://www.bilaterals.org/spip\\_redirect.php3?id\\_article=809](http://www.bilaterals.org/spip_redirect.php3?id_article=809) [Art 13 and 18]

91.Agreement on Trade Relations between the Government of the United States of America and the Government of the Mongolian People's Republic. [http://www.bilaterals.org/ecrere/articles.php3?id\\_article=810](http://www.bilaterals.org/ecrere/articles.php3?id_article=810) [Art 9(c)i]

92.US-Singapore Free Trade Agreement, May 2003. [http://www.bilaterals.org/ecrere/articles.php3?id\\_article=247](http://www.bilaterals.org/ecrere/articles.php3?id_article=247) [Art 16.1 and Art 16.7]

93.Agreement on the Protection and Enforcement of Intellectual Property Rights between the United States of America and the Democratic Socialist Republic of Sri Lanka. [http://www.bilaterals.org/ecrere/articles.php3?id\\_article=389](http://www.bilaterals.org/ecrere/articles.php3?id_article=389) [Sec 2c]

94.Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations. <http://usembassy.state.gov/vietnam/www/bta.html> [Chpt II: Art 1.3 and Art 7.2(c)]

95.Free Trade Agreement between the EFTA States and Bosnia and Herzegovina, 24 June 2013, <http://www.efta.int/media/documents/legal-texts/free-trade-relations/bosnia-and-herzegovina/annexes-protocol/annex-vii-ip.pdf> [Annex VII, Art 2.3.d]

96.Free Trade Agreement between the EFTA States and the Republic of Macedonia, <http://www.efta.int/media/documents/legal-texts/free-trade-relations/macedonia/Record%20of%20Understanding%20Annexes%20and%20Protocols/Annex%20V%20-%20Protection%20of%20intellectual%20property.pdf>, [Annex V, Art 2.2 and 2.3]

97.Free Trade Agreement between the EFTA States and Montenegro, 14 November 2011, <http://www.efta.int/media/documents/legal-texts/free-trade-relations/montenegro/montenegro-annex-6-ipr.pdf> [Annex 6, Art 2.1.3.d]

98.Free Trade Agreement between the EFTA States and the Republic of Serbia, 17 December 2009, <http://www.efta.int/media/documents/legal-texts/free-trade-relations/serbia/annexes-protocols-declaration/ann6.pdf> [Annex VI, Art 2.3.d]

## European Union

### EU-Macedonia FTA | 2004 | in force

Macedonia must join the UPOV Convention (1991 Act) by end 2009.<sup>99</sup>

### EU-Moldova FTA | 2014 | under provisional application

Moldova must implement the UPOV Convention, noting the optional “farmers' privilege” (to re-use protected seed while respecting the rights of the breeder).<sup>100</sup>

## United States

### EU-US FTA | under negotiation

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99.Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, 1 May 2004, [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22004A0320\(03\)&rid=1](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22004A0320(03)&rid=1) [Art 71.3]

100.Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, 27 June 2014, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0830\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0830(01)&from=EN) [Art 317]





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