

WTO/ TRIPS: THE 1999 REVIEW

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In this situation of political flux, it is important not to lose track of our international negotiations. Because of the absence of a Lok Sabha, we must ensure an all party consensus on contentious issues like TRIPs so that the country's interests are not compromised internationally. Coming up ahead is an important development in the WTO for which India must be fully prepared and have a strongly supported political brief.

This impending negotiation is the review of the IPR regime planned for the third quarter of this year. The 1999 Review of TRIPs was part of the agreement reached as GATT was laid to rest in 1994 and the WTO came into force. The intention was to allow five years to see how the controversial Intellectual Property Rights regime was faring and then to bring in amendments to ostensibly make the regime more effective.

This has very clearly meant, and that right from the beginning, those industrial nations, particularly the US would try and tighten the IPR regime further. The US which has been pushing for the most stringent forms of IPRs in every field but most notably in the field of biological resources has never concealed its desire to impose a unilateral patent regime on the biodiversity belonging to other nations. Despite violating WTO norms (like retaining Special 301), the Americans will play a leading role in deciding what goes on in 1999. Whether the 1999 Review will remain a review or whether it will be turned into a new WTO round, billed the 'Millenium Round' appears to be open at present.

The second WTO Ministerial Conference held in Geneva last year demonstrated one thing clearly. That those who have the say in the WTO have also begun to set the agenda. The canvas has been left wide so that every possible issue can be brought on board. More alarming are the aggressive pronouncements of US trade officials who have stated that they would not allow any concessions for developing countries as they prepare to force open fledgling markets for American goods and services. India's preparations for the coming negotiations will have to be very careful and our negotiating stance determined and aggressive.

There are some obvious issues which must receive priority in our strategy for the impending Review. Foremost of these is the *sui generis* option. We must retain this at all cost *Sui generis* which roughly means generating by itself or of itself is a choice given to members in lieu of patents. This comes up in TRIPs in the section where members are required to provide protection to the breeders of new plant varieties either by patents or an effective *sui generis* system. What this really means is the freedom to create a system of ones own whereby the rights of a plant breeder over the new variety that he has bred, are protected. The *sui generis* option does not

circumscribe in any other way. So groups like Gene Campaign have been pushing for the adoption of a *sui generis* legislation that would protect the rights of not just breeders but very particularly those of farmers.

The importance of the *sui generis* option is that it can be interpreted as freely as the political will of the country allows. This can provide a great deal of flexibility in adopting IPR regimes. What we really should do in 1999 is to push for the inclusion of the *sui generis* concept in other areas and other forms of intellectual property rights also, like in software. The *sui generis* strategy can in principle be applied to any sector of WTO. It essentially provides the opportunity to say... I will grant negotiated concessions but in a way that I determine, not the way you want me to do it. The Americans are now pushing for a change in the TRIPs Review that *sui generis* can not be interpreted freely, that it will have to follow the conditions of the 1991 version of the UPOV treaty which allows patenting of seeds. India must resist this move very strongly.

Another issue which we must try very hard to force onto the agenda of the 1999 discussion is a linkage between the WTO/TRIPS and the Convention on Biological Diversity (CBD). Linking the two is perhaps the only way of checking deliberate patent violations by the Americans. The rationale for linking is that both these international treaties deal with the ownership, use and intellectual property rights of biological resources. Compliance on one must accompany compliance on the other. In practice both treaties are moving in opposite directions. The US which refuses to ratify the CBD and therefore denies our ownership over our biodiversity is the greatest proponent of stronger IPR systems and does not hesitate to patent our Basmati and turmeric. At the same time we are threatened with dire consequences if we do not immediately comply with TRIPs.

India should in its policy give primacy to the CBD, taking recourse to Article 22 of the Convention which states that the conservation of biological diversity is of prime concern to all nations. Any international treaty which contains conditions which will come in the way of conserving biodiversity will have to be subservient to the CBD. It is well recognised that the IPR conditions of WTO/TRIPs will be significantly detrimental to biodiversity conservation and therefore WTO should logically be subservient to the CBD as far as biodiversity matters are concerned.

India must lobby developing countries with a stake in biodiversity, to demand parallel compliance for both treaties. Either everybody accepts the conditions of both treaties or no conditions will be considered binding. Already opinion is building along these lines in other developing countries, we must take the initiative to crystallise this opinion. Granted that this is a difficult goal to achieve but it is important enough for us in the biodiversity rich nations to make sure that we succeed.