

## THE AGENDA INDIA SHOULD TAKE TO CANCUN

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India needs to understand one central truth in all its WTO negotiations and that is that the agriculture and food sector has to be protected at all costs simply because the livelihood of several million Indians depends on it. This will be true at Cancun and at every subsequent Ministerial meeting. At Cancun we should take an aggressive posture on the unfinished Doha agenda and try to get a framework for its implementation.

The Doha declaration is explicit. It instructs the Council for TRIPs, in pursuing its work program including the review of article 27.3(b) (the article under which biological materials are handled) and Article 71.1 (review in the context of any new developments), to examine *inter alia* the relationship between the TRIPs Agreement, the CBD and the protection of traditional knowledge.

Although the subject of TRIPs and Public Health finds mention in the draft Cancun Ministerial document, there is continuing neglect of the impact of TRIPs on agriculture, food security, farmers' rights and livelihood security. India should take the position that the rights of farmers and local communities have been reiterated in other conventions, notably the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources (ITPGR) and these must be reflected in the WTO, which must move to harmonise with the international developments. It is for this reason that India has been advocating the linkage between the CBD and the WTO in its submissions to the TRIPS Review Council. The submission to the TRIPs Council is jointly made by Brazil, Bolivia, Cuba, Dominican Republic, Ecuador, India, Thailand, Peru and Venezuela.

This group of countries is asking that the TRIPs Agreement be amended to provide for the following in the case of applications for patents relating to biological materials or to traditional knowledge:

- i) disclosure of the source and country of origin of the biological resource and of the traditional knowledge used in the invention
- ii) evidence of prior informed consent , and
- iii) proof of provision for fair and equitable benefit sharing

This line must be pushed at Cancun.

It is unfortunate that India has chosen not to support the proposal of the Africa Group. The Africa Group is asking for an outright ban on patents on all life forms, a position they have held consistently since 1999. This is a proposal very much in the interest of developing countries since patents on life forms at this early stage of development of key technologies, would strike at self-reliant development in the fields of agriculture and pharmaceuticals. India has chosen not to support the Africa Group, arguing that it would go against its interests in biotechnology. This is not a well-considered position and is advocated by the Department of Biotechnology (DBT), which has neither the skills nor the experience to evaluate these developments in the larger context.

India should raise the issue of patents on life forms at Cancun and join the other countries and civil society groups in supporting the Africa Group position to oppose patents on all life forms. Having this flexibility is important to give domestic industries a chance to grow and develop their own technologies and become globally competitive. Since the patent system is being introduced for the first time on biological materials, we should give ourselves space to grow, in a patent free environment for some time. Accepting patents on life forms today, will hand over the advantage to the foreign companies who are at present technologically stronger and well versed in the exercise of life form patents. When Indian industry feels technologically strong, nothing prevents us from revising our present position and changing it.

Another matter, which suffers neglect in the Cancun draft text, is the subject of Geographical Indications (GI), which is of great interest to the economies of developing countries. The Cancun draft text mentions the need to work on GI for wines and spirits but does not mention. Expanding the scope of GI protection as the developing countries has been demanding. These countries, which are largely agriculture based, have several specialty products on which they wish to seek the form of IPR called Geographically Indicated Rights. India is interested in protecting a range of products like Basmati rice, Darjeeling tea, Shahi lychees, Ratnagiri mangoes etc.

Geographical indications identify a product as originating in the territory of a member country or a specific region within it, to which a given quality; reputation or other characteristic of the product can be attributed. Basmati rice for example can be distinctly attributed to the low foothills of the Himalayan region, which used to constitute the greater Punjab. After partition, this region has been divided between India and Pakistan, so geographically indicated rights over Basmati belong to India and to Pakistan.

Paragraph 18 of the Doha Ministerial Declaration states:” With a view to completing the work started in the Council for Trade Related Aspects of Intellectual Property Rights on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the fifth session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPs pursuant to paragraph 12 of this Declaration.”.

India must move aggressively at Cancun to garner support for the commitment made in this declaration, to increase the ambit of protection offered under Article 23 of TRIPs. Other countries, chiefly the EU, also have an interest in protecting their products through GI. The US remains a staunch opponent of enhancing the scope of GI protection, supported by Canada, Australia and New Zealand, all of whom are major agriculture exporting countries, including products like cheese, ham and other processed meats. The Indian strategy should aim to isolate the US with the support of the EU and strike independent deals with the other countries involving other issues of interest to them.

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