

UNFINISHED AGENDA GOES TO CANCUN

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In the jagged progress of the WTO, from one Ministerial meeting to the next, it is perhaps only the fourth meeting, the so-called Doha Round, which saw some declarations in favour of developing countries. The rest of the WTO process has been one sided and skewed heavily in favour of the industrialised nations. Yet, as we approach the fifth Ministerial meeting at Cancun in September, there is little that has moved forward from the viewpoint of developing countries. In effect, the agenda leading into Cancun is an unfinished one.

In the draft Cancun Ministerial document that has been circulated, there is lip service to the goals of the Doha Round, but little visible action in favour of developing countries. Although the subject of TRIPs and Public Health finds mention, there is continuing neglect of the impact of TRIPs on agriculture, food security, farmers' rights and livelihood security. 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 had sought 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

The proposal of the Africa Group asking for an outright ban on patents on all life forms is to be seen in this backdrop. This is a consistent position they have held since 1999. It is a proposal very much in the interest of developing countries since patents on life forms would strike at self-reliant development in the fields of agriculture and pharmaceuticals. However 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, which has a track record of promoting the interests of foreign industries at the cost of indigenous ones. In fact, Dr. Gopal Reddy of the Swadeshi Jagran Manch has just done an analysis of the partisan role played by the Department of Biotechnology in promoting the interest of Monsanto against Indian seed companies.

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 all the advantages to the foreign companies who are at present technologically stronger and well versed in the exercise of life form patents.

The Doha Ministerial had provided a mandate to address the outstanding implementation issues on a priority basis by end 2002 but this has not happened yet and there does not seem to be any effort on the part of developed countries to advance this issue. The Doha declaration was 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.

It further instructs that in pursuing this work, the TRIPs Council will be guided by Articles 7 and 8 of the TRIPs Agreement. Article 7 provides that IPR protection rather than becoming an instrument of unfair monopoly should contribute to technology transfer and be mutually advantageous to producers and users of technology in a way that is conducive to social and economic welfare. Article 8 enjoins members of WTO to adopt measures to protect public health and nutrition and promote the public interest in vital sectors like food and medicine. The draft Cancun declaration simply ignores these injunctions of the Doha declaration and moves ahead with an agenda that benefits the economies of the industrial countries while being largely oblivious to the interests of the developing world.

Another matter, which suffers neglect, is the subject of Geographical Indications (GI), which is of great interest to the economies of developing countries. 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 belong to India and to Pakistan.

Provided in Articles 22 and 23 of GATT/ TRIPs, GI protection at present has been afforded only to specialty products belonging to the category of wines and spirits, products of the western world. Despite the efforts of developing countries like India, to expand the scope of the protection in Article 23, to include other products of special relevance to them, the industrialised nations have refused to allow GI protection for anything except the alcoholic beverages. The sole exception to this obstruction is the European Union, which also supports expanding the scope of GI

since it has a number of processed foods of its own, like cheese, ham and other processed foods for which it seeks exclusive rights under GI.

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 work aggressively to garner support for the commitment made in this declaration, to increase the ambit of protection offered under Article 23 of TRIPs. Other countries too have an interest in protecting their (agricultural) products so mobilising support should not be difficult. 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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