

WTO/ TRIPS: THE 1999 REVIEW

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Things are happening in the World Trade Organisation. The race is on for a new Director General and an Asian is in the running. The right person could mean an opportunity to bring changes in the organisation's thrust and direction. Whatever the outcome of that race, a significant occasion is coming up next year for developing countries to try and correct the skewed course of the WTO. This is the review of the IPR regime planned for the third quarter of next 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, that 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.

In either case, India will have to have an agenda and a position. It has neither. The Commerce Ministry is unprepared and clueless as usual. Also as usual, there is not even the semblance of a consultative process with people who understand these issues. It is already very late. If India is not to lose still further ground, an immediate focus on the 1999 review must be created and experts called in to define India's agenda and strategy. It would also be wise to send seasoned negotiators with experience in GATT/ WTO, along with experts, to defend India's position in Geneva, rather than the usual Babu pyramid of under secretary, over secretary, joint secretary and additional secretary that goes on these junkets.

The second WTO Ministerial Conference which concluded in Geneva recently, 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 1999 program. Foremost of these is the *sui generis* option which we must retain 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 one's 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 farmers as well as breeders particularly since this does not contravene any TRIPs conditions.

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 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... That is the reason why this provision must not be allowed to go.

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.

It is difficult to believe that the battery of patent attorneys and experts in the US are not aware that patenting Basmati is a violation of India's (and Pakistan's) Geographically Indicated rights as spelt out in the WTO or that the turmeric patent is illegitimate , even on technical grounds. And yet American patents continuePhyllanthus, Coleus and so on. 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. Granted that this is a difficult goal to achieve but it is important enough for us to make sure that we succeed.