

WTO: TRADING AWAY AFRICA



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TRIPS — A THREAT TO AFFORDABLE MEDICINES AND BIODIVERSITY

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the most controversial agreements in the World Trade Organisation (WTO). Developing countries were strongly opposed to a broad based agreement on intellectual property rights throughout the Uruguay Round negotiations, but were pressurised into agreeing to it in the end, mainly by the US. It is widely known that the US position on TRIPS was drafted and negotiated with the help of a strong business lobby group, the Intellectual Property Committee (IPC), consisting of some of the major American corporations, several of them from the pharmaceutical industry.

TRIPS sets enforceable minimum standards on intellectual property. This includes copyright, industrial design, trade-marks and patents – where patents are the most contentious issue. TRIPS states that “patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application”. TRIPS has been widely criticised for being used as a protectionist instrument to promote corporate monopolies over technologies, seeds, genes and medicines.

Corporate rights before health

Strict patent regimes under TRIPS (the minimum patent protection period for products and processes is 20 years) allow pharmaceutical corporations to set prices of patented medicines at very high levels, keeping them out of reach for many of the world’s poor people. TRIPS grants the corporations monopoly rights that allow them to suppress competition from alternative, low-cost producers. This prevents African and other developing countries from effectively addressing imminent health problems, such as HIV/Aids, malaria and other infectious diseases.

At the WTO Ministerial in Doha in 2001 a special declaration on TRIPS and Public Health was adopted, which stressed that the TRIPS agreement should not prevent members from taking measures to protect public health. This declaration was widely proclaimed as a victory for developing countries, although it did not change anything in the text of the agreement itself – however it did have political significance, because it recognised that developing countries had problems in accessing medicines.

“We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all.”
From the Doha declaration on TRIPS and Public Health (paragraph 4)

No solution in sight

TRIPS allows production under compulsory licensing, i.e. when a government authorises itself or third parties to use the subject matter of a patent without the authorisation of the right holder. But the production must be primarily for the domestic market. The Doha Ministerial did not resolve how countries which have no or insufficient pharmaceutical manufacturing capacity will be able to make use of compulsory licensing. Paragraph 6 of the Doha declaration instructed the TRIPS Council to solve this problem before the end of 2002.

“We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002”

Paragraph 6 of the Doha Declaration on TRIPS and Public Health

No political will from developed countries

But very quickly after the Ministerial, the “spirit of Doha” faded and it became clear that there was very little, if any, political will among the rich countries to solve the problems facing African and other developing countries. There have been continuous attempts by developed countries to limit the solution to paragraph 6. EU wanted severe restrictions on suppliers and exporters of generic drugs, Japan wanted vaccines to be excluded from the product coverage and the US wanted to limit the scope of the solution to a number of specified diseases, such as HIV/Aids, malaria and tuberculosis. The Chairman of the TRIPS Council presented a proposal on December 16th 2002 (often referred to as the ‘Motta-text’), which most countries were ready to accept (although most African countries saw it as a compromise and far from ideal). This proposal was single-handedly rejected by the US and its strong pharmaceutical lobby. The negotiations have been stalled since then, amidst growing frustrations from African and other developing countries.

TRIPS allows patents on life

Also at the heart of the debate around TRIPS lies the threat to food security, farmers’ livelihoods and sustainable farming practices by patenting of seeds and genetic resources. The controversial article 27.3(b) of the TRIPS agreement allows for patenting of life forms. Farmers using patented seeds are deprived of their right to re-use, exchange and sell their seeds in local markets. The control over seeds has shifted from the farming communities to multinational corporations, such as Monsanto and Syngenta, that increasingly monopolise the seed market.

Patents on life forms are unethical and the TRIPS agreement should prohibit them, through modifying the requirement to provide for patents on micro-organisms and on non-biological and microbiological processes for the production of plants or animals.

From a proposal submitted to WTO by the African Group, June 2003

Stolen knowledge

TRIPS is also facilitating the theft of biological resources and traditional knowledge (so called biopiracy). The imposition of patent rights over biological resources and traditional knowledge deprive communities of their rights to and control over the resources that they have been using for generations. This contradicts the key principles of the UN Convention on Biological Diversity (CBD). African countries have kept demanding that TRIPS rules must be made consistent with the CBD provisions on national sovereignty and benefit-sharing with regards to access to genetic resources and traditional knowledge.

African Group: No patents on life

Kenya on behalf of the African Group submitted a proposal to WTO in August 1999, in preparation for the Seattle Ministerial, with concrete suggestions for reform of the TRIPS agreement. The African Group demanded for example a substantive review of Article 27.3 (b) and that no life forms and living processes may be patented. The proposal gained broad support from other developing countries as well as civil society around the world, but till today there has been no reform of the TRIPS agreement.

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