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Japan digs its claws into biodiversity through FTAs

Japan is increasingly using free trade agreements (FTAs) to tighten corporate control over seeds and other forms of biodiversity that are crucial to food, agriculture and medicine. Two such deals, sealed this month with the Chilean and Indonesian governments, put Japan in the big league of nations using bilateral trade deals to make seed-saving on the farm a thing of the past.

Over the past few years the Japanese government has been increasingly turning to free trade agreements to boost market opportunities for Japanese corporations and to protect the country's food and energy security interests, particularly in the Asia-Pacific region. (See Table 1.) Privatisation of biological diversity is part of that agenda.

Through its FTAs, which are drawn up through closed-door negotiations, the Japanese government has been cajoling other countries to change their laws so that they provide corporations with greater freedom to operate and stronger control over their assets. One of the tactics Japan has been increasingly using is to put pressure on its trading partners to accept patents on life and to toughen up laws that enable corporations to claim ownership over seeds and thus force farmers to pay royalties. Since Japan already has a bad name for 'biopiracy', as in the famed Shiseido and Cupuaçu cases, the government's drive to make it easier for Japanese biotech companies to secure legal rights over biodiversity abroad should come as no surprise.¹

It is evident that Japan has been stepping up its demands. In its first FTAs, signed with Singapore (2002) and Mexico (2004), Japan didn't even touch on the question of intellectual property rights over life. But soon after, in the FTAs negotiated with Malaysia and the Philippines, the issue began creeping on to the negotiating table. In the case of Malaysia, which inked a deal with Japan at the end of 2005, Tokyo tried to get the government to commit to the UPOV system of plant variety protection, but the Malaysians said no.² In fact, against the overall thrust of the FTA, which gives Japanese investors equal rights to exploit Malaysian resources, Malaysia inserted a 'carve out' clause which exempts biodiversity policy-making from Japan's interference.³ But at the same time, the government did accept some abstract wording about protecting private monopoly rights over seeds "in a manner consistent with internationally harmonised system". In practice, this means UPOV. The text just doesn't say so.⁴

In the case of the Philippines, a joint committee made recommendations for a possible Japan-Philippines FTA back in 2003. The Japanese said any such agreement should promote plant breeders' rights. The Filipinos said it should promote farmers' rights. Japan retorted that any kind of farmers' rights would have to be consistent with UPOV. In the end, the deal they signed in September 2006 says little about any of this.⁵ It only pins Manila down to providing some kind of system of plant variety rights and extending it to as many species as possible, taking into account Japan's corporate interests. Not too harmful, but not harmless either.

Breaking the UPOV barrier

All this changed in 2007. Japan is now explicitly pulling developing countries into UPOV with its FTA claws and even trying to change the scope of other countries' patent laws to get stronger rights for Japanese corporations over biodiversity.

In Thailand earlier this year, the military government's decision to sign an FTA with Japan led to a heated public debate.⁶ The Thai-Japan agreement had been negotiated during the Thaksin regime, but when the military staged a coup in September 2006 all Thai FTA negotiations came to a halt, largely because no foreign government wanted to be seen as accepting military rule. However, under pressure from Japanese companies through their Chamber of Commerce, and probably to show that martial law was not really a bad thing, the Thai military opted to pick up where Thaksin had left off and to sign the Japan deal themselves. In the beginning, the public protested about numerous aspects of the agreement but by the end public disquiet focused on two central issues, one of which was the patenting of microorganisms. The deal dictates that Thailand not be allowed to reject any patent application just because it involves a "*naturally occurring*" microorganism.⁷ In a world where national sovereignty over biological resources is enshrined in international law and where Japan has been accused on several occasions of 'biopiracy', this provision upset many Thai groups, all the way up to the Human Rights Commission. The generals were unmoved, however. Through the FTA, which was signed in early April, they additionally committed Thailand to honouring "*international standards*" of plant variety protection. Again, this is code-speak for UPOV, even though Thailand's PVP law does not match UPOV standards.

A few months later, in mid-August 2007, Chilean President Bachelet signed a similar Japan-Chile FTA. This was the first Japanese free trade agreement specifically to impose UPOV on its trading partner. While Chile has been a member of UPOV since 1996, this FTA commits the government to upgrade its domestic plant variety law to UPOV's 1991 standards, the latest version of the Convention. UPOV 1991 does not allow farmers to save and exchange seeds harvested from plants that are subject to PVP. While it is true that Chile has signed similar deals with the US and the European Free Trade Association, this is the first time that Japan has managed to bulldoze another country into joining the anti-farmer, anti-seed-saving UPOV.⁸

Before the ink could dry on the Chile deal, Japan's Prime Minister Abe and Indonesia's President Yudhoyono jointly signed their own bilateral FTA in Jakarta. Now Indonesia, as well as Chile, has agreed to comply with UPOV and make its best efforts to join the Union. If this happens, 165 million Indonesian farmers will be increasingly obliged to source their seed from the market – which is, of course, the entire point. The privatisation of biodiversity through these FTAs, with their strong intellectual property rules, is meant to turn as many farmers as possible into captive clients of a corporate controlled seed supply. Worse, violations – such as sharing seeds that are saved or selected from "protected" varieties without a licence – lead to criminal prosecution.

The bigger picture

The US and Europe are no longer the only 'bad guys' pushing farmers into a bleak new landscape where huge corporations control the seeds, incessant royalties have to be paid, and rural autonomy and culture are buried.⁹ Japan, host to one of the top ten seed conglomerates in the world, has now joined that league. (See Table 2.) The Abe government is in a frenzy to sign more FTAs with India, Vietnam and ASEAN as whole in the coming months. As precedents have now been set in Jakarta and Santiago, Japanese pressure on these countries to join UPOV should be expected.

Still, this is not only about Japanese interests. The old world view where 'the North' is the villain and 'the South' is the victim hardly makes sense anymore. It's even increasingly impossible to distinguish between state and corporate interests in all this free-trade wheeling and dealing. Malaysian plantation barons, like Sime Darby, or fast expanding Thai agribusiness groups, like Charoen Pokphand (CP), surely weren't crying over their governments' FTAs with Japan. As Witoon Lianchamroon, director of Biothai, puts it, *"It's clear that CP needs the UPOV system, same as Japan. CP tried to push UPOV for years before the JTEPA [Japan-Thailand Economic Partnership Agreement] negotiations began. We even faced difficulty with the Thai negotiators handling JTEPA, because they often preferred to use CP's position rather than that of the Thai farmers."*¹⁰ In Indonesia, companies like PT Fitotek and East West Seed have long been lobbying the government to adopt strong plant monopoly laws such as UPOV.¹¹ Like other Asian and Latin American transnational corporations, they too have plenty to gain from the privatisation of biodiversity through these trade deals. After all, some 70% of the world's farmers still save their seeds year to year. That's a lot of people to convert into paying customers.

The tightening up of intellectual property ropes around seeds, medicinal plants, micro-organisms and even traditional knowledge will only boost the profits of large firms which control the world's commodity trade. It is not farmers who should be criminalised for saving seeds, but these corporations for forcing through such terrible laws.

References

1. In the late 1990s, the Japanese cosmetic transnational Shiseido filed for European patents on 11 different compounds of traditional Indonesian medicinal plants or Jamu. After strong protests from Indonesian groups, such as BioTani Foundation / PAN Indonesia, Shiseido withdrew the patents in 2002. See http://www.evb.ch/cm_data/BioTani_EN_edited_.pdf and http://www.biotani.org/BioTaniPAN_Indonesia2005.htm. On Cupuaçu, a fruit from the Amazon patented by the Kyoto-based ASAHI Foods Company Ltd, see <http://www.amazonlink.org/biopiracy/cupuacu.htm>.
2. UPOV stands for International Union for the Protection of New Plant Varieties. It is a group of countries that adhere to the UPOV Convention, a common set of principles for plant variety protection (PVP) law. PVP is a kind of patent system for seeds, where users of 'protected' plants have to pay royalties to their 'owners'. Since plants naturally reproduce themselves, the UPOV Convention prevents farmers from saving seeds of 'protected' varieties except under certain conditions, to ensure that royalties are paid each cropping season.
3. In Annex 4 of the agreement, Malaysia has reserved the right to adopt or maintain any measure related to biodiversity when it comes to the principle of national treatment. In other words, the commitment to treat Japanese investors the same as Malaysians is subject to limitations when it comes to research and development involving biological resources in Malaysia.
4. The annexes to the Japan-Malaysia FTA go on to say that Japan may withhold privileges for Malaysian breeders who want to get monopoly rights over their plant varieties in Japan until and to the extent that Malaysia aligns its PVP laws more with Japan's. This is a further kind of bait to pull Malaysia into UPOV, although it's questionable how many Malaysian agribusiness firms are anxious to get PVP rights in Japan. At present, it's more the other way around.
5. The Philippines is, however, in the process of joining UPOV. In 2006, they submitted their PVP law to the UPOV Council for inspection and the Council ruled that the law needs to be amended if the country wants to join.
6. See FTA Watch (<http://www.ftawatch.org/en/>) and bilaterals.org (http://www.bilaterals.org/rubrique.php3?id_rubrique=115).
7. Many social groups around the world have been denouncing free trade agreements for being 'TRIPS-plus', because they go beyond the WTO agreement on Trade-Related Intellectual Property Rights (TRIPS). But this demand of the Japanese was perversely TRIPS-minus! You cannot patent a naturally occurring microorganism under any patent law, including TRIPS. At least, that is what the biotech industry lobby keeps saying.
8. EFTA is composed of Liechtenstein, Iceland, Norway and Switzerland.
9. A full account of industrial powers pushing stronger IPR laws on biodiversity in developing countries through bilateral channels is available from GRAIN: <http://www.grain.org/rights/?id=68>
10. Personal communication, 25 August 2007. Japan-Thailand Economic Partnership Agreement, or JTEPA, is the common name for the free trade agreement.
11. Riza V Tjahjadi, BioTani Foundation Indonesia, personal communication, 23 August 2007.

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ANNEXES

Table 1: Japan FTAs (August 2007)

Signed	Under negotiation	In the pipeline
Singapore (2002; amended 2007)	Korea (since 2003, currently stalled)	Argentina
Mexico (2004)	ASEAN (since 2005; preliminary agreement reached late August 2007, signature expected November 2007)	Brazil
Malaysia (2005)	Gulf Cooperation Council (since 2006, for conclusion early 2008)	Cambodia
Philippines (2006; currently up for ratification in the Philippines)	Viet Nam (since 2007)	Canada
Brunei (2007)	Australia (since 2007)	Central Asia
Thailand (2007)	India (since 2007, for conclusion by 2008)	China
Chile (2007)	Switzerland (since 2007, for conclusion end 2007)	East Asia ('Nikai initiative', including Australia, India and New Zealand; under study)
Indonesia (2007)		Egypt
		EU (under study)
		Iceland
		Israel
		Kuwait
		Mercosur
		Mongolia
		Morocco
		New Zealand
		Norway
		South Africa (under study)
		Taiwan
		US (under study; negotiations to start mid-2009)

Source: GRAIN

Table 2: The world's top 10 seed companies (2006)*

Company	2006 seed sales in US\$ millions
1. Monsanto (US)	\$4,028
2. Dupont (US)	\$2,781
3. Syngenta (Switzerland)	\$1,743
4. Groupe Limagrain (France)	\$1,035
5. Land O' Lakes (US)	\$756
6. KWS AG (Germany)	\$615
7. Bayer Crop Science (Germany)	\$430
8. Delta & Pine Land (US) (acquisition by Monsanto pending)	\$418
9. Sakata (Japan)	\$401
10. DLF-Trifolium (Denmark)	\$352

Source: ETC Group, based on 2006 seed revenues.

** In 2005, two Japanese companies made it to the top ten: Sakata (7th place) and Taikii (9th place). According to the International Seed Federation, in 2005, Japan was the 12th largest seed exporter in the world.*