

Since the breakdown of World Trade Organisation talks in Cancun in September 2003, there has been much talk of the rise of bilateralism. But bilateral trade and investment agreements aren't so much replacing the multilateral agreements that have foreshadowed them in the last decade as working *with* them to create a ratcheting system to increase the levels of intellectual property protection worldwide. Interestingly, and perhaps more significantly, bilateral trade and investment agreements are also proving to be quite effective in pushing the foreign policy goals of the US and EU.

# Corporate conquest Global geopolitics

## Intellectual property rights and bilateral investment agreements

AZIZ CHOUDRY

With World Trade Organisation (WTO) negotiations failing to deliver as much as many corporations want, the US and other governments, urged on by big business lobbies, are increasingly turning to bilateral free trade and investment agreements. These negotiations are – by design – much less visible and can easily slip beneath the radar of NGOs and popular movements that oppose the WTO and regional deals like NAFTA (North American Free Trade Agreement) or the Free Trade Area of the Americas (FTAA).

With President Bush elected for four more years, we can expect more aggressive US free trade and investment bilateralism. These negotiations are being used strategically to advance not only US corporate interests, but also the US administration's broader foreign policy and geopolitical goals. While Iraq and Afghanistan are being bombed and

occupied into 'liberty' and free market economics, US allies in the war on Iraq and the 'war on terror' like Australia and Thailand are being rewarded with promises of enhanced access to US markets through comprehensive bilateral free trade and investment agreements. The US uses these agreements to signal the policies that it expects from other countries economically, militarily and politically. As US Trade Representative Robert Zoellick stated just after the September 11, 2001 attacks: "America's light and might emanate from our political, military and economic vitality. Our counteroffensive must advance US leadership across all these fronts."<sup>1</sup> George Bush's January 2005 inauguration speech<sup>2</sup> shows that the US government still sees itself as a global policeman, and the preeminence of its military and corporate/economic interests remain as closely aligned as ever.



7

<sup>1</sup> "Countering Terror With Trade", Robert Zoellick, *Washington Post*, 20 September 2001.

<sup>2</sup> [www.whitehouse.gov/news/releases/2005/01/20050120-1.html](http://www.whitehouse.gov/news/releases/2005/01/20050120-1.html)

<sup>3</sup> See European Union website: [http://europa.eu.int/comm/trade/bilateral/acp/index\\_en.htm](http://europa.eu.int/comm/trade/bilateral/acp/index_en.htm) and [www.epawatch.org](http://www.epawatch.org) for analysis on EPAs.

<sup>4</sup> Argentina, Brazil, Paraguay and Uruguay.

<sup>5</sup> BITs are instruments which regulate conditions for the entry, treatment, protection and exit of investments between two countries.

<sup>6</sup> Ruth Okediji, "Interpreting TRIPs Flexibilities & Priorities for Regional Bodies", *South Bulletin* 63, South Centre, 30 August 2003.

<sup>7</sup> Acting USAID Director Anne Aarnes' Remarks at the Intellectual Property Rights Conference, Cairo, 7 July 2002. [www.usaid-eg.org/detail.asp?id=136](http://www.usaid-eg.org/detail.asp?id=136)

<sup>8</sup> The WTO's Trade Related Intellectual Property Rights Agreement (TRIPS) obliges all WTO members to provide patents (or something like them) on all forms of technology – including biotechnology.

<sup>9</sup> "Singapore issues' part of EU's trade agenda: Lamy", *Jakarta Post*, 9 September 2004. [www.bilaterals.org/article.php3?id\\_article=610](http://www.bilaterals.org/article.php3?id_article=610)

<sup>10</sup> "Expanding Intellectual Property's Empire: The Role of FTAs." November 2003. [www.grain.org/rights/tripsplus.cfm?id=28](http://www.grain.org/rights/tripsplus.cfm?id=28)

Meanwhile the EU is pushing ahead with a range of bilateral and regional trade and investment initiatives, notably the comprehensive Economic Partnership Agreements (EPAs) with the 77 African-Caribbean-Pacific (ACP) countries. The EPAs will replace existing preferential trade/aid arrangements with "reciprocal" ones under the Cotonou Agreement.<sup>3</sup> The EU is also trying to counter US market advantages from an eventual FTAA in Latin America by clinching its own deal with the power economies of MERCOSUR.<sup>4</sup> Closer to home, the EU is tightening up its bilateral economic and political links with Middle East and North Africa, concluding talks with Syria and now trying to work out something with Iran.

But it's not just the US and EU pushing bilateralism forward. Other countries, from Japan to Chile, are also engaging in bilateral free trade and investment negotiations. Some governments, such as Thailand and South Korea, are trying to position themselves as regional "hubs" for investment and trade by concluding a series of bilateral free trade and investment deals with other governments both within and outside of their particular region.

Regional groupings such as the FTAA, Asia-Pacific Economic Cooperation (APEC), Association of South East Asia Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC) provide potentially fertile breeding grounds for bilateral deals, even as the regional processes themselves have failed to deliver on much. While the outbreak of bilateralism continues to draw criticism from many ardent advocates of multilateralism and the WTO, there is no sign of

this drive losing momentum. In any case, some of the bilateral agreements are viewed as stepping stones towards new regional and subregional agreements involving the US, such as the Middle East Free Trade Area (MEFTA) which is supposed to come into effect by 2013 and the Enterprise for ASEAN Initiative which aims to build a network of US-ASEAN bilateral agreements.

Here we examine how bilateral investment treaties (BITs)<sup>5</sup> and free trade agreements (FTAs) which contain specific investment provisions reflect geopolitical concerns as well as economic ones. We also look at how these agreements help to redefine rights and privileges for transnational corporations today, including with respect to commercial control over biodiversity through intellectual property rights (IPR).

But while examining these particular agreements in detail, it is important to keep an eye on the bigger picture. In the same way that investment and intellectual property rights intersect in these agreements (since IPR are treated as a form of investment), so too do many other issues. IPR, services, agriculture, the environment, competition policy and so on all crosscut and impact one another in these treaties. Other agreements and other pressures also come to bear from bilateral and multilateral aid and development assistance, from the lobbying efforts of corporations and chambers of commerce, and from bilateral intellectual property agreements, to name a few.

Further complicating factors include contracts signed between governments and major pharmaceutical corporations, for example, to limit the ability of domestic distributors, licensees and collaborative ventures in developing countries to distribute drugs at reasonable cost.<sup>6</sup> Meanwhile, 'development' agencies such as USAID work directly with governments to rewrite and "strengthen" countries' IPR laws to bring them into line with – and in many cases going beyond – WTO requirements and to appease demands of foreign investors.<sup>7</sup>

We must be aware of the interplay of such actors, forces and processes, and the continual 'forum-shopping' that characterises the ways in which governments and corporations go from forum to forum seeking the best deal, the right moment or the weakest link, for use as leverage in other negotiations.



### IPR: the one-size-fits-all approach

The privatisation of information – including genetic information – through intellectual property regimes is crucial to capitalism today. And the US and EU share a common agenda to globalise intellectual property protection through both bilateral and multilateral means.

In the 1980s, the US expanded the boundaries of trade law to include intellectual property and linked its BIT programme to protecting intellectual property as an investment activity. BITs may not contain extensive sections on IPR but instead rely on standards set in other agreements, if not on sheer ambiguity. Through its bilateral agreements, the US secures commitments that overcome the deficiencies – from the point of view of its corporations – of WTO's TRIPS agreement<sup>8</sup>. The EU is right behind. As Pascal Lamy, the EU's Trade Commissioner until late 2004, put it, "We always use bilateral free trade agreements to move things beyond WTO standards. By definition, a bilateral trade agreement is 'WTO plus'." In this way, as Peter Drahos argues, a "global ratchet for IP" has been set up, consisting of "waves of bilaterals (beginning in the 1980s) followed by occasional multilateral standard setting (such as TRIPS or the WIPO Copyright Treaty)".<sup>10</sup>

Intellectual property provisions in free trade agreements go explicitly further than TRIPS. Typically, they severely limit the grounds for allowing the use of compulsory licensing of medicines, and effectively extend 20-year drug patent monopolies for an additional five years, threatening access to affordable medicines, including HIV/AIDS drugs. Moreover, this "TRIPS-plus" approach does not allow for plants and animals to be excluded from the patent laws of signatory countries. While TRIPS sets a minimum standard for intellectual property protection, these bilateral agreements are imposing an industry-driven agenda through the backdoor, locking countries into even more stringent intellectual property standards.

BITs contain broad definitions of investment, which throw the door wide open for disgruntled corporations based in one signatory country to take a case against the other signatory government to a dispute tribunal. Nevertheless, the degree of detail varies from agreement to agreement. In the Netherlands-Bolivia BIT<sup>11</sup>, the term "investment" includes "rights in the field of intellectual property, technical process and know-how". In the Canada-Costa Rica BIT, IPR include "copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits,



trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights."<sup>12</sup> In the US-Morocco FTA, "investment" is defined as "every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk"<sup>13</sup>.

When the US negotiates a bilateral agreement with a WTO developing country member, the most-favoured-nation principle of the WTO – whereby any privilege granted to one WTO member has to apply to all others – assures the EU that *it* gains the benefit of the standards that the *US* obtains. For all practical purposes then, these TRIPS-plus standards, whether with respect to IPR or investment, may become the "new minimum standards from which any future WTO trade round will have to proceed"<sup>14</sup>.

### BITs: commitments and disputes

It is hard to keep up with the pace and spread of bilateral free trade and investment agreements. By late 2002, there were more than 2,200 BITs.<sup>15</sup> UNCTAD calls BITs "the most important protection of international foreign investment" to date.<sup>16</sup> Others describe them as "arms of massive destruction" to national and international public law and human rights law; the "result of tactics by the centers of planetary economic and political power, particularly of the US, which consists of negotiating one by one with weak and/or corrupted governments ready to give up."<sup>17</sup>

One aggressive goal of the US BIT programme is to "support the development of international law

<sup>11</sup> This agreement is the basis for the investor-state dispute involving Bechtel/Agua del Tunari following the reversal of the privatisation of Cochabamba's water supply [www.bilaterals.org/IMG/pdf/NL-BO\\_BIT.pdf](http://www.bilaterals.org/IMG/pdf/NL-BO_BIT.pdf)

<sup>12</sup> [www.sice.oas.org/bits/cancos\\_e.asp](http://www.sice.oas.org/bits/cancos_e.asp)

<sup>13</sup> Final text of the US-Morocco Free Trade Agreement. [www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Morocco\\_FTA/Final\\_Text/asset\\_upload\\_file651\\_3838.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Morocco_FTA/Final_Text/asset_upload_file651_3838.pdf)

<sup>14</sup> Peter Drahos, "The Future of TRIPS at the WTO", Paper at Symposium *A New Feudalism of Ideas?* Centre for Intellectual Property Policy & Management Bournemouth University, UK, 26 June 2001. [www.cippm.org.uk/pdfs/drahos.pdf](http://www.cippm.org.uk/pdfs/drahos.pdf); Carlos Correa, *Bilateral investment agreements: Agents of new global standards for the protection of intellectual property rights?*, GRAIN, August 2004. [www.grain.org/briefings/?id=186](http://www.grain.org/briefings/?id=186).

<sup>15</sup> UNCTAD, *Making Investment Work for Development*, 2004. [www.unctad.org/en/docs/issmisc200412\\_en.pdf](http://www.unctad.org/en/docs/issmisc200412_en.pdf)

<sup>16</sup> UNCTAD website. <http://www.unctad.org/Templates/webflyer.asp?docid=3131&intitemID=2021&lang>

<sup>17</sup> United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 54th Session, *Written statement submitted by Europe Centre - Third World, E/CN.4/Sub.2/2004/NGO/10*, 12 July 2004. <http://www.urfig.org/Declaration%20ecrit%20traites%20commerciaux%20pt%204%20Anglais.doc>





<sup>18</sup> US Bilateral Investment Treaty Program. [www.state.gov/e/eb/rls/fs/22422.htm](http://www.state.gov/e/eb/rls/fs/22422.htm)

<sup>19</sup> See Organisation for Economic Co-operation and Development, *Regionalism and the Multilateral Trading System*, Paris, 2003. See also Carlos Correa, *op cit*.

<sup>20</sup> Carlos Correa, *Bilateral investment agreements: Agents of new global standards for the protection of intellectual property rights?*, GRAIN, August 2004. [www.grain.org/briefings/?id=186](http://www.grain.org/briefings/?id=186).

<sup>21</sup> Zachary Elkins et al, "Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000" (August 2004). UC Berkeley Public Law Research Paper No. 578961.

<sup>22</sup> *ibid*.

<sup>23</sup> [www.worldbank.org/icsid](http://www.worldbank.org/icsid)

<sup>24</sup> [www.uncitral.org](http://www.uncitral.org)

<sup>25</sup> William Rogers, "Emergence of the International Center for Settlement of Investment Disputes (ICSID) as the Most Significant Forum for Submission of Bilateral Investment Treaty Disputes", Presentation to Inter-American Development Bank Conference, October 26-27, 2000.

standards"<sup>18</sup>. This is important because many BITs and FTAs pushed by the US and the EU refer to "the highest international standards" of intellectual property protection. But these standards do not exist in international law.<sup>19</sup> In the absence of any benchmark, the inference is that the US (and EU) standards are the world's standards. With respect to biological diversity – from sacred plants to human DNA – that means heading towards "no limits" on what can be patented by corporations.

The newer bilateral agreements now typically limit a signatory government's right to impose performance requirements, such as technology transfer, on foreign investments. And they include clauses protecting foreign investors from "indirect expropriation" and measures "tantamount to expropriation" which allow for a very broad range of policies to be potentially targeted by an unhappy investor.

Thus far, investor-state disputes are often related to conflicts after the privatisation of state-owned enterprises and public utilities such as water. But with the inclusion of intellectual property in the sweeping definitions of "investment" in BITs, and its explicit application to biodiversity, it may not be long before an investor launches a dispute around IPR issues, be it a pharmaceutical corporation, an agrochemical firm, or a biotech seed company. One legal review of possible interpretations of BITs in terms of intellectual property claims on biodiversity found quite a number of "grey areas" that leave national measures to prevent biopiracy or promote public health open to potential dispute.<sup>20</sup> For example, compulsory licenses on drugs or the

enforcement of disclosure of origin rules on plant patent holders could become grounds for legal action by investors under these treaties, even if the host country's law is WTO-compliant.

US policy stipulates the establishment of a Trade and Investment Facilitation Agreement (TIFA) prior to negotiations on a BIT or FTA. TIFAs set up a joint council to identify and discuss ways to remove regulatory barriers to trade and foreign investment.

Developing countries typically face trading sovereignty for economic clout when they surrender to BITs. As some US academics point out, "The diffusion of BITs is propelled in good part by the competition for credible property rights protections that direct investors require."<sup>21</sup> BITs are a credible commitment device, because they provide a meaningful signal to investors. To violate or be accused of violating a treaty would risk serious damage to a government's reputation and its foreign policy interests. But the costs of complying are heavy: "governments agree to give up the use of a broad range of policy instruments (taxation, regulation, currency and capital restrictions) they might have legitimately wanted to use to achieve domestic political, social or economic purposes."<sup>22</sup>

In many BITs, where a dispute cannot be settled amicably and procedures for settlement have not been agreed on within a specified period, they can be referred, for example, to the World Bank's International Centre for Settlement of Investment Disputes (ICSID)<sup>23</sup> or the UN Commission on International Trade Law (UNCITRAL)<sup>24</sup>. NAFTA lets unhappy investors choose between the two. Both recourses represent the privatisation of commercial justice.

In a speech to the Inter-American Development Bank in October 2000, US lawyer William Rogers argued that investment treaties are "an open invitation to unhappy investors, tempted to complain that a financial or business failure was due to improper regulation, misguided macroeconomic policy, or discriminatory treatment by the host government and delighted by the opportunity to threaten the national government with a tedious expensive arbitration."<sup>25</sup> The mere existence of such agreements likely has a chilling effect on governments as they consider policy amendments or new legislation.



### Bullying, leverage and trade-offs

One thing that upsets the balance at the negotiating table is negotiating fatigue. This is especially acute for smaller or poorer governments in talks with powerful countries like the US. Keeping on top of technical, complex and arcane legalistic negotiations, especially when a government may be working on a number of different deals at different levels at any one time, puts an enormous strain on under-resourced officials and ministries, who often have little access to sources of critical analysis about these deals. Spreading another country's negotiating capacity even thinner may be a negotiating tactic for the US and the EU – after all, it encourages compliance, rather than challenges.

By stitching together an incomplete global web of bilaterals, issues, sectors and countries are played off against each other. The US/EU pursuit of bilateral negotiations is thus another example of classic divide and rule tactics – a strategy of weakening the actual or potential resistance to the EU/US positions being advanced in the WTO or in other venues.

For example, Washington insists on both intellectual property laws and outstanding investment disputes being sorted before negotiating a BIT. Progress on negotiations for a US-Pakistan bilateral investment treaty is being stalled by the US until it sees “the introduction and better enforcement of IPR and the resolution of investment disputes, particularly in the energy sector.”<sup>26</sup>

Yet even more egregiously, in the draft US-Pakistan BIT, the US has been insisting that Pakistan pay damages to US companies for their *future* investment in case of the infringement of IPR and unilateral cancellation of licenses. According to an official in Pakistan's Law Ministry, US negotiators insist that unless Islamabad pays immediate compensation to affected US firms, the World Bank's ICSID will pay the compensation and treat the amount as a loan to Pakistan.<sup>27</sup>

Similarly, dissatisfaction with Taiwanese intellectual property violations is also a sticking point in the launch of negotiations for a US-Taiwan FTA.<sup>28</sup> But in the cases of both Pakistan and Taiwan, there is also a sense that, despite its pressure on alleged intellectual property violations, broader US foreign policy interests could well tip the balance towards signing FTAs or BITs with these countries.

### The ratchet at work

The US is using bilateral and subregional free trade and investment agreements to set tougher standards for future trade and investment negotiations. It wants maximum concessions from developing countries, because this will make it harder for governments to oppose US demands at the WTO. Once a number of countries are already committed to tougher trade and investment rules through a bilateral agreement, it will be more difficult to mount the kind of concerted opposition to US proposals which Brazil helped to lead at the WTO Ministerial in September 2003 in Cancun, Mexico. What impact will these bilateral deals have on opposition to the introduction of the “new issues” such as investment at the WTO, or critical positions taken with regard to the implementation and review of the TRIPS agreement?

Patrick Cronin, senior vice president of Washington-based Center for Strategic and International Studies told the Daily Yomiuri: “With the setback to WTO reform at Cancun, the [Bush] administration is now focused like a laser beam on regional and especially bilateral trade accords.”<sup>29</sup> Zoellick has divided the WTO members into “can-do” and “won't-do”<sup>30</sup> countries – those who are serious about trade liberalisation and those who are not. Right after Cancun, he abrasively announced that the US would push ahead with free trade and investment agreements with “can-do” countries on a subregional or bilateral basis. Earlier that year Zoellick had explained that, “By pursuing multiple free trade initiatives, the US

<sup>26</sup> Shaukat Piracha, “IPR laws can expedite investment pact with US”, *Daily Times*, Lahore, 30 September, 2004.

<sup>27</sup> Khalid Mustafa, “US to claim damages against IPR abuses”, *Daily Times*, Lahore, 3 February 2005.

<sup>28</sup> Nicholas Lardy and Daniel Rosen, “US-Taiwan Free Trade Agreement Prospects”, in JJ Schott (ed), *Free Trade Agreements: US Strategies and Priorities*, Institute for International Economics, Washington, DC, April 2004.

<sup>29</sup> *Daily Yomiuri* (Japan), 1 January 2004.

<sup>30</sup> Robert Zoellick, “America will not wait for the won't do countries”, *Financial Times*, London, 22 September 2003. [www.bilaterals.org/article.php3?id\\_article=261](http://www.bilaterals.org/article.php3?id_article=261)



Cancun, 14 Sept 2003: “There were ‘can do’ and ‘won't do’ countries here. The rhetoric of the ‘won't do’ overwhelmed the concerted efforts of the ‘can do’.”



<sup>31</sup> Statement of Robert B Zoellick, US Trade Representative, before the Committee on Finance of the US Senate, 5 March 2003. [www.ustr.gov/assets/Document\\_Library/USTR\\_Zoellick\\_Testimony/2003/asset\\_upload\\_file96\\_4330.pdf](http://www.ustr.gov/assets/Document_Library/USTR_Zoellick_Testimony/2003/asset_upload_file96_4330.pdf)

is creating a 'competition for liberalisation' that provides leverage for openness in all negotiations, establishes models of success that can be used on many fronts, and develops a fresh political dynamic that puts free trade on the offensive."<sup>31</sup>

In the Americas, laser-guided liberalisation – bilateralism – allows the US to single out selected

countries and restrict the potential for alliances like the G21 to stand up to US bullying and double standards at the WTO. Many US business lobbies want bilateral agreements with Latin American countries like Chile, because they feel that they are missing out on export and investment opportunities in the region to the EU and Canada, which have already secured duty-free access for many goods through bilateral trade agreements.

## US to Thailand: "No GM, no FTA"

Under pressure from farmers and consumer groups, the Thai government banned the import of genetically modified (GM) seeds for commercial planting in 1999. In April 2001 it also called a halt to GM field trials, including Monsanto's ongoing cotton and corn experiments. But the US wasn't going to let the country off the hook that easily. Monsanto sees Thailand as "an important window to serve the growing Southeast Asian market for both conventional and agricultural biotechnology crops." In November 2003, Monsanto announced that it wanted to make Thailand its regional base for GM RoundUp-Ready corn and Bt corn by 2006, urging the government to lift its ban. Zoellick was immediately on the case and called on Thailand to eliminate "unjustified trade restrictions that affect new US technologies."

Monsanto urged US trade negotiators to seek an end to Thailand's moratorium on large-scale field trials of GM crops either "in a parallel fashion with the FTA negotiations or directly within the context of the negotiations." Monsanto says that "In the context of free trade ... it is imperative that the US work with Thailand to eliminate the current barriers to biotechnology-improved crops and establish a science-based regulatory system – including field trials of new crops – consistent with their international trade obligations in order to bring the benefits of these products to market in Thailand and to further promote consistent access to American agricultural technologies and products."

The pressure had an effect. Even before an FTA has been signed, the Thai Prime Minister Thaksin Shinawatra announced his intention to reverse the moratorium. While he and his Cabinet were forced to uphold the moratorium after Thai farmers, Buddhist organisations, consumers and anti-GMO activists protested, US and Monsanto officials still have the moratorium in their sights in the context of the FTA talks.

Attempts to patent Thailand's fragrant jasmine rice met outrage and stiff opposition from farmers and others concerned at the apparent ease with which Thai biodiversity and traditional knowledge is being appropriated by others. The US-Thai FTA would require Thailand to allow patents on animals and plants, further facilitating biopiracy by US companies and researchers.

**Sources:** Written Comments Concerning the US-Thailand FTA submitted by Monsanto to the office of the US Trade Representative, [www.us-asean.org/us-thai-fta/Monsanto\\_Comments.pdf](http://www.us-asean.org/us-thai-fta/Monsanto_Comments.pdf); Robert Zoellick. Letter to Senate on Intent to Negotiate FTA with Thailand, 2 December 2003, [www.ustr.gov/Document\\_Library/Letters\\_to\\_Congress/2004/Letter\\_to\\_Senate\\_on\\_Intent\\_to\\_Negotiate\\_FTA\\_with\\_Thail.html](http://www.ustr.gov/Document_Library/Letters_to_Congress/2004/Letter_to_Senate_on_Intent_to_Negotiate_FTA_with_Thail.html); Monsanto Press Release, *Thailand to Reverse Three-Year Moratorium on Cultivation of Genetically Modified Crops*, [www.monsanto.co.uk/news/ukshowlib.phtml?uid=8071](http://www.monsanto.co.uk/news/ukshowlib.phtml?uid=8071); Witoon Liamchamroon, *Speech on GMOs & Food Safety in the context of Thailand society*, 16 October 2004, Global Forum of Food Safety Regulators, WHO/FAO, Bangkok, [www.biothai.org/cgi-bin/content/gmo/show.pl?0006](http://www.biothai.org/cgi-bin/content/gmo/show.pl?0006); GRAIN, *Protecting Asia's Most Valuable Resource, Seedling*, December 2001, [www.grain.org/seedling/?id=59](http://www.grain.org/seedling/?id=59)

## Corporations turning the screws

The business coalitions that are the biggest driving force behind bilateral free trade and investment negotiations are quite open about their self-interest and eager to keep upping the stakes. In a letter of support for the US-Chile FTA, the International Intellectual Property Alliance states that the agreement "builds on the standards currently in force in the WTO TRIPS Agreement and in NAFTA, with the goal to update and clarify those standards to take into account not only the experiences gained since those agreements entered into force, but also the significant and rapid technological and legal developments that have occurred since that time."<sup>32</sup>

The report of the US Industry Trade Advisory Committee on Intellectual Property Rights (ITAC-15) on the US-Bahrain FTA states that: "Our goal in the negotiation of an FTA is to set a new baseline for all future FTAs, including the FTAA. This baseline is continually reflected in the model FTA agreements, which are constantly changing based on what we learn through negotiating each of the FTAs."<sup>33</sup>

Industry places extremely high demands on BITs and FTAs. Corporations are demanding full national treatment without exception in the intellectual property field<sup>34</sup>, and they are pushing for extreme patenting requirements. The US-Morocco FTA already provides for patent protection for animals as well as plants and the US-Singapore FTA requires patenting of both transgenic plants and animals. Meanwhile ITAC-15 "urges US negotiators to insist in all future FTAs that patent protection be made available to both plants and animals."<sup>35</sup>

Bilaterals are seen by the agricultural biotechnology industry as an important conduit for spreading genetically modified organisms around the world (see box). Corporations are looking to bilateral and regional trade agreements "to expand foreign understanding and acceptance of US regulations and standards, particularly with respect to agricultural biotechnology." As the Thailand case illustrates,





trade associations are correct in asserting that “free trade agreements can serve as an important vehicle for advancing US global interests in the field of agricultural biotechnology.”<sup>36</sup>

### Bilaterals as foreign policy tools

Notwithstanding corporate goals that lurk behind bilateral free trade and investment deals, in many cases, it is clear that foreign policy objectives far outweigh economic ones, especially given the size of the economies with which larger players like the US and EU have been negotiating such deals. Sometimes it is hard to separate these objectives, especially given the revolving door that exists between the US corporate and public sector, particularly in the area of commerce, trade and investment policy.

Early US bilateral deals with Israel (1985) and Jordan (2001) had much more to do with broader US foreign policy interests in the Middle East than economic concerns.<sup>37</sup> So too in today's world. Announcing the start of talks on a US-Pakistan bilateral investment agreement in September 2004, Zoellick said: “Pakistan and the United States are partners in combating global terrorism. A BIT based on the high standards contained in our model text can play an important role in strengthening Pakistan's economy, so as to create new opportunities for exporters and investors in both economies and assist in meeting the economic conditions to counter terrorism.”<sup>38</sup>

Likewise, in March 2004, Zoellick claimed that the bilateral TIFA with the United Arab Emirates, “solidifies the relationship between our two countries on an economic level which complements our strong partnership in our fight against terrorism”.<sup>39</sup> In justifying a TIFA with Qatar, Zoellick proclaimed that “Qatar played a valuable role in hosting and facilitating the launch of the Doha negotiations, the global trade negotiations to open markets and promote economic development. Furthermore, Qatar has been a steadfast friend of the United States in the war against terrorism, and I am pleased that we are working to expand our relationship on the economic front.”<sup>40</sup> The EU uses trade policy for the same goals. Its recently concluded FTA with Syria stumbled for a long time over the EU's insistence on a “weapons of mass destruction” clause.<sup>41</sup> The EU also secured a halt – at

## Going further...

**bilaterals.org** is a collaborative effort to share information and stimulate cooperation against bilateral trade and investment agreements that are opening countries to the deepest forms of penetration by transnational corporations. It is an open publishing website where researchers, activists, NGOs and others can share news, analysis and strategy discussions about free trade agreements and bilateral investment treaties worldwide.

**bilaterals.org weekly** is an electronic mailout of the latest additions to the site, released each Friday. More information about bilaterals.org and how to get involved is available at [www.bilaterals.org](http://www.bilaterals.org)

### **Bilateral Investment Agreements: Agents of new global standards for the protection of IPR?**

This GRAIN-commissioned study by Carlos Correa examines whether and how bilateral and regional investment instruments increase the scope and availability of IPR protection beyond current standards, reduce the flexibility available to countries under international treaties, and can be used to expand the application of IPR over biodiversity. See [www.grain.org/briefings/?id=186](http://www.grain.org/briefings/?id=186)

least a temporary one – in Iran's uranium enrichment programme as a basis for renewed FTA talks.<sup>42</sup>

The swirl of political and economic interests, the language of fighting terrorism and the talk of upholding democracy which surrounds the current wave of bilateral trade and investment agreements is a potent reminder that neoliberalism<sup>43</sup> and the brute force of imperialism are marching hand in hand into the 21<sup>st</sup> century.



Aziz Choudry is a New Zealand activist, researcher and writer. He is a member of GATT Watchdog, on the board of directors of Global Justice Ecology Project ([www.globaljusticeecology.org](http://www.globaljusticeecology.org)), a regular commentator for ZNet ([www.znet.org](http://www.znet.org)), and an Associate Fellow of McGill University's Centre for Developing-Area Studies. He has been active in a range of global justice and anti-colonial organisations and movements for many years. Email: [notoapec@clear.net.nz](mailto:notoapec@clear.net.nz)

<sup>32</sup> [www.iipa.com/rbi/2003\\_May8\\_ChileFTA\\_ITC.pdf](http://www.iipa.com/rbi/2003_May8_ChileFTA_ITC.pdf)

<sup>33</sup> 14 July 2004. [www.ustr.gov/Trade\\_Agreements/Bilateral/Bahrain\\_FTA/Reports/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/Reports/Section_Index.html)

<sup>34</sup> In its submission on the US-Chile FTA the IIPA asserts: “No bilateral agreement entered into by the US should have any other rule than full national treatment”. [www.iipa.com/rbi/2003\\_May8\\_ChileFTA\\_ITC.pdf](http://www.iipa.com/rbi/2003_May8_ChileFTA_ITC.pdf)

<sup>35</sup> [www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Bahrain\\_FTA/Reports/asset\\_upload\\_file822\\_5528.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Bahrain_FTA/Reports/asset_upload_file822_5528.pdf)

<sup>36</sup> Letter to Robert Zoellick on May 21, 2003, from seven food and agriculture trade associations: [www.soygrowers.com/library/timelynews/zoellick-biotech-052303.htm](http://www.soygrowers.com/library/timelynews/zoellick-biotech-052303.htm)

<sup>37</sup> Howard Rosen, “Free Trade Agreements as Foreign Policy Tools: The US-Israel and US-Jordan FTAs”, in JJ Schott (ed), *Free Trade Agreements: US Strategies and Priorities, Institute for International Economics*, Washington DC, 2004.

<sup>38</sup> USTR Press statement, 28 September 2004, *United States, Pakistan Begin Bilateral Investment Treaty Negotiations*. [www.state.gov/e/eb/rls/prsr/2004/36573.htm](http://www.state.gov/e/eb/rls/prsr/2004/36573.htm)

<sup>39</sup> USTR Press statement, 15 March 2004. *United States and United Arab Emirates Sign TIFA*. [www.ustr.gov/Document\\_Library/Press\\_Releases/2004/March/United\\_States\\_United\\_Arab\\_Emirates\\_Sign\\_TIFA.html](http://www.ustr.gov/Document_Library/Press_Releases/2004/March/United_States_United_Arab_Emirates_Sign_TIFA.html)

<sup>40</sup> USTR Press statement, 19 March 2004. *United States and Qatar Sign Trade and Investment Framework Agreement*. [www.ustr.gov/Document\\_Library/Press\\_Releases/2004/March/United\\_States\\_Qatar\\_Sign\\_Trade\\_Investment\\_Framework\\_Agreement.html?ht=qatar%20](http://www.ustr.gov/Document_Library/Press_Releases/2004/March/United_States_Qatar_Sign_Trade_Investment_Framework_Agreement.html?ht=qatar%20)

<sup>41</sup> Lin Noueihed, “EU insists on WMD clause in Syria accord - Fischer”, *Reuters*, 28 August 2004. [www.bilaterals.org/article.php3?id\\_article=514](http://www.bilaterals.org/article.php3?id_article=514)

<sup>42</sup> Dilip Hiro, “No Carrots, All Stick”, *Mother Jones*, 8 November 2004. [www.bilaterals.org/article.php3?id\\_article=941](http://www.bilaterals.org/article.php3?id_article=941)

<sup>43</sup> The term ‘neoliberalism’ describes both the ideology and strategy behind free-market policies and economic “globalisation”. It advocates total freedom of movement for capital, goods and services, views everything as a tradeable commodity, and argues that market forces must rule, free from government interference.

