The collapse of the WTO talks has somewhat unexpectedly created a further opportunity to fight a last ditch battle against the proposed patenting of life in the TRIPS Agreement. The patenting of life is a fundamental negation of the way in which countless generations of rural communities around the world have protected their biodiversity and handed down knowledge about it. Under their stewardship biodiversity and knowledge have evolved and adapted. Privatising these precious resources would threaten the very basis on which society has sustained itself for millennia.

TRIPS
Close call in Geneva

GRAIN

One of the largely unnoticed consequences of the collapse of the World Trade Organisation's Doha Round of talks in Geneva in late July was that the proposed negotiating mandate for an amendment to the TRIPS Agreement regarding patents on life was "washed away".[1] This is good news. The proposal to amend TRIPS, first tabled in 2006 and now supported by over 100 governments, has no real social backing, as far as we know, and goes in completely the wrong direction.

Back in 1997, when the mandated review of the TRIPS Agreement's rules on the patenting of plants and animals began, governments from the South made a range of proposals on this highly contentious issue. Quite a lot of them – including India, the Africa Group and the so-called Least Developed Countries – called for TRIPS to be amended to ban patents on life. Governments of the North rejected this idea and the talks dragged on, fruitlessly. After the Doha Round was launched in 2001, Southern countries took a much softer tack and started emphasising the inconsistencies between TRIPS and the Convention on Biological Diversity (CBD), particularly on the matter of benefit sharing (which CBD provides for and TRIPS, it was argued, prevents). Later on, the TRIPS–CBD conundrum was designated an "outstanding implementation issue", and at the WTO's sixth Ministerial Conference in Hong Kong, in December 2005, countries were given the deadline of 31 July 2006 to make suggestions for a way out.

As a result, Brazil, India, Pakistan, Peru, Thailand and Tanzania came together and, in May 2006, proposed a draft amendment to Article 29 of TRIPS.[2] Article 29 lays out the rules of "disclosure": what information applicants have to provide in patent applications. The group proposed to expand those rules so that they cover biodiversity – and fall into line with the CBD. Specifically, they suggested that when an invention involves biological resources or related knowledge, patent applicants should be obliged to reveal ("disclose") from which country they got the material or knowledge. Additionally, they should have to show proof that they complied with national laws on getting the prior informed consent of whomever they sourced the material or knowledge from, as well as proving that some benefit-sharing arrangements were made. Finally, the group stressed that countries should be able to revoke any relevant patent if these procedures are not followed. Since then, the proposal has been fine-tuned in various ways and a lot of countries have come on board. (Not only from the South:

1 See William New, "Collapse of WTO talks washes away hope for TRIPS changes", Intellectual Property Watch, Geneva, 29 July 2008: http://tinyurl.com/46sv5v

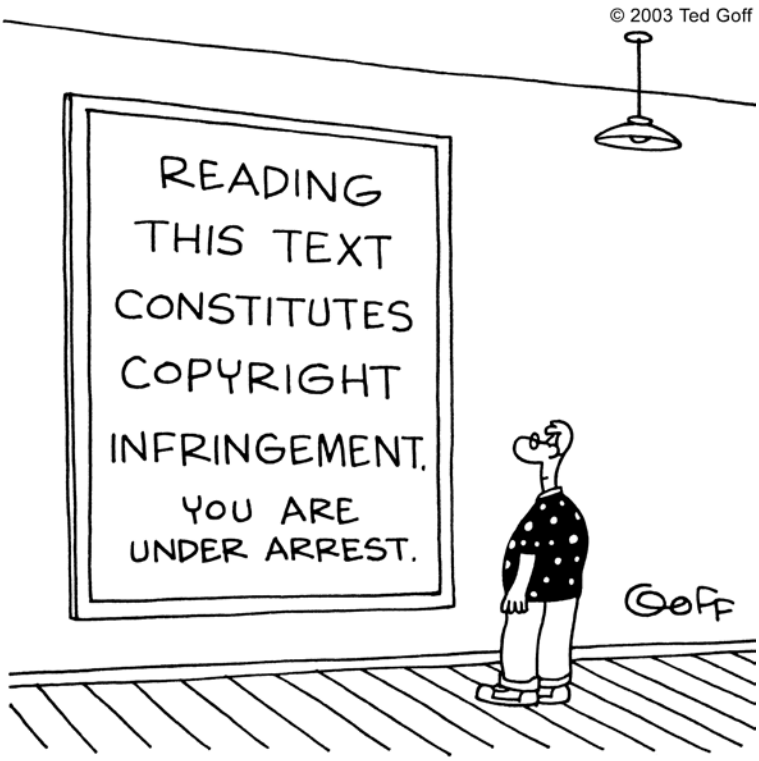
2 The text is available on GRAIN's website: http://tinyurl.com/3f3yf4

Norway, the EU and Switzerland are all amenable to some kind of disclosure deal for biodiversity, though they have their own separate proposals.)

The important thing in all this is that the proposed TRIPS amendment does not challenge patents on life at all. Rather than roll back the patent system from biodiversity altogether, the idea is to "improve" TRIPS by injecting some kind of "balance" into it. Put bluntly, through the proposed disclosure-of-origin deal the governments of the South are saying to the North, "OK, you can patent our biodiversity and traditional knowledge – as long as you pay for it!" If this amendment were approved at the WTO, it would amount to a clear and resounding "yes" to patents on life by nearly 160 governments. No more pretence of resistance from the South would be possible. Moreover, it would increase the power of the WTO by bringing traditional knowledge under its jurisdiction for the first time.

The political significance of this proposal is hard to overstate. For many peoples, the wealth of biodiversity that has been handed down through countless generations of farming families and other communities, as well as the local knowledge and cultures that it is inseparable from, is a collective heritage, not a piece of merchandise. The international peasant movement La Via Campesina puts it well when it describes biodiversity as "a heritage of communities at the service of humanity". Think about it! They are not claiming property rights or monopolies, much less benefit sharing. Le'a Malia Kanehe of the Indigenous People's Council on Biocolonialism is on similar ground when she says: "Many people interpret indigenous calls for participation as meaning they want a hand in the commercialisation of genes extracted from their native lands, but this is missing the point. What they want is the right not to own these things." Rather than respect such deeply held views and honour the rights of peoples who brought us this diversity and knowledge in the first place, the governments at WTO want to turn their heritage into property and make money from it. Worse, they frame this as an answer to biopiracy.

Disclosure-of-origin rules are already weaving their way into a number of national laws. India, the Andean Community and Brazil have brought all manner of disclosure requirements into their own patent systems. Egypt has put them into its plant breeders' rights Act. But no domestic regime in Cairo or Quito carries weight at the US Patent Office. They need to get it into international law and make it mandatory if it is to have any real effect in the North.



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On the table in Geneva last July was a package deal on how to further open world markets that included a mandate to negotiate the TRIPS amendment. Once approved, this amendment would provide the backing in international law that is missing at the moment. In the event, the talks broke down over the demand from some developing countries, particularly China and India, to increase special safeguards for developing country farmers who can't compete against food import surges.[3] As a result of the breakdown in the talks, the mandate to negotiate the TRIPS amendment fell dead in the water, along with everything else.

As a result, there is an opportunity to increase awareness about the gravity of the situation. The whole idea that patents on life, or plant breeder's rights for that matter, could be made "fair" by paying someone for the source material is completely misguided. By accepting the principle that life can be "privatised", even if part of the financial benefit remains in the South, goes in precisely the wrong direction, especially when all of this revolves around governments, many of which don't recognise farmers' or indigenous peoples' rights. If anything, TRIPS should be amended to make patents on life illegal. The choice is clear: it's either "yes" or "no".

3 This is the conventional explanation for the breakdown of the talks. The explanation less talked about is that the US threw in the towel on special safeguard mechanisms because cotton subsidies were next on the negotiating list – and Washington has no proposal on how to reduce its support to a few thousand politically powerful US cotton producers, as demanded by African nations.