

'TRIPS-PLUS' MUST STOP

The European Union caught in blatant contradictions

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Last month, GRAIN issued an open letter to Pascal Lamy, the chief of trade policy at the European Commission. In it, we disputed Mr Lamy's public relations efforts aimed at trying to convince the world that the EU champions the rights of Third World farmers to save seeds. Lamy never responded. But never mind. This month, a new bilateral agreement between the EU and Lebanon entered into force. Under this treaty, Lebanon must join UPOV within the next four years. If this is championing farmers' rights to save seeds, then something is really messed up.

Quite hidden from its media charms, the European Union is aggressively forcing developing countries to adopt the strictest intellectual property rules on seeds that are possible. We see it in Algeria. We see it in Tunisia. We see it in South Africa, Morocco, Lebanon and Bangladesh. And we even see it poking its head through the clouds of diplomatic language in the EU's policy towards more than 70 poor countries forming the Africa-Caribbean-Pacific (ACP) grouping. We have to stop this 'TRIPS-plus' parade of industrial powers asking developing countries to overshoot their commitments to the WTO through bilateral wheeling and dealing. The EU is not the only guilty party. The US is doing the same from its side, even more aggressively. Switzerland too. And others.

The current situation

By our count, the EU has forced TRIPS-plus commitments regarding intellectual property on life forms in almost 90 developing countries, including the ACP pack (see table).

The language of the individual agreements is not always clear.

- Some countries must join UPOV and/or accede to the Budapest Treaty. This is the case of Algeria, Lebanon, Mexico, Morocco and Tunisia.
- In other cases, the UPOV clamp is not so neat. Algeria is supposed to join UPOV, although the EU might be satisfied if Algeria just implements "*an effective sui generis system*" (see box). Bangladesh, for its part, has to make a best effort to join UPOV.
- Under some of the agreements, the parties recognise the need to provide adequate and effective protection of intellectual property rights, sometimes to the level of "*the highest international standards*" (see box). We then get a list of what those rights specifically include: patent protection of plant varieties and of biotechnological inventions.

All these deals qualify as 'TRIPS-plus' agreements as far as IPRs on life are concerned. TRIPS has no provision about implementing or joining either UPOV or Budapest. It does not require patent protection of plant varieties. And it doesn't even mention "biotechnological inventions".

So where do these provisions come from? They come from the EU's drive to harmonise intellectual property laws worldwide, beyond the minimum requirements of the WTO. The bilateral instruments are clear about this. As the EU's External Affairs Commissioner Chris Patten put it, celebrating the entry into force of the Lebanon agreement earlier this month, it's all about approximating the trade and economic legislation of developing countries with those of the European Union. In other words, to be a partner and benefit from friendly trade concessions or development assistance, Lebanon has to align its laws with those of the EU. This may seem crazy, given the differences between Lebanon and, say, Sweden. But that's what globalisation is about. And the harmonisation of patent laws is a central piece of the puzzle. Patents are vital assets for firms in the industrialised countries, which own over 95% of all patents in the world. They need these patents honoured by developing countries in order to facilitate their own market strategies and secure revenues.

A LEXICON OF 'TRIPS-PLUS' PROVISIONS

EFFECTIVE SUI GENERIS SYSTEM: Under the TRIPS Agreement, all WTO members must start patenting life forms. Patenting of microorganisms is obligatory. For plants and animals, it's optional. Plant varieties, however, must either fall under countries' patent laws or some "effective *sui generis* system" of intellectual property protection. This system is not defined in TRIPS and no mention is made of UPOV. On several occasions, the EU has outlined what it understands by "an effective *sui generis* system", and it is essentially the UPOV approach.

UPOV: The UPOV Convention, a treaty governing the Union for the Protection of New Plant Varieties, gives patent-like rights to plant breeders working in the formal seed industry. It rewards a very narrow type of plant breeding, geared toward genetic uniformity and large scale monocultures. The 1991 Act of the Convention, which is the latest version and the one the EU pushes developing countries to comply with, has no Union-wide provision to respect the rights of farmers. It only says that member states that wish to provide some kind of derogation for farm-saved seed may do so only without affecting the basic monopoly rights that UPOV provides to the seed industry.

BUDAPEST: The Budapest Treaty on the Deposit of Microorganisms for the purpose of patent protection (1977) creates a union of countries operating common rules on filing samples of patented microorganisms. It is administered by the World Intellectual Property Organisation (WIPO). While TRIPS Agreement says that microorganisms must be patented, it says nothing about countries having to adopt and comply with the Budapest Treaty standards.

HIGHEST INTERNATIONAL STANDARDS: Numerous EU bilateral treaties bind developing countries to enforce the "highest international standards" of IPR protection. It is unclear which standards these are. For example, it could refer to European standards, WIPO standards or new *de facto* standards emerging from the increasing number of bilateral treaties on trade and investment. One thing is clear: it can't mean WTO standards because it doesn't say so.

These bilateral treaties are also part of the EU's competition with other major trade powers, namely the US and Japan. They allow the EU to secure preferential terms of business with the partner countries. In this context, it is clear that the EU's historical relationship with the ACP countries constitutes one pole of preferential relations. The EU's proximity to the Mediterranean countries of North Africa and the Middle East constitutes another pole. In fact, the EU has an overall blueprint for its multiple partnerships with the Mediterranean states. Which is why we can expect similar TRIPS-plus policies emerging soon in Egypt, Jordan, and Syria (see table).

Beyond these special and often neocolonial poles, plain old rivalry comes in. The North America Free Trade Agreement between the US, Canada and Mexico, for example, catalysed the EU to propose its own treaty with Mexico.

The need to put a halt on it

The European Union must immediately cease and desist from imposing TRIPS-plus measures on developing countries. And whatever deals already done should be amended accordingly.

The Greens in the European Parliament made an important move in this direction this week by filing an urgent request to the European Commission. The action was triggered by the reality of the EU-Lebanon deal coming into effect. Under the urgency, the Greens have asked the Commission to explain why it pretends to uphold the so-called flexibilities of the TRIPS Agreement at the multilateral level while it simultaneously makes TRIPS-plus demands on developing countries at the bilateral level. The Commission will surely say it is not forcing anybody to do anything, because countries have the right to agree or not with any proposal from the EU. But that never answers the question. These deals represent coercion politics at their best: no patents, no trade or aid. That is why when NGOs and other groups in developing countries question their governments about why they are signing on, they are told to keep quiet because there's no choice. Naturally. Their inflows of foreign contracts and loans depend on it. These countries are in massive debt and now the farmers will have to pay royalties and face other restrictions on seeds – well beyond the WTO's prescriptions.

Civil society groups have to do a lot more to put a stop to this bulldozer.

Going further

The Greens / EFA Group, European Parliament, "EU goes further than WTO on intellectual property rules: Green MEP demands clarification of 'TRIPS-plus' policy for plant varieties", Press Release, Brussels, 25 March 2003.

<http://www.greens-efa.org/en/press/detail.php?id=1331&lg=en>

European Commission, "EU-Lebanon: entry into force of the Interim Agreement 1 March 2003", Press Release, IP/03/300, Brussels, 28 February 2003.

http://europa.eu.int/comm/external_relations/lebanon/intro/ip03_300.htm

The European Commission's bilateral trade relations website.

http://europa.eu.int/comm/trade/bilateral/index_en.htm

GRAIN, in cooperation with SANFEC, "*TRIPS-plus through the back door: How bilateral treaties impose much stronger rules for IPRs on life than the WTO*", July 2001, 14 pp.

<http://www.grain.org/publications/trips-plus-en.cfm>

Table: Bilateral trade agreements through which the EU seeks commitments to TRIPS-plus standards for intellectual property on life in developing countries

| Agreement with | Date | Status | TRIPS-plus and potential TRIPS-plus provisions on life forms |
|---|------|---|---|
| Africa-Caribbean-Pacific (ACP) countries | 2000 | Cotonou Agreement in force. Negotiations on individual bilateral Economic Partnership Agreements between the EU and 76 ACP countries are forthcoming. | The parties recognise the need to ensure adequate and effective protection of patents on plant varieties and on biotechnological inventions. ¹ |
| Algeria | 2002 | Negotiations concluded. | Algeria shall accede to and implement UPOV (1991 Act) within 5 years of entry into force, although accession can be replaced by implementation of an effective <i>sui generis</i> system if both parties agree. ² Must accede to Budapest Treaty. ³ |
| Bangladesh | 2001 | In force. | Bangladesh shall endeavour to join UPOV (1991 Act) and to accede to the Budapest Treaty by 2006. ⁴ |
| Egypt | | Under negotiation. | |
| Jordan | | Under negotiation. | |
| Lebanon | 2002 | Interim Agreement in force as of March 2003. | Lebanon must join UPOV (1991 Act) and accede to Budapest Treaty by 2008. ⁵ |
| Mexico | 2000 | In force. | Mexico must accede to Budapest Treaty within three years and shall provide "highest international standards" of IPR protection. ⁶ |
| Morocco | 2000 | In force. | Morocco must join UPOV (1991 Act) and accede to Budapest Treaty by 2004. ⁷ |
| Palestinian Authority | 1997 | In force. | "Highest international standards". ⁸ |
| South Africa | 1999 | In force. | South Africa shall ensure adequate and effective protection for patents on biotechnological inventions. "Highest international standards". Must undertake to go beyond TRIPS. ⁹ |
| Sri Lanka | 1995 | In force. | "Highest international standards". ¹⁰ |
| Syria | | Under negotiation. | |
| Tunisia | 1998 | In force. | Tunisia must join UPOV (1991 Act) and accede to Budapest Treaty by 2002. "Highest international standards". ¹¹ |

References

- ¹ *Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States*, CE/TFN/GEN/23-OR, ACP/00/0371/00, 8.2.00. <http://europa.eu.int/comm/trade/pdf/acp.pdf> [Art 45]
- ² *Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part – Annexes 1 to 6 and Protocols Nos 1 to 7*, Council of the European Union, Brussels, 12 April 2002, 6786/02 ADD 1 AL 1. http://europa.eu.int/comm/external_relations/algeria/docs/assoc_anex.pdf [Annex 6, Article 3]
- ³ *Ibid*, Annex 6, Article 1.
- ⁴ *Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development*, Official Journal L 118 of 27 April 2001. [http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=22001A0427\(01\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=22001A0427(01)&model=guichett) [Art 5 and Annex 2]
- ⁵ *Interim agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Lebanon, of the other part*, Official Journal of the European Communities L 262/2 of 30 September 2002. http://europa.eu.int/comm/external_relations/lebanon/ia/1.pdf [Annex 2.2]
- ⁶ *Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part*, Official Journal L 276/45 of 28 October 2000. http://europa.eu.int/comm/trade/pdf/oj276_mex.pdf [Art 12.1]. Decision No 1/-- of the Joint Council. http://europa.eu.int/comm/trade/pdf/text_dec.pdf [Title IV, Art 36.2 and 36.4].
- ⁷ *Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part*, Official Journal L 070 of 18 March 2000. http://europa.eu.int/eur-lex/en/lif/dat/2000/en_200A0318_01.html [Annex 7, Art 1]
- ⁸ *Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part*, Official Journal L 187 of 16 July 1997. http://europa.eu.int/eur-lex/en/lif/dat/1997/en_297A0716_01.html [Title II, Art 33]
- ⁹ *Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part*, Official Journal L 311 of 4 December 1999. http://europa.eu.int/comm/development/south_africa/agreement.pdf [Art 46]
- ¹⁰ *Council Decision of 27 March 1995 concerning the conclusion of the Cooperation Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on Partnership and Development*. http://www.dellka.cec.eu.int/en/eu_and_country/agreements.htm [Art 8.1.a]
- ¹¹ *Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part*, Official Journal L 097 of 30 March 1998. http://europa.eu.int/eur-lex/en/lif/dat/1998/en_298A0330_01.html [Annex 7]