

# **TRIPS-plus**

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**How FTAs and other  
bilateral treaties impose  
intellectual property rights  
on life in developing  
countries**

GRAIN  
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# 1. Bilateral treaties push patents on life

- One tool of a multi-pronged strategy to push patents on life worldwide
- “TRIPS-plus” = any set of obligations that goes beyond the WTO TRIPS Agreement.
- The US and the EU are the main forces pushing these agreements
- International policy-making “through the back door”

## **2. TRIPS-plus bilateral treaties take many forms**

- free trade agreements
- unilateral trade policies
- bilateral investment treaties
- bilateral IPR agreements
- bilateral science & technology cooperation agreements
- development cooperation or partnership agreements
- WTO accession agreements

### **3. When is a bilateral treaty “TRIPS-plus”?**

In terms of biodiversity, any agreement that contains an obligation to:

1. implement or join the UPOV Convention
2. grant patents on plants or animals
3. join the Budapest Treaty
4. conform with “the highest international standards” of IPR protection

is TRIPS-plus. The same applies to those that open the door to these obligations.

# 4. Why is TRIPS-plus bad?

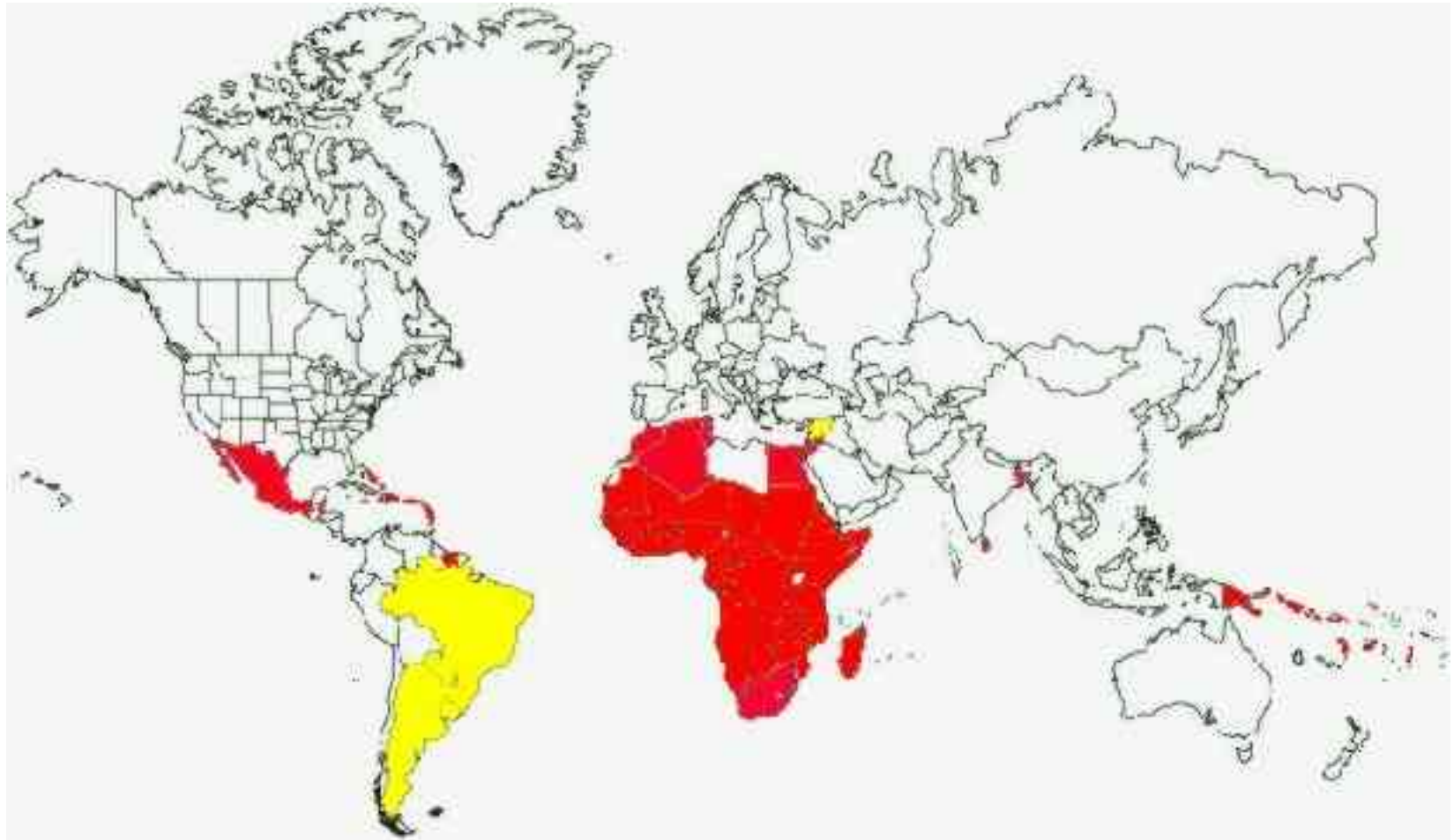
- privatises the basis of food & agriculture
- farmers can no longer save seeds
- undermines biodiversity
- brings in GMOs



End result: TNC control of food and agriculture in the South

# 5. IPR is crucial for TNCs

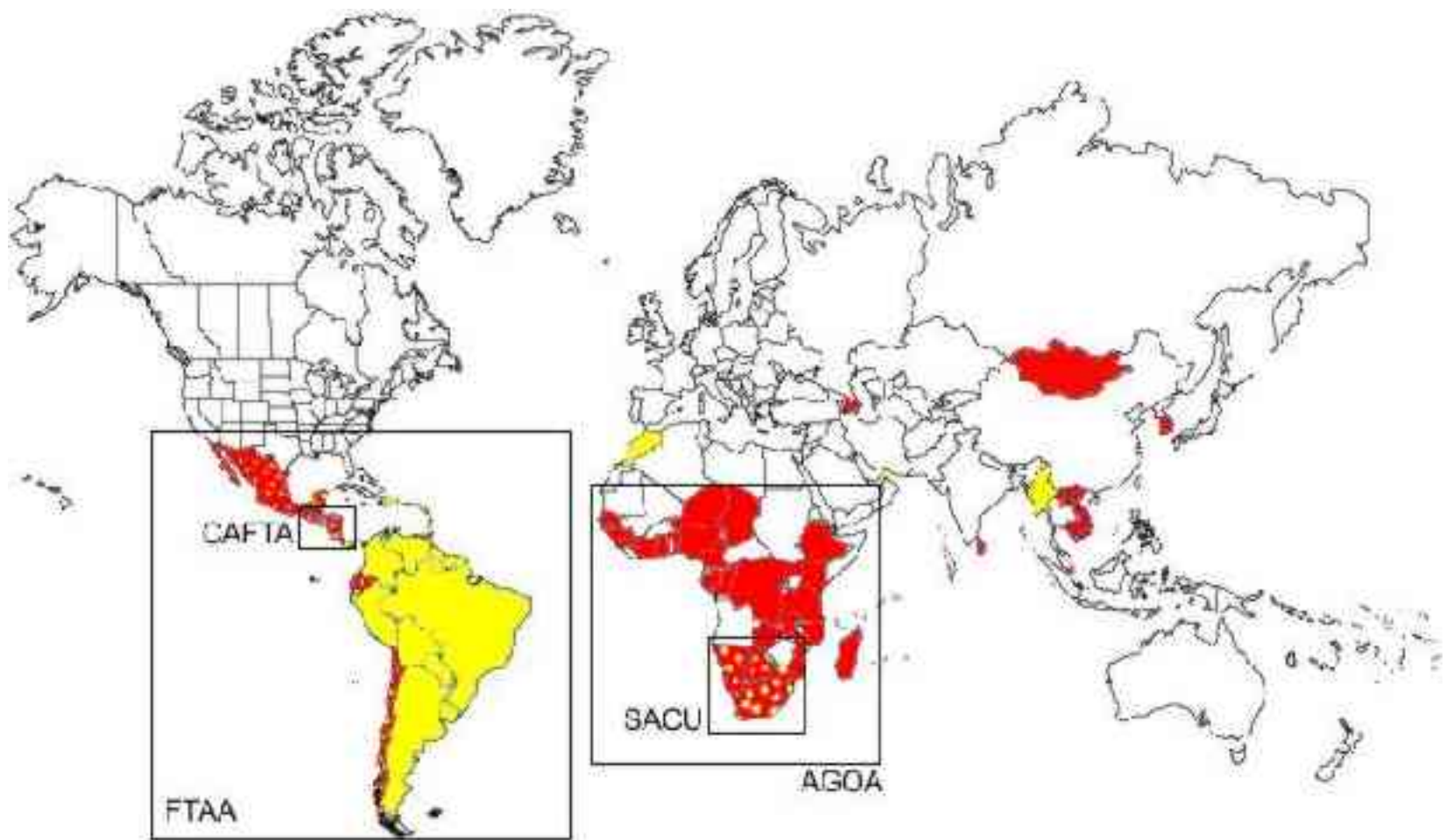
- provides market control
- growing portion of their income
- strategies they use: “piracy”, divide and conquer, “no patents, no prosperity”, intense lobbying
- cornerstone of FTA negotiations: Korea, Taiwan, Pakistan, Thailand, etc.



# TRIPS-plus deals from EU



 Agreed or done  
 Under negotiation

# TRIPS-plus deals from US



 Agreed or done  
 Under negotiation



# ➔ Latin America

- **ECUADOR:** Pressured to join UPOV if they refuse to allow patents on plants (US 1993)
- **MEXICO:** Forced to join UPOV (NAFTA 1994). Forced to join Budapest Treaty and to provide “highest int’l standards” of IPR protection (EU 2000)
- **BOLIVIA, COLOMBIA, ECUADOR and PERU:** US trade benefits gauged on extent to which they go beyond TRIPS (US 1991)

# ➔ Latin America

- **TRINIDAD & TOBAGO:** Forced to join UPOV (US 1994)
- **NICARAGUA:** Forced to join UPOV (US 1998)
- **24 CARIBBEAN BASIN COUNTRIES:** US trade benefits gauged on extent to which they go beyond TRIPS (US 2000)

# ➔ Latin America

- **CHILE:** Forced to join UPOV and to allow patents on plants and animals (US 2003). Must join UPOV and Budapest Treaty (EFTA 2003).
- **COSTA RICA, EL SALVADOR, HONDURAS, GUATEMALA, NICARAGUA, and soon DOMINICAN REPUBLIC:** Forced to join UPOV and to open the doors to plant patenting (US 2003)

# ➔ Latin America

- **ALL OF LATIN AMERICA except Cuba:** The proposed Free Trade Area of the Americas carries many references to enforcing UPOV and patents on life (FTAA 2005?)

## ➔ Asia

- **MONGOLIA:** No exclusions for plants/animals from patent law (US 1991).
- **SRI LANKA:** No exclusions for plants/animals from patent law (US 1991). Must conform with “highest int’l IPR standards” (EU 1995).
- **CAMBODIA:** Must join UPOV (US 1996)
- **LAOS:** Must join UPOV “without delay” and no exclusions for plants/animals from patent law (US 1997).

## ➔ Asia

- **BANGLADESH:** Must make “best effort” to join UPOV and Budapest Treaty by 2006 (EU 2001).
- **VIET NAM:** Must join UPOV by 2002 (Switzerland 1999). Must implement and make best effort to join UPOV. Must also provide patents on all forms of plants/animals that are not “varieties”, as well as on all inventions encompassing more than one “variety” (US 2000).

## ➔ Asia

- **CHINA, CAMBODIA and NEPAL:** Pressured to join UPOV as condition for membership in the WTO (US 2000-2003).
- **SINGAPORE:** Must join UPOV and must allow patents on plants and animals (US 2003)

# ➔ Africa and the Middle East

- **JORDAN:** Must join UPOV and Budapest Treaty (EU 1997). Must join UPOV, implement Budapest Treaty and no exclusions for plants/animals from patent law (US 2000 and EFTA 2001).
- **TUNISIA:** Must join UPOV and Budapest Treaty (EU 1998)



# ➔ Africa and the Middle East

- **SOUTH AFRICA:** Must protect patents on “biotechnical” inventions, provide “highest int’l standards” and undertake to go beyond TRIPS (EU 1999).
- **MOROCCO:** Must join UPOV and Budapest Treaty (EU & EFTA 2000). Must protect patents on plants/animals (EFTA 2000).
- **38 SUB-SAHARAN AFRICAN COUNTRIES:** US trade benefits gauged on extent to which they go beyond TRIPS (US 2000)

# ➔ Africa and the Middle East

- **77 AFRICAN-CARIBBEAN-PACIFIC COUNTRIES:** Must protect “patents for biotechnological inventions and plant varieties or other effective sui generis systems” (EU 2000)
- **EGYPT:** Must join UPOV and Budapest Treaty (EU 2001)
- **ALGERIA:** Must join UPOV (or implement similar) and Budapest Treaty (EU 2002)
- **LEBANON:** Must join UPOV and Budapest Treaty (EU 2002)

## ⇒ Scorecard ⇐

Through direct pressure from US & Europe

- some 21 developing countries have made commitments to implement the UPOV system of exclusive monopoly rights on plant varieties
- some 75 have made commitments to recognise industrial patents on plants and animals, especially GMOs

despite the option not to under WTO TRIPS.

## 6. Singapore model for Thailand?

Under the US-Singapore FTA of 2003, Singapore must

- join UPOV (1991 Act)
- allow patents on plants and animals

within six months of entry into force

# 7. Learnings

- TRIPS-plus treaties are the fruit of coercion, not negotiations between equals.
- The gains for industrialised countries are huge: market control, political hegemony, greater wealth.
- The losses for the South are also huge: democracy, development, sovereignty
- Resistance is not only possible (e.g. India, Ecuador, Nepal, Brazil), it is crucial