

Intellectual property provisions in Bilateral Free Trade agreements

Controversial Issues

Intellectual Property Rights

- undermine protection of community-based property of knowledge and its use
- Extend legal recognition to individual corporate rights

Enhanced enforcement of Intellectual Property Rights (IPRs)

In the agriculture sector means

→ **New patent laws and the privatization
of plants and seeds**

What does Switzerland and the EFTA countries want from India?

- the EFTA-countries put pressure on developing countries to offer protection for plant breeds through intellectual property rights that corresponds at least with the requirements of the convention for the protection of new plants UPOV

India already implemented the rules of the WTO-TRIPS agreement

- For the protection of plant breeds India chose a system sui generis which differs from UPOV and is better suited to conditions in India, where a large majority of producers still save their own seed for future planting

If India would accept a protection system that corresponds to UPOV

- the practice of Indian farmers of saving their own seed for future planting would be banned

→ **The request from the EFTA countries to India to introduce a UPOV-system would directly impact the right to food and the biological diversity in agriculture**



Gender-specific Effects of Increased IPRs in Agriculture

- The requirements of the so-called TRIPS-Plus- rules in bilateral free trade agreements concern both men and women farmers and limit their options considerably. Women are more deeply affected by such rules because they play a decisive role in feeding their families

- A majority of women are engaged in small-scale subsistence farming. They cultivate mostly local food plants for their own consumption and the local market, using seed they save from one year to the next and trade locally

- Women rarely have access to newer technologies and don't have the means to buy seed
- **Women play a decisive role in agriculture, especially as the guardians of seed**

Special Knowledge

- In many cultures women acquire a special knowledge about the variety of plant life and the use of plants. Often this knowledge is only transmitted orally to the next generation. The specific knowledge and experience of women as well as the collective knowledge of communities are threatened by the encroachment of Western systems of intellectual property



- Strong patent laws shift power from women and farmers to seed companies. More often men use the new seed offered by seed companies and negotiate with them. They have to buy new seed every year. As a result the traditional knowledge and the practices of women in indigenous communities, the culture of saving and trading seed are undermined. At the same time, women often lose control over the family's income



Use of patents to restrict access to medicines

What does Switzerland and the EFTA countries want from India?

- 1) Switzerland asks India to introduce in its legislation five-to ten-year exclusivity on data for registration of brand-name medicines → called **data exclusivity**

What does this mean?



Berne Declaration
Déclaration de Berne
Erklärung von Bern

Data exclusivity

- During the period of protection, regulatory authorities will not be able to automatically rely on data of clinical tests of original producers when approving the marketing of generic medicines
- **It becomes more difficult and takes longer to bring generic – that means cheap medicines - to market**



2) The EFTA countries request a 5-year patent extension → that means it takes even 5 years longer than the normal expiration of a patent (20 years) until generic cheap medicaments can be produced

- The provisions on Intellectual Property Rights (TRIPS Plus) strengthen the monopolistic rights of pharmaceutical corporations at the expense of ill people who need cheap medicaments urgently

Gender-Specific Effects on the Access to Medicines

- Men and women both need affordable medicines. 80 percent of the population in developing countries pay out of pocket for their medication. More and more young pregnant women between 15 and 25 are HIV-positive. Affordable retroviral drugs are crucial in preventing the transmission of the virus to the child → pregnant women also need more basic medicines and drugs against sexually transmitted diseases.



- If the necessary medicines are not available women carry an even greater burden because they care for the sick, both in their own family and in the wider community

Local knowledge diminished

- in many communities that produce mostly for their own consumption women have a great store of knowledge on the medical use of plants. This knowledge is now jeopardized by the loss of numerous plant species and diminished by the arrival of Western medicine. This explains the many efforts underway in developing countries to gather, document, and reactivate such local knowledge



The WTO-TRIPS-agreement and the Bilateral Free Trade Agreements don't protect this local knowledge, but they certainly protect the intellectual achievements of the North. So the proposed intellectual property rules clearly discriminate against the knowledge-keepers of the South

