

CONTENT

Note To Subscribers	1
BIOTECHNOLOGY	1
US Steps Up Pressure Over Biotech Rules	1
INTELLECTUAL PROPERTY RIGHTS	3
US Supreme Court Confirms Legality Of Plant Patents	3
BIOTECHNOLOGY	4
WIPO Committee: Countries Divided Over Need For New Legal Norms To Protect TK	4
IN BRIEF	5
EVENTS & RESOURCES	6

NOTE TO SUBSCRIBERS

This is the last issue of ICTSD's BRIDGES Trade BioRes for the year 2001. The first issue of 2002 -- Vol. 2, No. 1 -- will be published on 24 January. The producers, together with the rest of the ICTSD team, would like to thank our reporting contributors all over the World and our funders for their critical assistance. We are grateful to our readers for their interest and feedback and send to you all our best wishes for the holiday season and 2002.

Biotechnology

US STEPS UP PRESSURE OVER BIOTECH RULES

The US is reported to be losing patience with the continued EU de facto moratorium on the approval of genetically modified organisms (GMOs) with pressure mounting within the US to bring a case to the WTO. At the same time, the environmental organisation Friends of the Earth International (FoEI) has attacked the US and Argentina for allegedly pressuring small countries, such as Bolivia, Sri Lanka and Croatia, to refrain from implementing strict import rules for GMOs.

EU GM regulations still under attack

"Patience is wearing out" regarding the continued EU ban on the approval of GMOs, said Undersecretary of State for Economic and Business Affairs Alan Larson. "It is time for the [EU] member states to work to lift the ban," he said. Another US official stated that US government and industry representatives were getting "angrier and angrier" with the lack of progress, increasingly putting pressure on the US to bring the case to the WTO. The US has also reiterated its criticism of the draft regulations on labelling and traceability proposed by the European Commission in July (see Background, below), which, according to one US official, it contends are "unworkable and discriminatory".

According to Environment Commissioner Margot Wallstrom, however, the ban -- in place since 1998 -- is likely to remain for at least another two years while EU member states are debating the proposed labeling and traceability regulations. Wallstrom also pointed out that support among member states for the de facto moratorium was actually growing, with some countries even calling for a liability regime to be in place before it can be lifted.

FoEI attacks US for pressuring countries over GMO bans

Based on a number of leaked documents, FoEI has accused the US of putting pressure on small countries to not ban the import of GMOs. In a non-paper outlining US views on Croatia's interim GMO legislation, which proposes to ban or restrict the import, marketing, use and production of GMOs until specific legislation is in place, the US expresses concern that the ban "will undermine the science-based, rules-based approach to food safety as agreed to under the WTO, as well as unfairly restrict trade". "If such a ban is implemented, the U.S. must consider its rights under the WTO," the paper states. It furthermore suggests that Croatia should use caution in implementing the proposed EU biotechnology directives on labelling and traceability.

FoEI also reports that the Bolivian ban on GMO imports was revoked in October as a result of pressure by the Argentinean soya corporate sector, despite assurances by the Bolivian government in August that the ban (in place since January 2001) would be renewed. Similarly, Sri Lanka in September decided to suspend its GMO ban, which had been strongly criticised by the US as not scientifically justified (see BRIDGES Weekly, 11 September 2001; <http://www.ictsd.org/weekly/01-09-11/story5.htm>). The US has also in the past reportedly threatened to invoke Section 301 of US trade laws if Thailand decided to approve proposed labelling requirements for GM foods that harmed American exports (see BRIDGES Weekly, 31 July 2001; referenced above), "The World Trade Organization is the instrument that the US and biotech corporations are using to force countries around the world to accept GMOs," said Juan Lopez from FoEI. "We call on all governments of the world to stand up to the WTO," he added.

Background

It remains unclear whether import bans on GMOs and the proposed EU regulations on labelling and traceability are WTO compatible. If it were to come to a dispute in the WTO, the matter would most likely be taken up under the Agreement on Sanitary and Phytosanitary Measures (SPS) or the Agreement on Technical Barriers to Trade (TBT), both of which allow WTO Members to take measures necessary for the protection of human, animal or plant life or health, as long as they are based on science, non-discriminatory, least trade-distortive and do not constitute a disguised restriction on international trade. The SPS Agreement furthermore allows Members "in cases where relevant scientific evidence is insufficient" to provisionally adopt SPS measures subject to requirements laid down in Article 5.7 of the Agreement.

Some believe that the proposed EU regulations would be unnecessarily trade-distortive (and therefore WTO-incompatible) due to the high cost of segregating GMOs from non-GMOs. It is also argued that the regulations are not scientifically justified, in particular requirements to label products derived from, but no longer containing detectable traces of GMOs. Others have also expressed concern about the proposed 1 percent tolerance threshold of accidentally introduced GMOs, which they say will be difficult to comply with and measure. [See BRIDGES Weekly, 31 July 2001; <http://www.ictsd.org/html/weekly/31-07-01/story5.htm>]

"U.S. said losing patience with EU ban on GMOs; pressure rises for WTO complaint," WTO Reporter, 13 December 2001; "U.S. to analyze EU biotech rules, submission to WTO planned, official says," WTO Reporter, 30 November 2001; "US and biotech corporations impose genetically modified organisms worldwide under WTO threats," FoEI PRESS RELEASE, 17 December 2001; "Mexican Congress to Fox: 'Ban GM corn'," THE NEWS MEXICO, 6 December 2001; ICTSD Internal Files.

Intellectual Property Rights

US SUPREME COURT CONFIRMS LEGALITY OF PLANT PATENTS

The US Supreme Court on 10 December decided that plants developed through genetic engineering or other breeding techniques could be patented under Federal patent law (see BRIDGES Trade BioRes, 6 December 2001; <http://www.ictsd.org/biores/01-12-06/story5.htm>).

The Court rejected the argument put forward by the US-based company J.E.M. Ag Supply in its case against Pioneer Hi-Breed that plant patents were invalid and that Congress had never intended the scope of patentable subject matter to be extended to seeds and plant varieties. Instead, the Court argued that "Congress has not only failed to pass legislation" to support this assertion, but "it has even recognized the availability of utility patents for plants."

The ruling will be greatly welcomed by the agriculture industry, which has for the past 20 years based its investment decisions on the assumption that the plant varieties resulting from their research will be protected by patents. Plant breeders and seed companies generally argue that patent protection is a necessary incentive for research and development (R&D) as it enables investors to recover their R&D expenditure.

Farmers, however, are concerned that patents will prevent them from saving and re-planting seeds. Researchers, in turn, point out that patents restrict experiments to find improved varieties. Anti-biotech campaigners are also likely to be disappointed with the ruling, which they had hoped would reverse part of the patent law.

The Supreme Court's decision now paves the way for Pioneer Hi-Breed to continue its lawsuit against J.E.M. which it had brought against the company in 1998 for selling bags of corn seeds patented by Pioneer.

China worried about soy patent application

In related news, China has expressed concern regarding a proposed patent by the agro-chemical company Monsanto on DNA of a variety of high-yield soy. While the patent application was only filed in the US and would (for now) not affect use of the variety in China, some are expecting widespread consequences if the patent were granted. "This could affect genetic

research throughout the world," said Chang Ruzhen, chair of the China Soybean Society. "This is not good news for anyone". Others have pointed out possible trade impacts if Chinese farmers unwittingly ignored the patent, which they say could impede export of their products and might even lead to international trade sanctions. Several Chinese researchers and media reports have also questioned the source of the wild variety of soy used in Monsanto's research despite the company's assurances that the variety was obtained from a publicly accessible US Department of Agriculture germ plasma bank and was not cultivated anywhere in the world.

Additional Resources

The US Supreme Court ruling is available online at <http://supct.law.cornell.edu/supct/html/99-1996.ZS.html>.

"Plant breeders win patent protection," FT, 11 December 2001; "High court says seeds can be patented, in ruling beneficial to biotech industry," THE WALL STREET JOURNAL, 11 December 2001; "Patent application raises worries," AP, 12 December 2001.

Biotechnology

WIPO COMMITTEE: COUNTRIES DIVIDED OVER NEED FOR NEW LEGAL NORMS TO PROTECT TK

Substantive discussion at the second meeting of the WIPO [World Intellectual Property Organization] Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore on 10 - 14 December in Geneva focused mainly on two subjects: operational principles for contractual agreements concerning access to genetic resources and benefit-sharing; and traditional knowledge as prior art. Due to time constraints, deliberations on folklore were brief. The topic of operational definitions appeared in the draft agenda but was completely omitted.

The WIPO Secretariat had prepared several documents including two on the above-mentioned subjects, which formed the basis of most of the discussions. On the whole, the deliberations were fairly technical in nature and were less politicised than those covering the same issues tend to be in other international forums. While there was little in the way of a debate and the atmosphere was non-confrontational throughout, there was a clear division between those countries that favour the creation of new legal norms (mainly from Latin America and the Africa Group) and those that do not, including the US and Canada. The latter group of countries considers that solutions should be sought within existing legal frameworks and, while willing to contemplate additional obligations, would prefer these to be non-binding. Industry representatives also shared the call for non-binding obligations.

Several countries pointed out that any agreed model contractual provisions should be consistent with both the Convention on Biological Diversity and the new FAO Treaty on Plant Genetic Resources for Food and Agriculture.

The issue of representation of indigenous peoples and local communities came up throughout the meeting. While a few organisations representing these communities attended the meeting, such as the Indigenous Peoples Biodiversity Network, the Inuit Circumpolar Conference and the Saami Council, and one important developing country (Brazil) had a well-known indigenous person on its delegation, the Committee supported the proposal made by the EC that WIPO and its member states should consider creating a fund to ensure greater participation by indigenous peoples and local communities in future Committee meetings.

The Committee also agreed that WIPO should continue its work to establish model intellectual property rights (IPR) clauses for contractual agreements regulating access to genetic resources and benefit sharing, possibly including the development of a database of such clauses to help guide negotiations. Approval was also given to continuation of WIPO's work on the IPR aspects of documenting public domain traditional knowledge, the aim of which is to ensure that patent examiners are able to prevent cases where patents whose claims extend to traditional knowledge are improperly awarded.

Towards the end of the meeting, several developing countries proposed, without objections from other participating countries, that WIPO should produce a document providing elements for model sui generis protection for traditional knowledge.

The Committee is scheduled to meet for the third time in June 2001.

Background

The protection of traditional knowledge is being discussed in the WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs) and was explicitly listed for examination by the Council in the Doha Ministerial Declaration (see BRIDGES Trade BioRes, 22 November 2001; <http://www.ictsd.org/biores/01-11-22/story3.htm>). Many developing countries, such as India, Brazil and the Africa Group, would like to see the TRIPs Agreement and in particular Article 27.3(b) (patentability of life forms) broadened to include issues such as disclosure requirements for the origin of genetic resources and associated traditional knowledge, benefit-sharing arrangements and prior informed consent. Most developed countries, however, oppose such a broadening of scope, arguing that these issues should not be discussed at the WTO, but in other relevant forums, such as WIPO.

Additional Resources

The official documents on the second WIPO Intergovernmental Committee can be downloaded from the WIPO website: <http://www.wipo.int/globalissues/igc/documents/index.html> WIPO Press Release PR/2001/231: "IGC advances work on new global intellectual property issues", <http://www.wipo.int/pressroom/en/releases/2001/p301.htm>.

ICTSD Internal Files.

In Brief

CALLS FOR GMO BAN GROWING IN MEXICO. Following the discovery of transgenic components in Mexican native corn varieties (see BRIDGES Trade BioRes, 6 December 2001; <http://www.ictsd.org/biores/01-12-06/story3.htm>), the Mexican Congress unanimously called on President Vicente Fox to ban the importation of GM corn, claiming that it would threaten the genetic integrity of the country's crops and food supply. The calls were echoed by Mexican environmental and farm organisations in a petition presented to the Federal Attorney for Protection of the Environment. In the document, the organisations hold the secretaries of Agriculture, Environment and Economy, and the Intersecretarial Commission for Biosafety and GMOs (Cibiogem) responsible for the contamination of native corn varieties, demanding an import ban on transgenic corn from the US, and a suspension of releasing these products in Mexico until an adequate legislative framework is in place.

"Mexican Congress to Fox: 'Ban GM corn'," THE NEWS MEXICO, 6 December 2001; ICTSD Internal Files.

BRAZIL COMBATS ILLEGAL MAHOGANY TRADE. The Brazilian government on 6 December announced a decree to protect all remaining mahogany trees in three states against of illegal logging, making certification mandatory for all management plans, which surround Indian lands and conservation areas. The magnitude of the illegal logging activities of mahogany trees in the Amazon became public after Greenpeace submitted a report to the federal prosecutor and the environmental, which revealed illegal practices in the mahogany industry and in the international timber trade authorities (available at http://www.greenpeace.org/~forests/forests_new/html/content/reports/Mahoganyweb.pdf). As a result of the report, the Brazilian authorities undertook several investigations and inspections of illegal logging, forest management plans and saw mills. These investigations eventually led to the new decree, which according to Paul Adario from Greenpeace "sends a clear message to the Amazon logging sector and the market place, that they stop illegal logging and go to certification or they are out of business".

"Brazil Cracks Down on the Illegal Mahogany Trade," ENS, 14 December 2001.

INTERNATIONAL CERTIFICATION SYSTEM FOR MARINE AQUARIUM TRADE. During the 2nd International Marine Ornamentals Conference in Orlando, Florida the Marine Aquarium Council (MAC) launched a new certification system for the marine aquarium trade. The certification system, which conforms to WTO standards, was developed through an international process involving conservation groups, the industry, hobbyists, public aquariums and government agencies. The certification system enables consumers and the marine industry to identify certified facilities and organisms of the marine trade. The key goal for the certification is to put an end to unsustainable collecting practices and enhance the preservation of the marine environment. At the same time the new certification system will ensure economic stability of collectors and is considered to be a win-win solution for the entire supply chain, including coastal communities and the marine industry, as well as provides consumers with the possibility to get a healthy product.

"International Certification System for Marine Aquarium Trade Aims to Protect Coral Reefs, Ensure Quality of Fish and other Organisms" MAC, 3 December 2001.

Events & Resources

EVENTS

For a more comprehensive list of events in trade and sustainable development, please refer to ICTSD's web calendar at <http://www.ictsd.org/html/calendar.htm>.

9 - 12 January, Hanoi, Vietnam: ASIAN REGIONAL WORKSHOP ON SUSTAINABLE USE OF BIOLOGICAL DIVERSITY. For further information, contact CBD Secretariat, tel: (1 514) 288 2220; fax: 288 6588; email: secretariat@biodiv.org; Internet: <http://www.biodiv.org/doc/notifications/ntf-2001-12-07-suse-en.pdf>.

21-22 January, Muscat, Oman: INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE: OUR IDENTITY, OUR FUTURE. Organised by the World Intellectual Property Organization (WIPO) in cooperation with the Government of the Sultanate of Oman. The objective of the International Forum is to provide policy makers and senior government officials with the opportunity to exchange views and share experiences, at the highest level, on the social, cultural and economic dimensions of the protection of traditional knowledge. Participation will be at the ministerial level, namely the Ministers responsible for culture and/or

intellectual property matters. For further information, contact WIPO, tel: (41 22) 338 9111; fax: 733 54 28; Internet: http://www.wipo.org/arab/en/meetings/2002/muscat_forum_ip/index.html

Other Forthcoming Events

28 January - 8 February, New York, United States: CSD-10 ACTING AS 2ND PREPCOM FOR THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT. Organised by the UN. For further information contact JoAnne DiSano, Director, UN Division for Sustainable Development (DESA), tel: (1 212) 963 3401 /3160; fax: 963 3463, email: maini@un.org, Internet: <http://www.johannesburgsummit.org/html/documents/prepcom2.html>. 28-29 January Nairobi, Kenya: REGIONAL CONFERENCE ON PUBLIC PERCEPTIONS OF BIOTECHNOLOGY IN AFRICA. For further information contact Anna Ogalo or Harrison Maganga, African Centre for Technology Studies, Nairobi, Kenya; tel: (254 2) 524700/6; fax: 524701; e-mail: acts@cgiar.org or a.ogalo@cgiar.org; Internet: <http://www.acts.or.ke/Biotechnology%20Regional%20Conference.htm>. From IISD Linkages, <http://www.iisd.ca>

4-7 February, San Jose, Costa Rica: INTERNATIONAL CONFERENCE ON THE IMPACTS OF AGRICULTURAL RESEARCH AND DEVELOPMENT. Sponsored by the Consultative Group on International Agricultural Research (CGIAR) and the International Maize and Wheat Improvement Center, the conference will bring together researchers and other professionals interested in documenting and measuring the impact of international agricultural research. Participants are expected to highlight experiences and case studies of impacts on agricultural productivity, equity, poverty, social health, and nutrition, the environment, as well as on institutions and human capital. For more information contact: e-mail: impacts@cgiar.org; Internet: <http://www.cimmyt.org/research/economics/impacts/>. From IISD Linkages, <http://www.iisd.ca>

3-7 June, Trieste, Italy: ICGEB Workshop "Introduction to Biosafety and Risk Assessment for the Environmental Release of Genetically Modified Organisms (GMOs): Theoretical Approach and Scientific Background", organised by the Biosafety Unit of the International Centre for Genetic Engineering and Biotechnology (ICGEB). The Workshop is dedicated to those scientists actively involved in environmental releases of genetically modified organisms (GMOs). The main purposes of the Workshop is (i) to supply basic information on risk assessment and risk management and (ii) to provide an overview on international biosafety regulations and the main safety issues debated at an international level. For further information contact the Programme and Training Unit, ICGEB, tel.: (39-040) 3757333; fax: 226555; email: courses@icgeb.trieste.it

RESOURCES

If you have a relevant resource (books, papers, bulletins, etc.) you would like to see announced in this section, please forward a copy or review by the BRIDGES staff to hbaumuller@ictsd.ch. Submissions of publications to ICTSD's documentation centre would also be welcome (contact Matteo Rizzolli, mrizzolli@ictsd.ch).

ENVIRONMENTAL TRADE DISPUTES AND THE WTO, by P.K Rao. Published by Pinninti Publishers, May 2001. This book examines the impact of international trade on the global environment, and the conflicts and case studies in the resolution of international trade disputes arising from national attempts to protect the environment, and proposes principles for the resolution of trade-environment conflicts under the WTO regime. For further information,

contact: Pinninti Publishers, 86 Sycamore Court, Lawrenceville, NJ 08648, USA; fax (1-609)-912-0737, email: pkrao@att.net; Internet: http://www.pinnintipublishers.com/#ETD_and_WTO.

"Indian seed bill forges new ground", by KS Jayaraman, in NATURE BIOTECHNOLOGY, October 2001, pp 895-896. The paper describes and investigates new seed legislation in India and foresees that the new legislation will set a precedent for developing countries. In a move designed to encourage agbiotech innovation but prevent multinational companies from controlling the country's seed business, India has introduced new seed legislation that protects the rights of both plant breeders and farmers, according to the author. As such, the Plant Variety Protection and Farmers Rights Bill, which was passed by Parliament on 9 August, sets a precedent for developing countries. The paper is available online at http://www.checkbiotech.org/root/index.cfm?fuseaction=subtopics&topic_id=6&subtopic_id=31&doc_id=1913&start=1&control=74&page_start=1&page_nr=76&pg=1

"Protecting Asia's Most Valuable Resource", Seedling, Vol 18, No 4, GRAIN Publications, 2001. The article discusses the implications of recent developments in relation to the US company RiceTec's patent claims on Basmati rice. The article is available at <http://www.grain.org/publications/seed-01-12-3-en.cfm>

"Biotechnology and Development: A balance between IPR protection and benefit-sharing", by Jan Wendt and Juan Izquierdo in ELECTRONIC JOURNAL OF BIOTECHNOLOGY, Vol 4, Issue 3, Valparaíso, 2001. This paper describes the international framework for intellectual property rights (IPRs) related to genetic resources and the access to these resources, and deals further with the following questions: How do governments apply these concepts at national level in Latin America and the Caribbean? How do they get the balance right between protection of IPRs of innovations, access to genetic resources and the fair distribution of benefits? The paper is available at <http://www.ejb.org/content/vol4/issue3/issues/01/index.html>

PROTECT OR PLUNDER? UNDERSTANDING INTELLECTUAL PROPERTY RIGHTS. By Vandana Shiva, Published by Zed Books, December 2001. The author argues that the Western-inspired and unprecedented widening of the concept of intellectual property does not in fact stimulate human creativity and the generation of knowledge. Instead, in the view of the author, it is being exploited by transnational corporations to increase their profits at the expense of the health of ordinary people especially the poor, and the age-old knowledge of the world's farmers. For further information, please contact: Mohammed Umar, Zed Books; tel: (44-20) 7837-4014, fax: 7833-3960; email: sales@zedbooks.demon.co.uk; Internet: <http://zedweb.hypermart.net/cats/winter2001ws.htm>

"Bilateralism in Intellectual Property" by Peter Drahos, commissioned by OXFAM, October 2001, 17 pp. The report examines the way in which bilateral trade negotiations (Bilateral Investment Treaties and Bilateral Intellectual Property Agreements) are resulting in more extensive protection for intellectual property than that set out in the WTO TRIPS Agreement. It uses examples of recent US/EU negotiations with countries such as Nicaragua, Jordan, and Mexico. The report is available online at <http://www.oxfam.org.uk/policy/papers/bilateral/bilateral.html>.

"Lords of the Harvest: Biotech, Big Money, and the Future of Food" by Charles, D., Cambridge, Massachusetts, USA: Perseus Publishing, 2001. This book chronicles the appearance of genetically engineered crops and demonstrates the tremendous motivations and controversy surrounding the industry today. For further information, visit <http://members.bellatlantic.net/~charles5/>

Electronic Resources

NEW WWF WEBSITE ON SUSTAINABILITY ASSESSMENTS (SAS) AND TRADE. The new website addresses the potential economic, developmental and environmental implications of trade and investment agreements. Available at: <http://www.panda.org/balancedtrade>. For further information, please contact: Mireille Perrin, tel: (+41-22) 364-9026. Claudia Saladin, tel: (1-202) 778-9774

NEW WEBSITE OF THE ETC GROUP. The Action Group on Erosion, Technology and Concentration (ETC, formerly RAFI) has launched a new website (<http://www.etcgroup.org>) that allows users to search for ETC group publications by type (Communiqué, Genotype, News Release, Occasional Papers and Others) as well as find news and information organised by 16 key topics, including biodiversity & genetic resources, human rights / farmers' rights, biotechnology and intellectual property & patents. ETC group is dedicated to the conservation and sustainable advancement of cultural and ecological diversity and human rights. To this end, ETC group supports socially responsible developments of technologies useful to the poor and marginalised and it addresses international governance issues and corporate power.

POSITION VACANCY

RESEARCH FELLOW. The Centre for Philosophy of Law is seeking a Research Fellow to work on its Biodiversity empirical investigation and related theoretical issues on international regimes. Research will focus on the mechanisms of intellectual property rights as organised by the UPOV convention in order to meet its objectives with regard to the protection of biodiversity and its interaction with other international regimes such as WTO, UPOV, FAO's International Undertaking and the Biodiversity Convention.

Research Fellow candidates must have a PhD or equivalent degree (e.g: ScD, JD, doctorate) in a relevant academic discipline or be very close to completing their degree, with solid training in theory and research methodology. Duties include collaborative project planning, research drafting. The position requires written and verbal communication skills and the ability to work effectively in a multi-disciplinary team. It is a 12 months fellowship with the possibility of renewal (from one to four years). Fellowship -- depending on experience and qualification -- includes full social and healthcare protection. The position is available now and may be filled promptly; applications will be screened as they arrive. Candidates should send a letter of application, curriculum vitae, and writing sample to: Professor Jacques Lenoble, Director of the Centre, Centre for Philosophy of Law, Collège Thomas More, Place Montesquieu, 1348 Louvain-la-Neuve, Belgium, or by email to Lenoble@cpdr.ucl.

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