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## PROTECTING TRADITIONAL KNOWLEDGE : WHY IT IS IMPORTANT

**An International Seminar on Systems of Protection of Traditional Knowledge was jointly organised in New Delhi by India and UNCTAD during 3-5 April, 2002.** This event had its origin in the Seminar organised by the Government of India and the World Intellectual Property Organisation (WIPO) in July 2000 where it was felt that **though various bio-diversity rich countries were taking steps for the preservation and protection of traditional knowledge at the national level, they needed to come together for making concerted efforts to obtain international recognition for such national level systems of protection of traditional knowledge.** This issue is also on the agenda of the UNCTAD action plan. Rampant bio-piracy deprives holders of Traditional Knowledge of any benefits. **Loss of bio-diversity and associated traditional knowledge will not only deprive the world of a unique knowledge-base but also threaten the very survival of local communities. Intellectual Property Rights (IPR) laws must benefit all holders of such IPRs equally** - whether they are huge multinationals spending billions of dollars on research or traditional local communities where knowledge has simply been passed on to one generation to other. **Some of the vital issues relating to traditional knowledge were highlighted in the address of the Commerce & Industry Minister, Mr. Murasoli Maran, at the above mentioned Seminar, which is reproduced below:**

"I would like to welcome all the delegates who have come from various bio-diversity rich countries, inter-governmental organisations and renowned experts to this '**International Seminar on Systems of protection of Traditional Knowledge**' (TK). This event has its origin in the Seminar organised by the Government of India and World Intellectual Property Organisation (WIPO) in July, 2000. It was felt in that Seminar, that though various bio-diversity rich countries are taking steps for preservation and protection of traditional knowledge at the national level, they need to come together for making an effort to obtain international recognition of such national level systems of protection of traditional knowledge. This issue is also on the agenda of UNCTAD Action Plan. It is for this reason that India and UNCTAD decided to organise this Seminar jointly.

2. In 1992, at the United Nations Conference on Environment and Development at the Rio de Janeiro, the participating nations including India brought out the Rio Declaration on Environment and Development and also the Convention on Biological Diversity (CBD). In Principle-22 of Rio Declaration, we had proclaimed, and I quote:

*"Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development".*

3. Having traversed the road from Rio in our journey to Johannesburg, what have we achieved? We see rampant bio-piracy leading to absence of benefits to holders of Traditional Knowledge, and further leading to loss of sustainable development, thanks to Intellectual Property Rights (IPRs). I am not a pessimist, but sane advice tells me that loss of biodiversity and associated traditional knowledge will, not only deprive the world of this unique

knowledge-base but also threaten the survival of local communities. It is time the global community took concrete steps to achieve the objects of CBD and protect traditional knowledge. **IPR Laws must benefit all the holders of such IPRs equally - whether they are huge multinationals spending billions of dollars on research or traditional local Communities where knowledge has simply been passed on from generation to generation.**

4. The issue of protection of traditional knowledge, bio-piracy and fair and equitable sharing of benefits arising out of utilisation of traditional knowledge is very important for India. In the recent past, there have been several cases of bio-piracy of traditional knowledge from India. First, it was the patent on wound-healing properties of haldi and now patents have been obtained in other countries on hypo glyceimic properties of karela, brinjal, etc. These uses have been an integral part of traditional systems of medicine in India and these instances of bio-piracy agitated the whole country. For preventing such occurrences in future, an exercise to prepare easily navigable computerised database of documented traditional knowledge relating to the medicinal and other plants is in an advanced stage of preparation by the Union Ministry of Health and Family Welfare (Department of Indian Systems of Medicines and Homeopathy). NGOs have done commendable work in this area in preparation of People's Bio-diversity Registers.
5. In the Indian Bio-Diversity Bill, which is under consideration of Parliament, provisions have been introduced regarding prior consent of National Biodiversity Authority for access to biological resources from India. The National Biodiversity Authority is to ensure benefit-sharing arrangements also. Provision has also been made in the Patents (Second Amendment) Bill for mandatory disclosure in the patent application of the source of biological resource used in the invention.
6. These provisions would ensure prevention of bio-piracy in India and sharing of benefits arising out of use of

traditional knowledge. However, this will not prevent persons seeking patents on traditional knowledge in other countries and also using traditional knowledge without prior informed consent and benefit sharing. The onus of benefit sharing must also be shared by the user country to create an enabling environment and confidence through legislative measures so as to ensure compliance of prior informed consent stipulations and for ensuring equitable sharing of benefits as visualised in the CBD.

7. Similar provisions relating to disclosure, prior informed consent and benefit sharing have been made or proposed in a number of countries. **There is a need for international recognition of such national level systems for protection of traditional knowledge.** Work is going on in various inter-governmental bodies like CBD, WIPO, FAO, UNCTAD & WTO in this regard. However, the debate is tailored to the charter and the focus of these forums is not on the rights of the holder.
8. It is in this perspective that we have organised this Seminar so that a coalition of bio-diversity rich countries is made. **This coalition should work for development of an internationally agreed instrument, which recognises national level systems for protection of traditional knowledge.** This coalition should also provide necessary impetus to the work underway in various inter-governmental fora in this regard.
9. The need for such effort is urgent and relevant in the context of the mandate given by Doha Ministerial Conference to the TRIPS Council regarding the relationship between CBD & TRIPS Agreement and protection of traditional knowledge and folklore. These are some of the most important outstanding implementation issues which need to be resolved.
10. CBD while reaffirming the sovereign rights of nations over their biological resources, calls for equitable

sharing of benefits arising out of the utilisation of these resources and associated traditional knowledge. The TRIPS Agreement, on the other hand, recognises IPRs to be private rights and provides for rewarding inventions without referring to the source of biological material and associated traditional knowledge and without commitment for fair and equitable sharing of benefits with the country of origin of such knowledge.

11. In my view, the process we should follow will flow from Article 16.5 of CBD and I quote:  
  
*"The contracting Parties, recognising that patents and other IPRs may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives".*
12. The approaches in the TRIPS Agreement and CBD need to be harmonised in this reward. India had proposed in WTO that applications for patents should disclose the source of knowledge and biological material and also state that the prevalent laws and practices of country of origin have been fully respected.
13. The coalition of developing countries on the convergence of interests was highly successful in the process leading to Doha Ministerial Conference on the issue of access to affordable medicines for all. The same **"Development Coalition"** should utilise the opportunity provided by Doha mandate on the issue of protection of traditional knowledge. The adverse implications of the TRIPS Agreement on protection and sustainable use of Traditional Knowledge needs to be rectified. **The TRIPS Agreement should be used not only to reward the inventors but also the local people and communities who have conserved and developed the Traditional Knowledge, which provides valuable base for such inventions.**

14. Doha Declaration also refers to sustainable development; but there is a difference. The declaration states that ".....we agree to negotiations, .... on :

the relationship between existing WTO rules and specific trade obligations set out in multilateral environment agreements (MEAs). The negotiations **shall be limited in scope** to the applicability of such existing WTO rules as among parties to the MEA in question. **The negotiations shall not prejudice the WTO rights of any member that is not a party to the MEA in question".**

- With these provisions, countries who are not parties to MEA in question will be exempted from negotiations gracefully and will not have any binding commitments!

15. **In the case of environment, the text proposing immediate commencement of negotiations in this major area was proposed in Doha at about 3.00 a.m. i.e. early hours of 14th November, 2001. Having participated in the process, it is my clear understanding that other members in the Green Room - just about 20 countries - were told that this was the only text which majors like European Union can accept and nothing less is acceptable to them. I am almost certain that many developing countries did not have time or resources to compare the new text with the earlier ones and understand its implications. It is ironic that these are the subjects on which many developing countries have been articulating their strong position for many years. It is very unfair - more so, the exemptions. Every country has equal responsibility for the protection and enrichment of the environment. I am afraid that hereafter every country may think twice before signing any MEA as a matter of caution. Is it not a retrograde step which needs to be corrected? - I want the global community to consider the repercussions.**

16. WTO should send a clear and loud message that it would take full care of the interests of the developing countries as against the popular perception in the developing countries that it works and protects the interests of the multinationals only.

17. This Seminar provides an opportunity for the representatives from biodiversity-rich countries for building a coalition. This should not be taken as a one-stop measure but should be followed by a road map for developing an international instrument for recognition of traditional knowledge and strategy to work together in various inter-governmental fora.

18. **We strongly feel that bio-piracy and patenting of indigenous knowledge is a double theft because first it allows theft of creativity and innovation, and secondly, the exclusive rights established by patents on stolen knowledge steal economic options of everyday survival on the basis of indigenous biodiversity and knowledge. Over time, the patents can be used to create monopolies and make everyday products highly priced.**

19. India and UNCTAD have together organised this Seminar. UNCTAD, as the think-tank of developing countries should continue its endeavour on this issue and provide support to the developing countries, in pursuing their agenda for sustainable development. I am confident that this Seminar will show the path ahead, develop the strategy and build a "**Development Coalition**" required to get international recognition and an effective solution to this vital issue.

20. This would be the first visit of many of the foreign delegates to India. I wish that their stay in India is pleasant and fruitful and they have an opportunity to feel our traditional warmth and culture, for which, I assure we will claim no IPR!"



## **DEVELOPMENT COALITION URGED TO PREVENT BIO-PIRACY**

### **Outcome of International Seminar on TK**

**The efforts to prevent further bio-piracy and ensure benefits to holders of Traditional Knowledge (TK) got a major fillip by the organisation of an International Seminar of biodiversity rich developing countries organised by the Department of Commerce of the Government of India and UNCTAD.** The Seminar during the span of two days had rich discussions on providing international recognition to the national level *sui generis* systems or protection of TK and benefit sharing mechanisms at the international level. The Seminar was attended by representatives from 14 biodiversity rich countries, apart from international experts in the area and inter-governmental organisations working on the subject. This seminar was inaugurated by Minister of Commerce & Industry Mr. Murasoli Maran.

In his inaugural address, Mr. Maran referred to bio-piracy and patenting of indigenous knowledge as 'Double Theft'. The first theft is of the creativity of innovation of the traditional knowledge holders and the second theft emerges from the exclusive rights established by patents on such stolen knowledge, which closes economic options of every day's survival on the basis of preservation of biological diversity and associated

knowledge. He, therefore, called on the participants to develop a strategy for prevention of bio-piracy and the building of a 'Development Coalition' required to get international recognition and an effective solution to this vital issue.

UNCTAD and India have been co-operating very closely on a series of trade and development issues. This co-operation has been further strengthened through this seminar and will become even more important in the context of the WTO work programme adopted at the fourth WTO Ministerial Meeting (Doha, November 2001).

In this Seminar, UNCTAD Secretariat was represented by Mr. Pedro Roffe, Senior Advisor to the Secretary-General, UNCTAD and Mr. Rene Vossenaar, Chief, Trade, Environment and Development Section, UNCTAD.

With regard to TK, in October 2000, UNCTAD, Member States convened an Expert Meeting on Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices. In February 2001, UNCTAD's Commission on Trade in Goods and Services, and Commodities adopted agreed

recommendations to Governments, to the international community, and to UNCTAD. The international community was called upon to exchange information on national systems to protect TK and to explore minimum standards for an internationally recognised *sui generis* system for TK protection.

The participating countries in this Seminar highlighted the instances of bio-piracy and obtaining patents for traditional products like turmeric, neem, karela, jamun, quinoa, etc. They expressed the need for international mechanisms to prevent instances of such bio-piracy. It was also highlighted that the local and traditional communities who have conserved and developed such traditional knowledge are not being given a share in the benefits arising out of use of such traditional knowledge, in particular where use takes place outside of the country of origin. A need was expressed for international recognition of provisions for benefit sharing with such local and indigenous communities for the use of such traditional knowledge so that when such traditional knowledge is used in other countries, share of benefit flows back to the local communities who have preserved and developed such traditional knowledge.

**The representatives of participating nations expressed a strong desire to establish a coalition for working towards the creation of an instrument at the international level which could ensure that provisions or elements of the legislation and customs like the Indian Biodiversity Bill and the proposed amendments to be Indian Patents Act get recognised in jurisdictions where biological resources and associated TK is being accessed and commercialised. Such use, which may lead to**

**patents, takes place without any rewards accruing to the original inventors or preservers of the wealth of knowledge that has been accessed. Various options were explored for developing such an instrument. It was in this context that the emergence of this coalition becomes significant; as such a coalition would be able to keep their specific concerns paramount in the development of such an instrument.**

**The need for a 'Development Coalition' was vindicated by the representatives of other countries in agreeing to work towards such a coalition. These countries decided to work on two tracks. The first would be in the context of mandate given by Doha Ministerial Declaration on the relationship between the TRIPS Agreement and CBD and protection of traditional knowledge and folklore. It was agreed that the developing country coalition should utilise the mandate given by Doha Declaration to ensure international recognition to the national level revisions to prevent bio-piracy and ensure benefit sharing. This second track is the evolution of the elements of international recognition that may be necessary to extrapolate the benefits of national level regimes at the international level. It was agreed to work towards development of such international instrument in various other inter-governmental forums like WIPO, CBD, etc. It was also explored whether bio-diversity rich countries can carry the process forward through bilateral agreements between themselves with certain minimum common elements.**



## PROTECTING TRADITIONAL KNOWLEDGE -THE INTERNATIONAL DIMENSION

*(Text of paper by  
Department of Commerce,  
Government of India)*

### INTRODUCTION

1. Traditional knowledge (TK) associated with biological resource is an intangible component of the resource itself. TK has the potential of being translated into commercial benefits by providing valuable leads for development of useful products and processes. The valuable leads provided by traditional knowledge save time, money, and investment of modern biotech industry into any research and product development. Hence, a share of benefits must accrue to creators and holders of TK.
2. Due to globalisation of production systems, increase in population, destruction of forests for agriculture and timber purposes, bio-diversity is declining at a rapid pace. Bio-diversity and associated traditional knowledge is also declining due to decreased motivation amongst the local communities to conserve and protect them. This is happening because of change in their life style as well as misappropriation of their resources and their knowledge. Mis appropriation of traditional knowledge not only violates the rights of communities who conserved TK but also adversely affects the conservation and sustainable use of the traditional knowledge and that of bio-diversity.
3. The international community is debating the consequences of globalisation in its various dimensions in various forums. It is the responsibility of the same international community to debate the means of protecting and preserving traditional knowledge. The

global community has acknowledged the role and importance of traditional knowledge and that for the traditional knowledge to be maintained, the social and economic context in which it developed has to be maintained. In this regard, it is necessary to recognize and respect the rights of holders of traditional knowledge. Misappropriation of TK and bio-piracy erode the rights of the traditional knowledge holders and adversely affect conservation and sustainable use of bio-diversity and associated TK.

### WORK IN INTER-GOVERNMENTAL BODIES

4. Work on traditional knowledge is taking place in various inter-government bodies like CBD, WIPO, FAO, WTO and UNCTAD. For protection of traditional knowledge national biodiversity conservation regimes are coming up in conformity with the objectives of the Convention on Biological Diversity (CBD). These regimes would provide legal protection to biological resources and associated traditional knowledge at the national level

5. CBD Article 8 (j) provides that:

*"Each contracting Party shall, as far as possible and as appropriate, subject to its national legislation respect and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity and promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilisation of such knowledge, innovations and practices."*

6. In CBD, work is taking place in the Working Group on Access and Benefit Sharing regarding voluntary guidelines for access and benefit sharing and role of IPRs in the implementation of access and benefit sharing arrangement. The working group has recommended to COP to invite contracting parties and governments to encourage the disclosure of country of origin of genetic resources and associated traditional knowledge in applications for IPRs, as a possible contribution to tracking compliance with prior informed consent. The working group on Article 8(j) is working towards strategy to protect TK based on a combination of appropriate approaches, with full respect for customary laws and practices, including the use of existing intellectual property mechanisms, *sui generis* systems, the use of contractual arrangements, register of TK and guidelines and code of practice, with the support of relevant inter-governmental organisations.

7. In WIPO, the WIPO Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is working on issues relating to contractual practices, TK databases and preparation of a document with elements for a possible *sui generis* system for the protection of TK.

8. In WTO, discussions have been taking place on the relationship between the provisions of the TRIPS Agreement and the CBD and the protection of Traditional Knowledge under mandated review of Article 27.3 (b). Now, Doha Ministerial Declaration in Paragraph 19 provides that

*"19. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3 (b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and*

*other relevant new developments raised by Members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension."*

## **NATIONAL EXPERIENCES**

9. The most relevant issues regarding conservation and sustainable use of bio-diversity and associated TK are:

- a. Prevention of bio-piracy and misappropriation of TK
- b. Systems of protection of TK and
- c. Means for fair and equitable sharing of benefits arising out of utilisation of biological resources and associated TK

10. Efforts are being made in various countries with regard to the above issues. These include:

- a. Using some form of IPRs to provide legal protection to the holders of TK
- b. *Sui generis* systems for protection of TK and prior informed consent and benefit sharing
- c. Certain supplementary efforts for benefit sharing like contractual arrangement and for prevention of bio-piracy like documentation of TK, etc.

11. Systems for protecting TK include customary law, IPRs such as patents, plant variety rights, copyrights, etc. and concepts existing in civil and common law systems and contracts such as licensing and material transfer agreements. Protection to TK is also being provided through *sui generis* systems such as through bio-diversity related regulations such as access and benefit sharing regimes or a conservation framework legislation or a combination of all the above systems. A number of countries like Brazil, Costa Rica, India, Peru, Philippines,

Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela), some African initiatives (based on model OAU Law) are either providing or propose to provide protection to TK through a combination of various systems. These legislation contain provisions for prior informed consent, benefit sharing, some restrictions on applying for IPRs based on biological resources and associated TK without PIC and protection through various other means like registration of TK, systems of contract, recognition of customary laws, etc. However, the actual measures provided or proposed are different in each country. There is no uniformity in the provisions and each country's legislation is developed based on the specific requirements of individual country and its communities, their lifestyles and types of traditional knowledge and the way it is being protected or held by the traditional communities and the way it is being accessed for modern scientific purposes. It is very clear that a uniform international system for protection of TK would not be able to cater to the requirements of individual country. Rather, the need is for a system which recognises such diversity.

## **INDIAN EXPERIENCE**

12. In the recent past, there have been several cases of bio-piracy of Traditional Knowledge from India. First it was the patent on wound healing properties of haldi (turmeric), now patents have been obtained in other countries on hypoglycemic properties of karela (bitter gourd), brinjal etc. There is also the view that the TRIPS Agreement is aiding the exploitation of biodiversity by privatising biodiversity expressed in life forms and knowledge. Similarly, a patent granted on the neem as a fungicide was revoked in the European Patent Office in May 2000. But the time, effort and money involved in getting individual patents examined and revoked in foreign patent offices is prohibitive. Hence, an internationally accepted solution to such bio-piracy is necessary.
13. It is sometimes believed that proper documentation of associated traditional knowledge could help in checking bio-piracy. It is assumed that if the materials/knowledge is documented, it can be made available to patent examiners the world over so that prior art in the case of inventions based on such materials/knowledge is readily available to them. It is also hoped that such documentation would facilitate tracing of indigenous communities with whom benefits of commercialisation of such materials/knowledge has to be shared. On the other hand, others believe that documentation may facilitate bio-piracy. Nevertheless, documentation has one clear benefit. It would check patents based on traditional knowledge in public domain that are today difficult to prevent due to lack of availability of information with patent examiners.
14. In India, preparation of village-wise Community Biodiversity Registers (CBRs) for documenting all knowledge, innovations and practices has been undertaken in a few States.
15. For preventing bio-piracy there is a need for developing digital databases of prior art related to herbs which is already under public domain. In India an exercise has been initiated to prepare easily navigable computerised database of documented TK relating to use of medicinal and other plants (which is already under public domain) known as Traditional Knowledge Digital Library (TKDL). Such digital database would enable Patent Offices all over the world to search and examine any prevalent use/prior art, and thereby prevent grant of such patents and bio-piracy.
16. Documentation of traditional knowledge (TK) is one means of giving recognition to knowledge holders. But mere documentation may not enable sharing of benefits arising out of the use of such knowledge, unless it is backed by some kind of mechanism for protecting the knowledge. Documentation of traditional knowledge may

only serve a defensive purpose, namely that of preventing the patenting of this knowledge in the form in which it exists.

17. In India, enabling provisions have been made for protecting the traditional knowledge in the Biodiversity Bill, 2000. Relevant provisions of this Bill are discussed below.
18. Section 36(iv) provides for protection of knowledge of local people relating to biodiversity through measures such as registration of such knowledge, and development of a *sui generis* system. For ensuring equitable sharing of benefits arising from the use of biological resources and associated knowledge, Sections 19 and 21 stipulate prior approval of the National Biodiversity Authority (NBA) before their access. While granting approval, NBA will impose terms and conditions, which secure equitable sharing of benefits. Section 6 provides that anybody seeking any kind of intellectual property rights on a research based upon biological resource or knowledge obtained from India, need to obtain prior approval of the NBA. The NBA will impose benefit-sharing conditions. Section 18(iv) stipulates that one of the functions of NBA is to take measures to oppose the grant of IPRs in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource.
19. In the Patent (Second Amendment) Bill 1999, the grounds for rejection of the patent application as well as revocation of the patent include non-disclosure or wrongful disclosure of the source of origin of biological resource or knowledge in the patent application, and anticipation of knowledge, oral or otherwise. It has also been made incumbent upon patent applications to disclose the source of origin of the biological material used in the invention in their patent applications. Further provisions have been incorporated to include anticipation of invention by available local knowledge, including oral knowledge, as one of the grounds for opposition as

also for revocation of patents, if granted.

## **NEED FOR INTERNATIONAL RECOGNITION**

20. The above mentioned provisions in the Indian Biodiversity Bill 2000 and the corresponding provisions in the Patent (Second Amendment) Bill 1999 would ensure equitable sharing of benefits arising from the use of traditional knowledge with the holders of such knowledge. These provisions would ensure prevention of bio-piracy in India and equitable sharing of benefits. However, this will not prevent persons from seeking patents on TK and also using TK without prior informed consent and benefit sharing in other countries. As provisions of Article 8(j) of CBD are subject to national legislation, India is of the view that securing benefits arising out of the use of traditional knowledge related to biodiversity beyond national borders necessitates recognition of terms of benefits sharing through an international instrument. In order to ensure that national level systems for protecting TK and benefit sharing are effectively implemented for use of TK outside the country, international recognition should be provided to such national level systems. The onus of benefit sharing must also be shared by the user country to create an enabling environment and confidence through legislative measures so as to ensure compliance of prior informed consent stipulations, for ensuring equitable sharing of benefits as visualised in the CBD.
21. The 'Recommendations at the Multilateral Level' of the Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices, held in UNCTAD from 30 October to 1 November, 2000, noted that 'exclusions from patentability of TK based products in one country, for instance, would not exclude others from granting it a patent'.
22. In order to ensure that national level regimes for preventing bio-piracy and ensuring benefit sharing arrangements are effectively implemented and are not

violated when use or commercialisation of TK takes place outside the country, suggestions have been made by India in international fora under the aegis of CBD as well as WTO, that applications for patents should disclose the following:

- The source of knowledge and biological material; and
- an undertaking that the prevalent laws and practices of the country of origin have been fully respected.

### **INTERNATIONAL RECOGNITION OF NATIONAL LEVEL SYSTEMS FOR PROTECTION OF TK**

23. It is quite clear that the existing forms of intellectual property protection regimes do not adequately recognise the rights of TK holders. National level mechanisms and legal provisions to prevent bio-piracy as well as to install informed consent mechanisms to ensure reward to TK holders also require international recognition for their effective implementation and for their enforcement in other countries. In this regard, there is a need for development of an international mechanism for protecting TK. Such an international mechanism could include:
24. Local protection to the rights of TK holders through national level *sui generis* regimes including customary laws as well as others
25. Effective enforcement of national level *sui generis* regimes through *inter alia* systems such as positive comity of protection systems of TK which include coordination and cooperation amongst national authorities of various countries in undertaking measures for protection of TK
26. A procedure whereby the use of TK from one country is allowed, particularly for seeking IPR protection or commercialisation, only after such use is disclosed and

prior informed consent is obtained from the competent national authority of the country of origin; and

27. An internationally agreed instrument that recognises such national level protection. Such an instrument should not only prevent bio-piracy but also ensure that national level benefit sharing mechanisms and laws are respected worldwide. However, the efforts to develop such an instrument should not lead to harmonisation of national level *sui generis* systems but should recognise the diversity in national level systems and provide international recognition to them.
28. Although the issue of protection of traditional knowledge is engaging the international community in a debate in some of the international forums, the debate is tailored, inevitably, to the charter of these forum and is not fully taking into account the needs and aspirations of the holders of traditional knowledge.
29. Development of an appropriate form of protection for the knowledge of local communities is of great interest to countries, which are rich in biodiversity and traditional knowledge such as India. There is therefore a need for various bio-diversity rich developing countries to work together in various inter-governmental fora towards developing an international instrument for the recognition of diverse national *sui generis* systems. Development of essential elements of such an instrument could involve working through an expert group.
30. The mandate provided by Doha Ministerial Declaration provides opportunity to the developing countries for harmonisation of the different approaches of CBD and the TRIPS Agreement and of making necessary changes in the TRIPS Agreement to facilitate prior informed consent and benefit sharing and preventing bio-piracy in accordance with the objectives of CBD.



## **THE "STATE OF THE DEBATE" ON TRADITIONAL KNOWLEDGE**

**Background note prepared by  
the UNCTAD Secretariat**

This document summarises the current "state of the debate" in major intergovernmental forums dealing with traditional knowledge (TK) and access to genetic resources and benefit sharing. Information is provided on the Convention on Biological Diversity (CBD), the World Intellectual Property Organisation (WIPO), the Food and Agriculture Organisation (FAO), the World Trade Organisation, the United Nations Conference on Trade and Development (UNCTAD), the World Health Organisation (WHO), and the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

### **The Convention on Biological Diversity (CBD)**

Under the CBD, the recent meetings of two Working Groups are particularly relevant to the current seminar. The Ad Hoc Open-ended Working Group on Access and Benefit-sharing (ABS) met in Bonn, Germany from 22-26 October 2001. The Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity held its second meeting in Montreal, Canada 4-8 February 2002. These meetings made recommendations to be considered by the sixth Conference of the Parties in The Hague, 7-19 2002. The reports of these meetings are available on the CDB Website: [www.biodiv.org](http://www.biodiv.org). Below are some highlights.

### **The Working Group on ABS**

The Working Group (WG) adopted recommendations on the following issues:

- 1) *Draft Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilisation*

The WG adopted draft voluntary guidelines. These are meant to assist Parties, Governments and other stakeholders when establishing legislative, administrative or policy measures on ABS and/or when negotiating contractual arrangements for ABS. The guidelines are structured as follows:

*Section I* on General Provisions covers key features, use of terms, scope, relationship with relevant international regimes and the objectives of the guidelines.

*Section II* deals with the role of the national focal point and competent national authority(ies), and responsibilities of Parties and stakeholders that are users and providers of genetic resources.

*Section III* addresses the participation of stakeholders in the development and implementation of ABS arrangements.

*Section IV* covers steps in the process of ABS, including prior informed consent and mutually agreed terms.

*Section V* covers other provisions, such as incentives, accountability, monitoring and reporting, verification, dispute settlement and remedies

*Appendix I* contains suggested elements for Material Transfer Agreements, and

*Appendix II* provides an illustrative list of monetary and non-monetary benefits.

A few issues covered by the guidelines are still outstanding and may require further clarification. They include the use of terms, the scope of guidelines with respect to products and derivatives and stakeholder involvement.

- 2) *Other approaches, including the development of an action plan for capacity-building*

The Conference of the Parties in Decision V/26 recognised that key capacity building needs included: (a) assessment and inventory of biological resources as well as information management; (b) contract

negotiation skills; (c) legal drafting skills; and (d) means for the protection of traditional knowledge associated with genetic resources. The WG requested the Executive Secretary to convene an open-ended expert workshop on capacity-building for ABS to further develop draft elements for an Action Plan on Capacity-building for ABS which were identified by the WG.

3) *Role of intellectual property rights in the implementation of access and benefit-sharing arrangements*

The WG made several recommendations on intellectual property rights as they relate to the implementation of ABS arrangements. In general the WG underlined the need for further work on this issue in collaboration with a number of relevant organisations, such as the WIPO, WTO, FAO, UNCTAD and others. In addition, it specifically identified key issues to be transmitted to WIPO for further study and advice.

Two important recommendations of the WG for the consideration of the Conference of the Parties at its sixth meeting should be noted:

- The COP should invite Parties and Governments to encourage the disclosure of the country of origin of genetic resources in application for intellectual property rights, where an invention concerns or makes use of genetic resources in its development, as a possible contribution to tracking compliance with prior informed consent and the mutually agreed terms on which access to those resources was granted;
- The COP should invite Parties and Governments to encourage the disclosure of relevant traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity in applications for intellectual property rights, where an invention concerns or makes use of such knowledge in its development.

## **Working Group on Article 8(j)**

The WG made recommendations on a number of agenda items, including the following:

1) *Report on progress in the integration of relevant tasks of the programme of work on Article 8(j) and related provisions into the thematic programmes of the CBD.*

The WG urged Parties to include information in their national reports on each of the thematic programmes dealt with under the CBD on status and trends in TK and measures taken to enhance the participation of indigenous and local communities in the implementation of national work programmes in these areas.

2) *Outline of the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities.*

The WG adopted the draft outline of the composite report and requested the Executive Secretary to undertake its first phase. The outline contains the following elements:

A. Phase I

1. The state of the retention of traditional biodiversity-related knowledge
2. Identification and assessment of measures and initiatives to protect, promote and facilitate the use of TK.

B. Subsequent Phases

3. The relationship between biological, cultural and linguistic diversity
4. Identification of national processes that may threaten the maintenance, preservation and application of TK
5. Identification of processes at the local community level that may threaten the maintenance, preservation and application of TK
6. Trends regarding the recognition and implementation of Article 8(j) and related provisions.

7. Conclusions: lessons learned and identification of best practices for the maintenance, preservation and application of TK.
3. *Draft recommendations for the conduct of cultural, environmental and social impact assessment regarding development proposed to take place on, or which are likely to impact on, sacred sites and on lands and - waters traditionally occupied or used by indigenous and local communities.*

The WG adopted draft recommendations on this and agreed that its third meeting should carry out further work on guidelines.

4. *Participatory mechanisms for indigenous and local communities.*

The WG requested the Executive Secretary to explore and, as appropriate, secure potential sources of funding to facilitate the full and effective participation of indigenous and local communities of all geographical regions in meetings organised within the framework of the Convention.

5. *Assessment of the effectiveness of existing subnational, national and international instruments, particularly intellectual-property-rights instruments, that may have implications for the protection of the knowledge, innovations and practices of indigenous and local communities.*

The WG recommended that COP 6:

- Invites Parties and Governments, to develop and implement strategies to protect TK based on a combination of appropriate approaches, with full respect for customary laws and practices, including the use of existing intellectual property mechanisms, *sui generis* measures, the use of contractual arrangements, registers of TK, and guidelines and codes of practice, with the support of relevant intergovernmental organisations.

- Requests the WG on Article 8(j) to address the issue of *sui generis* systems for the protection of TK.
- Encourages Parties and Governments to take measures to establish or improve operational links between their national governmental intellectual-property bodies, national focal points of the CBD, and the indigenous and local communities and their organisations in order to better coordinate and institute measures to protect their TK, particularly with regard to TK documentation initiatives and community-based registries of TK.
- Invites Parties and Governments, with the participation of indigenous and local communities, upon their request, to examine the feasibility of establishing their respective national and community registries or databases of TK relevant to the conservation and sustainable use of biological diversity, taking into consideration customary laws and practices, and subject to national legislation.

## **World Intellectual Property Organisation (WIPO)**

WIPO's work on traditional knowledge (TK) and folklore began in 1978, when WIPO developed a *sui generis* model for national protection of folklore jointly with UNESCO. In 1998 WIPO launched a new work programme, including, inter alia, fact-finding missions to 28 countries on Intellectual Property (IP) and TK, which produced a global report on Intellectual Property Needs and Expectations of TK Holders' and three case studies on the role of IP rights in the sharing of benefits arising from the use of biological resources.

*The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee") was established by the WIPO

General Assembly in September 2000. The mandate of the Committee is to facilitate discussions on three primary themes, namely IP issues that arise in the context of (i) access to genetic resources and benefit-sharing; (ii) the protection of TK, whether or not associated with those resources; and (iii) the protection of folklore.

At the first Session of the Committee, held in May 2001, WIPO Member States expressed support for a work program which comprises the following items: (A) Genetic resources: to develop "guide contractual practices" and model IP clauses for contractual agreements on access to genetic resources and benefit-sharing. (B) Traditional knowledge: (1) delineating the subject matter in respect of which the Member States wish to discuss IP protection, for developing an understanding of the term "traditional knowledge"; (2) to assess the availability and scope of IP protection for TK and to identify any elements which require additional protection; (3) to consider the revision of existing criteria and develop new criteria which would allow the effective integration of TK documentation into searchable prior art; (4) to consider ways of assisting TK holders in relation to the enforcement of IP rights. (C) Expressions of Folklore: to assess and analyze national experiences with the protection of expressions of folklore.

At the second Session of the Committee, held in December 2001, the Committee approved specific activities for the implementation of the Tasks adopted at the first session. These activities include: (A) Genetic Resources: The Committee adopted a two-step approach to the development of model IP clauses for genetic resource contracts, beginning with the development of an electronic database of existing contracts. (B) Traditional Knowledge: Committee Members requested the WIPO Secretariat to prepare a document with elements for a possible *sui generis* system for the protection of TK. Additionally, the Committee supported the implementation of the following activities on TK. as prior art: (i) compiling an inventory of TK-related periodicals for possible integration in the "minimum documentation list" under the PCT; (ii) taking into account TK in amendments of guidelines for examination of patent applications; (iii) studying the electronic exchange

of public domain TK data, including through TK databases and digital libraries; (iv) examining the applicability of existing IP documentation standards to TK-related subject matter; (v) assisting TK documentation initiatives to manage IP implications of the documentation process. (C) Folklore: The Committee considered a 'Preliminary Report on National Experiences with the Legal Protection of Expressions of Folklore' and decided that a Final Report would be prepared by the Secretariat, which would provide an analysis, draw conclusions and suggest activities on expressions of folklore which the Committee may undertake.

The third Session of the Committee will take place from June 13 to 21, 2002. Based on the decisions at the first two Sessions, it is expected that the Committee will discuss, inter alia: (a) a format for an electronic database of contract clauses and practices concerning access to genetic resources and benefit-sharing; (b) inventories of existing TK-databases of and TK-related periodicals; (c) a review of existing IP protection of TK; (d) elements of a *sui generis* system for the protection of TK; (e) meanings of the term 'traditional knowledge'; (f) a Final Report and proposed workprogramme on protection of expressions of folklore.

*Ongoing and Future Program Activities on Genetic Resources, Traditional Knowledge and Folklore*

The Committee has indicated that WIPO should address these issues in conjunction with the Secretariats of the CBD and FAO, to ensure that WIPO's work continues to be consistent with and complementary to the work being done by the CBD, FAO and UNESCO. The CBD has requested technical studies on certain IP-issues from WIPO. The Committee also observed that synergies should be ensured with the work in the WTO on the basis of Article 19 of the Doha Ministerial Declaration. Activities contained in WIPO's 2000-2001 Program and Budget included: (1) practical studies of cases in which TK protection has been sought under the EP system; (2) possible study of customary laws protecting TK and any interfaces with IP; and (3) training workshops, information materials and distance learning courses on IP and TK.

## Food and Agriculture Organisation (FAO)

The FAO has a range of activities relating to access to genetic resources, their sustainable use, and promotion, protection and sustainable use of associated traditional knowledge. Activities in the Forestry Department, including the programmes on non-wood forest products and community forestry deserve special mention.

In recent years, the biggest development was the adoption on 3 November 2001 of the International Treaty on Plant Genetic Resources for Food and Agriculture. It was adopted by the FAO Conference at its 31st session in Rome with no country voting against it (116 positive votes and two abstentions), after seven years of hard and complex negotiations. It will enter into force after ratification by forty countries.

The Treaty is a new, legally-binding instrument which seeks to ensure the conservation and sustainable management of plant genetic resources for food and agriculture, as well as the fair and equitable sharing of the benefits arising from their use (Article I.I). Being at the crossroads between agriculture, commerce and the environment, the Treaty also aims at promoting synergy among these areas (Preamble).

Once in force, the Treaty will succeed the International Undertaking on Plant Genetic Resources, a soft-law instrument adopted by the FAO Conference in 1983, the first international agreement to deal with sustainable management of plant genetic resources at the global level. The International Treaty:

- Covers all plant genetic resources relevant to food and agriculture. Its objectives are the conservation and sustainable use of plant genetic resources and the fair and equitable benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.
- Within this larger context, it establishes a Multilateral System of Facilitated Access and Benefit-sharing on plant genetic resources, for an agreed list of over 60 plant genera with numerous species, including 35 crops and 29 forages, established on the basis of interdependence and food security.

- Provides for benefit-sharing through information exchange, technology transfer, capacity-building. It also requires the mandatory sharing of the monetary (and other) benefits of commercialisation of products incorporating material accessed from the Multilateral System. A trust Account will be established for moneys that accrue, for the purpose of implementing the Treaty. The primary focus is on farmers in the developing world who embody traditional lifestyles relevant for the conservation of genetic resource diversity.
- Includes a Funding Strategy to mobilise funding for priority activities, plans and programmes, in particular in developing countries and countries with economies in transition, taking into account the Global Plan of Action adopted in Leipzig in 1996.
- Provides a framework for international agricultural research. It recognises the importance of the ex situ collections held in trust for the international community by the Centres of the Consultative Group on International Agricultural Research, and other international collections. The Treaty foresees that they will sign agreements with its Governing Body.
- Provides for the realisation of Farmers' Rights (see Box 1) by national governments through:
  - the protection of relevant traditional knowledge,
  - equitable participation in sharing benefits derived from the use of plant genetic resources for food and agriculture,
  - participation in national decision-making related to their conservation and sustainable use.

## The World Trade Organisation (WTO)

The Ministerial Declaration of the WTO's fourth Ministerial Conference (Doha- 9-14 November 2001) emphasised the importance of TK. It instructed the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) "to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1."

(para. 19) In addition, it instructed the Committee on Trade and Environment (CTE) in pursuing its work on all items on its agenda give particular attention to three issues, including the relevant provisions of the TRIPS Agreement (para. 32) Moreover, it "recognise(d) the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them." (para. 33)

In the TRIPS Agreement, there is nothing that specifically prevents countries from developing systems to protect TK at the national level. Developing countries have made a number of proposals to incorporate provisions related to the protection of TK and avoidance of misappropriation in the TRIPS Agreement These relate to Articles 27.3(b), 29 and 71.1. These proposals include the following:

- To incorporate provisions in the TRIPS Agreement indicating that the State exercises sovereignty and inalienable rights over the biological resources within its national territory (Cuba, the Dominican Republic, Honduras and Nicaragua).
- To make it obligatory in all patent applications for biotechnological innovations, to include the country of origin of the germplasm; to make it obligatory to indicate whether prior informed consent was obtained for the biological genetic resource or traditional knowledge so as to facilitate benefit-sharing arrangements (India).
- To seek to seek to harmonise Article 27.3(b) with the CBD and the International Undertaking, inter alia by allowing developing countries to implement *sui generis* law that can provide for the protection of the innovations of indigenous and local farming communities in developing countries (African Group).
- To establish, on a mandatory basis, within the TRIPS Agreement, a system for the protection of intellectual property, with an ethical and economic content, applicable to the traditional knowledge of local and indigenous communities, together with recognition of the need to define the rights of collective holders (Venezuela).
- Within the context of the review of the TRIPS

Agreement provided for in Article 71.1, to include a new Article specifying the rights of indigenous peoples and local communities in Part I ("General provisions and basic principles") of the Agreement (Cuba, the Dominican Republic, Honduras and Nicaragua).

- To carry out studies, in collaboration with other relevant international organisations, in order to make recommendations on the most appropriate means of recognising and protecting traditional knowledge as the subject matter of intellectual property rights. On the basis of these recommendations, initiate negotiations with a view to establishing a multilateral legal framework that will grant effective protection to the expressions and manifestations of traditional knowledge (Bolivia, Colombia, Ecuador, Nicaragua, and Peru).

Developed countries do not, in general, contest the right of countries to protect TK. They generally hold the view that the TRIPS Agreement and the CBD are mutually supportive and object to the idea of disclosure requirement of genetic resources in the process of patent applications. At the recent TRIPS Council Meeting, 5-7 March 2002, these positions were reiterated. Some developed countries such as USA, EU, Japan and Norway said that the discussion in the TRIPS Council should wait for the results of work being done in the various international forums, such as WIPO. In contrast, some developing countries, such as Brazil and India, underlined again the need to explore *sui generis* systems for the protection of TK.

## **The United Nations Conference on Trade and Development (UNCTAD)**

### ***Intergovernmental discussions***

UNCTAD's member States decided to address the protection of TK. as part of UNCTAD's work in the area of trade environment and development. The Plan of Action adopted by UNCTAD's tenth Conference stated that UNCTAD should *inter alia* focus on: 'Taking into account the objectives and provisions of the Convention on Biological Diversity and the TRIPS Agreement, studying ways to protect traditional knowledge,

innovations and practices of local and indigenous communities” (paragraph 147, third bullet).

In UNCTAD, the emphasis has been on exchanging national experiences on policies and measures to protect TK in a broad sense and on identifying policies to harness TK. for trade and development. In October 2000, UNCTAD Member States convened an Expert Meeting on Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices. Over 250 experts from 80 countries participated, including representatives of governments, indigenous groups, NGOs, IGOs, academia, private companies, and international agencies. Some 50 papers on country experiences were presented, most of which are now available on the UNCTAD Website ([www.unctad.org](http://www.unctad.org)). These papers are currently being compiled into a book to be published in 2002.

In February 2001, UNCTAD’s Commission on Trade in Goods and Services, and Commodities adopted agreed recommendations to Governments, to the international community, and to UNCTAD.

UNCTAD, in cooperation with relevant intergovernmental and regional organizations, was called upon to undertake a number of activities, including to;

- conduct analytical work and organise regional workshops to exchange national experiences and examine strategies on TK-related issues
- assist member States and local and indigenous communities in exploring policies to harness traditional knowledge for trade and development
- assist interested developing countries in exploring ways to protect TK. The international community was called upon to “exchange information on national systems to protect TK and to explore minimum standards for an internationally recognised *sui generis* system for TK protection”.

### ***Capacity-building activities***

In response to these recommendations, a capacity-building

project on “Harnessing Traditional Knowledge for Development and Trade” is under development.

TK has been given special attention in ongoing trade, environment and development capacity building projects, particularly the project funded by DFID on enhancing research and policy-making capacity in ten developing countries, as well as BIOTRADE and UNCTAD/UNDP country projects. A module on Harnessing TK for Development and Trade has been added to the Train for Trade, Environment and Development training course series.

In addition, TK. is a main topic considered by the UNCTAD/ ICTSD capacity building project on TRIPS and Development. This project which started in July 2001, also funded by DFID, aims to improve understanding of the development implications of the TRIPS Agreement and to strengthen the analytical and negotiating capacity of developing countries so that they are better able to participate in intellectual property rights (IPR)-related negotiations in an informed fashion in furtherance of their sustainable development objectives. It is also envisaged to include capacity building on traditional knowledge as part of UNCTAD’s work on post-Doha capacity building

### **World Health Organisation (WHO)**

WHO has done a great deal of important work on traditional medicine. This includes the organisation of a WHO inter-regional Workshop on Intellectual Property Rights in the Context of Traditional Medicine in Bangkok, Thailand from 6-8 December 2000. This workshop inter alia discussed solutions for the protection of knowledge of traditional medicine. This workshop stressed the important role of traditional medicine in developing countries and reiterated that countries should develop a national traditional medicine policy, which should include the issue of R&D in the area of traditional medicine, the formal recognition of traditional medicine systems and the integration of traditional medicine in the national health care system. The meeting noted that many activities and products based on TK. are important sources of income and health care, as well as environmentally sustainable routes to economic development for large parts of the population in many developing countries.

Currently, WHO is finalising its Traditional Medicine Strategy for 2002-2005. It has four main pillars:

- *Policy*: integrate Traditional and Complementary/ Alternative Medicine (TM/CAM) with national health care systems
- *Safety, efficacy and quality*: provide evaluation, guidance and support for effective regulation
- *Access* : ensure availability and affordability of TM/CAM, including essential herbal medicines
- *Rational use* : promote therapeutically-sound use of TM /CAM by providers and consumers

### **United Nations Educational, Scientific and Cultural Organisation (UNESCO)**

UNESCO recently launched a cross-cutting initiative on "Local and Indigenous Knowledge Systems in a Global Society" (LINKS), which was included in UNESCO's programme for 2002-03 and its medium-term strategy for 2002-07. The project builds upon early work on traditional knowledge in the 1970s and 1980s and the recent outcomes of the World Conference on Science, held in Budapest in 1999. It brought together all five UNESCO programme sectors, thereby underlining the importance of a holistic approach to understanding, recognising and preserving local and indigenous knowledge. The development of synergies and linkages between indigenous knowledge and scientific knowledge for the purposes of biodiversity conservation is emphasised. Special attention will be paid to enhancing efforts to sustain indigenous knowledge as a living and dynamic resource within indigenous communities, with particular attention being paid to indigenous and local knowledge transmission, and the strengthening of dialogue between elders and youth. The opportunities and threats posed by formal educational processes and the innovative potential offered by new information and communication technologies will be examined in that context. UNESCO has also recently approved a Declaration on Cultural Diversity at its General Conference held in Paris in November 2001, which included an action plan that made a specific reference to supporting traditional knowledge, in particular that of indigenous peoples.

### **Box 1: Article 9 - Farmers' Rights**

- 9.1 The Contracting Parties recognise the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.
- 9.2 The Contracting Parties agree that the responsibility for realising Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:
  - (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
  - (b) the right to equitably participate in sharing benefits arising from the utilisation of plant genetic resources for food and agriculture; and
  - (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.
- 9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.



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**RECOMMENDATIONS OF  
THE CIVIL SOCIETY  
CONSULTATION ON  
INDIGENOUS KNOWLEDGE**

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**Paper by Gene Campaign**

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- Indigenous Knowledge (IK) is a valuable and sophisticated knowledge system developed over generations by local communities in various parts of the world. This knowledge's is validated over time in a way that is different to the western empirical system.
- IK has been developed in many fields and is still evolving. It is a technology or know-how capable of providing sustainable solutions to many modern day problems. This fact should be acknowledged and the commercial use of IK should be handled in the same way that other technologies are .
- The economic value of IK is to be seen in the herbal medicine and nutraceutical sector which is estimated to touch roughly 5 trillion by the year 2020. The share of benefits accruing to communities from the commercialisation of IK should reflect this figure.
- The phenomenon of biopiracy is cause for great concern and calls for action at both national and international level.
- It is important to develop an indigenous paradigm to discuss the issues related to IK, identify the problematic areas and develop solutions. The debate and its content must be generated indigenously.
- We need a national legislation specifically to protect IK. This should be followed by negotiations at the international level for an International Agreement to protect IK and the rights of local communities.
- The real challenge before us is to develop a sui generis system to protect the Intellectual Property of communities in the field of IK related to biological resources. This is the new, least understood and most controversial area and needs the most attention.
- Patents on genetic resources and IK should not be allowed on ethical, social and economic grounds. Existing IPR ( like trademarks and certification ) should be used to protect IK only when unambiguous protection can be granted to the community. The concept of public domain must be maintained in the IPR system (as in the ITPGR where anyone who restricts access to material in the public domain has to pay into a common conservation fund.)
- Conservation of IK and bioresources has to be taken up on a priority basis. Strategy for protection should take into account the fact that genetic resources and IK are inextricably linked.
- Documentation of (oral) IK of communities and their legal protection is urgently needed in view of the rapid erosion of this knowledge base. Special attention needs to be paid to thousands of undeciphered manuscripts. Legally protected databases with suitable contractual agreements based on CBD principles should be set up.
- The herbal drug industry should be allowed to use plants only from cultivated sources. Collections from nature should only be permissible for local communities and traditional healers and monitored for sustainability.
- Disclosure, informed consent and equitable benefit sharing should be mandatory for any commercial use of IK and genetic resources. Concrete and specific methods of sharing benefits should be worked out in the event of commercialisation. Develop a community-

industry- national authority interface to work out these modalities. Concrete & specific methods of sharing benefits in the case of commercialisation should be worked out in favour of communities.

- There is a need for greater investment in research in IK by both the government and the private sector. A special focus on taxonomy is needed to understand and classify the bioresource base. Investment is needed in the standardisation and quality control of IK derived products.
- To conserve IK, it is crucial to accord it prestige and value. Integrate the Indigenous Systems of Medicine into the mainstream health and veterinary care system on par with the conventional system. Involve local communities in policy formulation and decisions. Work to give the youth a stake in the conservation and use of IK.
- Develop a system of rewards and recognition for creators and holders of IK, as we do for other achievers.
- Keep transmission of IK alive, both among the local people and outsiders, in a variety of ways. Include IK in all development programmes.
- Create awareness at the local panchayat level, particularly among women and the youth, about the value of IK.
- Generate awareness among the community, as also mainstream youth, about the long-term sustainability of IK and the attendant economic rewards.
- Lobby with the scientific (particularly medical) elite about the need for dialogue with IK.

- Organise local practitioners in combination with middle class activists/scientists around IK research issues.

### **Action needed at the international level**

1. Implement sincerely the relevant provisions of the international commitments like the ILO Convention, the IUPGR, the UNESCO/WIPO Guidelines for Protection of Folklore, the UN Draft Declaration on the Rights of Indigenous Peoples, and the CBD.
2. Remove Article 27.3-b from TRIPS. To start with, retract the demand for patents on life forms.
3. Do not remove the flexibility of countries to draft their own sui generis legislation for plant varieties by now insisting on compliance with UPOV.
4. Apply Article 29 of TRIPs which requires disclosure in the case of patent applications, to genetic resources and traditional knowledge used in inventions for which IPRs are claimed.
5. In the CBD, give primacy to conservation since that is what will conserve the basis of IK and continue to provide livelihoods and value addition opportunities to communities.
6. Enhance the scope of Article 23 of TRIPs to strengthen protection of geographical indications for goods other than wine and spirits, such as Darjeeling tea.
7. Ensure that any agreement on databases like the proposed Database Treaty (which will govern databases like the Indian TKDL) recognises the ownership of communities and includes provisions for PIC, MTA and benefit sharing when granting access.



## **MONTHLY REPORT ON MULTILATERAL TRADE ISSUES AND DEVELOPMENTS (MARCH 2002)**

### ➤ **TRIPs Council**

A Session of the TRIPs (Trade Related Intellectual Property Rights) Council was held in Geneva during 5-7 March 2002. Preliminary discussion took place on items arising out of Doha Agenda, such as, Review of Article 27.3(b), Review of Article 71.1, CBD (Committee on Bio-Diversity) & TRIPs and Traditional Knowledge & Folklore, action arising out of paragraph 6 of the Declaration on TRIPs & Public Health and Extension of Geographical Indications. Basically the existing positions were reiterated by all sides.

### ➤ **Special Session of TRIPs Council**

A Special Session of TRIPs Council on establishing multilateral Register for protection of Wines & Spirits was held on 8/3/2002. The Chairman proposed an indicative work programme in two phases in the years 2002 and 2003. A single negotiating draft is likely to emerge by the end of year 2002.

### ➤ **Working Party on Domestic Regulation (WPDR)**

The Working Party continued its discussion on 12/3/2002 on the development of disciplines under Article VI:4 and in this context, deepened the understanding on the various concepts such as transparency, necessity, equivalence and international standards. Further, the WP adopted its Work Programme for the year 2002. Discussions were also held on the organisation of future work. Members agreed on the need for more focussed discussion in the working party. Discussions were also

held on development of regulatory disciplines under Article VI.4 of GATS and development of disciplines for professional services.

### ➤ **Committee on Market Access**

The draft waiver for extension of time period for individual requesting Members under the transposition of HS96 changes to Members' Schedules was approved at the meeting of the Committee on Market Access on 15/3/2002 and recommended to the CTG (Committee on Trade in Goods). A draft collective waiver of one year for transposition of HS2002 changes to Members' Schedules was also approved and recommended to the CTG. On the dissemination policy of the Consolidated Tariff Schedule (CTS), it was agreed to revisit the matter, and for the Chairman to hold informal consultations. On the implementation issue related to "substantial interest" in Article XIII. it was agreed that the Secretariat will prepare an empirical analysis based on the Korean proposal. The next meeting is scheduled for 12 June 2002.

### ➤ **Committee on Trade in Services (CTS)**

The Committee on Trade in Services met on 19/3/2002. The discussions were held on draft procedure for rectification, reduction and termination of MFN exemptions. India stated that it would need more time to reflect on the implication of the revised procedures. Cuba, US, Japan also suggested some changes in the draft procedures. The Chairman will be holding further consultations so that decision could be taken up in the

next meeting of the CTS. Discussions were also held on technical review of GATS provisions as well as understanding on accounting rates on telecommunication.

The Council for Trade in Services met in a Special Session on 19/3 & 22/3/2002. Ambassador Alejandro Jara of Chile was elected as Chairperson. India presented a paper on Computer and Related Services. There was detailed discussion on organisation of future work in the CTS-SS (Special Session).

➤ **Working Party on GATS Rules (WPGR)**

The WPGR (Working Party on GATS Rules) continued its discussion on the issue of emergency safeguard mechanism (ESM) for services on 13/3 & 15/3/2002. Further, it continued discussion on the other two issues covered by its mandate, namely, subsidies and government procurement of services. Due to reservation expressed by the ASEAN, a recommendation on the issue of extension of deadline beyond 15 March 2002 for completion of negotiations of an ESM for services was postponed. Following informal consultations, the matter was sorted out and the Working Party at its formal meeting on 15 March 2002 adopted a recommendation to the Council for Trade in Services (CTS) for extension of the deadline by another 2 years, i.e. up to 15 March 2004. Decision was adopted by the CTS, which met soon after the formal session of WPDR. The decision to extend the deadline was to be adopted on March 13. However, owing to difference between ASEAN and the QUAD (mainly EC) over the formulation of Chairman's covering note (referring to future work programme of the WPGR and stock-taking at the 5<sup>th</sup> Ministerial) to the draft decision, the meeting was adjourned and re-convened on 15 March. The Chairman of the WPGR held a number of informal consultations to build consensus on the draft decision.

➤ **Committee on Technical Barriers to Trade (TBT)**

The TBT Committee held its meeting on 15 March to discuss the regular agenda, including issues such as seventh annual review of the implementation and operation of the Agreement, follow-up to the second triennial review of the operation of the Agreement under Article 15.4, updating of activities by the Observer Organisations and technical assistance.

A formal meeting of the Committee on TBT was held on 15 March. Prior to formal meeting, informal consultations were held on March 14 on technical assistance programme and labelling. Draft questionnaire prepared by the Secretariat to assist developing countries to identify their specific need in the TBT field was finalised. On labelling, Canada introduced its paper on a framework on informal structured discussions in the matter. Some preliminary comments were made on the Canadian paper. Further informal consultations will take place on the issue of labelling before the June meeting of the Committee. In the formal meeting, members made statement on implementation and administration of the TBT Agreement. The US raised its concern on amendment to India's 1955 Food Adulteration Rules as well as Indian labelling requirement for pre-packaged retail goods. The EC raised its concern on mandatory certification as well as Gazette notification on import of edible oil products.

➤ **Committee on Trade in Financial Services**

The Committee decided to invite the IMF to hold a joint briefing session on the IMF/World Bank Financial Sector Assessment Programme (FSAP) in July 2002 back to back with the meeting of the Committee. The Committee also considered the work programme of the Committee as proposed by Chairman. It was agreed to continue discussions on this issue at the next meeting to allow

flexibility to organise work to the new Chairman. It was also generally felt that additional issues should be discussed in the Committee on the basis of proposals from Members.

➤ **Sanitary & Phytosanitary (SPS) Measures**

Prior to formal meeting on March 19, informal consultations were held on March 18 and 19 on the format for notification of equivalence agreements as well as recommended notification procedures. On March 19, informal consultations were held on the technical assistance in the area of SPS. Members who have filled up the questionnaire prepared by the Secretariat to assist developing countries to identify their technical assistance needs in SPS area introduced their submissions. Informal consultations were also held on the future work programme on equivalence.

In the formal meeting on 19-21, members raised their specific trade concerns in the area of SPS. The Chairman briefed the Committee on the outcome of the informal consultations on 18 and 19th March. The recommended notifications procedures were also discussed and adopted by the Committee (G/SPS/7/Rev.2) with some changes. The future work programme on equivalence was also adopted. On the technical assistance, the Chairman encouraged Members to fill up the questionnaire. In the margins of SPS Committee meeting, the Australian delegation met Shri R. Gopalan, JS (TPD) and discussed the issue of import prohibition by India on Australian Camauba waxed apples. JS(TPD) told the Australian delegation that matter was being examined in the concerned department in Delhi. JS (TPD) also took up the matter regarding restriction imposed by Australian authority on import of Indian mangoes

➤ **Committee on Trade & Environment (CTE)**

Discussions mainly focussed on para 32(i) of the Doha Ministerial Declaration pertaining to effect of

environmental measures on market access. India made a detailed intervention under this agenda item and indicated that it proposed to submit a paper in the CTE on this subject. Many developing countries supported the thrust of India's intervention. Under 2nd part of para 32(i), discussions were held on sectors namely agriculture, fisheries and energy. Brief discussions also took place on labelling, technical assistance in the area of Trade and Environment, environmental review at national level and discussion under para 51 of the Doha Ministerial Declaration

CTE as Special Session held on 22/3/2002 discussed the organisation of work in the special session of the CTE as well as para 31 of the Doha Ministerial Declaration. Developing countries argued for two phased approach; study phase followed by negotiating phase. EC maintained that negotiations have already began. EC presented a submission on para 31(i). Some delegation gave their preliminary comments to the EC paper. The number of meetings of the CTE-SS was also discussed. While developing countries argued for only three meetings this year, the EC wanted to have fourth meeting as well in December 2002. The Chairperson would be holding further consultation in the matter. On para 31(iii), there was a broad consensus that negotiations on environmental goods and services be carried out in the negotiating group on market access and CTS Special Session. CTE could have a monitoring role and could discuss the definitional aspects of para 31(iii).

➤ **Council for Trade in Goods (CTG)**

The CTG first resumed its meeting of 4 December 2001 to postpone consideration of El Salvador's draft waiver, and also the EC's request for a waiver on its special arrangements for combating drugs production and trafficking, without comment by any Member. The regular meeting of the CTG on 22/3/2002 then

considered the two textiles implementation issues, where India reintroduced its proposals. Brazil, Pakistan, Guatemala and Bangladesh supported India. It was agreed to revisit the issues at the next meeting. In the interregnum the Chairman will hold consultations on which other items to be addressed in the CTG. Grenada withdrew its request for authorisation to renegotiate under Article XXVIII:4 of GATT. The Chairman will hold consultations on Bangladesh's request for invoking Article XVI:1: C. Part II of the joint study by the WTO and UNCTAD Secretariat's was discussed under the TRIMs review, and will be revisited. The work programme on trade facilitation was adopted. It was also agreed that the major review under Article 8 of the ATC should be expedited, and the Chairman will hold consultations. It was agreed to suspend the meeting on the appointment of Chairs of subsidiary bodies.

#### ➤ **Special Session on Agriculture**

A work programme for Agriculture Negotiations was adopted at the Special Session in Agriculture held on 26/3/2002. Meetings will be held in June, September (beginning and end) and November 2002 and January, February, March 2003 for discussion on modalities. Initially, topics relating to Export Subsidies, Market Access and Domestic Support will be discussed at the June & September (beginning & end) meetings. Bilateral meetings with Australia, EC, China and Japan were held on the margins of this meeting.

#### ➤ **Committee on Trade & Development (CTD)**

Discussions were held on 5/3/2002 on the revised Co-ordinated WTO Secretariat Technical Assistance Plan for 2002. The Secretariat also briefed the committee on the costing aspects of this plan. It was agreed by the CTD to go ahead with the implementation of the TA plan. It was also agreed to further review of the plan.

At the formal first meeting of the Special Session on 6/3/2002, discussions were held on the organisation of work in the CTD-SS as well as background notes (WT/COMTD/77/Rev.1/Add.1-4) prepared by the Secretariat on Special & Differential (S&D) treatment provisions. Brief discussion also took place on the status of the CTD-SS - whether it was a negotiating body as well as on the participation of observer in its deliberations. Chairman indicated the tentative meeting schedule of the Special Session and reminded members to provide inputs to the Committee as mentioned in the agreed process WT/COMTD/36.

#### ➤ **Dispute Settlement Body (DSB)**

In this regular DSB meeting of the WTO held on 8/3/2002 in Geneva, US presented status reports on 1916 AD Act (DS136&162) and on Copyright Act (DS160) disputes. DSB noted agreement between EC and Argentina on procedures under Articles 21&22 of the DSU in dispute, Argentina - Hides and Leather (DS155). DSB adopted the panel and Appellate Body reports on US - Line Pipe from Korea (DS202). DSB accepted inter alia Government of India's nomination of Shri R. P. Aggarwal, DCM, Brussels, to include in the list of panelists.

The Panel on *US - Continued Dumping and Subsidy Offset Act of 2000* (DS217&234) held second meeting with parties. We as well as other 10 complainants and US made oral statements, reiterating their known legal and factual positions.

#### ➤ **Negotiating Group on Rules**

A programme of work for the Rules Negotiating Group for the year 2002 was adopted on 11/3/2002. The meetings will be held on 6-8 May, 8-10 July, 16-18 October and 25-27 November 2002. The basis of the work programme will be written proposals.

➤ **Committee on Specific Commitments (CSC) in Services**

Discussions were held on classification issues; incorporation of new commitments into members schedules; possible approaches to scheduling of additional commitments under Article XVIII of the GATS. Australia presented a proposal on liberalisation of trade in legal services. It stated that there was strong case for revising W/120 for legal services to reflect the commercial realities. On the incorporation of new commitments into members' schedules as well as possible approaches to scheduling of additional commitments under Article XVIII of the GATS, the Secretariat has been requested to prepare background notes.

➤ **Consultations with EC**

Pursuant to our request for consultations on dispute, EC - Conditions for Granting of Tariff Preferences to Developing Countries (DS246), consultations were held with EC delegation. Questions were put to EC on its laws, regulations, criteria, rationale, etc, for selecting countries for benefits under EC's GSP scheme (for drug trafficking, labour and environmental reasons). EC responses were not persuasive. Since the consultations request was issued on 5 March, 60 days period should be allowed to elapse, before making request to the DSB for establishment of a panel.

Pursuant to our request for consultations under Article 21.5 of the DSU on dispute, EC - Anti-Dumping Duties on imports of cotton-type bed linen from India - Recourse by India to Article 21.5 of the DSU (DS141), consultations were held with EC on 25/3 & 26/3/2002. Questions were asked on how EC's 7th August 2001 regulation could be full compliance with DSB rulings, the nature of partial review undertaken by it, discrimination by not terminating duties on Indian bed linen as was done in

the case of bed linen from Egypt and Pakistan, and on various dumping and injury elements of its regulation and disclosure document of 14 March 2002. EC defended that its actions were in compliance with Anti-Dumping Agreement. As these consultations did not result in any settlement of the dispute, request for establishment of a panel is being finalised

➤ **Consultations with US**

Pursuant to our request for consultations on dispute, United States - Rules of Origin for Textiles and Apparel Products (DS234), formal consultations were held with US for second time on 26/3/2002 seeking clarifications as to why changed rules of origin applicable only to textile and apparels, and not other products, their consistency with Agreement on Rules of Origin, extent of their harmonisation with other countries, etc. While its defence was not convincing, US posed counter questions on India's rules of origin and previous negotiations held in January this year on textiles. We maintained that questions on India were not relevant for the present dispute, previous bilateral consultations had nothing to do with this dispute on rules of origin. As these consultations for second time also did not result in resolution of the matter, request for establishment of a panel is under preparation

➤ **Committee on Customs Valuation**

The meeting held a detailed discussion on 27/3/2002 on each of the five tirets 57 to 61 proposed by India and some other developing countries. There were a significant number of questions to which replies were provided by India. It was agreed that members would send their questions in writing by 15 April 2002, so that written replies could be made two weeks thereafter, which will then be considered in the next meeting scheduled for 8 May 2002.



## WTO REPORT ON ANTI-DUMPING ACTIVITY

The WTO Secretariat reported that in the period I July - 31 December 2001, 19 Members initiated 186 anti-dumping investigations against exports from a total of 55 different countries or customs territories. During the corresponding period of 2000, 18 WTO Members had initiated 187 anti-dumping investigations

India initiated 51 investigations during the second semester of 2001, as compared with 21 investigations initiated during the second semester of 2000. The United States had the second highest number of initiations (35) during the second semester of 2001, compared with 38 during the corresponding period in 2000. Argentina had the third highest number of initiations, 16, a decrease from 34 initiations in the comparable period during 2000.

China, with 25 investigations on its exports, is at the top of the list of countries subject to anti-dumping investigations, although this number is a decrease from the 32 investigations initiated on Chinese exports during the second semester of 2000. Brazil, Chinese Taipei, Thailand and the United States were next, each with 9 investigations initiated on their exports in the second semester of 2001. Indonesia, Korea and Japan each had 8 investigations initiated on their exports in the second semester of 2001.

A majority of the investigations during the second semester of 2001, 121, were initiated by developing

countries, with developed countries initiating 65 investigations. This parallels the situation during the second semester of 2000, when developing countries had initiated 101 investigations as compared with 86 initiations by developed countries, but differs significantly from the situation in the first half of 2001, when developed countries had initiated almost twice as many investigations (88) as developing countries (46). Exports from developing countries were the subject of 91 investigations initiated during the second semester of 2001, while exports from developed countries were the subject of 51 initiations, and exports from transition economies (including China) were the subject of 44 initiations. This represents a change from the previous semester and from the second semester of 2000, during which periods transition economies were the second most affected group of countries, while developed countries were the least affected.

The largest group (60) of investigations initiated during the second semester of 2001 involved products classified in the base metals sector of the Harmonised System of Tariff Classification, which includes iron, steel and aluminium products. The other two sectors most affected were chemicals and plastics, with, respectively, 41 and 34 investigations initiated. The United States initiated 33 out of its 35 investigations on base metals products, while India initiated the majority (28) of its investigations on chemical products. Turkey initiated 12 out of its 13 investigations on products in the plastics sector.

Eight WTO Members imposed a total of 79 final anti-dumping measures against exports from 33 countries or customs territories during the second semester of 2001. This total represents a sharp decline from the 107 measures imposed during the corresponding period of 2000. Notable also is the decline in the number of countries imposing measures, from 16 countries during the second semester of 2000. The United States imposed the most final measures (21) during the second semester of 2001, a significant increase from the 8 final measures imposed by the United States during the corresponding period of 2000. India was a close second to the United States in the number of final measures imposed during the period, with 20 measures. The European Communities and Argentina each adopted 11 measures during the period, which for the Communities was significant decrease from the 32 measures imposed in the second half of 2000. Argentina had imposed 10 measures during the second half of 2000.

Exports from China were the subject of the largest number, 21, of final measures imposed during the second semester of 2001. Chinese Taipei was a distant second, with 6 measures. For China, this represents a slight increase from the 17 measures imposed against its exports during the second semester of 2000.

During the second semester of 2001, developing country Members imposed a total of 33 final measures, while developed country Members imposed a total of 46 final measures. Developing countries and transition economies (including China)

each had 34 measures imposed against their exports, while developed countries had 11 measures imposed against their exports. As was the case for initiations, the sector most affected by final measures was base metals, with 34 final measures imposed on products in that sector. This was followed by the chemicals sector, with 13 measures imposed, and the machinery and electronics sector with 8 measures.

### **Note :**

The WTO Anti-Dumping Agreement allows governments to act against dumped imports where there is material injury to the competing domestic industry. In order to do that the importing government has to determine, after investigating, that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price or "normal value"), and determine that the dumping is causing injury.

GATT Article VI allows countries to take action against dumping. The Anti-Dumping Agreement clarifies and expands Article VI, adding detailed procedural and substantive requirements, and the two operate together. They allow countries to act in a way that would normally break the GATT principles of binding a tariff and not discriminating between trading partners — typically an affirmative finding in an anti-dumping case results in an additional import duty on the particular dumped product from the particular exporting country in order to bring its price closer to the "normal value" or to remove the injury to domestic industry in the importing country.

<b>AD* Initiations : Reporting Party vs Affected Country From : 01/07/01 To : 31/12/01</b>																				
Affected Country	Argentina	Australia	Brazil	Canada	Chinese Taipei	Colombia	Egypt	European Community	India	Indonesia	Israel	Jamaica	Korea, Rep. of	Malaysia	Mexico	South Africa	Turkey	United States	Uruguay	Totals:
Argentina	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	2
Australia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Belgium	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	2
Brazil	4	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	2	0	9
Bulgaria	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Canada	0	0	1	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	0	4
China, P.R.	4	3	2	1	0	0	0	0	0	0	0	0	0	0	1	0	1	3	0	25
Colombia	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Dominican Republic	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Egypt	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	1	0	3
Estonia	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
European Community	0	0	0	0	0	0	0	0	6	0	0	0	0	0	0	0	0	0	0	6
Finland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
France	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Germany	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	2	0	4
Greece	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Guatemala	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Hong Kong	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Hungary	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	1	0	0	3
India	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	1	0	4
Indonesia	1	1	0	0	1	2	1	0	0	0	0	0	0	1	0	0	0	1	0	8
Iran	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Israel	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	3
Italy	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	1	3
Japan	0	0	1	0	0	0	0	0	4	1	0	0	0	0	0	0	0	2	0	8
Jordan	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Kazakstan	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Korea, Rep. of	1	1	1	0	1	1	0	0	2	0	0	0	0	0	0	0	0	1	0	8
Libya	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Lithuania	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Malaysia	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Mexico	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Moldova	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Nepal	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Neatherland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	2
New Zealand	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	2
Norway	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Phillipines	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Qatar	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Romania	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	1	0	0	3
Russia	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	1	1	0	4
Singapore	0	0	0	0	0	0	0	0	7	0	0	0	0	0	0	0	0	0	0	7
Slovak Republic	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
South Africa	1	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	3	0	0	6
Spain	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	2
Sweden	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	2
Chinese Taipei	1	1	0	0	0	1	1	0	3	0	0	0	1	0	0	0	0	1	0	9
Thailand	1	2	1	0	0	1	0	0	3	0	0	0	0	0	0	0	0	1	0	9
Trinidad & Tobago	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Turkey	0	0	0	0	0	0	0	1	1	0	1	0	0	0	0	0	0	1	0	4
Ukraine	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	3
United Arab Emirates	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
United Kingdom	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	2
United States	0	1	1	1	0	0	0	1	3	0	0	0	0	0	1	0	1	0	0	9
Venezuela	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	3
<b>Total for 01.07.01-31.12.01</b>	<b>16</b>	<b>13</b>	<b>13</b>	<b>2</b>	<b>3</b>	<b>6</b>	<b>6</b>	<b>15</b>	<b>51</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>13</b>	<b>35</b>	<b>1186</b>	

AD\* - Antidumping



## PARLIAMENT BRIEFS

### ● Memoranda for Separation from WTO

Many units of the Bhartiya Kisan Sangh from Uttar Pradesh, Rajasthan, Karnataka, Goa, Delhi, All India Kisan Sangharsh Samiti, Bihar and the National Coordination Committee of Farmers' Movement have submitted memoranda to Government for separation from World Trade Organisation (WTO). It has been represented that prices of agricultural commodities are falling due to unrestricted imports under the World Trade Organisation regime, opening of agricultural sector Multi National Corporations and continuation of subsidies by developed countries.

India is a founder member of the WTO which came into being on 1.1.1995 as a successor to the General Agreement on Tariffs and Trade 1947 (GATT), of which also India was a founder member. WTO provides a predictable rule based multilateral trading system.

While the Agreement on Agriculture (AoA) has not constrained India's domestic policy options for agricultural and rural development, experience in implementation of the same has brought out a number of issues, which deserve rebalancing. These have already been flagged by India in its comprehensive proposals submitted in WTO. The Indian proposals aim at protecting its food and livelihood security and for creating opportunities for the exports of its agricultural surpluses while targeting the high tariffs and trade distorting domestic support and export subsidies of the developed countries. Further in the Doha Ministerial Declaration also the key concerns of India in agriculture have been adequately safeguarded. Special and differential treatment for developing countries including recognition of food security and rural development has now become an integral part of the mandated negotiations on agriculture.

As regards the fluctuation in prices of agricultural commodities it may be noted that prices are a function of demand and supply factors as well as other macro-economic indicators. It

will thus not be correct to attribute, in general, the decline or rise in prices of agricultural products to any one factor.

The wholesale prices of different agricultural commodities have shown a mixed trend with domestic prices for wheat, jowar, bajra, ragi, maize, moong, gram, masoor and edible oils witnessing an increase. Commodities like rice, barley, urad, arhar, sugar and cotton have registered a decline in the past one year. Government is constantly monitoring the imports of sensitive commodities and acting to protect the interests of both the consumers and producers.

In order to ensure that Indian producers including the Small Scale Industries are not put to any hardship, the Government have put in place a suitable mechanism for monitoring of the imports of sensitive items and are committed to providing adequate protection to the domestic producers by resorting to various WTO compatible measures which include appropriate calibration of applied tariffs within the bound tariffs, imposition of anti-dumping, countervailing duties and safeguard action under certain specified circumstances.

### ● SLAPPING OF IMPORT TARIFF BY US ON INDIAN STEEL

US President has on 5th March, 2002 decided to impose safeguard duties on a broad range of steel products imported into USA. However, the developing countries **including India** have been excluded from the remedy action as per the Safeguards Agreement, except in the case relating to import of **carbon flanges from India**. In respect of flanges safeguard duty of 13%, 10% and 7% respectively have been imposed for three years and one day which is applicable from 20th March, 2002. This may have negative impact on our exports of the item to USA even though it is too early to make a quantitative estimate of the extent of the impact of the Safeguard action.

### ● NATURAL RUBBER AS AGRICULTURAL COMMODITY

India in its negotiating proposals filed in January, 2001 in WTO has proposed rationalisation of product coverage of Agreement

on Agriculture to include agricultural commodities such as rubber, jute and coir.

## ● **DISPUTE BETWEEN INDIA AND US OVER TEXTILES**

On 11 January 2002 India requested formal consultations with the United States under the Dispute Settlement Mechanism of the World Trade Organisation (WTO) regarding the changes in rules of origin for textiles and apparel products set out in the United States' Uruguay Round Agreements Act and the Trade and Development Act of 2000. India has questioned the compatibility of the changes with the provisions of the Agreement on Rules of Origin according to which rules of origin shall not themselves create restrictive, distorting or disruptive effects on international trade, shall not be discriminatory, and shall be administered in a consistent, uniform, impartial and reasonable manner. Formal consultations have been held with the United States on 7 February 2002 and 26 March 2002. The issue of changes introduced by the United States has been raised at various bilateral and multilateral fora.

## ● **TALKS WITH AUSTRALIA ON WTO ISSUES**

The Government has not received any formal request from the Australian Government to initiate bilateral dialogue for enhancing mutual cooperation in the context of the Work Programme at the WTO. However, during the Senior Officials meeting held at Canberra in April 2001, the Australian side had, inter-alia, suggested for working together for talks on multilateral trade, WTO, trade issues etc. As regards the commonality of interests between the two countries, Australia as a member of the Cairns Group of Agriculture export countries is pushing forward the idea of agricultural trade liberalisation through elimination of trade distorting export and domestic subsidies. On the issue of granting higher Geographical Indications (GIs) protection to products other than Wines and Spirits being supported by India, Australia has been showing strong reservations. Australia believes that such an extension would potentially deprive Australian agricultural producers of the opportunity to use generic terms such as Basmati rice or Kalamata olives etc in all domestic major export markets.

## ● **AGRICULTURAL PRODUCTS UNDER THE PURVIEW OF QRs**

Import restrictions are being removed as part of economic liberalisation programme of the Government and also in terms of our international obligations. The removal of restrictions has not altered the overall rate of growth of imports of the country. The growth rate of imports was 15.3% in 1993-94, 23.1% in 1994-95, 36.4% in 1995-96, 13.2% in 1996-97, 11% in 1997-98, 15.6% in 1998-99. The process of removal of Quantitative Restrictions on most agricultural items began on 1.4.2000. The import growth rate during the year 2000-2001 was only 7.27% in rupee terms and 0.27% in US dollar terms. The growth rate of imports during the first nine months of financial year 2001-2002 was only 0.31% in Dollar terms and 4.55% in Rs. terms, compared to the same period for the previous year. The import data for 714 items, QRs on which were removed on 31.03.2000, for the year 2000-2001, indicates a growth in import of these items by less than 6%. Similarly, the import of 300 sensitive items, which is being monitored by a Standing Group of Secretaries, has also not indicated any surge in imports in the first nine months of financial year 2001-2002. The overall picture that emerges is thus one of normal trading activity in response to demand and supply factors.

The various agricultural products still under the purview of Quantitative Restrictions include Live Animals, Meat and Meat products of Bovine Animals, Meat and Meat products of wild animals, live fish and various kinds of vegetable planting material. These restrictions are being maintained under Article XX of GATT for inter alia, protecting human, animal or plant life or health.

## ● **WTO Agreement on Agriculture**

India in its initial negotiating proposals filed in January 2001 in World Trade Organisation (WTO) has proposed rationalisation of product coverage of Agreement on Agriculture to include agricultural commodities such as rubber, jute and coir. The negotiations on WTO Agreement on Agriculture are still going on and the final outcome in this regard will be known only after the conclusion of these negotiations.

**● Anti - Dumping Cases**

The number of anti-dumping cases initiated by India during the years 1999-2000, 2000-2001 and 2001-2002 were 19, 28 and 30 respectively. Details of these cases and the status as on date is given in the table below :

S. No.	Product	Date of Initiation	Country	Status
1.	Barium Carbonate	1.4.99	China	Definitive duty imposed on 15.5.2000
2.	NBR	21.4.99	Taiwan	Definitive duty imposed on 6.4.2000
3.	Purified Terephthalic Acid	22.4.99	Spain	Definitive duty imposed on 30.5.2000
4.	Seamless Tube	20.5.99	Romania, Austria, Russia, Ukraine & Czech	Definitive duty imposed on 21.6.2000
5.	Optical Fibre	1.7.99	Korea RP	Definitive duty imposed on 28.6.2000
6.	Soda Ash	5.7.99	China PR	Definitive duty imposed on 4.8.2000
7.	Acrylic Fibre	28.7.99	Taiwan	Definitive duty imposed on 18.7.2000
8.	Metronidazole	29.7.99	China PR	Definitive duty imposed on 31.8.2000
9.	Oxo Alcohols	29.7.99	S. Korea, S. Arabia, Indonesia, Russia, Iran, USA, EU & Poland	Definitive duty imposed on 18.8.2000
10.	Vitamin-C	10.8.99	Russia & EU	Definitive duty imposed on 15.9.2000
11.	EPDM	27.8.99	Korea R	Definitive duty imposed on 27.9.2000
12.	B & W Photographic paper	27.8.99	UK, France & Hungary	Definitive duty imposed on 21.12.2000
13.	Aniline	13.9.99	Japan, USA	Definitive duty imposed on 6.10.2000
14.	Sodium Nitrite	4.11.99	China PR	Definitive duty imposed on 19.12.2000
15.	Pthalic Anhydride	16.11.99	Indonesia	Definitive duty imposed on 20.12.2000
16.	Seamless Grade Alloy etc.	9.12.99	Russia & China	Definitive duty imposed on 25.6.2001
17.	Bisphenol-A	6.1.2000	EU, Taiwan	Definitive duty imposed on 3.1.2001
18.	Hydroxyl Amine Sulphate	2.3.2000	USA, Japan, EU	Definitive duty imposed on 28.3.2001
19.	Polyester Film	29.3.2000	Korea & Indonesia	Definitive duty imposed on 10.3.2001
20.	Trimethoprim	28.4.2000	China	Definitive duty not imposed
21.	Caustic Soda	26.5.2000	Iran, S.Arabia, USA, France & Japan	Definitive duty imposed on 26.6.2001
22.	Aniline	29.5.2000	EU	Definitive duty imposed on 26.6.2001
23.	Ferro Silicon	5.6.2000	Russia & China	Definitive duty imposed on 25.6.2001
24.	Isopropyl Alcohol	12.6.2000	USA, Singapore & Netherland	Closed on 28.2.2001
25.	Sodium Ferrocynnide	13.6.2000	EU	Definitive duty imposed on 10.5.2001
26.	Strontium Carbobnate	28.7.2000	China PR	Definitive duty imposed on 26.6.2001
27.	Theophylline & Caffeine	11.7.2000	EU	Definitive duty imposed on 30.7.2001
28.	Potassium Permanganate	30.10.2000	China, Hongkong & Taiwan	Definitive duty imposed on 1.11.2001
29.	Sodium Hydrosulphite	3.11.2000	China	Definitive duty imposed on 2.11.2001
30.	Partially Oriented Yarn	10.11.2000	Indonesia, Taiwan, Thailand & Malaysia	Definitive duty imposed on 8.2.2002
31.	Toys	20.11.2000	China	Closed on 30.1.2001
32.	Dry Cell Batteries	20.11.2000	China	Definitive duty imposed on 2.8.2001
33.	Sports Shoes	20.11.2000	China	Definitive duty imposed on 25.9.2001
34.	White Cement	6.12.2000	Iran & UAE	Definitive duty imposed on 3.10.2001
35.	Choline Chloride	6.12.2000	China & EU	Definitive duty imposed on 14.1.2002
36.	Zinc Oxide	8.12.2000	China	Definitive duty imposed on 2.11.2002
37.	HSR	20.12.2000	Poland & EU	Definitive duty imposed on 15.1.2002
38.	Analgin	27.12.2000	China & Taiwan	Definitive duty imposed on 8.10.2002
39.	IBB	1.1.2001	China	Definitive duty imposed on 28.9.2002
40.	Lead Acid Batteries	12.1.2001	China, Korea, Japan & Bangladesh	Definitive duty imposed on 2.1.2002
41.	Paracetamol	30.1.2001	China & Taiwan	Definitive duty imposed on 27.3.2002
42.	Phosphoric Acid	7.2.2001	China	Definitive duty imposed on 12.9.2002
43.	2-MNI	8.2.2001	China	Definitive duty imposed on 27.3.2002



## SCHEDULE OF MEETINGS AT THE WTO/GENEVA\* MAY 2002

### MAY

1	Closing Session of the WTO Symposium - The Doha Development Agenda and Beyond	6	Working Party on the Accession of Algeria
1& 2	Special Meeting of the Committee on Subsidies and Countervailing Measures	8	Committee on Budget, Finance and Administration
1	WTO Symposium - An Emerging Southern Agenda on Trade and Environment	8	Negotiating Group on Rules
1	WTO Symposium - Doha's Impact on TRIPS: Balancing Geographical Indications protection	13&14	General Council
1	WTO Symposium - Internal Transparency and Decision-making processes at the WTO: Critical Issues and Recommendations	13	Trade Policy Review Body - Slovenia
1	WTO Symposium - Lessons Learned from Relations Between International Organisations and Civil Society	14	Committee on Import Licensing
1	WTO Symposium - Trade and Social Development: A Southern Viewpoint	14-16	Textiles Monitoring Body
2&3	Council for Trade in Goods	15	General Council
3	Committee of Participants on the Expansion of Trade in Information Technology Products	15	Trade Policy Review Body - Slovenia
3	Committee on Subsidies and Countervailing Measures	15	Working Party on the Accession of Uzbekistan
6& 7	Committee on Customs Valuation	16	Special Session of the Committee on Trade and Development
6& 7	Negotiating Group on Rules	21	Committee on Trade in Investment Measures
6	Work Programme on Electronic Commerce/ Second Dedicated Discussion on Cross-Cutting Issues	21	Special Session of the Dispute Settlement Body
		22	Dispute Settlement Body
		23&24	Council for Trade in Services
		24	Sub-Committee on Least-Developed Countries
		27&28	Workshop on Government Procurement Agreement Accessions
		29	Working Group on Transparency in Government Procurement
		29&30	Market Access Seminar
		31	Committee on Government Procurement
		31	Market Access Seminar

\* Source : WTO/Geneva as on April 2002

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