

# Intellectual property rights, technology transfer and farmers' rights

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# Overview

- About IPRs and WTO/TRIPS
- Patent and public health debate within TRIPS
- Patent, plant breeders' rights and farmers' rights debate within TRIPS
- Technology transfer debate within TRIPS
- Proactive Agenda for Nepal
- An example of a policy that does not guide

# About IPRs

- ◉ IPRs are privileges granted by a government to allow an inventor to exclude others from exploiting an IPR-protected product or process (only when for public service).
- ◉ IPRs are perceived as tools to promote innovation, the dissemination of knowledge and technology transfer.
- ◉ IPRs are of different types such as copyright, trademark, geographical indication, patent and plant breeders' rights.
- ◉ Patent and plant breeders' rights are mostly relevant in agriculture, and patent in health sector.

# Features of TRIPS

- TRIPS is a multilaterally binding agreement of the WTO.
- It is a minimum standard agreement (e.g., 20 years of patent protection).
- As in other agreements of the WTO, non-discrimination is a major principle in TRIPS implementation (e.g., no discrimination between foreign and national patents, and between patents of other members).
- Patents have to be applied in all fields of technology, including biotechnology.

# Criteria for patent and plant breeders' rights

- > **New:** The invention must not have been available to the public before or in public domain.
- > **Inventive:** The invention must involve a development over the state of the art.
- > **Industrially applicable:** The invention must be applicable for industry, i.e., used in economic activities.
- > In the case of breeders' rights, four criteria are critical: **Distinctness, Uniformity, Stability and New.**

# Article 27 and patentability

- Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, incl. to protect human, animal or plant life or health or to avoid serious prejudice to the environment....
- Members **may** also exclude from patentability:
  - > diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
  - > plants, animals and essentially biological processes for the production of plants and animals, but not microorganisms, and non-biological and microbiological processes
- Members **shall** provide protection to plant varieties either through:
  - patents, or an effective *sui generis* system , or a combination of both

# Patent and public health debate

- ◉ Unjust exploitation of medicinal plants and lack of effective benefit sharing mechanisms with local communities
- ◉ Prices of IPR-protected drugs (e.g., ARV).
- ◉ Restrictions in drug production and export.
- ◉ Use of compulsory licensing and parallel import provisions. (In cases of seed?)
- ◉ Problems of countries without manufacturing capacity.
- ◉ Breakthrough decisions at the WTO level.

# Patent, plant breeders' rights and farmers' rights debate

- ◉ Use of farmers' varieties and knowledge without prior informed consent and benefit sharing (conflict with CBD).
- ◉ High prices of IPR-protected seeds.
- ◉ Restrictions over the use of farm-saved seeds, affecting, among others, farmers' rights to save, exchange, reuse, and sell (in non-branded form) seeds (conflict with ITPGRFA).
- ◉ Patenting of life forms (discoveries vs inventions)
- ◉ GM seeds and livelihood impacts (e.g., environmental and biodiversity concerns)

# Technology transfer issue in TRIPS

- Article 66.2: Developed country Members shall **provide incentives to enterprises and institutions** in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.
- This is being seen as an obligatory provision but whether this has worked or will work?
- For example, the global climate change debate has shown how countries have expressed reservations about the liberalization as well as transfer of technologies (within the WTO as well as UNFCCC).
- Absorptive capacity as well as ownership by locals are also being raised as concerns.

# Proactive agenda for Nepal

- ◉ Development of national policies and strategies with wider consultation as 2013 is approaching near.
- ◉ Capacity development of domestic pharmaceutical companies.
- ◉ Harmonization initiatives in view of TRIPS, CBD, ITPGRFA, Cartagena Protocol on Biosafety.
- ◉ Development of positions for TRIPS review negotiations (e.g., disclosure requirement).
- ◉ Legal and institutional mechanisms for preventing biopiracy through an access and benefit sharing regime.
- ◉ Promotional as well as protective measures towards the protection of farmers' rights over all types of varieties and seeds.
- ◉ Regulations for GMOs and strategies towards making BIOTECHNOLOGY not only a source of economic incentives but also supportive of people's rights, social justice and the environment.

# जैविक प्रविधि नीति २०६३ (An example of a policy that does not guide)

## रणनीति

- ४.७. बौद्धिक सम्पत्तिसम्बन्धी अधिकार (Intellectual Property Right), जैविक सुरक्षा (Bio-safety), जैविक निगरानी (Bio-surveillance) तथा जैविक नैतिकता (Bio-ethics) जस्ता विषयहरु सुनिश्चित गर्ने ।
- ४.८. तन्तु प्रविधि (Tissue Culture), वन, कृषि र खाद्यान्न, जडिबूटी, च्याउ उत्पादन तथा प्रशोधन प्रणाली र पशु तथा मानव स्वास्थ्य प्रणाली समेतमा जैविक प्रविधिलाई प्रयोगमा ल्याउन निरन्तर रुपमा अनुसन्धान गर्न प्रोत्साहन गर्ने ।
- ४.१२. नेपालका जैविक स्रोतहरुको स्वामित्व सम्बन्धमा ऐन, कानून तर्जुमा गर्ने ।
- ४.१३. जैविक प्रविधिले दिगोपन, प्राकृतिक स्रोत व्यवस्थापन, वातावरण र जैविक विविधता संरक्षणमा प्रदान गर्नसक्ने सार्वजनिक फाईदाहरुको मापन गर्न सूचांकहरुको विकास गर्ने र यी फाईदाहरुलाई सार्वजनिक गर्ने ।

# जैविक प्रविधि नीति २०६३

## नीति

- ५.६. जैविक प्रविधिको माध्यमबाट गुणस्तरीय र रोगमुक्त बोटविरुवाहरु पैदा गर्न निजी व्यवसायीलाई प्रयोगशाला, हरितगृह तथा नर्सरीहरु स्थापना गर्न प्रोत्साहित गर्ने ।
- ५.१३. वन, कृषिजन्य तथा औद्योगिक उत्पादनका लागि प्रयोगशालाबाट विकसित आर्थिक रूपबाट सक्षम (Economically Viable) प्रविधि हस्तान्तरणलाई प्रवर्द्धन गर्ने ।
- ५.१८. अनुसन्धाता र विकासकर्मीहरु, कृषकहरु तथा औद्योगिक कर्मचारीहरुलाई जैविक प्रविधि सम्बन्धी विभिन्न तहका तालीमहरु उपलब्ध गराउने ।
- ५.१९. जैविक प्रविधि तथा तत्सम्बन्धी पूर्वाधारहरुको विकासका लागि स्वदेशी तथा विदेशी लगानीलाई प्रोत्साहन गर्ने ।
- ५.२१. नेपालले यस नीतिका उद्देश्य अनुकूल जैविक प्रविधिजन्य एकाधिकार (Patenting) लाई साकार पार्न विभिन्न कार्यविधिहरु पुनरावलोकन गर्ने र जैविक सुरक्षा सम्बन्धी कार्टाहेना प्रोटोकल, बौद्धिक सम्पत्ति सम्बन्धी अधिकारहरुमा असर पर्न जाने व्यापार सम्भौता (TRIPS),...तथा जैविक प्रविधिगत पक्षहरुको पुनरावलोकन गर्ने ।