

ASEAN raises concerns on life patenting

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At a recent crucial meeting of the World Trade Organisation in Geneva, ASEAN countries raised several concerns that the patenting of life-forms and biological materials under a WTO agreement could have serious environmental, social and ethical effects MARTIN KHOR reports.

by Martin Khor

Penang: The Association of South-East Asian Nations (ASEAN) has raised strong concern in the World Trade Organisation (WTO) about environmental, social and ethical problems that may result from the patenting of living organisms and biological materials.

At a meeting of the WTO's Trade and Environment Committee in Geneva on 21-22 June, Ambassador Haron Siraj of Malaysia outlined several issues arising from the patenting of plants, agricultural crops, genetic materials and other life-forms.

On behalf of ASEAN members of the WTO (Malaysia, Indonesia, the Philippines, Thailand and Singapore), Mr. Haron raised public concerns that the patenting of crops may accelerate the loss of biodiversity and marginalise the interests of farmers in developing countries. At the same time, he added, the patenting of life-forms also involved complex ethical, moral and religious issues.

Mr. Haron, who is Malaysia's permanent representative to the United Nations and the WTO, was speaking in the first round of a critical discussion on TRIPs and the environment. Given the widespread international public interest in the topic, his

statement will have a significance beyond the usually rather narrow confines of technical trade negotiations.

TRIPs refers to 'trade-related intellectual property rights', a new issue in the General Agreement on Tariffs and Trade (GATT) that formed one of the agreements in the Uruguay Round package signed by over 100 governments in Marrakesh last year.

Reconciliation

Among the decisions of the Marrakesh meeting of Trade Ministers was the setting up within the WTO of a Trade and Environment Committee, whose aim is to attempt a reconciliation of trade rules with environmental concerns.

At the insistence of some developing countries, the Committee's objectives were widened to include the objective of 'sustainable development', a concept that encompasses the environment as well as social equity and the right to fulfil human needs.

Whilst the Committee's main task was envisaged by the industrial countries to cover the environmental effects of trade in goods, some developing countries successfully proposed that it should also look into the relation between the TRIPs agreement, the environment and sustainable development.

The Committee is authorised not only to identify the relationship between trade measures and environmental measures, but also to recommend changes to the provisions of the multilateral trading system in order to promote sustainable development.

Recommend reforms

In other words, if the Committee were to find that any existing rules of the relevant WTO agreements would act against the interests of the environment or sustainable development, it could propose that these rules be amended. Thus the Committee is given the power to recommend reforms to the trading system, and its deliberations are therefore of more than academic interest.

At its recent meeting, the Committee held its first discussion on TRIPs and the environment a topic

that has generated a great deal of international public interest.

There is a growing concern from a wide variety of organisations (including development, environmental, scientific, and religious groups) that implementation of the TRIPs agreement will lead to the compulsory patenting (or other forms of intellectual property protection) in WTO member countries of many types of life-forms.

Most countries now exclude living organisms, such as plants, crops and human or animal genes, from their patent laws. Article 27 in the TRIPs agreement implies that some types of living organisms or biological materials will have to be subjected to patenting or other types of intellectual property protection.

'Patenting of life'

According to the concerned groups, this will open the door to the 'patenting of life', as the member countries of WTO will have to change their national legislation to comply with the TRIPs ruling.

Mr. Haron's speech to the Trade and Environment Committee dealt in some detail on TRIPs and biological materials, covering four major areas of concern.

On the environmental aspect, Mr. Haron raised concerns that 'the patenting of genes, genetic materials and genetically engineered crops and plants will promote or accelerate the process by which plant and agricultural biodiversity is eroded.'

The erosion of biodiversity, said the statement, is recognised widely as a major environmental problem, which can also have serious development consequences.

There is an additional concern from scientists and ecologists that the introduction of the patent regime to plants and crop varieties will greatly contribute to the spread of genetically engineered crops (or transgenic crops), and that this spread can lead to serious ecological problems, such as the proliferation of unwanted super weeds, the erosion of traditional plant varieties, and the spread of herbicide-resistant characteristics to surrounding plant life.

'This Committee should be aware of such concerns, and mechanisms should be set up whereby the discussions on this issue in other fora, such as the Biodiversity Convention, can be fed back into this Committee.'

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