

FREE TRADE INDUSTRIAL AGRICULTURE RULES THREATEN THE WORLD'S FARMERS:

The World Trade Organization Trade Related Intellectual Property Rights Agreement.

By Dr. Vandana Shiva

THE WTO TRADE RELATED INTELLECTUAL PROPERTY RIGHTS AGREEMENT (TRIPS)

The World Trade Organization (WTO) TRIPs agreement poses a uniquely modern threat to farmers. This agreement sets enforceable global rules on patents, copyrights, and trademarks, which extend to living resources so that genes, cells, seeds, plants, and animals can now be patented and "owned" as intellectual property. Living organisms and life forms that are self-creating were thus redefined as machines and artifacts made and invented by the patentee.

For example, TRIPs gives the patent holder a monopolistic right to prevent others from making, using, or selling seeds. Seed saving by farmers has now been redefined from a sacred duty to a criminal offence of stealing "property." As a result, developing countries are being forced to reorganize their production and consumption patterns to allow monopolies by a handful of so-called "Life Sciences" corporations. The TRIPs agreement provides living proof that the WTO does not reduce protectionism as its supporters always claim; it merely replaces protections for people and nature with protections for corporations.

THREE PERVERSIONS OF PATENTS ON LIVING MATERIAL

Ethical Perversion:

This refers to the claim that seeds, plants, sheep, cows, or human cell lines are nothing but "products of the mind" "created" by Monsanto, Novartis, Ian Wilmut or other such corporations. Living organisms have intrinsic self-organization; they make themselves, and hence cannot be reduced to the status of "inventions" and "creations" of patent holders. They cannot be "owned" as private property.

Criminalization of Saving and Sharing Seeds:

The recognition of corporations as owners of seed through intellectual property rights converts farmers into thieves when they save seed or share it with neighbors. Monsanto hires detectives to chase farmers who might be engaging in such "theft."

Encourages Biopiracy:

Biopiracy is the theft of biodiversity and indigenous knowledge through patents. It creates a false claim to novelty and invention, even though the knowledge has evolved since ancient times. Diverting scarce biological resources to monopoly control by corporations is resource theft from the poorest two-thirds of humanity who depend on biodiversity for their livelihoods and basic needs—it creates market monopolies and excludes the original innovators from their rightful share of local, national, and international markets.

Instead of preventing this organized economic theft, WTO rules protect the powerful and punish the victims. In a dispute initiated by the U.S. against India, the WTO forced India to change its patent laws and grant exclusive marketing rights to foreign corporations on the basis of foreign patents. Because many of these patents are based on biopiracy, the WTO is in fact promoting piracy through patents. Over time, the consequences of TRIPs for the South's biodiversity and southern people's rights to their diversity will be severe. No one will be able to produce or reproduce patented agricultural, medicinal, or animal products freely, thus eroding livelihoods of small

producers and preventing the poor from using their own resources and knowledge to meet their basic needs of health and nutrition. Royalties for their use will have to be paid to the patentees and unauthorized production will be penalized, thus increasing the debt burden.

Indian farmers, traditional practitioners, and traders will lose their market share in local, national and global markets. For example, recently the U.S. government granted a patent for the anti-diabetic properties of karela, jamun, and brinjal to two non-resident Indians, Onkar S. Tomer and Kripanath Borah, and their colleague Peter Gloniski. Yet the use of these substances for control of diabetes is everyday knowledge and practice in India. Their medical use is documented in authoritative treatises such as *Wealth of India*, the *Compendium of Indian Medicinal Plants* and the *Treatise on Indian Medicinal Plants*.

If there were only one or two cases of such false claims to invention on the basis of biopiracy, they could be called an error. However, biopiracy is an epidemic. Neem, haldi, pepper, harar, bahera, amla, mustard, basmati, ginger, castor, jaramla, amaltas and new karela and jamun have all been patented. The problem is not, as was made out to be in the case of turmeric, an error made by a patent clerk. The problem is deep and systemic. And it calls for a systemic change, not case-by-case challenges. The potential costs of biopiracy to the Third World poor are very high since two-thirds of the people in the South depend on free access to biodiversity for their livelihoods and needs. Seventy percent of seed in India is saved or shared farmers' seed; 70 percent of healing is based on indigenous medicine using local plants.

THE WAY FORWARD

The implementation of TRIPs, therefore, should be immediately stopped. Countries should make domestic laws that protect indigenous knowledge as the common property of the people, and as a national heritage. U.S. patent laws must be redrafted to recognize prior art of other countries.

This is especially important given that U.S. patent laws have been globalized through the TRIPs agreement of the WTO. We must exclude patents on indigenous knowledge and trivial modifications of it, and create *sui generis* systems for the protection of collective, cumulative innovation. Patents on indigenous knowledge and use of plants are an "enclosure" of the intellectual and biological commons on which the poor depend. Robbed of their rights and entitlements to freely use nature's capital because that is the only capital they have access to, the poor in the Third World will be pushed to extinction. Like the diverse species on which they depend, they too are a threatened species. ❖

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