



Americas Trade and Sustainable Development Forum (ATSDF) 17-18 November 2003, Miami

Trade, Knowledge and Intellectual Property Rights Thematic Tent

CONCLUSIONS

On behalf of the Trade, Knowledge and Intellectual Property tent of the ATSDF, which included representatives from some 20 organisations, I would like to make the following statement:

Participants agreed that there should not be a IPRs chapter in the FTAA. Any future IP negotiations should take place in a suitable worldwide forum, such as the WTO. Some of the reasons for such a general statement are:

- a) The TRIPs Agreement has not been implemented by many developing and least developed countries when new standards are already sought;
- b) The high cost of implementation for new obligations that in most cases are TRIPS plus. In the case of the IPR chapter of the FTAA the costs might be higher than the potential benefits for developing countries and consumers in the Americas;
- c) Lack of effective assistance to address asymmetries in the technological field,
- d) The reduction of the knowledge and information currently existing in the public domain in detriment of consumers and users.

No TRIPS-plus provisions should be included in current international trade negotiations. What is needed is a more balanced regime between public and private interests, allowing, for example, the full implementation of TRIPS Articles 7 and 8. Some examples of the TRIPS plus provisions proposed in the FTAA draft chapter on IPRs include:

- a) Deletion of the exceptions to patentability,
- b) Limitations of measures that countries can undertake to address public health issues (i.e. limitations to compulsory licensing);
- c) Longer periods of protection for copyrights (from 50 to 95 years of protection plus the life of the author);
- d) Reductions of flexibilities to choose the most convenient system to protect plant varieties;

There should be a moratorium on bilateral/regional IP negotiations. Countries should refrain from pressuring others to increase IP protection in a bilateral/regional or multi-lateral forum.

International IP agreements should respect the Universal Declaration of Human Rights and more specifically Articles 19 and 27.

Participants agreed that the following principles and concerns should be taken into consideration in any multilateral, regional or bilateral negotiations involving knowledge resources:

- Flexibilities to address public interest concerns including health, environment, nutrition, food security, education that are already included in national patent laws and copyrights laws should be protected;
- IP proposals in the current FTAA text limit generic competition, the most powerful force for reducing drug prices. Generic competition has reduced the price of AIDS drugs by more than 98%. This is a matter of life and death. Countries must prioritise public health over private commercial interests and fully implement the Doha Declaration on TRIPS and Public Health;
- Flexibilities to chose and use the most convenient system to protect plant varieties whether through patents or a *sui generis* system should be kept;
- The Convention on Biological Diversity and the new FAO International Treaty on Plant Genetic recourses for Food and Agriculture principles, together with adequate legal mechanisms for assuring legal access to and benefit sharing from genetic resources, must be directly incorporated in any international IPR treaty as well as national laws;
- Protection of traditional knowledge and folklore needs to be provided for and fully developed;
- Meaningful mechanisms to regulate abuse of rights, and competition policy to remedy failures linked to IP should be developed;
- With respect to copyright policy, trade agreements in general should be pro-competitive, promote innovation, respect personal privacy and reasonable private copying rights, ensure access to essential learning tools, and not undermine the efforts of developing countries to bridge the knowledge gap;
- Open and Free software development models should be encouraged, and nations should retain flexibility and sovereignty over setting limitations and exceptions to exclusive rights;
- Effective ways for facilitating technology transfer should be included and new mechanisms for stimulating needs-driven health R&D should be explored; In this case technology transfer should not be confused with technical cooperation,
- Special and differential treatment for developing countries must be incorporated and enhanced, and;
- Non violation actions that are currently included in the text of the chapter of dispute settlement should not be allowed in the IPRs field;

Finally an annex has been attached to this statement with recommendations of each of the session of the workshop on trade, knowledge and IPRs.