Berne Declaration, Alliance Sud, and CIEL Media Briefing:
Intellectual Property and Proposed European Free Trade Area (EFTA) Bilateral Agreements with Developing Countries

Many developing countries are still struggling to implement their obligations under the TRIPS Agreement, while maintaining the few flexibilities available to them.

Meanwhile, developed countries have added to this burden. The United States (in Latin America and the Middle East) and the European Union (with African, Caribbean and Pacific (ACP) countries) have used the leverage of ending preferential market access to force developing and least developed countries to sign up to higher intellectual property standards. The effects of some of these provisions include:

- limiting access to medicines by reducing legitimate competition from generic pharmaceutical producers.

- making it more difficult for developing country students and academics to access and afford educational materials on the internet.

- restricting the full and traditional right of their farmers to save, re-use, exchange and sell the seeds produced from their harvests, making them dependent on global multinationals for their food security and threatening agricultural biodiversity.

Proposed TRIPS-Plus intellectual property provisions in bilateral FTAs can only exacerbate problems of lack of capacity, public health and access to education in developing countries.

Why is EFTA including IP provisions in its FTAs?

EFTA member countries have been able to benefit from the activities of the United States and the European Union on IP. Under the TRIPS Agreement, signing a regional or bilateral FTA does not exempt a country from the obligation to extend identical treatment to all other members of the WTO. Developing countries that have signed agreements with the US and the EU (e.g. Peru and Colombia) are already obligated to treat EFTA countries identically. ***In including intellectual property provisions in its bilateral agreements, EFTA raises concerns that it is seeking even greater intellectual property protection than that already gained by the US and the EU in these developing countries.*** Such provisions have been widely condemned, even resulting in changes to US Trade policy by the US Congress, and a commitment by the EU not to seek TRIPS-Plus pharmaceutical provisions in its Economic Partnership Agreements with ACP countries. Even in those countries that EFTA has approached ahead of the United States and the European Union, TRIPS-Plus provisions that EFTA gains will have to be extended to the EU and US. This provides no comparative advantage to EFTA while ensuring that the developing country partner is further restricted in it ability to meet public health, education and food security needs.

Areas of Specific Concern Raised by EFTA FTAs

Access to Medicines (e.g. EFTA- Egypt FTA Annex V, Article 3e,)

Developing countries, including so-called middle-income countries such as India, still suffer from severe problems in ensuring access to medicines for their populations. Non-communicable diseases are also an increasing part of the disease burden in these countries, requiring, for example, affordable access to heart and diabetes medications. Generic competition is one of the few ways to ensure significant price reductions. Restrictions that delay generic entry can severely limit access to medicines. Based on the example of the EFTA-Egypt FTA, there would be 5 years of protection for undisclosed information. This goes beyond protection against unfair competition and requires protection against any disclosure. This is effectively data exclusivity which restricts access to medicines by limiting the entry of generic producers into the market.

Food Security: Seed sharing and exchanging (e.g. EFTA-Egypt FTA Annex V, Article 2e, Accession to UPOV 1991)

Saving, sharing and exchanging seed is a vital traditional method that enables farmers to cope with high levels of poverty and food insecurity. Under a provision that requires accession and compliance with UPOV1991, farmers will have to pay the seed company not just the first time they use the seeds, but may be required to seek permission and pay every time they share, exchange or sell the seeds they save. While the Egypt FTA ostensibly allows ratification of UPOV 1978, that option is not actually available as, legally, new members may only accede to UPOV 1991. The World Bank has noted that such rules can threaten development and strengthen the power of large seed companies. To access the latest plant varieties, poor farmers find themselves increasingly dependent on the cash economy, and in chronically poor areas, enmeshed in vicious cycles of debt.

As of June 18, 2007, Norway and Lichtenstein, an EFTA state, had not ratified UPOV 1991. It is not clear that Norway ever will since its rejection of UPOV 1991 in 2005. This makes agreed and future FTA commitments on this issue even more unfair to EFTA developing country partners, as new UPOV-members can only ratify the stronger UPOV 1991 text. Even if future FTAs step back from this, requiring only that they should implement a Plant Variety Protection in line with UPOV 1978, the problems remain. UPOV 1978 still places TRIPS-Plus restrictions on countries' flexibilities to ensure that farmers become self-sufficient growers of food. It should be noted that TRIPS Article 27.3b ***does not require*** the use of UPOV as the model. India, for example, has chosen a *sui generis* regime.

Conclusion

The necessity for the inclusion of IP provisions in EFTA FTAs remains unclear. EFTA will gain no special advantage compared to other countries that do not have such agreements with EFTA partners. More worrying is that the IP obligations that its developing country partners accept will extend beyond EFTA to the whole WTO membership. This will increase the burden on these countries, over-extending their already very limited policy capacity and resources. The TRIPS-Plus standards that EFTA appears to be pursuing will also further restrict the possibilities for designing development appropriate innovation systems that guarantee public health, food security and education.

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