

QUAKER ECO-BULLETIN

Information and Action Addressing Public Policy
for an Ecologically Sustainable World

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Friends Testimonies of Justice and Equality: Trade, Patents, the World Trade Organization (WTO) and Beyond Carol Dixon and Tracey McCowen

The produce of the earth is a gift from our gracious creator to the inhabitants, and to impoverish the earth now to support outward greatness appears to be an injury to the succeeding age. —John Woolman, 1772

Globalization and Intellectual Property Rights

As world-wide trade agreements came together under the new World Trade Organization (WTO) in the mid 1990s, a good deal of anger, fear and anxiety were generated about what these new trade rules would mean. Whose interests would be served? The broad WTO agreement includes not only rules about trading in goods as in the previous General Agreement on Tariffs in Trade (GATT), but adds rules about trade in services and intellectual property rights (IPR) called “Trade-related Aspects of Intellectual Property Rights” (TRIPS).

IPR is a phrase that includes copyrights, trade secrets and patents. Patents have historically been granted by individual governments. Incorporating patent rights into worldwide trade agreements puts a whole new spin on globalization. The WTO is a rules-based organization that countries may choose to join. Once a country has made that choice, trade sanctions might be imposed if they do not abide by the rules.

Representatives at the WTO in Geneva from developing countries, and especially from the least developed countries, lack capacity and resources. Their negotiators do not have the legal and technical expertise on their teams that the large delegations from developed countries have. Often several meetings are held in different venues simultaneously making it impossible for a one-delegate team to know what is going on, much less to contribute. In such an

environment it is very difficult for them to negotiate an agreement that takes the needs of their people into account.

Processes for policy-setting are often established in developed country capitals, such as, Washington and Brussels, where concerns of developing countries and for public interest are not often considered. By contrast, lobbyists for commercial interests, such as, pharmaceutical and agricultural corporations that are based in developed countries, are often present when policy is being formed and may be part of a negotiating team from the developed country.

Patents and other IPR Protection

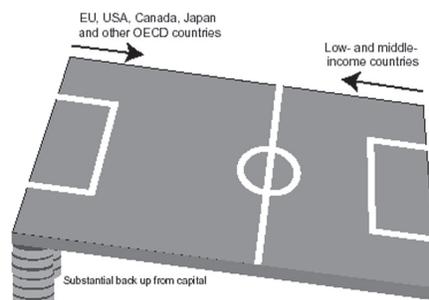
A patent is a privilege granted by a government, allowing the holder to exclude others from making, using and selling an invention. Patents provide the holder with an effective monopoly on a particular product or production process. These privileges apply in the countries where they are granted for a limited period, a minimum of twenty years. In order to prevent patents from harming the public interest, governments retain the right to override them under certain circumstances, which is called “initiating a compulsory license”.

While the patent system is meant to provide incentives for research and innovation, it is not clear this system is the best way to achieve these goals. Many patent-based industries base much of their research on previous publicly supported innovation, fail to address research needs in areas where there is no market, and even use patents to block research and competition.

What's wrong with the negotiating process?

“Active participation by developing countries is essential to ensure the legitimacy of standard setting and its appropriateness and relevance to nations at very different levels of development”

UK Commission on IPRs, p164



Thanks: Food Ethics Council

One problem is the imbalance between the parties. Another problem is that trade policy-setting processes in developed country capitals fail to give appropriate consideration to development concerns and generally prioritise narrower commercial interests. Multilateral negotiations, however, tend to allow the weaker parties to gain more through coalitions than in bilateral negotiations.

Quaker Eco-Bulletin (QEB) is published bi-monthly by Quaker Earthcare Witness (formerly FCUN) as an insert in *BeFriending Creation*.

The vision of **Quaker Earthcare Witness (QEW)** includes integrating into the beliefs and practices of the Society of Friends the Truths that God's Creation is to be held in reverence in its own right, and that human aspirations for peace and justice depend upon restoring the Earth's ecological integrity. As a member organization of Friends Committee on National Legislation, QEW seeks to strengthen Friends' support for FCNL's witness in Washington DC for peace, justice, and an earth restored.

QEB's purpose is to advance Friends' witness on public and institutional policies that affect the earth's capacity to support life. QEB articles aim to inform Friends about public and corporate policies that have an impact on society's relationship to the earth, and to provide analysis and critique of societal trends and institutions that threaten the health of the planet.

Friends are invited to contact us about writing an article for **QEB**. Submissions are subject to editing and should:

- Explain why the issue is a Friends' concern.
- Provide accurate, documented background information that reflects the complexity of the issue and is respectful toward other points of view.
- Relate the issue to legislation or corporate policy.
- List what Friends can do.
- Provide references and sources for additional information.

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For instance, patents can prevent much needed 'no-name' brand drugs reaching the market, but patents are not the only means of market control. Under WTO rules, such as the TRIPS agreement, governments are free to decide whether or not to allow patents on plants, but they must provide some kind of legal protection for plant varieties. This may be through patents or a specially designed system for plant variety protection, or both. A widely used model for plant variety protection laws is the International Union for the Protection of New Plant Varieties (UPOV). Developed in the 1960s, the UPOV provides plant breeders rights designed to protect the interests of modern agro-industrial commerce.

Why Are Friends Concerned?

Friends are concerned that the trade negotiation process is unequal and unjust. Developed nations frequently overwhelm developing nations with the sheer number of lawyers they use and the demands they make. Developing nations, desperately seeking economic growth, are under great pressure to accommodate to the wishes of the developed nations. Friends' testimonies of justice and equality compel us to address this inherently unequal and unjust situation.

The wording of the WTO rules may be interpreted in different ways. Depending on how the agreements are interpreted and implemented, they may undermine the ability of nation states to safeguard their food supply, biological and agricultural diversity and traditional knowledge. These agreements will shape the future of all who live on the planet. At risk is ownership, control of and access to genetic resources; access to technology, medicines, information and knowledge; the right to save seeds; the use of traditional knowledge and much more. The long-term effects of this kind of privatisation are not clear. Who will make the rules? Who will benefit from them? What will individuals be allowed to do? Who will drive the direction and pace of technological change?

IPR and Health

Patented drugs generally cost much more than unpatented "generic" equivalents. Generic drugs are otherwise identical to the original brand name version; they are, in effect, copies. Many developing countries want to make or import generic medicines, but pharmaceutical companies owning patents on such drugs have tried to limit the extent of generic medicine production. They have convinced developed country governments to push for stronger protection for patented drugs when negotiating trade deals with poorer countries. Developing countries have argued that TRIPS is fundamentally unbalanced, as it fails to take into account their concerns.

Take for instance the AIDS pandemic which is devastating many developing countries. In the developed world it costs roughly \$10,000 per year to treat a person with an anti-retroviral drug cocktail therapy. This is far beyond what poor nations can afford, especially places where as many as 25-40% of the population is HIV positive. Generic drug manufacturers in some developing countries can supply these drugs for around \$300 per year. The World Health Organization announced in 2003 that an Indian generic drug manufacturer had developed a 'twice a day' pill to treat AIDS that could be provided for the annual cost of \$140 per patient per year. However, *Médecins Sans Frontières/Doctors Without Borders* pointed out that there were still some patent barriers to the use of this pill. QIAP consultant Fred Abbott says of the TRIPS agreements, "they appear designed to negate the effective use of compulsory licensing by blocking the marketing of third party medicines during the term patents." (Abbott, 2004)

AIDS is not the only under-served disease of the developing world because treatments for the tropical diseases of the developing world are not a profitable market. Pharmaceutical companies may argue that they need strong patent protection to fund research for new drug development, but in the long run that means one thing: boutique medicine for those that can buy it. In fact, of the 1,393 drugs developed between 1975 and 1999, only 13 were for tropical diseases. (QIAP-QUNO, 2004a)

Food Security and Farmers' Rights

Treating disease is one way to improve the quality of life for people in the developing world, but perhaps even more important is the prevention of disease. As the old saying goes "an ounce of prevention is worth a pound of cure". One way to prevent disease is to make sure that people have access to adequate nutrition. Food insecure people are not healthy and, therefore, are susceptible to simple infections that can be life threatening. For most in the developing world, adequate nutrition means being able to grow enough of one's own crops.

Like people, plants have immune systems; they adapt to local environments over time, building up immunity to infestation and resistance to adverse conditions, such as drought. In many countries farmers select, save and re-use seeds from one year to the next. They save the best, most resilient seeds for next year's harvest, and eat the rest; they are in effect acting as mechanisms of natural selection, making sure the fittest survive. However, modern-industrial producers tend to select seeds for yield and uniformity. They can use chemical inputs and irrigation to protect against infestation and drought because they have access to crop insurance, price supports and loans, which cash-strapped subsistence farmers and indigenous peoples do not.

The previously mentioned IPR agreement UPOV allows farmers to save, use and exchange seeds, but not to sell seeds. UPOV does not take into consideration the economic realities in which these non-industrial farmers exist. Subsistence farmers are forced to become reliant on purchased seeds to plant their crops each year. Increasing seed prices and the cost of fertilizer and pesticides needed for these seeds cause economic hardships for these subsistence farmers.

In addition, the increasing uniformity in the genetic makeup of the purchased seeds reduces local crop diversity. It is essential to preserve a variety of resilient plants should a major crop disease, drought, or other environmental factor occur. Crop diversity is a major factor in food security.

In some cases, patents have prevented developing-nation farmers from increasing their revenue by accessing new markets. Larry Proctor, a US farmer and seed producer, obtained a US patent for the yellow Mayocaba bean he found in Mexico. Consequently, he could then prevent Mexican farmers from exporting this bean to the US, or he could require royalty payments for the privilege to export the beans into the US market. Mexican farmers, who suffered economic hardship as a result, have had to engage in a costly and difficult legal struggle to try to get the patent revoked. (QIAP-QUNO, 2004b)

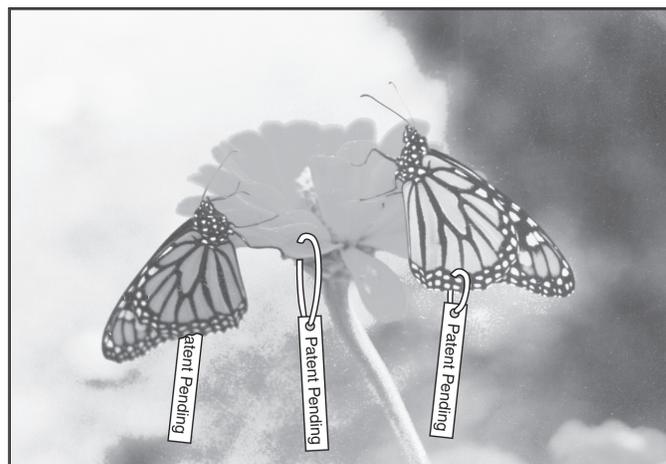
Control of Seeds by a Few Corporations

Strict protections treaties such as UPOV and TRIPS have enhanced the market concentration of seed developers which in turn has led to increased seed prices. In the first fifteen years after the application of IPR to new plant varieties in the late 1960s, the market share consolidated from 762 commercial seed companies down to 68 (Mooney, 1983).

Furthermore, during the 1990s, after the TRIPS agreement was signed, a rash of mergers and acquisitions took place in the industry. Monsanto acquired 18 seed companies, including Dekalb, the second largest corn breeder in the country. Ciba Geigy and Sandoz merged to form Novartis and bought six other French firms. At the end of the decade Novartis merged with pharmaceutical giant Astra/Zeneca to form Syngenta. Dupont acquired Pioneer, the largest corn breeder. And these are just the well known corporations; there were more consolidations among other lesser known corporations. Now six major seed companies control the majority of the world's genetic resources for basic crops such as corn, soya beans, wheat, rice and cotton (Dhar, 2002). These companies may operate under different names in different countries, but they all fall under six parent companies or alliances.

Less than a decade after the initial consolidation of seed companies and implementation of IPR in the 1970s, seed corn prices had risen 253%, soybeans rose 173%, and wheat 134% (Lesser and Masson, 1983). With the advent of biotechnology some increased costs have been hidden in the name of "technology fees". So while the price of seed remains the same as non-genetically engineered varieties, a \$25/acre technology fee is charged. Seed companies argue that they need to charge more for seed in order to support research and development. However, a two-decade study showed that while public expenditure into research had doubled for wheat breeding, private spending remained almost static (Dhar, 2002).

Just as IPR can adversely affect access to essential medicines and negatively impact the ability to grow food, there is also a growing concern that IPR negatively affects Traditional Knowledge (TK) systems. "Traditional and Indigenous knowledge has been used for centuries by indigenous and local communities under local laws, customs and traditions. It has been transmitted and evolved from generation to generation. TK has played, and still plays, an important role in vital areas such as food security, the development of agriculture and traditional medicines. However, Western societies have not, in general, recognized any significant value in TK nor any obligations associated to its use, and have passively consented to or accelerated its loss through the destruction of the communities' living environment and cultural values." (Correa, 2001) It is through TK that many of the world's less represented people access such methods of survival.



Elizabeth Kamphausen

What Friends Are Doing

Quaker International Affairs Programme (QIAP) was launched in 2001, after several years of development by a committed group of Friends. With a deep concern for the inequities in the negotiating process, QIAP aims to help level the playing field by providing the small delegations of developing countries with information that helps them be more effective in trade negotiations. Especially in technical areas, developing nations frequently do not have access to the legal and technical expertise necessary to bargain for advantageous trading agreements. In collaboration with the Quaker United Nations Office located in Geneva, Switzerland (QUNO), QIAP publishes research and hosts seminars, opportunities for off-the-record dialogue on some of the contentious issues to improve the chances for the usually unheard voices to be heard. QIAP and QUNO have a circle of experts that are available to consult on various aspects of patents and their implications for development. Meetings are hosted in Geneva and Ottawa, as well as on the edges of multilateral meetings such as the WTO Ministerials and the 2006 United Nations Convention on Biodiversity meetings in Granada, Spain.

QIAP and QUNO have also published briefing papers that help ordinary citizens gain a better understanding as well as provide information on how to become better involved. All QIAP publications, including issue papers, discussion papers, occasional papers, briefing papers, and annual reports from both QIAP and QUNO-Geneva, are available from the QIAP web site, but upon request can be provided in hard copy.

QIAP is a programme of Canadian Yearly Meeting accountable to Canadian Friends through Canadian Friends Service Committee. QIAP's work priorities are based on the concerns of Canadian Quakers and determined in part by the agendas of the organizations and participants with which QIAP works. Check the QIAP website for much more information. <www.qiap.ca>

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For Further Information

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What Friends Can Do

1) Question the Rules

Greater public involvement is needed in the making of policy that determines the privileges society grants to patent holders. Attention from the media and public health advocates has already had an impact in important fields such as access to medicines.

2) Get Others Involved

Labour unions, environmental organizations, businesses, faith-based organisations, farming bodies, law associations, health advocates, universities, or consumer groups must look at how these issues will affect people locally and globally. A wider range of interest groups must be engaged in policy setting and decision making for real change to happen. Only then will the rules on patents reflect the broader public interest and the needs of the poor. In the long term this requires a fundamental reform of the decision-making processes that set public policy.

3) Influence Decision Makers

Contact your government members (parliament/congress) and government departments. Raise awareness about the issues at stake by writing a letter to a local or national newspaper.

4) Support QIAP!

Although most of our finances have come from public agencies such as Canadian International Development Agency (CIDA), International Development Research Centre (IDRC), and currently Netherlands Ministry of Foreign Affairs, we are able to leverage these funds because of generous Quakers and others who support us in both small and large ways.

We would love to have you join us in this work. Your contributions to QIAP are processed through Canadian Friends Service Committee (Canadian charitable receipts) or Quaker Ecological Witness (US charitable receipts).

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