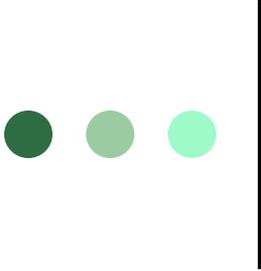




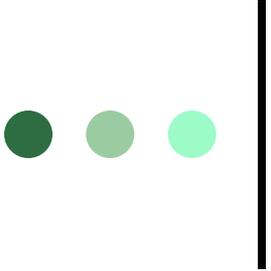
Including developing country interests in FTAs: biodiversity

Third World Network
Washington DC
27 February 2006



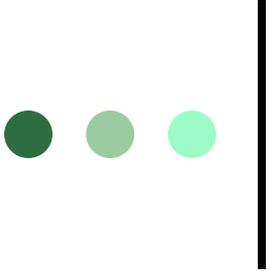
What is the problem?

- All countries have at least some biodiversity
 - This can be plants, animals, even human DNA
 - Developing countries tend to have more biodiversity than developed countries
 - Biopiracy is a problem for many developing countries
 - Biopiracy: the taking of biodiversity (and/or related TK) without prior informed consent and benefit sharing
- FTAs can be divided into:
 - South-South: these tend to be limited to reducing tariffs on goods
 - North-South: much broader in scope and include intellectual property provisions which can facilitate biopiracy



Scope of patentability

- No patents on life
 - Ethical and religious aspects re patenting DNA, human genetic resources, biological resources
 - Some indigenous communities do not want patents on their knowledge and do not want to commercialise it eg because it is too sacred to share
 - Africa Group and LDCs at WTO do not want patents on lifeforms (plants and animals)
 - Andean Community of Nations (includes Colombia, Ecuador and Peru) does not allow patenting of plants/animals
 - TRIPS does not require patents on plants and animals
 - Nth-Sth FTAs often require plants and animals to be patentable
 - It is a US demand in Andean and Thai FTA negotiations and is found in other US FTAs eg Morocco



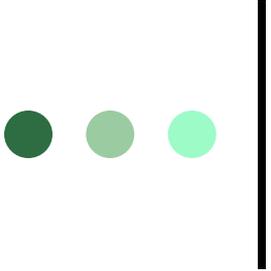
Standard of patentability

- TRIPS: must grant patent if invention is new, involves an inventive step and is industrially applicable
- Novelty:
 - Is it known to the public? (so traditional remedies should not be novel)
- Inventive step:
 - does it involve a step that would not have been obvious?
- So there should be no patents for mere discoveries (cf inventions)



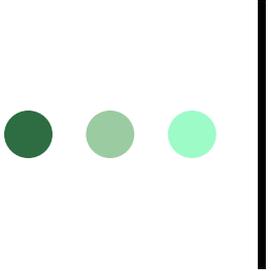
Enforceable mechanism for benefit sharing

- Principle:
 - Prior informed consent of indigenous communities should be required and
 - Benefits derived from their knowledge/resources should be equitably shared with them
- So if patents are granted, it should only be if the conditions above are met



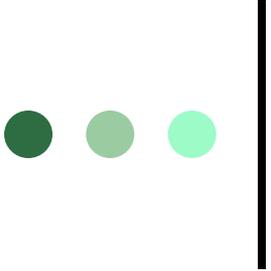
UPOV

- Farmers are the direct competitors of seed companies because they can often re-use seed from their harvest and most still do
 - They also select and exchange seeds all of which is allowed under a TRIPS compliant sui generis system but not under UPOV (1991)
 - The exchange of seeds, eg different varieties of corn for different rituals, helps preserve biodiversity
- Patents and UPOV style plant variety protection are intended to stop farmers from saving seed
- Nth-Sth FTAs often require developing countries to accede to UPOV, thus giving up their ability to have a sui generis system
- The world's commercial seed market represents US\$30 billion per year



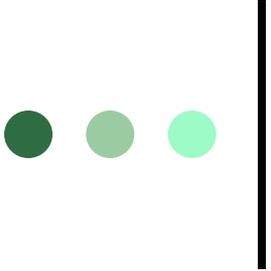
Effect of investment chapter

- Expropriation (requiring compensation) occurs when anything affects the value of an investment which can include
 - Patents (eg a compulsory licence on a seed needed by farmers)
 - A contract to collect biological resources
 - The material collected under such a contract
- Allows investors to sue the state directly



Other provisions in FTAs

- MFN can spread detrimental provisions beyond the immediate parties to the FTA
- Dispute settlement chapter allows cross sectoral retaliation eg
 - For failure to provide or enforce required intellectual property protection
 - For failure to pay compensation under an investor-state dispute settlement
- Dispute settlement chapter allows non-violation complaints



Conclusion

- Patents on life forms are problematic because:
 - They may be against the wishes of indigenous communities
 - They encourage/reward biopiracy if they are not balanced by equally enforceable prior informed consent and benefit sharing requirements
 - They make farming more expensive