No Solution Yet on Access to Medicines

After prolonged and heated debate, WTO Members failed to meet their 31 March 2005 deadline for adopting an amendment to the TRIPS Agreement allowing the export of generic medicines to countries that do not have the capacity to manufacture them locally.

The Doha Declaration on TRIPS and Public Health mandated Members to find, before the end of 2002, an ‘expeditious solution’ to the difficulties faced by countries with insufficient or no pharmaceutical manufacturing capacities in making effective use of compulsory licensing under the TRIPS Agreement. In August 2003, WTO Members finally agreed on a temporary waiver allowing the export of generics under compulsory license subject to stringent conditions, mostly intended to prevent the re-export of such drugs to developed country markets (Bridges Year 7, No. 6, page 9). After the latest deadline for turning this waiver into a permanent provision in the TRIPS Agreement was missed in March 2005, Members agreed to aim for the 26-27 May General Council session. However, the differences on this issue remain so profound that few expect a solution to emerge by then.

The latest impasses centre on the African Group’s December 2004 amendment proposal, which neither spells out the complex anti-diversion provisions of the waiver, nor makes any mention of the Chair’s statement associated with it (Bridges Year 8, No. 10, page 1). Many developing countries support the African position, while most developed countries, including the US, the EU, Korea, Canada, Japan and Switzerland, continue to insist that the amendment must contain both the waiver and the statement as presented in August 2003.

TRIPS and Biodiversity

In March, Members again considered the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD). But positions on this long-standing agenda item remain largely unchanged. A new submission from Brazil, Bolivia, Cuba, Ecuador, India, Pakistan, Peru, Thailand, and Venezuela (IP/C/W/442) focused on the need to provide evidence of benefit-sharing in patent applications, complementing previous proposals on disclosure requirements and prior informed consent. With regard to the legal effects of non-compliance by a patent applicant with the obligation to provide such evidence, the latest submission distinguishes between the pre- and the post-grant phase. Failure to provide evidence before the grant of the patent should result in a discontinuation of the application procedure, combined with penalties, time limits and eventually the withdrawal of the application. Failure to provide evidence after the grant of the patent could result in the revocation of the patent and/ or criminal and administrative sanctions, including punitive damages.

Several developing countries consider that the TRIPS Agreement should be amended to prevent the granting of patents involving undisclosed genetic material or traditional knowledge (TK), and to ensure that the communities that are custodians of such resources get a share of benefits arising from their commercialisation. The US, Canada, Australia, and Japan remain unconvinced that the TRIPS Agreement needs amending, arguing that TRIPS and the CBD support each other and that both can be implemented consistently. These countries also tend to favour addressing questions related to intellectual property rights, genetic material and TK in the Intergovernmental Committee of the World Intellectual Property Organisation (WIPO).

Spirits and Wine Register

The Doha Declaration mandated Members to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits by the WTO’s fifth Ministerial Conference. After the Cancun collapse, often heated – but so far futile – negotiations have continued on the issue. The debate is increasingly tied with fundamental differences between ‘old world’ and ‘new world’ countries on extending strong GI protection to other products other than spirits and wine in the TRIPS Council and on certain countries’ attempts to place the issue on the agricultural negotiating agenda. The next TRIPS Council meeting is scheduled for 14-15 June.