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Facts and Figures

- Only about a dozen agricultural crops are produced primarily for export, including coffee, cocoa, soybeans, rubber, tobacco, and aquaculture salmon and shrimp.
- In contrast, the bulk of key commodities for addressing hunger (in the sense of a shortage of overall calories in the diet) is consumed in the producer country. Exports of the four crops that account for 73 percent of global caloric demand amount to just 4 percent for rice, 9 percent for cassava, 14 percent for corn and 22 percent for wheat. If you add potatoes, sorghum, bananas and sweet potatoes, the total percentage of food calories is nearly 90 percent.
- In developed countries, the average share of the household budget that goes to food is at an all time low (14 percent in the US). The poor in developing countries may pay 75 percent of their income for food and still go hungry.

Source: Jason Clay: *World Agriculture and the Environment: A commodity-by-commodity guide to impacts and practices*. Island Press, 2004.

Winds of Change Blow on WIPO

For the first time, the General Assembly of the World Intellectual Property Organisation (WIPO) has been called upon to consider the establishment of a Development Agenda that would go beyond the organisation's current focus of safeguarding the protection of existing intellectual property rights and the negotiation of ever more stringent and far-reaching new standards.

Demands for refocusing WIPO's mandate have come from many quarters, including the governments of Argentina and Brazil, as well as non-governmental organisations and academics concerned about the effects of its traditional defence of narrowly-defined intellectual property rights on larger societal concerns such as access to medicines, knowledge, technology and the appropriation of public research by private interests.

The Development Agenda Proposal

A central tenet of the formal proposal (WO/GA/31/11) submitted by Brazil and Argentina to the 27 September - 5 October session of WIPO's General Assembly is that "intellectual property protection cannot be seen as an end in itself, nor can the harmonisation of intellectual property laws leading to higher protection standards in all countries, irrespective of their levels of development."

As a specialised agency of the United Nation, WIPO should be "fully guided by the broad development goals that the UN has set for itself, in particular in the Millennium Development Goals and [...] strive for an outcome that unequivocally acknowledges and seeks to preserve public interest flexibilities and the policy space of Member States. Provisions on 'objectives and principles', reflecting the content of Articles 7 and 8 of the TRIPs Agreement, should be included in the Substantive Patent Law Treaty [SPTL] and other treaties under discussion in WIPO." The TRIPs Articles in question refer, *inter alia*, to technology transfer and the need for 'appropriate measures' to prevent right holders' abuse of IPRs.

One of the public interest flexibilities the proponents undoubtedly have in mind is the protection of biological resources and the attendant indigenous traditional knowledge (TK). The obligation to declare the source of the genetic resources and TK in patent applications is already inscribed the patent laws of several developing countries, but not yet recognised in either WIPO treaties or the WTO's TRIPs Agreement despite years of effort.

The United States is a staunch opponent of mandatory disclosure requirements for biological resources or TK in patent applications, as well as one of the keenest supporters of the WIPO Patent Agenda, which aims at harmonising patent application and maintenance procedures. US Deputy Trade Representative Peter Allgeier said he was 'mystified' by the Development Agenda initiative, claiming that "the primary beneficiaries of stronger IPR protection in Brazil would be Brazilian artists and innovators, and investment in high-technology industries".

In contrast, Argentina's and Brazil's concerns about stronger IPR protection centred on the perpetuation of the knowledge gap between rich and poor countries. As an example, they cited restrictive IPRs that hamper technology transfer, innovation and creativity through proposed or actual restrictions on the use of resources available on the Internet and elsewhere. They proposed that WIPO members negotiate a Treaty on Access to Knowledge and Technology (see page 17 for further details).

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Bridges

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The Geneva Declaration

While welcoming the proposal for a WIPO Development Agenda, the Geneva Declaration issued by a number of non-governmental organisations at the close of a workshop on the future of WIPO went further. It demanded a moratorium on any new WIPO patent treaties, including the SPLT, in order to create space for addressing "far more urgent needs", such as those advocated by consumer and human rights groups in defence of "the poor, the sick [and] the visually impaired". The Declaration charged that WIPO had "embraced the culture of creating and expanding monopoly privileges", and now needed to "enable its members to understand the real economic and social consequences of excessive intellectual property protections, and the importance of striking a balance between the public domain and competition on the one hand and the realm of property rights on the other."

The Geneva Declaration backed the call for a Treaty on Access to Knowledge and Technology, and urged the relevant WIPO committees to solicit the views of member states and the public on the elements of such a treaty. In addition, the Declaration said that WIPO should "fundamentally reform its technical assistance programmes, including by helping developing countries to take full advantage of the flexibilities reconfirmed by the WTO Declaration on TRIPs and Public Health, as well as assisting them in addressing the limitations in patent and copyright law that are essential for fairness, development and innovation" (see related article on page 22).

The WIPO Manifesto

James Boyle, a Professor of Law at Duke Law School and the co-founder of the Center for the Study of the Public Domain, is among those advocating that WIPO consider a change of direction. In his Manifesto on WIPO and the Future of Intellectual Property, Professor Boyle said that "when WIPO documents speak of 'balance' they generally refer to a balance between producer and consumer, or developed and developing nations. But the intellectual property system depends on a different, and neglected, kind of balance. Science, technology and the market itself depend on a rich 'commons' of material available to all, just as they also depend on the incentives provided by intellectual property rights. Too many rights will slow innovation as surely as too few. The WIPO secretariat should be required to perform an Intellectual Environmental Impact Statement on each new proposal for the expansion of rights, detailing its effects on the public domain, and the commercial, innovative, artistic and educational activities that depend on the public domain." In addition, he urged WIPO to start considering the Internet as an opportunity rather than a threat: "WIPO should be at least as concerned about the impact of software patents on open source software development as it is about the impact of software piracy on closed source software development."

Like the Development Agenda proposal and the Geneva Declaration, the Manifesto called for greater participation and transparency: "WIPO needs to continue the welcome steps it has already taken to increase the participation of civil society groups in the discussion and debate. When intellectual property implicates everything from access to essential medicines and free speech to education and on-line privacy, it cannot be made according to the assumptions of a narrow coterie of lawyers and industry groups."

In conclusion, Professor Boyle noted WIPO's limited power to undo the trend toward ever-increasing private rights through patents and copyrights although "genius is actually less likely to flower in this world, with its regulations, its pervasive surveillance, its privatised public domain and its taxes on knowledge." In fact, trade negotiations "have become the preferred arena for expanding rights still further. But if these trends are to be reversed there will need to be an international, informed, democratic debate about the trajectory we are on. WIPO's role in that debate is a central one. It should embrace that role, rather than seeking to jump onto the bandwagon of ever-expanding rights."

The Geneva Declaration can be found at <http://www.cptech.org/ip/wipo/genevadeclaration.html>, and the entire text of the WIPO Manifesto is available at <http://www.law.duke.edu/journals/dltr/articles/2004dltr0009.html>.