

National Dialogue on “Intellectual Property Rights and FTAs”

12 November 2004

Convention Hall, Chulabhorn Research Institute

Bangkok, Thailand

With the move of trade negotiations away from multilateralism towards regionalism and bilateralism new challenges have emerged, due to the introduction of increasingly higher trading standards, hand in hand with a reduction of bargaining power from developing countries in regional and bilateral negotiations. Debates surrounding intellectual property rights (IPRs) commonly feature as one of the central parts of the negotiations, based on a strengthened format of protection that includes expanded scope, reduction of flexibilities, creation of new IPR form and enforcement – commonly referred to as TRIPS Plus. An example of this tendency is the recent negotiations for a free trade agreement (FTA) between the USA and Thailand. These negotiations are covering intellectual property rights and therefore raising serious concerns regarding its potential impact on human rights, health, agriculture, biodiversity, competition, innovation, and research and development.

It is against this background that the International Centre on Trade and Sustainable Development (ICTSD), in collaboration with FTA Watch, Thailand, organised a national event on IPRs and FTAs in Bangkok on 12 November 2004. The aim of the dialogue was to foster dialogue and exchange among key stakeholders with respect to the ongoing bilateral negotiations. Particular emphasis was placed on the linkages between IPRs and human rights, health and biotechnology. Approximately 180 people attended, ranging from government officials, academics, activists, representatives from NGOs and international organizations and interest groups in the field of health and agriculture.

IPRs and Human Rights

In the session on Human Rights discussions centred on the question of the role of technology in society vis-à-vis the rights of the individuals. The keynote speaker indicated that technology could not be neutral as it inevitably changes or reinforces power relationships, as can be witnessed in the field of health and agriculture. In that sense the rights of the individual should not be overlooked. With the introduction of new technologies comes the social obligation to make sure that weaker parts of the society are not being left out. In the same time scientific discovery as it is embedded in a societal process of learning and technological advance, should not exclusively belong to the individual but also to the society the individual was part of.

It was thought that these more philosophical concerns should be borne in mind when negotiating the USA-Thailand FTA. Emphasis should not only be placed on aiming for a market access deal. The long-term goal has to include concerns on human dignity and social justice, which demands the incorporation of the human rights dimension in the negotiations on free trade. Balances and mechanisms were therefore needed to assure that intellectual property rights respect human rights and that technology transfer actually results in benefits for the overall society.

Health Session

Thailand introduced process patents on pharmaceuticals in 1975 and has since 2002 introduced provisions on limited data exclusivity in its national legislation. Public health representatives were concerned about the potential impact of the FTA on public health, if both, stricter protection of pharmaceutical products and processes, as well as strengthened rules on data exclusivity will be introduced. Most of the concerns voiced related to potentially increased difficulties in access to affordable essential medications due to rising prices, as well as a fear that the local generic industry will find it increasingly difficult to compete under strengthened data exclusivity provisions. Based on experiences from the Chilean and Moroccan negotiations with the USA it was felt that it is of utmost importance that the Doha Declaration is included in the FTA, such as in the Preamble, to ensure that health safeguards will be maintained. This issue was especially relevant in Thailand where an important part of the population is suffering from AIDS as well as neglected diseases in general.

Natural Resource, Environment and Community Rights

Concerns related to natural resources, environment and community rights centered on questions of plant variety protection (PVPs) standards. Enforced PVP protection as well as related IPRs are feared to threaten the food security of small scale farmers and the general livelihood of local communities. Furthermore, through reduced research exemption provisions for seed exchange, small scale R&D and traditional agricultural innovators are feared to be driven out of the market. As such it was felt that the principles included in the Convention of Biological Diversity, namely access and benefit sharing, disclosure of origin and prior informed consent, as well as a general sovereignty over national genetic resources, have to be included in any future FTA. Further concerns voiced related to GMOs and a fear that with the opening to products in agricultural biotechnology, the Thai market would be swamped with foreign produced GMOs, again driving local seed industries out of business. Finally, the need to develop appropriate frameworks for the protection of traditional knowledge was expressed.

The larger context

While the above mentioned concerns surrounding IPRs are of fundamental importance, one has to bear in mind that the USA-Thailand FTA is embedded in a wider political and economic context. Therefore, the issues mentioned above should not be seen in isolation from the wider trade policy interests of Thailand and have to be treated as such. Thus targeted sector specific studies should be carried out identifying the impact of the FTA in the respective sectors. It would be useful to analyse how other countries, such as Chile, have negotiated in the past in order to get a better understanding where negotiations are likely to head in the near and medium term future. FTAs are not reversible and thus have to be formulated with respective care.