

India is spearheading a drive among developing nations to ensure that the WTO address "biopiracy" at this year's meetings in Hong Kong. Along with countries like Brazil and China, India is seeking to prevent the international pharmaceutical industry from exploiting its native plants, animals and traditional remedies. Countries like India perceive biopiracy as a threat, particularly if a blockbuster drug, based on plants and animals from its jungles, is discovered and none of the profits return to India itself. Kamal Nath, India's commerce minister, commented that the WTO's failure to recognize this issue would invalidate the talks in Hong Kong. Indian officials, including Nath, suggest that biopiracy capitalizes on existing frameworks of trade inequality, whereas analysts assert that the phenomenon is rare and that the likelihood of likelihood of India's jungles containing miracle cures is slim. The issue focuses on profit potential, but could also reflect national pride and India's desire to win recognition for its wealth of ancient knowledge and the cultural contributions to the world at large. In the meantime, India is seeking protection for traditional foods, architecture, farming methods and even yoga positions at the WTO talks – and creating a massive database as a first step. The issue falls broadly into a developing vs. developed world category so the WTO response or lack thereof will be telling. – YaleGlobal

India to WTO: Help Us Protect Herbs, Tea, Yoga

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MUMBAI, India -- India, which has lobbied to help its generic-drug industry sidestep some international drug patents, is seeking protection for its ancient intellectual property, from herbal medicines to Darjeeling tea to yoga positions.

India is one of several nations pushing that idea at the World Trade Organization talks, now under way in Hong Kong. Along with China, Brazil and other emerging players at the global trade table, India wants WTO members to recognize the need for a system that would control how corporations, scientists and other

interests in the developed world can use a nation's native plants, animals and centuries-old knowledge to make pharmaceuticals and other products.

The developing nations are particularly concerned that a future blockbuster drug might be based on a plant or animal species originating their jungles, without giving them any financial benefit. Officials in India and elsewhere call such poaching of plants, animals and ideas "biopiracy," and they want WTO guarantees against it. Indian officials point to attempts over the past decade by scientists in the U.S. and Europe to patent the medicinal qualities of the spice turmeric and neem, a tropical evergreen found in Asia. The patents were overturned by U.S. and European authorities after India helped establish that the plants' medicinal properties were already widely known in that country.

For now, the efforts to protect traditional resources and knowledge are still mostly theoretical. Complexities abound in trying to sort out which countries, communities and tribes have rights to which plants and ideas. Many traditions have been passed down orally. Advocates of traditional-knowledge protections want nations to share in the financial rewards of patented products based on native plants and animals, but creating a system that could award compensation and resolve disputes presents a mind-boggling challenge.

"Who gets the rights? How do they manage it? How do they maintain it? How long does it last and from which starting point?" asks Francis Gurry, deputy general of the World Intellectual Property Organization in Geneva, which has been looking at the problem for years. These are only a few of the questions that have yet to be answered, he says. "There is a widespread consensus that this is an issue that should be addressed, but the world has not agreed on how to approach this problem."

The Indian government is taking a small step toward that goal by building a giant database to catalog more than 100,000 traditional herbal medicines and thousands of plants and yoga positions. The database, in New Delhi at India's National Institute of Science Communication and Information Resources, also includes more than 30 million pages of ancient Indian texts translated into English, French, German, Spanish and Japanese. The institute plans to add traditional Indian food, architecture and farming methods -- all in an effort to establish the provenance of India's natural and cultural property.

"At least 150 experts have been working six days a week for the last three years on this," says V.K. Gupta, director of the National Institute. "Now we have a mechanism through which we can prevent piracy."

Among several specific measures it is endorsing, India wants patent applicants around the world to declare the country of origin of plant or animal-based material used in their application, to seek permission from that country and, eventually, to share monetary benefits with the people of that country. "Countries

that have traditional knowledge must have the ability to protect it," says Kamal Nath, India's commerce minister.

Indian officials also hope one day to apply the similar patent-like protections for traditional Indian products and ideas. They want to obtain WTO restrictions on the use of names such as Basmati rice and Darjeeling tea. India is seeking "geographical indication" rights to protect what it sees as its brands, just as France demands that makers of sparkling wine in California refrain from calling their product Champagne.

Yesterday at the WTO, Mr. Nath hinted that inequalities in the world-trade system -- such as protecting patents on the developed world's pharmaceutical products while not protecting the developing world's biodiversity and traditional knowledge -- could become stumbling blocks at the Hong Kong talks. "If the content of this round only perpetuates the inequalities of global trade, then it will be no round," Mr. Nath said.

Analysts say there isn't much evidence that biopiracy is rampant. At Merlion Pharmaceuticals Pte Ltd., of Singapore, which has collected more than 130,000 plant and microorganism samples from across the globe and tested their medicinal properties on behalf of giant pharmaceutical clients, Chris Molloy, business development manager, says biopiracy may be often debated, but there are few well-documented examples of it.

He says his company discloses the country of origin and other information as part of compliance with the 1992 United Nations' Convention on Biological Diversity. That accord marked one of the earliest instances of recognition for the developing world's demands. "Companies [that] develop and commercialize drugs from natural products need to ensure the natural sources of their drug candidates are compliant with that agreement," Mr. Molloy says. "We see no direct evidence of anyone doing [biopiracy]."

India and the other countries, including Brazil and China, want a call for negotiations on tighter patent disclosure to be a part of any final ministerial declaration at the WTO's Hong Kong talks. "The disclosure of [outside use of] traditional knowledge and genetic resources is an absolute must as far as we are concerned," said Naresh Nandan Prasad, a joint secretary at India's Ministry of Commerce and Industry, in New Delhi. "It is the areas of biotechnology and pharmaceuticals that we are most interested in protecting."

It isn't clear how far their demands will go: WTO officials say it is uncertain when or if ministers will get around to discussing the issue in this round of talks.

The demands from within the developing world come just as "least developed" countries, such as Bangladesh, Cambodia and Rwanda, have won an easing of international pharmaceutical patent-protection law. The WTO last month agreed

to give these nations eight more years to continue ignoring international patent and trademark protections. The WTO also has outlined guidelines allowing countries to break patents on drugs if they need to manufacture them in the case of a national medical emergency, as in the case of Roche Holding AG's Tamiflu and avian flu.

At the same time, however, India and other countries are beginning to level the regulatory playing field within their borders. Following years of pressure from the WTO, India this year made it tougher for domestic companies to copy patented drugs. Still, the recent decision regarding least-developed countries means Indian manufacturers can copy and export generic versions of some patented drugs without the approval of the companies that developed them.

Some analysts say the quest to protect traditional knowledge may be more about national pride and politics than profits. While the market for nature-based drugs is huge, only a tiny number of such products turn into blockbusters. "There's money out there but it's not megabucks," says Graham Dutfield, an expert on biodiversity laws at Queen Mary College, London. "Having 100,000 species in your country doesn't mean you will find a single chemical that will be valuable."

Still, India and other developing countries hope for at least some sort of nod to the issue in Hong Kong. But patent and traditional-knowledge experts say it won't be easy to reach a consensus. "Industrialized countries say it is a complex and intellectually challenging issue and we should proceed carefully," said Mr. Gurry of the World Intellectual Property Organization. "Developing countries are rather impatient that progress be made."

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