



**Friends of
the Earth
International**

trading away indigenous peoples' rights

a friends of the earth international briefing on the
possible impacts of wto negotiations on indigenous
peoples' rights regarding protected areas



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introduction

Governments that are Members of the World Trade Organization (WTO) are currently conducting multilateral trade negotiations. The potential results of these negotiations may have a serious adverse impact on the extent to which States may be willing or able to effectively carry out actions to promote and protect the rights of Indigenous Peoples and communities. In particular, these trade agreements would undermine the land rights of Indigenous Peoples and their rights regarding traditional knowledge and their rights to the natural and genetic resources upon which they depend.

The following WTO negotiating areas are of special relevance with respect to Indigenous Peoples' rights:

- Trade liberalization for environmental services;
- Investment negotiations;
- Trade liberalization for agricultural goods;
- Trade liberalization for environmental goods; and
- Clarification of the relationship between the trade-related provisions of multilateral environmental agreements (MEAs) and WTO rules.

In addition, the work currently on-going in the WTO and in the World Intellectual Property Organization (WIPO) relating to the protection of traditional knowledge, genetic resources, and folklore, may be of particular relevance for Indigenous Peoples.

protected area management and other environmental services

The WTO negotiations on trade liberalization for environmental services may adversely impact on the ability of indigenous communities to protect and manage the environment and natural resources within their territories. Among the services sectors that are subject to trade liberalization negotiations is the "nature and landscape protection" services sector. The European Communities (EC) has already, for example, requested other WTO Members – such as Argentina, Australia, Bahrain, Brazil, China, India, Kenya, Kuwait, Mexico, Pakistan, Philippines, Qatar, South Africa – to allow European companies to compete on the same footing as domestic companies in providing nature and landscape protection services.

Should such requests be agreed to by other WTO Members, the situation may arise in which a foreign (e.g. European) company, either by

itself or in partnership with a domestic company, could be contracted by a national government to provide management services for protected areas. This could then have adverse impacts on the rights and ability of local and indigenous communities to access and manage the natural resources found within such protected area for their own livelihood and traditional uses such as hunting and fuelwood gathering. The liberalization of "nature and landscape protection" services as a result of the WTO services negotiations may also make it more difficult for States to ensure that resource-dependent local and indigenous communities are able to effectively participate in the development of area and resource management programs.

Furthermore, some developed countries like the United States have requested some developing countries to make commitments to liberalize their energy sector, from the stage of minerals exploration and mining to the distribution and retail of petrol and other energy products. Liberalization would essentially involve making it easier for mining and petroleum companies to search, exploit, and control the extraction of petroleum minerals and other energy products, even if such activities are to be done in indigenous territories.

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The liberalization of the trade in the provision of water services is also covered by the current WTO services negotiations. Since equitable and participatory access to and management of water resources are of great importance for Indigenous Peoples and other local communities, the potential adverse impacts of the WTO services negotiations with respect to water services need to be considered as well. Liberalization of this services sector may have the impact of deregulating and privatizing water management and provision, thereby undermining the rights of Indigenous Peoples regarding water resources, including water resources located on their traditional lands.

investment

WTO discussions relating to the creation of new WTO rules to facilitate foreign investments among WTO Members have been on-going since 1997. Currently, WTO Members are faced with the question of whether negotiations on such new rules are to be launched or not. Most developing countries have continued to oppose such negotiations, while developed countries have, just as persistently, pushed for such negotiations.

In the event that new WTO rules governing foreign investments are negotiated and then adopted by WTO Members, the impacts on indigenous communities will be very grave especially in relation to their ownership, control and management of the natural resources and territories on which they depend. New WTO rules on investments may prevent governments from giving or recognizing the priority control, access, and management rights of indigenous communities over the land and natural resources in their ancestral or traditional territories. Such priority rights to natural resources (e.g. like those accorded to Philippine indigenous communities under the Philippine Indigenous Peoples' Rights Act of 1997) in favour of indigenous communities may be considered as a violation of the new WTO rules that require governments to treat foreign and domestic "entities" (which includes indigenous communities) equally.

Hence, if such new WTO rules on investments are negotiated and adopted, a government that refuses to grant mining rights or privileges to a foreign mining company in a territory occupied by an indigenous community to protect the land rights and livelihood of that community, may be brought to WTO dispute settlement by the home country of the foreign

mining company on the ground that such refusal constituted discriminatory treatment against the foreign mining company. A similar scenario can be imagined with tourist industries that invest in infrastructure in or near Indigenous lands. This scenario could eventually lead governments to cease to protect indigenous rights in order to avoid WTO dispute settlement proceedings and the threat of cross-sectoral trade retaliation.

wto and wipo work on traditional knowledge, genetic resources, and folklore

The discussion of the relationship between intellectual property rights (IPRs) such as patents, indigenous traditional knowledge, access to and ownership of genetic resources, and folklore protection, has been discussed in the WTO context within the WTO's Trade-Related Intellectual Property Rights (TRIPS) Council. Some developing countries have made suggestions that, if accepted, would prohibit the patenting of lifeforms and protect indigenous knowledge systems from the application of WTO rules on IPRs. On the other hand, developed countries have pushed for a broader and more extensive

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application of the IPR regimes to developing countries. Because of these differences in views, work on these issues in the TRIPS Council has become essentially deadlocked. Because of their failure to push their agenda forward in the TRIPS Council over the resistance of developing countries, developed countries have turned to another forum, the WIPO, especially the Intergovernmental Committee on Genetic Resources, Traditional Knowledge, and Folklore (IGCGRTKF), to promote their agenda.

Existing IPR regimes – e.g. patent laws and treaties – do not fairly and effectively recognize and or make provision for community rights relating to genetic resources, traditional knowledge, and folklore, especially those sourced from developing countries. The work in both the TRIPS Council and WIPO will not serve to advance such community rights not only because of the lack of participatory mechanisms to ensure developing country and indigenous community participation in these processes but also because the discussion agenda in both the TRIPS Council and WIPO is heavily influenced by the industry-driven agendas of the developed countries like the United States.

agriculture

The WTO agriculture negotiations are intended to produce an outcome in which the economic profitability of industrial, export-oriented agricultural production methods is increased through the expansion of export market opportunities. However, the growth of industrial, export-oriented agriculture has long-term adverse social and environmental effects that may be relevant to Indigenous Peoples and their territories. These impacts include:

- a shift to chemical input-dependent and resource-intensive farming from traditional and ecologically sustainable farming (e.g. in the Andean highlands and the Philippine Cordilleras);
- expropriation of indigenous lands and territories;
- displacement of local indigenous farming communities from their traditional farmlands;
- conversion of forests and ecologically-fragile habitats upon which indigenous communities depend into marginal agricultural lands to be used for export agricultural purposes (e.g. in the Brazilian Amazon).

environmental goods

As part of the WTO negotiations for further liberalization in the trade of non-agricultural goods, barriers to the trade in “environmental goods” also have to be lowered or eliminated. However, there is as yet no commonly agreed definition of “environmental goods” but some suggestions would cover not only industrial goods but also non-agricultural non-industrial products such as organic or “green” agriculture; primary natural resource commodities such as cotton, rubber, palm oil; or organic/bio-degradable packaging products such as jute. Some WTO Members have also suggested the specific inclusion of certain types of non-agricultural goods such as “clean” fossil fuels (by Qatar) and forest products (by Japan) within the meaning of “environmental goods” for purposes of the negotiations.

In this context, any negotiated outcome that, through liberalized trade rules, may increase the international trade in primary natural resources such as forest products and minerals will likely have adverse impacts on the rights and interests of indigenous communities, and their territories. Natural resource-extracting corporations (mostly Northern multinationals and their developing country corporate partners) will have greater incentives to maximize

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their trading profits by increasing the exploitation and export of natural resources, especially from developing countries to developed countries. This will hence mean increased pressure on governments, especially in developing countries, to open up previously untapped natural resource areas to commercial exploitation, and thereby further marginalizing and displacing indigenous communities that have been traditionally dependent on these natural resources for their livelihoods.

mea-wto relationship

The WTO negotiations to clarify the relationship between trade obligations contained in MEAs and WTO rules may have a long-term impact on how States Parties implement their obligations under the UN Convention on Biological Diversity (CBD). The CBD is one of the MEAs that contain trade-related obligations, although it is not among the MEAs that are currently being considered within the WTO context as an MEA with "specific trade obligations." However, any rules that the WTO may come up with as a result of these negotiations to govern the relationship between trade-related actions taken under an MEA obligation and WTO rules will also influence the kinds of actions that CBD States Parties may

undertake to implement their CBD obligations. There is a substantial fear that WTO will decide, for example, that the CBD provisions will have to be in line with the WTO TRIPs agreement, instead of vice versa.

That is, CBD States Parties who are also WTO Members may, in their desire to evade being brought to WTO dispute settlement, be "chilled" from adopting measures that would protect and promote the rights of indigenous communities to genetic and natural resources and to their traditional knowledge, or adopt such measures that are the "least trade-restrictive" but which may not be as effective in achieving CBD objectives compared to a trade-restrictive measure. It is important, therefore, that such negotiations in the WTO go no further and that the clarification of the relationship between MEA obligations and WTO rules be settled within the UN framework (see FOEI paper attached herewith).

conclusion

Indigenous Peoples' Organizations, NGOs and other social movements, and governments, must therefore be aware of the pace and direction of the on-going WTO negotiations, especially in the areas briefly discussed above,

in order to ensure that the flexibility and freedom to undertake measures to protect and promote the rights of Indigenous Peoples are fully preserved. NGOs, Governments and other organisations involved in these discussions must recognise the impact that they are likely to have on Indigenous Peoples' rights and ensure that Indigenous Peoples are consulted, kept informed and involved in the discussions at every step of the process. This may involve the provision of funding and other resources to build capacity so that Indigenous Peoples and their representative organisations can participate on an equal footing.

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