

JOURNAL FÜR ENTWICKLUNGSPOLITIK

herausgegeben vom Mattersburger Kreis für Entwicklungspolitik
an den österreichischen Universitäten

vol. XXIX 2–2013

TRADING KNOWLEDGE IN A GLOBAL INFORMATION SOCIETY

The Southern Dimension of TRIPS and GATS

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mandelbaum *edition südwind*

Inhaltsverzeichnis

4	THOMAS R. EIMER, VERENA SCHÜREN Trading Knowledge: The Southern Dimension of TRIPS and GATS
II	PATRICIA GRAF Research and Development in Mexican-American Relations Post-NAFTA
31	THOMAS R. EIMER Global Wordings and Local Meanings: The Regulation of Traditional Knowledge in India and Brazil
51	CHRISTOF MAUERSBERGER Commercial Markets or Communication Rights? International Norms and the Democratisation of Media Markets in Argentina and Brazil
69	MARKUS RAUCHECKER Intellectual Property Rights and Rent Appropriation: Open Conflict regarding Royalties on RR Soy in Argentina
87	KENNETH C. SHADLEN The Patent Policy Trilemma
106	Book Review
108	Editors of the Special Issue and Authors
III	Impressum

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**Trading Knowledge: The Southern Dimension
of TRIPS and GATS**

Since the conclusion of the GATT Uruguay Round in 1994, both the content of human intellectual activity and its dissemination have undergone a fairly contested process of commodification. Under the regime of the World Trade Organization (WTO), cultural and technological inventions have been subsumed under a far-reaching intellectual property rights agreement (TRIPS), by which intangible ideas are transformed into tradable goods. At the same time, the dissemination of human experiences and thoughts, for instance in education and broadcasting, is increasingly perceived as a merchantable service (GATS). The predominant focus on the exchange value triggers a redefinition of knowledge itself, while at the same time altering the modes of its production and distribution (May 2000, 2002).

In an historical perspective, the WTO agreements of the mid-1990s can be regarded as the codification of powerful interests' preferences in industrialised countries which succeeded in imposing their perspective on the relationship between ideas and property on a global scale (May/Sell 2006; Drahos/Braithwaite 2002). While recent developments, most notably in Europe, show that the fixation of ever-expanding property rights does not remain unchallenged in industrialised countries themselves (Haunss 2012; Schneider 2010; Eimer 2011), the commodification of knowledge has met even more resistance throughout the Global South. Since the early 2000s, Brazil and many other emerging and developing countries claim, through various international organisations, that the presumed incentive effects of private property rights for ideas must be weighed against the limitations in the adaptation and dissemination of technologically, socially, and culturally relevant knowledge (May 2008; Sell 2010; Muzaka 2010). More-

over, they argue that the WTO regime enshrines a specific European and Anglo-American concept of knowledge production and distribution that ignores alternative traditions and cultures (Goff 2009; Helfer 2004).

While scholars have recently started to address the distributional and ideational conflicts on the international level (e.g., May 2008; Sell 2010; Morin/Gold 2010), domestic controversies on the calibration of property rights for intangible assets have remained rather neglected for the time being. The lack of in-depth case studies on emerging and developing countries, however, prevents a comprehensive understanding of policy trajectories in this field, since the WTO agreements only provide a framework that leaves considerable room for interpretation during the implementation of the agreements on a domestic level (Sell 1995). This special issue shall shed some light on the implementation of knowledge-related international commercial law in the Southern hemisphere.

Generally, the articles in this issue confirm the observation that the definition of property rights for knowledge still remains a prerogative of the nation state (Drahos/Braithwaite 2002: 28). As Ken Shadlen and Christof Mauersberger (both in this issue) show, national regulations play a pivotal role for the transmission or reinterpretation of the international framework. The notion of state sovereignty, however, does not help us to predict what developing countries and emerging economies actually do when implementing TRIPS and GATS. Governments may use their prerogatives in order to confirm or even to reinforce the commodification of knowledge, as stipulated by the international agreements (Randeria 2007). But they may also try to carve out loopholes in order to use the existing 'policy space' for their own economical, developmental, social, and cultural priorities (Gallagher 2007; Eren-Vural 2007). Although the articles of this special issue do not suggest generalisable propositions on Southern governments' preferences and strategies, they reveal distinctive tendencies as well as potential causal mechanisms and behavioral patterns.

Most of the articles in this special issue put TRIPS and GATS into perspective. While the WTO agreements are crucially important, they are embedded in a 'regime complex' (Raustiala/Victor 2004) of sector-specific conventions and resolutions, bilateral agreements, and regional arrangements (Helfer 2004; Sell 2010; Drahos/Maher 2004). In some cases, the multitude of internationally recognised norms helps governments to limit

the monopolistic position of corporate actors (see, for example, Mauersberger in this issue) or justifies the rejection of multinational firms' claims within other jurisdictions (see Rauchecker). In the context of South-South cooperation, emerging and developing countries can potentially use regional arrangements in order to counterbalance the demands from industrialised countries (see Shadlen). In other cases, however, sector-based or bilateral agreements may provoke a 'TRIPS plus effect' (see Graf) or favour the interests of industry actors, both in industrialised and emerging economies, to the detriment of other societal groups (see Eimer).

Although governments do make direct use of international agreements for their own purposes, the impact of international regulations often seems to depend on transnational actors which refer to these norms in order to substantiate their claims on a domestic level (Keck/Sikkink 1998; Risse 2002). Multinational firms use TRIPS to justify demands for all-encompassing private property rights in the seeds sector (see Rauchecker), and transnational environmental NGOs refer to international environmental law in order to advance the commodification of biological resources and associated traditional knowledge (see Eimer). However, transnational civil society actors and academics can also transmit alternative norms such as common good perspectives from one jurisdiction to another (Dobusch/Quack 2010; Biehl 2007). Such a transfer may be facilitated by regional institutions (see Mauersberger) or ethnic relations (see Eimer). Although transnational actors are usually thought of as non-public entities, Ken Shadlen shows that an increased transnational bureaucratic cooperation could also lead to a more careful (and thus more limited) definition of private property rights in the field of patentable technologies.

The impact of transnational actors seems to depend on their ability to engage in partnerships with domestic pressure groups (Kennedy 2007; Acharya 2004). Markus Rauchecker demonstrates that Monsanto's failure in Argentina can at least partially be explained by its detachment from local farmers' organisations with regard to the question of royalties. Domestic actors, however, do not necessarily have to engage in partnerships with foreign allies in order to gain influence, if they can rely on their already established contacts with decision-makers (Shaffer et al. 2008; Pedersen 2008). Christof Mauersberger's article illustrates how domestic actors can build up considerable pressure on policy leaders to uphold the commodi-

fication of knowledge and knowledge-related services. On the other hand, however, domestic actors may also reinforce the private property perspective of the WTO agreements. Without Mexican scientists' approval of patent-based research (see Graf), and without the support of Indian corporations for the commodification of traditional knowledge (see Eimer), TRIPS and related agreements could not have attained the level of legitimacy they enjoy in emerging economies, at least in specific sectors.

Taken together, the articles in this special issue show a considerable variety of different constellations of international norms, transnational actors, and domestic pressure groups. These constellations support the WTO-inspired commodification of knowledge or help to advance alternative perspectives, or do both at the same time.

The article of Patricia Graf generally confirms the trend of globally triggered knowledge commodification in emerging countries. Her analysis of the Mexican innovation system assesses the prospects for technological learning in the light of two international agreements, namely TRIPS and NAFTA. The contribution not only points to a reinforcement of TRIPS provisions through NAFTA, but also reveals that the ways in which global norms affect technological learning are sector-specific. Graf's article hence gives us a gentle indication of the existence of sectoral knowledge societies.

Similarly, Thomas R. Eimer discusses a predominantly capitalist perception of knowledge in the international framework in his study of traditional knowledge regulation in India and Brazil. While the presence of a diversified 'regime complex' enables non-commodifying national approaches in the first place, deviating regulations of traditional knowledge, as those in Brazil, seem to be becoming destabilised due to certain undermining mechanisms at the international level. The article thus draws our attention to the sustainability of domestic regulation patterns in the global context.

The contribution is followed by the articles of Christof Mauersberger and Markus Rauchecker who both take up the role of non-state actors. Mauersberger analyses the media markets in Argentina and Brazil in the conflicted area between commercial markets and communication rights. He illustrates that (transnational) social movements and academics can (re)frame the debate about media regulation by referring to global human rights norms. Furthermore, his study points to the fact that social movements can also inspire reforms in other countries. Brazilian activists are

learning from their Argentinean counterparts and are progressively integrating internationally codified communication rights into their approach.

Markus Rauchecker takes the perspective of a multinational company. His article analyses the appropriation of rent between farmers and seed breeders in the specific case of RR Soy in Argentina. He traces the attempts of Monsanto to generate a universal norm of remuneration within a 'regime complex' of contradictory international and national legal norms. Rauchecker finds the alliance between the Argentinean government and the farmer's associations to be one key factor in the failure (so far) of Monsanto's various proceedings.

Finally, Ken Shadlen deals with the national implementation of patent policies. He examines the trade-offs countries face in pursuing three objectives, namely speed of examination, patent quality, and expenditure of resources, and presents those as a trilemma where only two (of the three) can be maximised at the same time. Shadlen suggests we regard patent quality as the most important objective and discusses cooperation arrangements for developing countries to minimise resources spent while retaining high examination quality.

The limited selection of articles in this special issue can only offer a snapshot of the dynamics that are evolving around the commodification of knowledge and its countercurrents in the Southern hemisphere. However, it may stimulate further research directions in this policy field. It seems that the policy trajectories are strongly influenced by regional patterns. With the exception of Mexico, Latin-American countries seem to be resisting the global trend towards commodification, whereas Asian countries like India rather try to use it for their own economic advantage. More research is needed to assess whether these findings indicate a general tendency and what we could expect in African countries, which have not been addressed in this special issue. Given that regional policy patterns can be identified, further research should also ask for their sustainability against the backdrop of an international regime complex that predominantly favors the commodification of knowledge. If it can be shown that alternatives to the WTO regime are politically viable, socially accepted, and economically sustainable, we might imagine the emergence of a knowledge society in the Global South that not only imitates industrialised countries' blueprints, but adds creative and perhaps even more welfare-enhancing priorities to the currently hegemonic formations.

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