

CEC Working Paper

**Report on Negative Effects of
German Politics and Investments
in India**

2005



Centre for Education and Communication

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Introduction

The pertinent issue in this capital movement from Germany to India might involve violation of human rights by the German firms. Some German firms instead of contributing to the development process as part of their corporate social responsibility (CSR) have disregarded these responsibilities in India. Many MNCs in India are also involved in reducing the bargaining power of the Indian labor. These strategies include ban on new recruitment's in unionized categories, parallel production, Voluntary Retirement Schemes.¹ Since the inception of liberalization process in India concerted efforts have been made by both international organizations, Government of India, the various international and Indian Non- Governmental Organizations to protect the right of Indian citizens. Here are some instances for protecting human rights.

Case Study 1: Greenpeace Action against Bayer incase of GM Food

Bayer AG is ranked thirty fifth among the World's top 100 non-financial TNCs in terms of foreign assets in 2000. It has operations throughout the world with total assets accounting for 33,917 across the globe, employing around 1, 22,100 labor with trans-nationality index in terms of employment being 67.7%.² The U.S. is its largest market of Bayer products. This company also has facilities in Mexico, Brazil, South Africa, India, Thailand, China, Japan and many European countries.

Company Profile of Bayer

It is an international, research-based company specializing in life sciences, polymers, and chemicals. Bayer AG holds a key position in four market sectors: healthcare (pharmaceuticals), agriculture (seeds and agro-chemicals), polymers (plastics, synthetic rubber, coatings) and chemicals (chemical raw materials and specialized chemicals).

Bayer HealthCare covers the fields of animal health, genetically produced medicines, over-the-counter products, diagnostic products and prescription drugs. Bayer HealthCare is a legally independent company comprising five divisions: animal health, biological products, consumer care, diagnostics and pharmaceuticals.

The crop-science business segment comprises of the crop protection and animal health business groups. The crop protection business group researches and develops new crop protection agents to control diseases, pests and weeds in food crops.

The chemicals business group focuses on the production and marketing of basic and fine chemicals businesses, which are among the core activities of the Bayer Group. The operations of the independent subgroup include the chemical businesses of Wolff Walsrode and H.C. Starck, a major producer of refractory metal and ceramic powders for the electronics industry.

1. For greater details see, Ratnam venkata, C.S, Impact of New human Resource policies on Industrial Relations, Labour File, 2000

2. For Greater details see, World Investment Report 2002: Transnational Corporations and Export Competitiveness (New York: UNTACD, 2002), p. 98. Trans-nationality Index in terms of employment measures foreign employment to total employment.

Bayer Material Science is one of the world's largest producers of polymers and high-performance plastics. It has developed products for use in the automotive and construction, electronics, household, sports and leisure sectors. The business and administrative services of the Bayer Group are provided by Bayer Business Services. This service company is a market-oriented service provider with full operational responsibility for its activities.

Bayer has a distinguished history of corporate crimes ranging from the manufacture and sale of controversial drugs (Heroin, Ciproxin and Baycol) to the development of chemical warfare agents and poisons (Chlorine Gas, Zyklon B and VX).³ During the period preceding the Second World War it was a part of IG Farben which worked with Third Reich.⁴ After the war Farben was broken up into BASF, BAYER and Hoechst (now called Aventis), and the three firms still cooperate closely and exert a large influence on German and European politics.

Bayer through its association with various groups throughout the world has become part of every common man's life. In India it has been criticized for anti-dumping cases, violation of labour laws and environmental degradation.

Case against Bayer in India by Greenpeace

- A. Description of the case: Greenpeace in India is vocal against Bayer operations. Greenpeace is campaigning against Bayer on two important grounds firstly, in field of pesticides and its Genetic Modification Organism project. According to the Greenpeace India, the Pro Agro (a wholly owned subsidiary of Bayer) has conducted field trials of Cabbage and Cauliflower genetically modified with controversial Cry9c⁵. The Cry9C gene protein is suspected to be a human allergen. The United States has acknowledged this fact and refused to certify it as fit for human consumption.⁶ Greenpeace led a campaign against this issue leading to the discontinuation of this project through Bayer. Issues raised by Greenpeace India are important in terms of food security, health concern of Indian citizens along with protection of environment. These experiments might cause adverse impact on the environment if Cry9c entered food chain, secondly depending upon MNCs for seed production and food products will have important bearing on both food security and health of the people.⁷
- B. ***National actor involved is:*** Headquarter of Greenpeace India is in Bangalore (India) which took action against Bayer (AG)
- C. ***Human Right violated are:*** Right of the right to Food Security and Health as enshrined in Universal Declaration on Human Rights.

Case Study 2. Claas India (India) Ltd

Claas India (Indiat) Ltd is 100% subsidiary of Claas a leading German company in Europe specializing in agricultural manufacture. It is engaged in producing Manufacturing Combine Harvester machines. Claas

3. For greater details see, Corporate crimes, www.corporatewatch.org.uk/profiles/bayer/bayer3.pdf.

4. *ibid*

5. For Greater details see, Starlink(Cry9C) Corn Fact sheet, www.greenpeaceindia.org/Cry9C_Quotes_facts.pdf, pp.1-3

6. For greater details see, Corporate crimes, www.corporatewatch.org.uk/profiles/bayer/bayer3.pdf.

7. *ibid*

India (India.) Ltd is situated in Faridabad, Haryana. For nearly two years it was involved in controversy pertaining to the recognition of one of the oldest & largest Trade Union of Haryana.

The Claas India Limited got separated from the Escorts Group in August 2002 and the new company management declared that it would not recognize the union of the Escort employees, as the company was a separate entity and had nothing to do with the Escorts Group. The All Escorts Employees Union did not accept it and thus it went on strike. The matter was settled with management directly negotiating with each worker under section 18(1) of Industrial Dispute Act of 1947. Presently about 275 employees are working in this factory with management willing to recognize Union of the employees of Claas India if necessary. Management regards employment generation and transfer of new technology which is environmental friendly as their part of Corporate Social Responsibility (CSR). This potential case study could highlight how the management policy of Claas India (pvt) Ltd. dampened the formulation of trade Union and collective bargaining so vital for protection of labour from organized capital.⁸

National Body involved in the case: National Trade Union, Hind Mazdoor Sabha (HMS), affiliate of ICFTU in India

Documents available for the case: copy of the agreement signed between the labour and the management is available at Labour Commission office

Human Right issue: Right of the labor to organize against the Capital

Case Study 3 : Bayers involvement in Hybrid Cottonseed Production in states of Andhra Pradesh and Karnataka⁹

The issue of child labour in hybrid cottonseed production in the state of Andhra Pradesh, India has recently received national and international media attention. A number of initiatives to address the problem have been undertaken by the Government, Non Governmental Organisations (NGOs), the seed industry and international agencies like ILO-IPEC, UNICEF and UNDP. Report by Business and Community Foundation and Plan International in 2001 and India committee of Netherlands in 2003 points towards use of child labour in cottonseed sector by multinational corporations. A subsequent campaign was initiated by NGOs, trade Union in Netherlands, Germany, UK and USA has put the multinational corporations who are producing and marketing hybrid seeds in India under pressure. The three NGOs viz-Germanwatch, Coalition against Bayer Dangers and Global March, Germany later on initiated the OCED complaint against Bayer a corporate study. In this study it was found that subcontractors of Bayer had employed about 1,500 children under the age of 15 in the production of cottonseeds, Andhra Pradesh. Multi-national instead of maintaining higher labour standards used middlemen chain to bring their cost of production down. These child labourers were exposed to pesticides for long hours. They were also were lured to work harder by giving them chocolates and taking them out ones in the week to watch cinema. The report raises important issue of girl child and labor rights in India.

8. As told by General Secretary of Hind Mahasabha, Mr. Nagpal, 7 March 2005, Unrest Dogs German MNCs, Tribune, 22 August 2004 and As told by Management of CLAAS INDIA (pvt) Ltd.

9. For Greater details see, Venkateswarlu Davuluri, Child Labour in Hybrid Cottonseed Production in Andhra Pradesh: Recent Developments (Hyderabad: India Committee of the Netherlands, 2004)

Human Rights Issue involved are:

- Right to Education.
- Right to Food Security
- Right to form Trade Union
- Right to Development

Action taken by the victims:

Research and advocacy campaign for girl child rights in India were undertaken by various organisations. The report by Davuluri Venkateswarlu and Lucia Da Corta gives details about the measures undertaken by the Government of Andhra Pradesh, intervention by International organizations ILO-IPEC, UNICEF and UNDP and Association of Seed Industry in respect to girl child education in India.

Case Study 4 'Dumping' as a legal offence under WTO and Indian Constitution

The WTO agreement does not pass judgment whether practice of anti-dumping is a fair practice or not. Its focus is on how governments can or cannot react to dumping it disciplines anti-dumping actions, and it is often called the 'Anti-Dumping Agreement'. In case of India the legal action is constituted under sections 9A, 9B and 9C of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed there under form the legal basis for anti-dumping investigations and for the levy of anti-dumping duties. These laws are based on the Agreement on Anti-Dumping, which is in pursuance of Article VI of GATT 1994.¹⁰ Anti- dumping measures are constituted when a casual link between the 'dumped imports' and 'material injury' to the domestic industry is established in terms of price undercutting, price depression or dampening increase in wages, employment or productivity. Directorate General of Anti-Dumping and Allied Activities investigated presently anti- dumping cases against German companies and it imposed anti-dumping duties on them.

- Case 1 Anti- Dumping case was constituted against Poland, republic of Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and European Union for allegedly dumping Oxo Alchols to India.
- Case 2 Anti-dumping investigation was constituted against the imports of aniline from European Union
- Case 3 The anti- dumping case of Sodium Hydrosulphite originating from Germany and Korea
- Case 4 Anti-dumping investigation concerning imports of Sodium Nitrite from European Union (EU) and Taiwan
- Case 5 Anti Dumping Investigation concerning imports of Vitamin AB2D3K originating in or exported from European Union, USA, Thailand and Singapore

10. For greater details see, Government of India(2004), Directorate General of Anti- Dumping and Allied activities, Ministry of Commerce, Anti- Dumping Guide, New Delhi. Dumping takes place when an exporter sells a product to India at a price less than what it exists in its domestic market. However, the phenomenon of dumping per se is not condemnable as it is recognized that producers sell their goods at different prices in diverse market. It is also not unusual for prices to vary from time to time in the light of supply and demand conditions. It is also recognized that price discrimination in the form of dumping is a common international commercial practice. However where the dumping causes or threatens material injury to the domestic industry of India, the Designated Authority initiates necessary action investigations and imposes anti-dumping duties.

Directorate General of Anti-Dumping and Allied Activities

Designated Authority in the Ministry of Commerce is responsible for initiating proceeding against the foreign firm if the domestic industry affected is able to establish the link between the material injury and alleged case of dumping. In many of these cases filed against German firms designated authority found that material injury was inflicted resulting in depressing of profits, wages of workers and also sometimes jobs to workers.

Human Rights issues involved in these cases are:

These anti-dumping measures affected the right to employment of the workers, right to sustainable development and natural resources as claimed by the WTO. The preamble of the Marrakesh Agreement recognizes the objective of sustainable development while allowing for the optimal utilization of world resources. The General exception clause of GATT 1994 also provides that nothing in this agreement shall be construed to prevent the adaptation or the enforcement by any contracting party of measures relating to the conservation of exhaustible. The right to employment the preamble of Marrakesh agreement recognizes that the parties to this agreement should conduct their relations in the field of trade and economic endeavor with the view of ensuring full employment.

Role of European Commission and German Embassy in these cases:

The Designated Authority (DA) informed both German Embassy and incase of the involvement of the European Union the EC Delegation about the alleged dumping case. A copy of letter and questionnaire sent to the exporter was also sent to the concerned Embassies along with the list of questionnaire. DA solicits the concerned authorities to ask the exporter to fill the questionnaire and cooperate in investigations. During the preliminary inquiry European Commission even expressed their opinion whether imports by the alleged German Company constitute dumping as a legal offence.

Action taken:

Anti-dumping duty was imposed on the goods.

Preface

Centre for Education and Communication is pleased to submit this report to FIAN, Bread for the World and the Protestant Church Development Service (EED) as part of its project intended to present during the next two years a parallel report to the Committee on Economic, Social and Cultural Rights of the United Nations about the negative effects of German politics regarding economic, social and cultural rights in the countries of the South.

This report on negative effects of German investments in India was prepared by Ms. Priyanka Kumar, assisted by Ms. Pallavi Mansingh.

Given the constraints of time and financial resources, this study is based primarily on secondary sources. In one case, extensive field survey was conducted.

CEC would be happy to provide you with supplementary information, if asked for.

J John
Executive Director
Centre for Education and Communication

New Delhi
April 06, 2005

The Present Study

Background of Indo- German relations

Within the European Union Germany is the largest economy, the most populous country and world's third largest economy. It is India's second largest trading partner within the EU and also a major source of technology and investment for India.¹¹ India is one of the first developing countries to have established diplomatic relations with Federal Republic of Germany (FRG) in 1951. In October 2004, Gerhard Schröder Chancellor of Germany visited India in order to strengthen its relations giving priority to economic development and science.

The Chancellor of Germany Gerhard Schröder was accompanied by German Education and Research Minister Edelgard Bulmahn, Parliamentary State Secretary Ditmar Staffelt, high-level officials, business and media delegation including the powerful Thyssen Krupp. To, India the bilateral relations with Germany is crucial since the latter is an important member of G-8 & European Union.

Dimensions of Indo-German Relations

Indo- German bi-lateral Trade

Indo- German ties have been close and amicable. India offers Germany a huge potential for foreign trade and investments. Germany is the fourth largest trading partner accounting for about 5% of India's global trade while India ranks seventh among Asian countries exporting to Germany. Indian imports from Germany include machinery, chemical & pharmaceuticals, iron and steel products, vehicles and electronics and precision instruments. India's industrial base is developing at a faster pace. Due to this, the Indian demand for capital goods and steel products rose. With the result the imports from Germany, which is India's most important capital goods supplier grew at an impressive rate of 33.9% . While in case of India nearly one third of our exports are accounted for by textiles and garments and one-fourth by leather and leather goods . Imports from Germany to India continue to grow faster than Indian exports to Germany though of late diversification of Indian exports continues.

Indo- German Investment Scenario

India has one of the most transparent and liberal FDI regimes among the emerging developing economies. FDI flows are usually preferred over other forms of external finance because they are non-debt creating, non-volatile and their returns depends on the performance of the projects financed by investors¹²

The Union government has been continuously opening up new sectors to foreign investment, while enhancing FDI limits in existing sectors. The year 2002 saw the opening up of the defence, print media, housing, real estate

11. See, Federal Republic of Germany (2004), Federal Ministry of Economics and Labour, Annual Economic Report, Berlin

12. For greater details see, Government of India (2001), Office of Economic Adviser, Ministry of Commerce and Industry, Handbook of Industrial Policy and Statistics, 2000, New Delhi.

and urban mass transportation sectors to rest of the world. 100 per cent FDI is allowed in most sectors except telecommunications (49 %), insurance (26 %), banking (49 %), aviation sector (40 %) and small scale industries (24 per cent). This year government of India will selectively open retail sector to rest of the world. The move to open retail sector to FDI is complex issue since 98% retail is in unorganized sector¹³. India has already opened a number of its sectors to domestic and foreign private investors such as power, mining, coal and pharmaceuticals (For Statement on FDI and Foreign Technology cases refers appendix1).

USA continues to be the number one country in terms of total number of approval of FDI sanctioned by GOI. Germany on the other hand is ranked fourth after Mauritius followed by UK. Within Europe UK has replaced Germany as number one source of collaboration with India. Yet Germany continues to be the major source of FDI and technology in India. In India total approved FDI since 1957 is 37,196 till 2002. The numbers of Indo-German collaboration among them were 5,102 till 2002. For greater details see table 1 and 2.

Table 1 :

Nature of Indo- German Collaborations	
Indo-German Collaborations	Number
Total no. Collaborations sanctioned	5102
Actual nos. of Collaboration in operation	1595
Joint Ventures	611
100% subsidiaries	149
Nos. of Indian firms involved	780
Nos. of German Firms involved	777

Source: Directory of German Companies in India Part 2 (Mumbai, Indo German Chamber of Commerce, 2003)

Table 2:

The Percentage of German Holdings in Joint Ventures	
Percentage of German Holding	No. of Joint Ventures
0-10	23
11- 25	29
26	18
27-39	32
40	31
41-49	15
50	81
51-74	114
75- 99	43
100	149
Not known	76
Total	611

Source: Directory of German Companies in India Part 2 (Mumbai, Indo German Chamber of Commerce, 2003)

13. For details see, Bamzai Sandeep and Joshi Deepak, "FDI in retail sector is Next", Hindustan Times, 26 February 2005, p.15.

The percentage of German shareholding in the 611 collaborations varies from 2.5% to 100%. Of late the role of German firms in these Joint Ventures has increased. According to the table there are more firms with more than 50% voting rights.

Table 3 :

Regional Distribution of Indo- German Collaborations¹⁴ in 2002

States	2002
Maharashtra (Mumbai- Pune)	45(29)**
Delhi	32 (24)
Karnataka (Bangalore)	19(16)
Tamil Nadu (Chennai, Coimbatore)	16(16)
Haryana (Gurgaon, Faridabad)	12(7)
Gujrat (Ahmedabad, Baroda)	10(9)
West Bengal (Kolkatta)	7(4)
Andhra Pradesh (Hyderabad, Secundrabad)	6(4)
Goa (Panaji)	4(4)
UP (Kanpur, Noida)	4(4)
Kerala (Cochin and Trivandrum)	3(3)
Rajasthan (Jaipur,Udaipur)	1(0)
Pondicherry	1(1)
Bihar (Ranchi and Jamshedpur)	0(0)
Madhya Pradesh (Indore, Bhopal, Bhilai)	0(0)
Punjab (Chandigarh)	0(0)
Himachal Pradesh	0(0)
Total	160 (121)

Collaborations sanctioned by the Indian Government
 * Joint Ventures in Brackets
 Source: Directory of German Companies in India Part 2 (Mumbai, Indo German Chamber of Commerce, 2003)

In the year 2002 160 Indo- German Collaborations were located in India. Regional distribution of these firms broadly conforms to the earlier pattern of Indo- German Collaborations with the same regions continuing to attract the bulk of collaborations even today.

14. The distribution of German investments is based on the data collected in 2002 and can be collaborated both by SAI or IGCC database. For details see, Annual Review 2003: Indo- German Economic Cooperation (Mumbai: Indo- German Chamber of Commerce, 2003) or visit the website of www.siadipp.nic.in

Table 4

Share of Germany in Sector wise Investment in India (1998-2002)

INDUSTRY GROUP	2002	2001	2000	1999	1998
Industrial machinery	21(15)	29(19)	34(16)	32(16)	39(16)
Misc. mechanical & engineering industries	28(22)	21(16)	29(18)	29(14)	16(5)
Electrical equipment	21(13)	19(13)	27(12)	15(11)	9(3)
Chemicals & Pharmaceuticals	16(13)	18(14)	18(10)	29(13)	32(16)
Automobiles & Transportation	18(14)	15(11)	15(10)	23(15)	19(6)
Computer software	13(10)	12(12)	15(15)	7(7)	4(4)
Machine tools	6(3)	7(5)	8(7)	9(7)	11(5)
Financial & management services	2(2)	5(5)	3(3)	1(1)	5(4)
Textiles & garments	6(4)	5(5)	5(3)	3(3)	6(5)
Metallurgical industries	1(1)	4(4)	0(0)	0(0)	2(1)
Electronics and Telecommunications	3(3)	3(3)	6(5)	5(2)	9(7)
Engineering consultancy services	3(3)	3(3)	6(5)	11(11)	(2)
Trading	4(4)	3(3)	1(1)	(7)	8(8)
Hotels & tourism	3(3)	3(3)	2(2)	4(2)	3(3)
Household appliances	2(1)	2(1)	3(3)	5(5)	9(7)
Industrial instruments	1(0)	2(1)	10(7)	7(6)	6(4)
Leather & leather goods	0(0)	1(1)	2(2)	4(4)	6(6)
Paper & pulp products	1(1)	1(1)	2(2)	5(5)	1(1)
Rubber & plastic goods	0(0)	1(1)	7(4)	2(1)	3(1)
Cargo shipping & other services	5(5)	1(1)	1(1)	1(1)	0(0)
Cement & gypsum products	0(0)	1(1)	0(0)	0(0)	0(0)
Jewellery & precious stones	0(0)	0(0)	2(1)	3(3)	0(0)
Food & beverages	1(1)	0(0)	1(1)	2(2)	4(3)
Glass & ceramics	1(1)	0(0)	1(1)	2(2)	4(3)
Boilers & steam generation plants	0(0)	0(0)	0(0)	2(1)	0(0)
Prime movers	1(1)	0(0)	0(0)	0(0)	1(1)
TOTAL	160(121)	156(123)	201(131)	208(139)	193(108)

*collaborations sanctioned by the Indian Government

* * Joint Ventures in brackets

Source: SIA Website & IGCC Database

In terms of industries Engineering and related industry has been the dominating sector during 2002. 84 collaborations were approved during this period. Auto and component sector occupied the second position with 18 approvals followed by 16 in the Chemicals including Pharmaceuticals. Information and Technology (IT) was fourth with 13 approvals.

YEAR	FDI Approved (In US\$)	FDI Inflow (In US\$)	% of Realisation Rate (In US\$)
1991	17.1	2.7	15.78
1992	33.0	23.4	70.90
1993	57.4	13.1	22.82
1994	181.5	44.6	24.52
1995	426.6	75.5	17.70
1996	447.2	137.4	30.72
1997	601.6	158.5	26.37
1998	216.1	158.7	73.44
1999	272.1	47.2	17.34
2000	138.1	77.6	56.19
2001	92.0	107.1	116.41
TOTAL (1991-2001)	2478.1	845.7	34.07

Source: SIA Website

The inflow German FDI from 1991-2001 is 845.7 million compared to FDI approval being 2478.1 while the realization rate in terms of percentage is less than 50%. However as compared to 2000 the realization rates were much higher around 116.41%.

Development Cooperation and Technical Assistance

Germany is India's third largest bilateral provider of development assistance, after Japan and the UK. The overall commitment of the German government for bilateral development co-operation in the year 2004 was at 144 Million Euros.¹⁵

Germany's development cooperation measures are carried out by the German Agency for Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit GmbH, GTZ) and the Reconstruction Loan Corporation (Kreditanstalt für Wiederaufbau, KfW) on behalf of the Federal Ministry for Economic Cooperation and Development in coordination with the Federal Foreign Office. The GTZ concentrates on technical cooperation (advisory services), the KfW on financial cooperation (investment projects).

Financial assistance has been extended to India in the areas of social, physical infrastructure, rural development, environment, education, finance, private industry and environment. German-Indo cooperation is designed on a cross-sectoral basis with the aim of contributing to poverty alleviation, the goal being to cut poverty by 50% by 2015.¹⁶

The programme of action 2015 for Poverty Reduction is the most remarkable policy, which got approval in April 2001. The most important aspect of this policy is poverty reduction in developing countries necessary for sustainable development. The programme calls for better synergies of international, multilateral and partner country actors in aid disbursement. There is growing importance of multilateral aid programme rather than bilateral initiative.

The programme of Action 2015 focuses on Germany's contribution to halving extreme poverty worldwide. In pursuing this objective indirect approach to poverty reduction including building larger infrastructure projects, support for macro-policies, institutional building and private sector development took a relatively larger share of ODA than the direct approach.

This programme does not include prioritization of countries or sectors. There are some shortcomings in this programme. Firstly, Germany does not have publicly disclosed opinion surveys on development Co-operation. It appears; nevertheless that public support has been on a downturn since 1990s. It is primarily due to domestic conditions prevailing in the country.

The modernization of eastern Germany continues to be costly. Germany's aging population combined with high unemployment rate has pushed social security outlays to a level exceeding contributions from workers. Structural rigidities in the labour market including setting of wages on national basis have made unemployment a chronic problem. The focus of the German public thus shifted to these issues rather than Development Co-operation. Furthermore a general 'donor fatigue' or ineffectiveness of aid appears to exist in the minds of the people.¹⁷ Secondly, the new policy will not apply to the activities of NGOs or länder. India

15. For greater details see, Development –Cooperation Overview www.germanembassy.org

16. *ibid*

17. For greater details see, Development Cooperation Review: Germany. Development Assistance Committee Journal , Vol. 2(4), 2001,p. 24

though will continue to be an important recipient of development cooperation aid.

A. 1. New Cases to be explored

The parties to the Dispute	Nature of the problem	Case reported : Source	Progress in the case
Delhi income tax vs. Lufthansa	Tax evasion by Lufthansa	The Delhi income tax department took action against several foreign credit card companies, airlines and organization offering centralized reservation services ¹⁸	Initiated
Motor Industries company (MICO) vs. Employees of the Bangalore plant	Right to adequate standard of living and to organize trade Union	The employees of the MICO Bangalore plant were demanding wage increase for the years 2001-2004. The management was on the other hand more concerned about productivity. The deal was struck between the management and workers ¹⁹	Yet to be initiated

18

A report by Mr. Kavaljit Singh of Public Interest Research Group has critically examined investments by the German corporations into India from the period 1991-96. The report is entitled “The Reality of Foreign Investments: German Investments in India (1991-96)”. According to the report Indian government has given permission to a large number of investment proposals from Germany without looking into their implications on people, economy and natural resources.

18. For details see, fernandesVivian, Many MNCs land in Indian Tax Net, Tribune, 21 May 2004.

19. For details see, MICO Employees calls off strike, 29 June 2003.

Case Study 1: Green Peace Action against Bayer in case of GM Food

Introduction

Genetic engineering introduces changes at the most fundamental level involving experimentation with DNA. It is more advanced than Hybridization since the latter only entail crossing of two plants or lines of dissimilar genotype to produce HYV. On the other hand Genetic Engineering refers to inserting a novel gene(s) at random into the DNA of another organism. It is new technology that is far more developed and could be more environmentally damaging than Hybridization process.

HYV technology was the cornerstone of green revolution in India. However, gradually the negative effects of this technology came to light when increasing input costs indebted large farmers in the countryside such as Punjab. The excessive use of fertilizers reduced the marginal productivity of their land and made them more indebted while at the same time increased the control of big corporations on the lives of farmers in India.

The issues of BT crops are far more complex since it uses technique of genetically modifying organism to produce desired result. The experimentation at the most fundamental level induces irreversible changes in our food chain the consequences of which are still unknown. Secondly, it makes farmers all the more dependent upon the big corporate giants than in case of HYV. There are many fundamental issues involved in introduction of BT technology in India in respect to consequences on food security, implication on health of the common man, issues of rights of farmer to conserve seeds, corporate control and implication of these experiments on environment and ecology of India. In India MNCs, which have invested in GE are Dupont, Eli Lilly, Monsanto, Caterpillar, GM, Hewlett Packard, Motorola, Bell Labs, Daimler Chrysler, Intel, Texas Instruments, Cummins, Microsoft, IBM, Toyota, Mitsubishi, Samsung, LG, Novartis, Bayer, Nestle, Coca Cola and McDonalds.²⁰ These companies promote genetic engineering as a clean technology with three advantages. The three basic advantages are first, it is environmentally safe and friendly, resistant to pests thus lower the cost spent by farmers on pesticides and third it increases the crop yield thereby helps in poverty reduction.

At the time Green peace took action against Bayer GMO both public and private institutions in India conducted experiments. In fact they were at different stages of approval process. The following table gives details about the companies, which proposed to commercialize these plants along with the characters being inserted in it. According to this table, 4 companies and 7 public research institutes attempted transgenic manipulation in 11 crops. Pro Agro a hundred percent subsidiary of Bayer (India) was one of them. Actors involved in this case

20. For details see, www.indiainvestment.nic.in

Profile of GMOs in India		
Serial no.	Name of the Organization	Crop/Gene/ Purpose
1.	M/s Rallis India Ltd. Bangalore	Bell pepper, Chilli and Tomato (Snowdrop (Galanthus nivalis) Lectin gene): Resistance against pest;
2.	Indian Agricultural Research Institute, New Delhi	Brinjal, Cauliflower and Tomato (Bt gene): To impart lepidopteran pest resistance; Mustard/ rapeseed (Arabidopsis annexin gene): Transformation completed, Greenhouse trial completed, ready for field-trials for moisture resistance stress;
3.	M/s MAHYCO, Mumbai	Cotton (Cry1A(c)): To develop resistance against lepidopteran pests;
4.	Delhi University, South Campus, New Delhi	Mustard / rape seed (Bar, Barnase, Barstar): Plant transformations completed and ready for green house experiments; Rice (Selectable marker genes): Gene regulation Transformations completed;
5.	Jawaharlal Nehru Univ., New Delhi	Potato (Gene expressing for seed protein containing lysine obtained from seeds of Amaranthus plants (Ama-1 gene): Transformation completed and transgenic potato under evaluation;
6.	Central Potato Research Institute, Shimla	Potato (Bt toxin Gene): To generate plants resistant to lepidopteran pests. Ready to undertake Green House trials;
7.	Bose Institute, Calcutta	Rice (Bt toxin genes): To generate plants resistant to lepidopteran pests;
8.	Tamil Nadu Agricultural Univ. Coimbatore	Rice (Reporter genes like hph or gus A): To study extent of transformation;
9.	Indian Agricultural Research Institute sub station at Shillong	Rice (Bt toxin gene): To impart lepidopteran resistance;
10.	M/s Proagro PGS (India) ltd.	Brassica / Mustard (Barstar, Barnase, Bar) and Cauliflower (Barnase, Barstar and Bar): To develop better hybrid cultivars; Brinjal and Tomato (Cry1A(b)): To develop plants resistant to pests; Cauliflower and Cabbage (Cry1H/Cry9C): To develop resistance to pests.
11.	Central Tobacco Research Institute, Rajahmundry	Tobacco (Bt toxin gene Cry1A(b) and Cry1C): To generate plants resistant to H.armigera and S.litura.
Source: www.ris.org.in/dp30-pap.pdf, p. 14		

Bayer (AG)

Bayer AG is ranked thirty- fifth among the World's top 100 non-financial TNCs in terms of foreign assets in 2000. It has operations throughout the world with total assets accounting for 33,917 across the globe, employing around 1, 22,100 labor with trans-nationality index in terms of employment being 67.7%.²¹ It is an international, research-based company specializing in life sciences, polymers, and chemicals. Bayer AG holds a key position in four market sectors: healthcare (pharmaceuticals), agriculture (seeds and agro-chemicals), polymers (plastics, synthetic rubber, coatings) and chemicals (chemical raw materials and specialized chemicals).

Bayer HealthCare covers the fields of animal health, genetically produced medicines, over-the-counter products, diagnostic products and prescription drugs. Bayer HealthCare is a legally independent company comprising five divisions: animal health, biological products, consumer care, diagnostics and pharmaceuticals.

21. For Greater details see, World Investment Report 2002: Transnational Corporations and Export Competitiveness (New York: UNTACD, 2002), p. 98. Trans-nationality Index in terms of employment measures foreign employment to total employment.

The crop-science business segment comprises of the crop protection and animal health business groups. The crop protection business group researches and develops new crop protection agents to control diseases, pests and weeds in food crops.

The chemicals business group focuses on the production and marketing of basic and fine chemicals businesses, which are among the core activities of the Bayer Group. The operations of the independent subgroup include the chemical businesses of Wolff Walsrode and H.C. Starck, a major producer of refractory metal and ceramic powders for the electronics industry.

Bayer Material Science is one of the world's largest producers of polymers and high-performance plastics. It has develops products for use in the automotive and construction, electronics, household, sports and leisure sectors. The business and administrative services of the Bayer Group are provided by Bayer Business Services. This service company is a market-oriented service provider with full operational responsibility for its activities.

ProAgro (A wholly owned subsidiary of Bayer)

The Proagro group of companies comprises Proago Seed Company Ltd., Proagro- PGS India Ltd. , Hybrid Rice International (HRI), and MISR Hytech. With exception of the Egypt based MISR Hytech, Proagro group companies the heaquarter is in Hyderabad. The address of the company is 8/1/39, Tolichowki, Hyderabad. The Proagro group is one among the top five leading private seed companies in India.

Progro Seeds company is ranked first in the production of coarse seeds like corn, millet and second in the production of sunflower and grain sorghum. Proago-PGS on the otherhand was a joint venture between Proagro Seed Company Ltd. and Plant Genetic Systems (PGS), a subsidiary of AgroEvo specializes in vegetable seeds. Hybrid Rice International (HRI) is the market leader in India in hybrid rice and is active in other important Southeast Asian Markets. MISR Hytech is active in both hybrid vegetables and field crops for Egyptian, West Asian and North African Markets.

The Proagro group of companies are currently owned by Bayer which is one of the world leading agro chemical company based in Germany. Till 1999 Biogenetic Technologies, a Dutch holding company owned majority of stakes in the ProAgro group of companies. In February 1999, Hoechst Scherling AgrEvo a German bsd MNC acquired 100% stake in Biogenetic Technologies a parental ProAgro group of companies. In 1999 AgroEvo AG merged with Rhone Poulanc AG and formed a new entity called Aventis Crop Science. Bayer purchased the Aventis Crop Science in 2001. Proagro is involved in the production and marketing of both public and private hybrids, Its cottonseed production activity is largely concentrated in Hyderabad.²²

Green Peace (India)

Greenpeace is an independent, campaigning organisation that uses non-violent, creative confrontation to expose global environmental problems, and force solutions for a green and peaceful future. Greenpeace's goal is to ensure the ability of the Earth to nurture life in all its diversity. Greenpeace is an independent,

22. See, Venkateswaru Davuluri, Child Labour and Trans- National Seed Companies in the Hybrid Cottonseed production in Andhra Pradesh(Hyderabad:India Committee Netherlands, 2001), p22.

campaigning organisation that uses non-violent, creative confrontation to expose global environmental problems, and finds solutions for these problems. Greenpeace's goal is to ensure the ability of the Earth to nurture life in all its diversity.

Greenpeace organises public campaigns for the protection of oceans and forests, climatic changes, the elimination of toxic chemicals, prevention of genetically modified organisms, nuclear threat and safe sustainable trade.

Greenpeace has played a pivotal role in, among other things, the adoption of:

- A ban on toxic waste exports to less developed countries.
- A moratorium on commercial whaling.
- A United Nations convention providing for better management of world fisheries.
- A Southern Ocean Whale Sanctuary;
- A 50-year moratorium on mineral exploitation in Antarctica.
- Bans on the dumping at sea of radioactive and industrial waste and disused oil installations.
- An end to high-sea, large-scale driftnet fishing.
- A ban on all nuclear weapons testing - our first ever campaign.

In India the headquarter of this organization is: Greenpeace India, 3360, 13 B.Main, HAL2 stage, Indiranagar, Bangalore-560038 . The drive against Bayer was led by GE campaign division of Greenpeace (India). The basic crux of the campaign was to make aware people aware that Bayer is carrying out experiments involving Cry9c in cabbage and cauliflower. These experiments posed serious threat to food security and could have contaminated food in India.

Defining the case of Greenpeace (India) against Bayer(AG)

In the present case the Pro Agro (a wholly owned subsidiary of Bayer) conducted field trials of Cabbage and Cauliflower that were genetically modified with controversial Cry9c.²³ The Greenpeace on 30 September 2004 campaigned in Mumbai at the headquarters of Bayer Crop Science Central Avenue, Hiranandani, Powai , Mumbai 400076.

Greenpeace asked Bayer to answer critical questions on their genetic field trials.

The questions are as follows:

1. Why is Bayer using the same gene implicated in the Starlink to feed people in India?
2. What bio-safety and health safety assessments, if any, have been conducted and what were the results of the same?
3. What did Bayer do with the GM plants, seeds and produce from these field trials?

²³ For details see, Starlink(Cry9C) Corn Fact sheet, www.greenpeaceindia.org/Cry9C_Quotes_facts.pdf, pp.1-3

The Chronology of events as provided by Greenpeace is as follows:

Greenpeace India campaign against Bayer is based on the fact that Indian public owes an explanation from the MNC about the rationality of using Cry9C protein in GM experiments on cauliflower in India. Cry9C is known to produce insect resistant GE corn which could cause allergies.

Here are some facts about Cry9C which makes it controversial:

- Registered to AgrEvo (now Aventis CropScience) under the trade name of Star Link in 1998, Cry9C corn is the variety of BT corn to be developed for commercial use for animal consumption in US only.
- Star Link corn produces Cry9C protein, a plant pesticide for which there is no history of human dietary exposure.
- In April 1999, AgrEvo petitioned the EPA (India) to permit Cry9C “in or on all raw agricultural commodities” (i.e. for human consumption). The EPA has not yet ruled on this petition due to concern about Cry9C's potential allergenicity.²⁴
- In March 2003 (India) the Genetic Engineering Approval Committee rejected a food aid shipment by CARE and Catholic Relief Services on the grounds that it may contain traces of Star Link corn containing Cry9C gene.

In 2002 Genetic Engineering Committee introduced commercialization of BT cotton in India. It led to widespread protest by the civil society. The spate of suicides among cotton farmer, the growing resistance of cotton pest to insecticides, the higher costs of cultivation, jobless growth especially in rural sector and decreasing returns all prompted debate on benefits accruing to Indian public from Genetic Engineering. At this background Greenpeace in 2003 requested for information on the trials conducted by public and private institutions on various crops from Department of Bio- Technology (DBT).

In 2004 the request of Greenpeace was finally met by the Department of Bio- Technology (DBT). The Department of Bio- Technology (DBT) send them a letter annexed with an internal list of field trials conducted and a Current Science article that contained a list of genetically modified crops that had been given permission for field trials. This paper showed that a particular company had been given permission for field trials with the potentially allergenic Cry9C (StarLink gene) in cabbage and cauliflower. The exact extent of area in which these field trials were conducted is never made public.²⁵ According to the Divya Raghunandan, GE campaigner of Greenpeace India “these experiments were carried out in company plots under controlled conditions and were at earlier stages of experimentation”.

Greenpeace activists on August 2004 had a phone conversation with the senior mustard researcher of the company's biotech division. This researcher gave them reasons to believe that the company had given up their transgenic work on cabbage and cauliflower. They have also abandoned work on mustard, tomato and brinjal. Greenpeace then send a letter to the company asking them whether they had abandoned field trials on GM vegetable crops and why did they do so. There was no response from the company.

24. For greater details see, Regulatory Procedure in India Annex 1

25. It is only after pressure was mounted on the government that the report on field trials of BT cotton is made public and is available on the net.

Finally on 30 September 2004 the Greenpeace organization confronted Bayer (AG) directly. Greenpeace organized an eleven hour protest against Bayer at their headquarters (Mumbai). The activists wanted to expose the high-risk involved in the genetic experiments conducted by the company on popular food crops including cabbage and cauliflower. During this campaign Divya Raghunandan, GE Campaigner, Greenpeace India said, "Considering the high risks to human health associated with this particular gene, Greenpeace is concerned about the implications for consumers, including the farmers that will grow these crops, and we are demanding that the company stop all research using the Cry9C gene and makes all information related to these field trials open to public scrutiny".²⁶ The idea was to confront the company by both media and Greenpeace in order to make people aware about the potential contamination of food crops.

Later the Greenpeace send a letter on October 2004 seeking information about the field trials undertaken by the company. The company responded back to the queries of Greenpeace by simply asserting that it has discontinued all its projects on genetic engineering and is now concentrating on conventional plant breeding.²⁷

Important Events

- In 1998 the Cry9C protein was approved by the US government for animal feed and Industrial purposes. The Cry9C gene protein was suspected to be a human allergen. The United States has acknowledged this fact and refused to certify it as fit for human consumption.
- In September 2000 traces of StarLink were found in corn taco shells and other foods, and over 300 corn products were withdrawn from the US market.
- In March 2003 the Genetic Engineering Approval Committee rejected a food aid shipment by CARE and the Catholic Relief Services on the ground that it may contain traces of StarLink corn containing the Cry9C gene.
- August 2003- July 2004 Greenpeace requested for information on the field trial crops. It came to know of Bayer involvement in the trial through a letter send by DBT.
- August 2004 a telephone conversation with the researcher of biotech division of the Bayer Company made Greenpeace believe that it had given up their transgenic work on cabbage, cauliflower, mustard seeds, tomato, eggplant and brinjal.
- September 30th 2004 Greenpeace campaigned against the company in Mumbai to make information about these trials public.
- 4 November 2004 the Bayer replied back to Greenpeace on the status of transgenic research in India. According to Alope V. Pradhan, Head of Corporate Communications "the projects were discontinued".

Impact and Issues of Concern

The discontinuation of all its projects on Genetic engineering in India and the decision of the company to concentrate on conventional plant breeding research was an important development. It only points to the fact

26. for details see, India: Greenpeace Activists Chain Themselves to Bayer Headquarters Demand Bayer Come Clean on their experiments with GM Food Crops", www.corporatewatch.org.uk

27. For details see Annex 2.

that India nearly avoided a serious contamination of its food crops. It is also important, as India is the second largest country in the world with 80% of population involved in agriculture. The Indian market for agro- chemical and seed companies is enormous. Earlier in March 2004 Bayer announced that they would pull out of GE crop research in the UK. In June 2004 Bayer announced that they would not pursue commercialisation of GE canola in Australia. However it had already violated important human rights of people in India.

Human Rights Violated are

The right to adequate food including right to health are fundamental human rights which flows from the Universal Declaration of Human rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has been reaffirmed in many pronouncements of the international community over the last fifty years.

The Universal Declaration of Human Rights emphasis that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection".

The right to adequate food and health should not be interpreted in a narrow sense or defining in terms of intake of minimum package of calories, proteins and other specific nutrients. The core content of the right to adequate food implies that the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture is important. The accessibility of such food should be in ways that are sustainable and that do not interfere with the enjoyment of other rights. In fact FIAN International (Food First Information and Action Network), International Human Rights Organization for Right to Feed oneself, WANHR (World Alliance for Nutrition and Human Rights) and Institute Jacques Maritain International on September 1997 endorsed the draft legislation on International Code of Conduct on Human Right to Adequate Food and they also defines it broadly to include social, economic and cultural aspect covered by ICESCR definition. In case of Indian constitution there is no binding obligation on the state to ensure right to adequate food and nutrition. However Article 47 of Directive Principle of State Policy imposes duty on the state to raise the level of nutrition, Indian government has also directly intervened from time to time in order to raise standard of living condition and initiated projects such as Integrated Child Development Programme, Mid-day meals schemes or intervention through Public Distribution System.

In the present case this right has been violated since Cry9C is considered to be human allergent and was regarded as unfit for human consumption by the US administration. Later as stated above in this case study in March 2003 the Genetic Engineering Approval Committee rejected a food aid shipment by CARE and the Catholic Relief Services on the ground that it may contain traces of StarLink corn containing the Cry9C gene.

Secondly, the new protein produced by the foreign gene may cause allergies or toxicity. There is scientific agreement that the potential for such risks does exist and in many countries regulations are in place to examine the safety of GE foods. But these testing systems are not full proof. For example, Genetic engineering is designed to produce new proteins not normally present in the plant and these may cause allergies. It may also result in unintended modifications to existing plant proteins, which could make them allergenic. However, it is not possible to predict whether a protein is a potential allergen with any certainty. Another problem is that when any food safety testing is performed on GE crops, it is only short-term - over days or a few weeks. There is no long-term testing or testing for chronic effects of toxicity or nutritional changes. There is evidence that unintended effects of genetic engineering are not uncommon, that potential allergens have entered the food chain because of inadequate controls, and that the scientific data supplied to regulatory authorities cannot be trusted.²⁹

GE campaigner Divya in a press release made a statement, “ We don't need genetically engineered crops to feed India... around the world, in fact, the promises made by genetic engineering industry have been unfulfilled, whether of increasing crop yields or reducing pesticide use” she continued, “ It doesn't surprise us that Bayer is giving up GE experiments in India. They saw the writings in the wall- the Indian public was not going to accept their manipulated cabbages and cauliflower ... It's time for the rest of the industry to give up on this misguided and inappropriate technology”³⁰

Right To Information: The article 19 of Universal Declaration of Human Rights advocates “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The company Bayer has the right to belief and therefore conducts research but certainly it owes an explanation on the rationality to conduct experiments involving Cry9C gene. Denying access to information on the plea that it has discontinued research in transgenetics is weak. The Civil and Political Covenant on Human Rights, article emphasis, “Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities.”

References are:

- Divya Raghunandan, The Story So far (Transcript) by Greenpeace
- Bayer AG Annual Report, www.bayer.com
- Bayer CropScience: Your Partner for Growth (Leverkusen: Bayer Cropscience Corporate Communications, 2004)
- Bayer: Public Health(Leverkusen: Bayer Cropscience Corporate Communications, 2000)
- Corporatecrimes, www.corporatewatch.org.uk/profiles/bayer/bayer3.pdf.
- Starlink(Cry9C)CornFactsheet, www.greenpeaceindia.org/Cry9C_Quotes_facts.pdf
- The regulatory Mechanism for GMO in India, www.greenpeaceindia.org

28. For details see, “Bayer pulls out of Genetic Engineering Research in India: Admits to Greenpeace the future is in 'conventional ' Breeding”, www.rediffmail.com/cgi-bin/red.cgi, 10 November 2004.

30. For details see, “Bayer pulls out of Genetic Engineering Research in India”..... www.rediffmail.com/cgi-bin-red.cgi, 10 Nov. 2004

Case Study 2 - Claas India Ltd.

Introduction

The process of liberalization and integration of Indian economy with the rest of the world has accelerated the process of corporate restructuring which has weakened organized trade union within India. Corporate restructuring existed even before the liberalization process per se was initiated. It was present in form of lock-outs by declaring the particular company sick by their employer to reduce the collective bargaining powers of their own workers. Today corporate restructuring has taken more varied forms such as opening new green-field & parallel production sites, recruitment of more contract labourers, voluntary retirement schemes and finally, creation of working councils or pocket trade unions which has an adverse effect on the right of the workers to bargain collectively. Today trade unions face the problem to protect the rights of workers from the wrath of organized capital, which exploits its powerful position by use of press or media, state machinery and politicians to break the collective power of labour. German MNCs operating in India have also used these tactics to reduce the powers of workers.

German Companies and their investments pattern in India

The major issues in Indo- German relations since the the process of liberalization process per se was the unreasonable demands by German companies investing in India pressurizing the GOI to make changes in the field of Industrial Dispute Act of 1947, issues on patent protection, clear exit policy and increased shareholding by German firms. In fact German pharmaceutical companies had been asking GOI to introduce earliest product patents in India. During the official visit of Prime Minister Rao in 1991 to Germany Dr. Volker, the member of the Central Board of the Siemens of Munich, demanded that the “company should be allowed to raise their equity to 51%”.³¹

During the pre-liberalisation period perse Germany was the second largest country having a share of 18.02% in total foreign collaborations approved during 1980s. Its share went down to 3.44% during nineties. On the other hand during the period between 1991-2002 actual inflow of foreign capital in India shows that Mauritius followed US, Japan, UK and then Germany are the four major investors (FDI) in India. The data on foreign equity from the period 1991 in the Indo- German collaboration indicates that German partners are increasing their share in the decision making process of their respective firms. In 2002 around 611 joint ventures were in the operation, out of these 149 are 100% subsidiaries of German companies. The new joint ventures are often seen to have a German shareholding of more than 50%. The increasing stakes by German partners in joint ventures is primarily the result amendments in FERA rules. Earlier FERA regulations imposed an upper limit on most of the foreign shareholdings.

31. For Greater details see, “A visit that holds the Promise”, Hindu (Madras), 2 September 1991.

Over the years the strategic dimensions of relations between the two countries has been strengthened since agreement for the Avoidance Double taxation came into force in 1996, similarly in July 1998 agreement for the Promotion and Protection of investments gave a boost to Indo- German economic relations. In fact Indian Prime Minister as early in 1994 assured Chancellor of Germany Helmut Kohl that India would allow 51% foreign shareholding in various sectors of Indian economy including food sector.³²

In 2000 Germany's apex industry and trade associations which weilds considerable influence revamped their Common India committee in a bid to intensify interactions with India and paved the way for greater bilateral relations . The India committee comprises of several associations including The Federal association of German industry, The Association of German Chamber of Commerce and Industry, The Asia- Pacific Business Association, The Federation of German Banks and Indo- German Chamber of Commerce to name a few of them. In 2000 itself Gerhard Tooss, Director in the board of management of Germany's industrial conglomerates Thyssen Krupp AG took over the chairmanship from Guenter Wilhelm who headed this committee since 1994. The main task of this committee is to represent the interest of the German industries in creating what German's frequently term as favourable framework conditions in India.³³ As the relationship between the two countries has improved the issue of both right of workers to collective bargaining and corporate restructuring is coming into prominence.

Recently in 2002 German Remedies through VRS curtailed the collective power of its worker in Mumbai. German Remedies Ltd offered voluntary retirement scheme to its employees at the manufacturing facility located in Andheri, Mumbai. This according to the company was part of a restructuring exercise to synergise the operations of Zydus Cadila and German Remedies.

According to a press release, the company said that the objective of this restructuring was to improve capacity utilisation, productivity and reduce cost of production. The products manufactured at the plant were transferred to the Goa plant of German Remedies as well as the Ahmedabad plant of Zydus Cadila.³⁴ Later in Ahembabad medical representatives of the company called for nation wide strike when one of the subsidiary of Zydus Cadila named Recon Healthcare limited entered into agreement to acquire combined controlling stake from Astra Medica AG and Heller Vermögensverwaltungs GmbH (Heller) of German Remedies. The medical representatives demanded the Zydus Cadilla management to clarify their position on industrial relations. Such complex process of M&A has been really harmful for trade unions and has dampened the right to collective bargaining. The case study of Claas India ltd clearly demonstrates the point beyond any doubt.

The Claas Group

The Claas Group ltd is a German company which is in existence over 100years now. The headquarters of Claas Group is in Harsewinkle approximately five hundred kilometers from Frankfurt. The Claas Group is a family owned business headed Hemult Claas. This company essentially deals with production of agricultural machinery with a brand name Cromptiger. The turn over of this group is approximately two billion Euros. Claas India situated in Faridabad Delhi Mathura highway is the only plant in India, which is operating since 1994.

32. For Greater details see, "India now to be focus for Germany: Kohl", Times of India, 4 February 1994.

33. For Greater details see, "German Friendship", The Pioneer (New Delhi), 22 May 2000.

34. For details see, "German Remedies to close Andherie Plant, offers VRS", The Hindu, 9September 2002.

The company is located away from the din and glitters of city life. The exact address of this company is plot no.15/3 on Mathura Road, Faridabad.

Claas India entered into Joint Venture agreement with Escorts pvt. ltd in 1994. It was among many other German companies who signed Joint Venture agreements with Escorts India (pvt.) ltd. Escorts pvt ltd had several associations with many leading German companies for over four decades now. According to the company sources in 2002 the joint venture between Claas Group ltd& Escorts pvt. Ltd. was dissolved mutually. The workers of the new company were unable to adapt to new working environment which became quite professional. There were increasing demands to maintain discipline, enhance productivity and meet sales targets.

The Origin of Dispute and Chronology of events

When the new management took over All Escorts Employee trade union was operating in Claas India Ltd., Escorts unit of Haryana, Yamaha a joint venture between Japan and Escorts Group of Haryana, JCB a joint venture between UK and Escorts. "All Escorts Employee trade union is the oldest and one of the largest trade Union operating since 1979 in Haryana", according to former General Secretary of this trade union Mr. Surinder Lal. The workers had tremendous faith in their leaders. The leaders of this organization are elected democratically along with leader representative from each plant. Despite the new management took over the relation between the workers and management remained cordial as before though difference of opinion pertaining to the outlook on productivity, and production increased.

Incident leading to strike on March 2004

According to the Head of HR of Claas India (pvt)ltd. the problem between the management and the trade union cropped up when the one of the employee of Claas India ltd. was asked to visit the customer site in Sri- Lanka to install machinery but he did not do so. The disciplinary action was taken against the employee. At this junction the plant leader of trade union intervened and according to the company raised the demands for bonus. These unjustified demands were turned down leading to a strike. According to the management strike was a means by All Escorts Trade Union to gain legitimacy and influence. Quoting HR head on the purpose and intention behind the strike he said, "All Escorts Union was looking for platform to establish them in the outgoing business of Escorts group because they had disinvested their shares in JCB/ Yamaha and Claas. All Escorts Union had made correction in their constitution that even if the Escorts had sold their shares and lost control of the management the All Escorts Employees Trade Union will remain as a single one unit. This amendment in their constitution was even turned down by the registrar of Trade Union Haryana".

The former General Secretary of All Escorts Employees Trade Union on the other hand have slightly different version of the events which led to strike. According to Mr. Surinder Lal "Strike which took place on March 2004 started over the issue of bonus hike for their employees. The Claas India was incurring losses for two years and hence they were not in the position to give the bonus of 20%". The management was willing to give only 8.33% bonus hike to their workers. It led to lots of agitation among workers since previously they were getting annual bonus of 20%regularly. The management on the other hand did not even recognize this issue as an factor leading to strike. The head of HR department refute the perspective of All Escorte Employee Trade

Union that the issue was about hike in the bonus. “It was rather about eligibility of persons who would get bonus. . . .” In fact the whole issue was about All Escorts Union asserting its identity and gaining legitimacy of its existence in Claas India. The company HR head made it clear that Claas India wants a trade union free environment with focus on increasing productivity and their employee's welfare.

According to Mr. Surinder Lal, bonus hike issue gradually became an important factor. The All Escorts Union could not ignore it. It had to take this issue since it was considered important by workers. Quoting MR Surinder Lal former Secretary General of All Escorts Employee Union “It was necessary for the All Escorts Union to take this matter once it became an issue in the eyes of their workers. It came as a jolt to the workers since it was the first time management refused to give bonus of 20%”. The Trade Union was left with no alternative but to take some action. In fact for the management the amount of Rs. 6, 000/- per worker could not be a problem as total strength of the Claas India is not more than 300 employees including workers. He indicated that the rigid position of the management and stiff attitude of All Employees Trade Union complicated the matter. On March 2004 when the workers called for a strike it was declared illegal by the management. The matter was then reported to the police though the company lodged no FIR.

The Strike Period March 2004 to November 2004

During the period of strike the company always expressed concern about the agitation by workers. They objected to strike as uncalled resulting in indiscipline and threat to maintenance of law and order. The threat to maintenance to law and order was overplayed in order to constrain the right of workers to collective bargaining.

According to the company when the strike began workers were agitated. The plant leader of All Escorts Employee Trade Union organized rallies within the company premises. According to company sources workers used vulgar language against the management and the MD of the company. The indiscipline behaviour of worker and the stiff attitude of the company strained their relations. According to the company, the union leader and workers who participated in the strike prevented their fellowmen from entering the premises. The management then took to the form system where each individual had to take an undertaking that he would work in total discipline. For nine months workers did not sign the form or the undertaking. The altercation between the management and the trade union also ensued when Claas management started their production work by recruiting casual labourers from nearby areas. The union leaders prevented them from entering into their premises. However as the pressure from the management increased workers gradually started succumbing to the pressure tactics of the management. The pressure tactics of the company reached a plateau when management complained about strike to German Business Delegation accompanying the Chancellor of Germany Gerhard Schröder. The management as a law and order problem perceived the indiscipline behaviour of the workers. The complaint was then taken to PM office, German Embassy. After this Haryana district administration came down heavily on the workers. The workers gradually scumbled to the pressure tactics of Claas India management.

The Pressure Tactics of the Management of Claas India Limited and its Effects

The management of Claas India Limited exerted pressure on three ways: first, by presenting the actions of

workers as a direct threat to maintenance of peace thereby limiting the fundamental rights to peaceful association and freedom to expression guaranteed in the third part of Indian constitution. Second by use of media local print newspapers to lure and pressurize the workers. Third, by tarnishing the image of leaders and non-recognition of All Escorts Employees Trade Union that could negotiate on the behalf of workers.

Characterised Strike as Threat to the maintenance of law and Order

According to the company workers misbehaved and were violent in their actions constituting a direct threat to law and order. According to the company the actions of workers were unruly and unsophisticated. The head of HR of the company said, "These workers indulged in violent acts such as preventing MD of the company to enter the premises, used abusive and vulgar language in the protest marches". These images and actions of the workers were considered as a direct threat to maintenance of law and order within the factory by the management of Claas India Ltd. The company therefore termed the strike as illegal in early March while the district administration termed the strike only as illegal and not as violent.

According to the company, the behaviour of the leaders of All Escorts Trade Union dampened a favourable atmosphere in which fruitful negotiations could have taken place between the management and their employees. German investors have always regarded militancy of workers as one of the major stumbling block in investments.³⁵ In this particular case direct action by workers was overplayed and presented as a law and order problem. The workers were bewildered by the indirect pressure put by the officials of Claas India (Ltd.). The apathy towards their cause by the media and administration made them more violent. They failed to channelise their despair and anguish in proper manner in form of words which could highlight their cause.

The Use of Media as a Pressure Tactics

The Claas India MD Mr. PK Malik and the head of Human Resource, Mr. Chaturvedi through press conference organized in Hill View Hotel on 13 and 14 November 2004 even tried to lure and threaten workers if they did not fall in line. They said that company had good orders for delivery of their machines from abroad and South India. It is necessary that production should begin on time and hence if workers do not resume their work then they have to go for new recruits.

At the press conference they made it clear that management is not ready to negotiate with leaders of All Escorts Employee Union rather with their own workers. The MD of the company, Mr. PK Malik said "they cannot recognize All Escorts Union which belongs to Escorts pvt ltd which is their contenders in tractor industry and thus it is impossible to extend recognition to this union in Claas India limited".

Political Pressure

The Claas Group took this issue to the highest level of decision making in this country in order to reduce the worker's collective power of bargaining.

The company also alleged that All Employees Union had blown the issue out of proportion such that the company was forced to seek help from PMO. Such statement was quite ironical since in an interview with our researcher the company was appreciative of district administration for cooperating with management during

35. For Greater details see, "for greater details see, "Growth of Indo- German relations", Statesman, 18 November 1995

the period of labour problem in Claas India. If district administration was supportive of management then one fails to understand the need to take the issue to PMO. In fact the strike was ill placed since the CEO of the company R. Günter was the part of the business delegation that accompanied the Chancellor of Germany in October 2004. The German delegation took serious note of the situation and the matter was discussed with Minister for agriculture Mr. Kamalnath and PMO office.³⁶ The PMO office then conveyed the message to the district administration. The wait and watch policy of management yielded fruitful result and their work were simply restricted to highlighting the misgiving of workers in media and higher echelons of decision-making in India. German Ambassador also made a statement that if the labour problem is not solved in Claas India Ltd. then further investments in India will be difficult.

Mr. Chaturvedi in his personal interview with our researcher said that a letter drafted by him was also send to German Embassy emphasizing grave concern about the law and order in Claas India limited. In this case thus the role of German business delegation, embassy though indirect was crucial since it acted as a catalyst in weakening the power of organized labour union.

The Company tried loggerhead HMS against the All Escorts Employee Trade Union

Hind Mazdoor Sabha is the only major trade union organisation which is truly independent of political parties, whether in power or in opposition. T came into existence in 1948. Hind Mazdoor Sabha made a bold bid to strike a new path of organising unions as independent institutions without control of political parties. This policy of independence was declared in the founding conference of HMS in December 1948 has remained throughout its existence. HMS has unshakable faith in socialist values and democracy. HMS has fifty-six Member Working Committee including office bearers who are elected in the biennial conferences of HMS from every state. Mr. Manohar Kotwal is the President while Umraomal Purhoit is General Secretary of HMS. HMS currently has sixteen Industrial federations. The aim of Hind Mazdoor Sabha is to forge trade unions in unorganized sectors while strengthening existing trade unions in organized category. Presently there are 52016-registered trade unions. However since the liberalization of Indian economy the vast working force remains in the unorganized sector. It continues to be a challenge especially in case of women workers. Hind Mazdoor Mahasabha aims at expanding trade union activities and gradually integrating women work force into trade union. It also aims at education and training of workers.

Internationally Hind Mazdoor Sabha is an affiliate of International Confederation of Free Trade Unions and of ICFTU-APRO in Asia Pacific region. HMS is also a member of SARTUC- The South Asian Regional Trade Union Council addressing the SAARC countries. International Confederation of Free Trade Unions (IFTU) was set up in 1949 and has 233 affiliates in 154 countries and territories in five continents. It has membership of 145 million. It has three regional organizations APRO for Asia and Pacific, AFRO for Africa and ORIT for Americas. It also maintains close links with European Trade Union, Confederation and Global Union Federation that links together national unions from particular trade or industry at international level. IFTCU organizes direct campaign on issues of trade union and workers rights.

In case of Claas India HMS was never directly involved. All Escorts Employee Trade Union is its affiliates. As

36. For Greater details see, Danik Bhasker (regional hindi paper), 14 October 2004.

stated above it got involved for raising the concerns of workers employed in Claas India. When the dispute took place between the All Escorts Employee Trade Union and the management of Claas India (Ltd) there were 84 employees working in the Claas India Ltd. who were also the members of All Escorts Employee Trade Union.

The management of the company always refused to recognize All Escorts Employee Union as a representative of workers . They even said if need be they would recognize trade union of their own employees. Later the company went back on its own words and said that it wants a trade union free atmosphere. During the strike the meeting organized to resolve the issue between Claas India management and leaders of All Escorts Employees Trade Union at the behest of District Commissioner in October 2004 could not take place. The management of Claas India (Ltd) again refused to recognize All Escorts Employees Trade Union as a party to the dispute though it was willing to talk with Central Trade Union.

In the words of Mr. Nagpal General Secretary of Central Trade Union (HMS) to which All Escorts Trade Union is affiliated, “the company had spent large sums of money to systematically curtail the powers of All Escorts Employees Trade Union. They even tried to loggerhead HMS against All Escorts Employee Trade Union”. Mr. Nagpal was given an open invitation to intervene in this matter but he did not do so. . . . “the reason was quite simple the issue raised by All Escorts Employees Trade Union could be amicably solved by the representatives of trade union and the management at state level. My intervention was not required. Secondly, intervention by HMS could create the rift between them and its affiliates at the state level since the leaders of All Escorts Employees Trade Union never invited me to intervene in this matter. Finally, direct involvement of HMS could further complicate the matter”. Mr. Nagpal also concedes that he was in touch with the developments taking place in Haryana and organized meetings with office bearers of All Escorts Trade Union on this issue. It was however difficult to intervene publicly surpassing its affiliate since it could deepen the rifts further.

The public image of TU leaders tarnished

The image of unruly behaviour of leaders belonging to trade union lower their esteem in the eyes of their fellow workers. Mr. Chaturvedi the head of HRD Claas India pvt ltd. said, “ Nobody came to their help since the strike was uncalled and unjustified. . . . “in this tussle both media and district administration was very supportive of the management while HMS despite our open invitation did not even intervened.” The administration prohibited the strike for one year and the leaders failed in their attempt to get a stay order on the strike. The Leaders were then booked under Indian Penal Code for violating order of the court of fifty meters injunction as strike continued. The contempt of court proceedings are still pending against them. According to the company neither the district administration nor the central trade union supported the cause of workers. In fact HMS had a neutral stand on this issue. . . If there was some weight in the arguments of the workers then there would be some sympathy for their cause” .

The Right of Collective Bargaining

The Claas India Ltd violated the fundamental right of the worker to form association and bargain collectively which includes the right to strike. Article 23 of the Universal Declaration of Human Rights states, amongst

other things, that “Everyone has the right to form and to join trade unions for the protection of his interests”. Further International Covenant on Economic, social and cultural rights under article 8 advocates that everyone has the right to form and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations; (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. This article however should not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. Similarly, International convention on Civil and Political Right under article 8, 21, 22 bestows Right to form Trade Union and Associations. Convention on the Elimination of All Forms of Racial Discrimination under article 5 also confers this right.

The Right to Organize and Bargain Collectively under ILO Convention is dealt under No.87, the Freedom of Association and Protection of the Right to Organize Convention, 1948, and Convention No.98, the Right to Organize and Collective Bargaining Convention, 1949. Convention No.87 says that the right to organise will be granted to all workers and employers; only the armed forces and police may be exempted. Workers and employers are guaranteed the right to establish and join the organisation of their choice. The state cannot interfere with these organisations or suspend or dissolve them. The ILO members agreed in 1950 that even states which have not ratified these Conventions should be subjected to a special system of supervision, to make sure that they respect organisational and collective bargaining rights. In 1951, a tripartite Committee on Freedom of Association was established to examine complaints from workers', employer's organisations and governments that member states are not respecting the basic principles of freedom of association. It meets three times a year, and can examine complaints even against countries that have not ratified the Conventions. In Europe especially Germany the right to collective bargaining is well entrenched, In Germany the wages of workers are co-determined at state level where employers and employees association plays a crucial role.³⁷ It is also the part of various international declarations on human rights and regional conventions such as European Social charter.

India constitutionally guarantees the right to form associations and trade unions, more particularly in Article 19 (1) (c) of the Constitution of India as a fundamental right with only reasonable restriction essentially relating to maintenance of public order and national security. It in a way prohibits discrimination and victimization of individuals by allowing them to form the association. For example, employers should not make employment conditional on the ground that one should not belong to a union, nor should they dismiss or victimize workers in any way for joining a union or participating in its activities.

37. For Greater details see, Workers' Rights and Labour: A backgrounder for the workshop on labour laws (Mumbai: India Centre for Human Rights & Law, 2003).

Employers should not interfere with worker's organizations, for example by setting up employer-dominated unions or trying to control unions in any way. In India the right to collective bargaining is the foundation of the Industrial Disputes Act 1947. It is recognized that individuals as such have less bargaining power and thus it is necessary to form associations which can bargain collectively. Section 2(q) of Industrial Dispute Act defines the term strike, implying a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment. Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise their strike is deemed to be an illegal strike.

The implication of this episode on the people affected

When the strike began there were around 84 employees in the unionized category from Claas India (pvt) Ltd. "Nearly fifty three employees from Claas India who participated were inducted back while 30 still wait for justice" according to Former General Secretary of All Escorts Employees Trade Union. While according to the company sixty eight workers have been inducted and company will have positive attitude in resolving the dispute with suspended employees. The Head of HRD Mr. Chaturvedi could not give exact figures pertaining to number of workers presently employed in the company. The total workforce of Claas India Ltd. Does not exceed more than three hundred.

The entire episode had an important bearing on the employees of Claas India irrespective of the fact that they participated in the event or not. The management of Claas India (pvt) Ltd. directly negotiated with each worker under section 18(1) of Industrial Dispute Act of 1947. It finally did not recognize All Escorts Employee Union and now categorically states that management wants a trade union free atmosphere despite the assurance earlier to workers that it would recognize trade union formed by their own employees.

The episode had implication on the freedom enjoyed by workers. There is pressure on workers by the management to increase their productivity. The HRD head of the Claas India made it clear that "there is no need for trade union since every worker will get according to his productivity and capability within the ambit of legal rules". Workers are still adapting to changed scenario of the company. It is unfortunate since the workers individually have a bleak chance to withstand their employer in case of anti-labour policies or structured exit policy such as VRS.

The entire episode also has important implication for trade union movement in India. Firstly the goodwill All Escorts Trade Union enjoyed suffered a major setback. Today office bearers of this trade union have no following among the workers. Workers consider this trade union responsible for their misery. The leader of Claas India plant belonging to All Escorts Trade Union along with other office bearers should have behaved in a more rationalized manner. They won't be spared even now as the election of trade union is fast approaching and they might be voted out of their office".

The management of Claas India also set a precedent for reducing bonus of workers on the pretext of company losses..After this episode Escorts group gave its employees a bonus of 8.33 % rather than 20% since according to the management the company is incurring losses. Presently, it is difficult for the workers and

public to understand that trade union could also have positive effects. As Surinder Lal said, “in JBC workers are enjoying high salary and healthy atmosphere. The company is also benefiting from increased productivity”.

Mr. Nagpal, the Secretary General of HMS said that “the entire episode was a major set back to the trade union movement. It reduced the faith of workers in trade union as means to protect their interest”. It was also a jolt to Trade Union movement since workers who sacrificed a lot in this episode had to face hostile management on their own. It also brought to fore the rigidities, ego hassles which made trade union inflexible to deal with changing environment. The management of Claas India ltd exploited these weaknesses very easily. Finally, Mr. Chaturvedi also conceded to the views expressed above. He said, “ Trade Union should consider the change in the economic scenario of the country. The objects of trade union should be defined more clearly which should be conducive with various acts and laws of our constitution. Law and Order should not be given in the hands of public. Finally, labour reforms are the need of this hour. The Industrial Dispute Act of 1947, the Factory act of 1948 needs amendment. . .” In the end he made the position of this company very clear that IT STANDS FOR TRADE UNION FREE ATMOSPHERE. . .

Other References

- Class Workers Ko Ultimatum, Dainik Bhaskar (Hindi), October 14, 2004
- Kam Par Nahin Laute to Barkhast Hongen Karmi, Amar Ujala (Hindi), October 14, 2004
- Karamchari Kam Par Laute, Samasya Hal Hogi, Dainik Jagaran, (Hindi), October 14, 2004
- Dr Richard Von Weizsaecker visit to New Delhi, Newstime, February 28, 1991
- Economic Aspects of Indo German Ties: PM has tough task in Germany, The Statesman, September 6, 1991
- Mr. H.P.Nanda (Escorts Group): Growth of Indo German Relations, The Statesman, November 18, 1991

Case Study 3:

Bayer's involvement in Hybrid Cottonseed Production in the States of Andhra Pradesh and Karnataka

Introduction

Cotton is a major commercial crop in India. It occupies about 9 million hectares with about 40% of this land is covered by hybrid seeds. India accounts for 21 percent of world's total cotton area. Among the cotton growing states Maharashtra takes a lead with about 35% of total cropped area followed by Gujarat and Andhra Pradesh. The hybrid seed production is concentrated in South India particularly in the Telangana and Rayalaseema region. Andhra Pradesh alone account for about 65% of the seed production in India. During the period 1999-2000 nearly 90% of hybrid seeds of maize and Jowar, 70% of hybrid cottonseeds marketed in the country were produced in AP. During this period within AP hybrid cottonseed production was concentrated in three districts viz. Mahaboobnagar, Kurnool and Ranga Reddy which alone account for 95% of total production in the state. About 60% of the seed produced in AP is exported to other states within India and countries. The production and marketing of hybrid seeds are carried out by both public and private agencies though the role of State Seed Corporation is not as vocal as in other states. Within the state Syngenta, Hindustan Lever, Advanta, Proagro are important players in cottonseed production and marketing. Private companies are at liberty to fix the prices for their hybrids. The role of MNCs in cottonseed business has increased due to various trade liberalization policies. In April 2002 government of India also introduced BT (*Bacillus Thuringiensis*) cotton in Indian market which increased the role of MNCs in cottonseed production.

A study by Dr. Davuluri Venkateswarlu explores the nature of linkages between Multinational Corporation and seed producer who employ children in production of hybrid cottonseeds in Andhra Pradesh. Second, the study estimates the number of child labour employed in cottonseed farms & nature of their employment. The study is significant since previously there was no history of female bonded labour in agricultural sector of India. The liberalization process gradually led to feminization and later creation of female bonded labour in India. Also, the study enlightens that MNCs though were not directly involved in employing child labour their business strategies and profit motives encouraged the environment which supports the practices of child labour in India.

The research study was conducted from the period December 2001 and January 2002. It was commissioned by India Committee of Netherlands {ICN} in Netherlands carried out by Global Research and Consultancy Services, Hyderabad under the guidance of Dr. Davuluri Venkateswarlu. In this study working condition of children in 22 seed farms in five mandals viz. Sanjamala, Nandyala, Gadval, Dharur, Maktakal in Mahaboobnagar and Kurnool districts which are producing seeds for MNCs like Hindustan Lever, Syngenta, Mahyco, Advantha and Proagro. Of total 22 seed farms 12 are producing seeds for HLL, three each for

Syngenta and Mahyco and two each for Proagro and Advanta. This report was published by Business and Community Foundation and Plan International (India) chapter in 2001 and the India Committee of the Netherlands (ICN) in 2003. Later a resurvey of the farms producing cottonseed for MNCs previously covered by ICN study was undertaken. The period of resurvey was September- December 2003.

The study consists of a detailed survey of working conditions of children in 174 cottonseed farms in 38 villages in ten mandals in Kurnool, Mahaboobnagar, Rangareddy and West Godavari districts of Andhra Pradesh. Out of 174 farms surveyed, 130 produce seed for various local companies and 44 for multinational seed companies. The names of MNCs involved in employing girl child labour are Emergent Genetics group of companies (Paras Extra Growth Seeds and Mahendra Hybrid Seeds), Proagro (owned by Bayer), Mahyco-Monsanto and Advanta. Of the total 44 MNC farms included in the survey, 16 produce seed for Emergent Genetics, 14 for Mahyco-Monsanto, five each for Proagro and Advanta. In case of four farms complete details are not available to clearly link them to specific companies but based on the limited data the study concluded that they produce seed for MNCs and not local companies.

In case of Karnataka on other hand cottonseed production is concentrated in five districts namely Raichur, Koppal, Gadag, Baghalkot and Haveri. These five district account for over 90% of the cottonseed production in the state. In Raichur and Koppal districts, it is still the migrant farmers who are mostly involved in cottonseed production activity. In Raichur district, seed production activity is concentrated in Sindhanur taluk, in Koppal district (Kanakagiri taluk), in Baghalkot district (Badami taluk), in Gadag district (Ron taluk) and in Haveri district (Haveri taluk). Field work for this study was carried out in 20 cottonseed farms in eight villages in three districts namely Koppal, Gadag and Bagalkote. The names of the villages are Kanakagiri, Tippamal, Chikkedu (in Kanakagiri taluk, Koppal district) Honniganur, Kalkapura (in Rona taluk Gadag District) Mallapura, Yeragoppa and Badami villages (in Badami taluk Bagalkote District). The main part of the field work was conducted during September and November 2003.

Defining the case against Bayer (AG) by Research Study in Andhra Pradesh and Karnataka

Hybrid seed production in a self-pollinated crop like cotton is a difficult task, especially when crop is being produced for commercial use. Unlike other hybrid seeds in cottonseed production cross-pollination work are done manually. Each individual flower has to be emasculated and pollinated by hand. The Hybrid cottonseed production is a highly labour and capital-intensive activity. It requires ten times more labour and four and half times more capital when compared to cotton crop. Ploughing, sowing, inter-cultivation, application of fertilizers and pesticides, cross-pollination and harvesting are important activities in cottonseed cultivation. In fact hybrid cottonseed production requires assured supply of labour for carrying out activities particularly cross-pollination work Children mostly girls are employed for carrying out cross-pollination activity.

They are also employed for other activities like sowing, inter-cultivation and harvesting. The involvement of adult labourer is mainly confined to activities like ploughing, sowing and application of fertilizers and pesticides. Seed producers extend loans to parents of children at a very crucial time of summer when work is not available in the village and when they are most likely to face financial problems. Parents feel pressurized to

send their daughters for work in the cottonseed fields in order to respect the agreement settled earlier in the season. Secondly, The subcontracting the cottonseed production by MNCs companies make huge profits while seed farmers cannot afford to pay better wages to workers.

There is thus the crucial link in this form of subcontracting and employment of Girl child labourers. Since farmers are not able to pay better wages to workers hence have to employ girls for this job. The procurement prices offered to farmers are low. During the time of resurvey the cost of various inputs increased however the procurement prices paid to farmers did not change. The important link between the company and the farmer interested in cottonseed cultivation is seed organiser. The company provides the foundation seed, which farmers grow. The seed organisers collect these seeds from the farmers. The Company then conducts three quality tests and then pay to organizer. It takes 3-4 months for the farmers to get the payment. This semi-feudal structure of agrarian economy nurtured by the company is responsible for various ills stated below.

MNCs involved in cottonseed production are found guilty of:

Most of the labour employed is children and predominant girls:

In Andhra Pradesh about 90% of the workers engaged in these farms are hired labour. A total of 486 children were working in these farms. Children in the age group of 6-14 years constitute about 88% of total labour force. Adult labour accounts for only 12% of total labour force. The girls account for 78% of the total child labour population. The social background of these working children indicates that most of them (87%) were from lower castes like tribal people, dalits and other backward castes. Marginal farmers and poor agricultural labouring families account for 65% of the total families. The children employed constituted both of migrant and local population.

In areas such as Sanjamala and Nandyala of Kurnool district where seed production is highly concentrated local labour is found to be insufficient. Girls are preferred since they are easier to control and discipline. On the other hand during the period of resurvey it was found that the employment of children below 10 years has significantly declined. Children in the age group of 7-9 years account for nearly 12% of the total child labour force in 2003-04.

In 2000-01 this age group account for nearly 25% of the total child labour. During this period children in the age group of 7-14 girls were 75.8%. Children accounted for nearly 57.4% of the total workforce compared to 88% in 2000-2001. Due to increased media attention it was also found that 11 to 14 years young girls are made to wear adult women dresses. In case of state of Karnataka also a large proportion of the workforce in cottonseed farms are children.

Over two thirds of the labour force (67.2%) is children in the age group of 7 to 14 years. Among children, girls account for nearly 88%. Women (girls and adult women) account for nearly 80% of the total labour force. 15 to 18 year's age group of workers account for nearly 21% the total labour force. In areas where cottonseed production is done by migrant farmers on a large scale the proportion of child labour to the total labour force is higher compared to areas where local farmers on a smaller scale carry out production.

Most of the children employed in cottonseed production are in debt bondage:

In case of Andhra Pradesh children were recruited by farmers on long term contract basis by giving loans/ advances to their parents. Though the initial agreement between the farmer and parent of the child was for only one crop but it is observed that in most of the cases the agreements were extended for later crop seasons through additional loans. During the resurvey period the proportion of children involved in this debt bondage slightly decreased from about 90% in 2000-01.

Children work for long hours and are paid less

Children worked for thirteen hours a day and were paid lower wages than adults. On the average children were paid about 30% less than the adult female and 55% less than the adult wage rate in the market. The working condition of migrant child labourer was far worse than local children. There were no specified working hours for them. They go to fields at about five in the morning and work till seven in the evening. After returning from the field they were also made to do few works at the employer's house.

In order to extract more work from children employers resorted to new techniques such as offer them small inducements, conduct competition for fast work with prize being bindi or ribbon. Taking children to cinema at the employer's expense twice a month. To get more work done by the producer by showing video. During the period of resurvey there was slight increase in the wage rates paid to the children in 2003-04. Children though continued to work for long hours as before around 9-10 hours per day and 10 to 13 hours in peak season. In case of Karnataka the wage rates are fixed for the whole season at the time of signing of the agreement. During 2003-04, the daily wage rates paid to labourers in cottonseed farms varied between Rs 17 to Rs 25. Except in the case of young children (below 10 years) who are paid Rs 2 to Rs 5 less, the wage rates are the same for every one irrespective of their age and gender. The working hours per varied for normal and peak seasons for labourers. During normal seasons, labourers worked 10 hours a day from 8.30 AM to 6.30 PM and during peak seasons, they work 12 hours a day from 6.30 AM to 6.30 PM. No payment is made for non working days and holidays are not given.

Health implications on Children

The use of pesticides is very high in commercial cotton cultivation (accounting for nearly 55% of total pesticide consumption in India) Children working in the cottonseed fields were directly exposed to poisonous pesticides for prolonged periods. In cottonseed cultivation work is carried out even during the days when pesticides are sprayed in the fields. Hence compared to workers in ordinary cotton fields, children working in cottonseed fields are more directly exposed to pesticides for long hours. On 4 October 2004 Mamidipudi Venkatarangaish Foundation listed the death of 11 children in Kurnoor district employed in cottonseed production due to the exposure to dangerous pesticides.

Adverse effect on Education

The employment of children in cottonseed work had an adverse impact on literacy. Nearly 60% of the children working in the cottonseed production were school dropouts. 29% of them never attended school. The right to education is the fundamental right guaranteed not only by Indian Constitution rather is a part of Universal

Declaration and second-generation human right. It is a part of important human rights and regional convention.

Right to form trade union and collective bargaining:

Since the company the rights of workers employed by sub- contracted always denies the chain of sub-contracting farmer does not exist. Most of them are children hence the right to form trade union and collective bargaining is unheard off.

Interventions by National and International actors:

At the local level AP government:

Various programmes initiated various policies to achieve its goal of total elimination of child labour in the state include the Back to School Programme, Residential and Non Residential Bridge Course Centres for 9-14 age group children under DPEP (District Primary Education Programme) and DPIIP (District Poverty Initiative Programme), the National Child Labour Project Scheme and Early Child Education Centres. In the year 2002-03, the state government under DPEP and DPIIP programmes supported 3,376 Non-Residential Bridge Course (NRBC) centres and 385 Residential Bridge Course (RBC) Centres. The state government has also launched a midday meal programme in 2002 in all the primary and upper primary schools in the state covering 700,000 (7 lakh) children. This programme is meant not only to increase enrolment but also to enhance retention through better nutrition levels and improve the quality of education in the schools.

ILO-IPEC Special Project 2000-2003:

The project aimed to eliminate child labour from Andhra Pradesh. The project aimed at tackling child labour in the state by working closely with the government, employers, social organisations, NGOs and trade unions. As part of its project, ILO-IPEC brought together various trade unions and employers associations on a common platform to work against child labour. ILO-IPEC facilitated the formation of CEASE Child Labour (Consortium of Employers Association for Elimination of Child Labour) in 2001 with the objective of influencing employers against the employment of child labourers, encourage the public commitment of employers and inspire employers to work with the community and the government. CEASE Child Labour comprises of 22 Employers Federations, Sectoral Business Associations and Human Resources Professional Associations, which represents about three quarters of the trade, industry and commerce in the state. The Seedsmen Association of Andhra Pradesh, an organisation of seed producers is one of the members of CEASE Child Labour.

Action at Global level:

Since several MNCs are also actively involved in cottonseed production in Andhra Pradesh where children are employed on a large-scale, the issue of child labour in this sector has received global attention. The India Committee of the Netherlands, the International Labor Rights Fund (USA), Amnesty International Netherlands, FNV Mondiaal (Netherlands), Hivos (Netherlands), Novib/Oxfam Netherlands, Germanwatch, Coalition against Bayer Dangers (Germany) and Global March Germany demand that all cottonseed

companies, and in particular the multinational companies:

- 1.) Immediately implement a plan of action to eliminate all child labour in the cottonseed industry in India and ensure that every child goes to school. This should be done in close co-operation with civil society organisations and government authorities. In Andhra Pradesh, the present co-operation with the MV Foundation should be intensified in order to reach the objective that no child should work in cottonseed production in the new 2005 season.
- 2.) Pay fair procurement prices to farmers to allow them to hire adult labourers and pay them at least the official minimum wage as well as equal wages for both men and women.
- 3.) Eliminate all forms of bonded labour in cottonseed production in India.
- 4.) Respect the workers' right to freedom of association and collective bargaining.
- 5.) Provide training to farmers and seed organisers on safe handling of pesticides, and provide protective gear and clothing for pesticides handling.

The three NGO also submitted a complaint to the German Federal Ministry of Economics and Labour against Bayer for violating the OECD Guidelines for Multinational Enterprises.

Human Rights Violations:

The right to adequate food including right to Health are fundamental human rights which flows from the Universal Declaration of Human rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has been reaffirmed in many pronouncements of the international community over the last fifty years. The right to adequate food and health should not be interpreted in a narrow sense or defining in terms of intake of minimum package of calories, proteins and other specific nutrients. The core content of the right to adequate food implies that the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture is important. The accessibility of such food should be in ways that are sustainable and that do not interfere with the enjoyment of other rights. In fact FIAN International (Food First Information and Action Network), International Human Rights Organization for Right to Feed oneself, WANHR (World Alliance for Nutrition and Human Rights) and Institute Jacques Maritain International on September 1997 endorsed the draft legislation on International Code of Conduct on Human Right to Adequate Food and they also defines it broadly to include social, economic and cultural aspect covered by ICESCR definition. In case of Indian constitution there is no binding obligation on the state to ensure right to adequate food and nutrition. However Article 47 of Directive Principle of State Policy imposes duty on the state to raise the level of nutrition, Indian government has also directly intervened from time to time in order to raise standard of living condition and initiated projects such as Integrated Child Development Programme, Mid-day meals schemes or intervention through Public Distribution System.

Apart from this other important human rights violated are

- Right to Education

- Right of Indigenous people to conserve their environment
- Right to employment
- Right to form trade union
- Right to Development

All these rights forms important part of Universal Declaration on Human Rights and International Covenants on Economic ,Social and Cultural Rights. These are also the part of regional conventions. In fact Article 55 of the UN charter describes economic development and respect for human rights as the twin foundation of peaceful and friendly relations among nations. This right includes right to live with dignity. The economic development should lead to change in the educational, employment standards without hampering environment. Business in any given society implies extraction of natural resources, which in turn hamper ecology. However this extraction process should not hamper the rights of the people living in the area. In the present case pursuit of profit making by Bayer has dampened the environment making farmers dependent upon the these corporate giants for fertilizers and hybrid seeds. Also pursuit for profit making entailed child rights abuse by Bayer.

References are :

- MNCs encouraging Child Labour in fields: Study, Hindu, 29 May 2003.
- Spectre of Starvation and Prospects of Resistance, [www.cpiml.org/liberation/year_2004/November/special feature_starvation.htm](http://www.cpiml.org/liberation/year_2004/November/special_feature_starvation.htm).
- Re: GMOs' Disappointing Record, Third World Network Biosafety Information Service, 17 March 2004.
- Global Agriculture Information Network, USAD Foreign Agricultural Service, India Planting Seeds, Indian Seed Industry under Transition(IN3125), 2003.
- Sinha Shanta, Combating Child Labour in Cottonseed Production: A Statement on the present role of Multinational Companies in Andhra Pradesh(Hyderabad, MV Foundation, 2004)
- Gadwal VR, The Indian Seed Industry: Its History, Current Status and Future", www.ias.ac.in/currsci/feb102003.
- Shiva Vandana, Yoked to Death: Globalisation and Corporate Control on Agriculture(New Delhi: Research Foundation for Science, Technology and Ecology, 2001)
- Venkateswarlu Davuluri, Child Labour in Hybrid Cottonseed Production In Andhra Pradesh: Recent Development(Hyderabad, Glocal Research and Councultancy Services,2004)
- Venkateswarlu Davuluri, Child Labour in Hybrid Cottonseed Production in Gujarat and Karnataka (Hyderabad, Glocal Research and Councultancy Services,2004)

Case Study 4 - The Anti-dumping Cases in India

Introduction

The General Agreement on Tariffs and Trade lays down the principles to be followed by the member countries for imposition of anti-dumping duties, countervailing duties and safeguard measures. Pursuant to the GATT, 1994, detailed guidelines have been prescribed under the specific agreements that have also been incorporated in the national legislation of the member countries of the WTO. Indian laws were amended with effect from 1.1.95 and were aligned with the provisions of the respective GATT agreements. According to Anti-Dumping Agreement of WTO these measures are unilateral remedies which are applied by the member state after investigation and determination that an imported product is dumped and that dumping is causing material injury to a domestic industry producing the like product.

Dumping takes place when an exporter sells a product to India at a price less than the price prevailing in its domestic market. However, the phenomenon of dumping per se is not condemnable as it is recognized that producers sell their goods at different prices to different market. It is also not unusual for prices to vary in the light of supply and demand conditions. It is also recognized that price discrimination in the form of dumping is a common international commercial practice. It is also not uncommon that the export prices are lower than the domestic prices. Therefore, from the point of view of antidumping practices, there is nothing inherently illegal or immoral about the practice of dumping. However, where dumping causes or threatens to cause material injury to the domestic industry of India, the Designated Authority initiates necessary action for investigations and subsequent imposition of anti-dumping duties. Sections 9A, 9B and 9C of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 forms the legal basis for anti-dumping investigations and for the levy of anti-dumping duties. These laws are based on the Agreement on Anti- Dumping that is in pursuance of Article VI of GATT 1994.

The Legal Framework of Anti-dumping Provisions in India

- Based on Article VI of GATT 1994
- Customs Tariff Act, 1975 - Sec 9A, 9B (as amended in 1995)
- Anti-Dumping Rules [Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995]
- Investigations and Recommendations by Designated Authority, Ministry of Commerce
- Imposition and Collection by Ministry of Finance

In order to assess material injury to the domestic industry determination of volume and price effects is taken into consideration. The Designated authority under Directorate General of Anti-dumping and Allied activities under Ministry of Trade, Commerce and Industry examines the volume of the dumped imports, including the extent to which there has been a significant increase in the volume of dumped imports, either in absolute terms or in relation to production or consumption in India, and its economic/ financial effects on the domestic industry in terms of following

- loss of sales & decline in output
- loss of market share
- reduced profits
- decline in productivity
- decline in capacity utilization
- reduced return on investments
- price effects
- adverse effects on cash flow, inventories, employment, wages, growth, investments, ability to raise capital, etc. Injury analysis is a detailed and intricate examination of all the relevant factors. It is not necessary that all the factors considered relevant should individually show injury to the domestic industry.

A 'causal link' must exist between the material injury being suffered by the Indian industry and the dumped imports. In addition, other injury causes have to be investigated so that they are not attributed to dumping. Some of these are volume and prices of imports not sold at dumped prices, contraction in demand or changes in the pattern of consumption, export performance, productivity of the domestic industry etc.

The Trends in Anti-dumping cases:

During the period 1992-93 2002-03 the DGAD received large number of petitions for initiating anti-dumping investigations. After examination, Anti-dumping investigations were initiated in 153 cases and 22 petitions were not accepted for various reasons. The major product categories for which antidumping petitions have been filed by the industry pertain to Chemicals & Petrochemicals followed by Pharmaceuticals, Steel & other Metals and Fibers / Yarns. The countries involved are mainly China, European Union, Taiwan, Korea, Japan, USA and Singapore.

Case 1: Dumping of Oxo Alcohols to India

Anti- Dumping case was constituted against Poland, republic of Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and European Union for allegedly dumping Oxo Alcohols to India.

The German companies involved in this dumping case are Huls Aktiengesellschaft, BASF Ag Germany, Chemische Werke Huels. Anti- Dumping investigations were initiated for review on 1st April, 2001 to 31st March, 2002.

Oxo Alcohols Industries Association represented the domestic producers viz. Messrs, Indu Nissan Oxo Chemical Industries Limited, Mumbai; National Organic Chemical Industries Ltd., Mumbai (NOCIL) and Andhra Petrochemicals Ltd., Hyderabad (APL), M/s. Andhra Petrochemicals Ltd., Hyderabad filed the petition against the aforesaid companies. During the period of investigation it was found that 9,104 MT of dumped imports of subject goods took place. It constituted 13.28% market share in total demand. The alleged dumping has resulted in increasing the cost of production in the Indian Plasticizer Industry forcing closure of units. The embassy of Germany and European Commission, EC Delegation were issued notification with the request to advise the exporters /producers from their country to respond to the questionnaire within the prescribed time. A copy of letter and questionnaire sent to the exporter was also sent to the concerned Embassies along with the list of questionnaire.

The designated authority found that oxo alcohols have been exported below the nominal price by Poland, Saudi Arabia, Russia, Iran, USA and European Union. The authority imposed anti- dumping duties on the companies exporting oxo alcohol hailing from the aforesaid countries.

Case 2: Dumping of Aniline

Anti-dumping investigation was constituted against the imports of aniline from European Union

The period of investigation started from 1st April, 1999 to 31st December, 1999. In this case German MNCs BASF and Bayer AG were involved. Petitioners against the alleged dumping who filed the petition against aforesaid dumping are M/s Hindustan Organic Chemical Ltd, M/s Narmada Chematur Petro Chemical Ltd (NBPL) and M/s Aniox Pigments Ltd. Aniline is vital for the production of pharmaceutical, drugs, dyes and dye intermediates. It was alleged that the volume of exports from European Union had increased during the period of investigation. It resulted in underutilization of production capacity and price undercutting. Anti-dumping duties were imposed on the concerned parties.

Case 3: Dumping of Sodium Hydrosulphite

The anti- dumping case of Sodium Hydrosulphite originating from Germany and Korea

The Designated Authority after receiving a petition filed by M/s Transpek Silox Industry Ltd., Vadodara and M/s. Demosha Chemicals Pvt. Ltd., Mumbai on the alleged dumping of Sodium Hydrosulphite originating from Germany and Korea, The authority constituted an inquiry against German MNC BASF. The Designated Authority found that landed value of the dumped imports was below the cost of production of the domestic industry. Due these imports the industry was forced to curtail employment. There were difficulties in planning of fresh investments in the following industry.

Case 4: Imports of Sodium Nitrite

Anti-dumping investigation concerning imports of Sodium Nitrite from European Union (EU) and Taiwan

Designated authority constituted case against the German firm BASF exporting Sodium Nitrite to India. The investigations covered the period of 1st April, 2000 to 31st March, 2001 (12 months). The authority constituted the case against the company after receiving a petition from Deepak Nitrite Ltd., Nandesari and Baroda on behalf of the domestic industry. Sodium Nitrite is an oxidizing and reducing agent. It is a white

crystalline powder mostly used in Pharmaceuticals industries. Authority notes that the domestic industry was forced to cut its costs on all fronts. Appointment of fresh persons in the company was curtailed.

Case 5: Dumping of Vitamin AB2D3K

Anti Dumping Investigation concerning imports of Vitamin AB2D3K originating in or exported from European Union, USA, Thailand and Singapore

Designated Authority constituted a case against the German firm BASF exporting Vitamin A, B2, D3 and K. The period of investigation was 1.4.2000 to 31.12.2000. The Designated received a written petition from M/s. Nicholas Piramal India Limited, Mumbai against the dumping of Vitamin A, B2, D3 and K. It is primarily used in animal feeding. It is added to the poultry feed at the poultry feed mills, hatcheries and farms who make their own feed. The authority found definite link between the dumping goods and material injury to the domestic industry. Anti dumping duties were imposed on BASF.

The companies who filed petition in each of these cases constitute large part of the industry of concern and thus anti-dumping measures were constituted against them.

In each of these cases action was taken by Directorate General of Anti-Dumping and Allied Activities:

Anti-dumping duty was imposed on the goods by the Directorate General of Anti-Dumping and Allied activities.

Human Right violations

The right to development and livelihood of workers was infringed. The liberalization process per se should result in fair trade practices. The WTO Marrakesh Agreement lists twelve human rights. The liberalization process should lead to the fulfillment of these rights. However in reality the discriminatory policies followed by the developed world hamper the right to development of millions living in India. The right to development is also an integral part enumerated in the Universal Declaration of Human Rights and international covenants. It implies creation of favorable social international order with emphasis on right to life. The right to life apart from the part of international law is a fundamental right enshrined in the Indian Constitution. There are various celebrated decisions by Supreme Court enunciating what constitutes right to life. In the *Maneka Gandhi v. Union of India*, the concept of human dignity was incorporated into the right to life. The Supreme Court held that the right to life is not mainly confined to physical existence, but it included within it the right to live with dignity. The right to live with dignity includes access to adequate nutrition, clothing, shelter etc. the principle is endorsed in *People's Union for Democratic Rights v. Union of India* popularly known as *Asiad case*. In the *Olga Tellis v. Bombay Municipality Corporation*, the Supreme Court held that

“An equally important facet to life is right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood.”

In all the above cases the anti dumping hampered productivity, employment and hence the right to development and livelihood was hampered. Since workers were unable to earn fair wages other rights such as right to education of their children were also hampered.

Sources and references are:

- Government of India (2004), Directorate General of Anti- Dumping and Allied activities, Ministry of Commerce, Anti- Dumping Guide, New Delhi.
- Government of India(2003), Directorate Directorate General of Anti- Dumping and Allied activities, Ministry of Commerce, Annual Report 2003,New Delhi.
- Government of India, Directorate Directorate General of Anti- Dumping and Allied activities, Ministry of Commerce, Anti-Dumping Cases
- www.wto.org/english/tratop_e/adp_e?antidum2_e.htm.

Appendix I

The regulatory mechanism for GMOs in India

Genetically modified organisms (GMO) are regulated in India under the Indian Environment (Protection) Act of 1986 (EPA). The objective of the EPA is the protection and improvement of the environment, which calls for regulation of “environmental pollutants or substances that tend to be, injurious to the environment

The institutional Rregulatory Mechanism

GMOs at a national level are regulated primarily by the two bodies, namely the Regulatory Committee on Genetic Manipulation (RCGM) and the Genetic Engineering Approval Committee (GEAC). The RCGM functions under the Department of Biotechnology (DBT), which is under the Ministry of Science, and Technology. The RCGM is entrusted to regulate all experimental level research of GMOs in the country and can approve “small experimental field trials for research” limited to a total area of 20 acres. The GEAC functions under the Ministry of Environment and Forests; the GEAC approves and regulates field trials (larger than 20 acres) and commercial usage and the import, export, transport, manufacture, processing, use or sale of any kind of GMOs.

Bio-Safety Decision Making Structure in India

Authority	Composition	Functions
Recombinant DNA advisory committee (RDAC)	As determined by the department of biotechnology—to consist of experts in their individual capacity	Review biotechnology developments at national and international levels and recommend suitable bio-safety regulations for India.
Review committee on genetic manipulation (RCGM)	Member secretary, DBT; Indian Council of Medical Research; Indian Council of Agricultural Research; Council of Scientific and Industrial Research; other experts in their individual capacity.	Issue guidelines for GMO research; authorize controlled field experiments; permit imports of GMOs for research.
Institutional Biosafety committees (IBSC)	Head of the organisation; scientists engaged in rDNA work; Biosafety or medical officer; nominee, department of biotechnology.	Oversee DNA research activities; to ensure adherence with Biosafety guidelines; prepare an emergency plan; inform DLC, SBCC and GEAC about relevant experiments.
Genetic engineering approval committee (GEAC)	Chair, additional secretary, MOEF; co-chair: DBT representative; representatives from ministry of industrial development, DBT, atomic energy; Indian Council of Agricultural Research; Indian Council of Medical Research; Council of Scientific and Industrial Research; Directorate of Plant Protection; Central Pollution Control Board; others in individual capacity.	Authorize commercial use of GMOs or their products; large-scale production and release of GMOs and their products into the environment; to mandate restrictions or prohibitions on production, sale, import or use of GMOs, if necessary.
State biotechnology coordination committee (SBCC)ERR	Chief secretary, state government; secretaries, department of environment, health, agriculture, commerce, forests, public works, public health; chairman, state pollution control board; state microbiologists and pathologists; other experts in individual capacity.	Periodically review safety and control measures in institutions handling GMOs; inspect and take punitive action in case of violations through the state pollution control board or the directorate of health; act as nodal agency at the state level to assess damage, from release of GMOs, take on site control measures.
District-level committee (DLC)	District collector; factory inspector; pollution control board representative; chief medical officer; district agricultural officer; public health department representative; district microbiologists/pathologists; municipal corporation commissioner; other experts in individual capacity.	Monitor safety regulations; investigate compliance with rDNA guidelines and report violations to SBCC or GEAC; act as nodal agency at district level to assess damage, if any, from release of GMOs and to take on site control measures
Monitoring and evaluation committee (MEC)	Chairman, jointly elected by secretary, department of biotechnology and secretary, department of agricultural research and education. To include plant biotechnologists, plant ecologists, Seed technologists, and plant breeders (nominated by RCGM or ICAR), an NBPGR nominee, an MOEF nominee, and the member-secretary of the RCGM.	Undertake field visits at experimental sites; assist RCGM in collecting and analysing field data; to collect information on comparative agronomic advantages of transgenic plants

AA: DOREEN STABINSKY

Bayer



November 4, 2004

Dear Ms. Raghunandan,

This is with reference to your letter to us dated October 10, 2004, wherein you had included some questions.

Our response to these questions is as follows :

1. (a) This project was discontinued. This decision has already been communicated to the relevant Government authorities.
(b), (c), (d), (e) All the projects mentioned in your letter have been discontinued. This decision has also been communicated to the concerned Government authorities.
2. These projects were discontinued a couple of years ago due to changes in our global research strategy.
3. Overall, Bayer CropScience India will continue to focus in the coming years on its conventional plant breeding research programme.

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With best regards,

A. V. Pradhan

Aloke V. Pradhan
Head - Corporate Communications



RWTUV

