

World Trade Organization and Intellectual Property Rights and Its Impact on India- An Evaluation

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Abstract

The coming into force of WTO agreement involving Trade Related Aspects of Intellectual property Rights [TRIPs] has brought both opportunities and threat to the developing countries, though there exists little convergence of opinion on these aspects. However, the new protectionist TRIPs agreements in the otherwise free trade era calls for effective protection of the wealth of developing countries. An attempt is made here to understand the concept of intellectual property rights [IPRs] and its possible impact on various sectors of Indian economy.

Key words: *WTO-TRIPs-IPRs-free trade era-Indian economy*

Introduction

The signing of the final Act of the Uruguay Round by member nations of GATT in April 1994 paved the way for the setting up of the World Trade Organization (WTO). An agreement to this effect was signed by 104 members. The WTO Agreement came into force from January 1, 1995 and India has become a founder member of the World Trade Organization, by ratifying the WAO Agreement on December 30, 1994. The former GATT was no really an organization : it was merely a legal arrangement. On the other hand, the WTO is a new international organization set up as a permanent body and is designed to play the role of a watchdog in the spheres of trade in goods, trade, in services, foreign investment, intellectual property rights etc. It has the following five functions as set out in Article III.

i. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the I Multilateral Trade Agreements, and shall also provide, the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

ii. The WTO shall provide the forum for negotiations among its members concerning their multilateral trade relations in matters dealt with under the Agreements in the Annexes to this Agreement.

iii. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes.

iv. The WTO shall administer the Trade Policy Review Mechanism.

v. With a view to achieving greater coherence in Global economic policy making, the World Trade Organization shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

Structurally the highest body will be the Ministerial Conference. This will consist of representatives of all the members and will meet at least once in every two years. There will also be a General Council, again consisting of representatives of all the members. The General Council will essentially carry out the functions of the Ministerial Conference. The General Council

will also convene the Dispute Settlement Body and the Trade Policy Review Body. Under the General Council, three separate councils will be established a Council for Trade in Goods, a Council for Trade in Services, and a Council for Trade Related Aspects of Intellectual Property Rights.

Features of the Uruguay Round

To understand India's likely benefits and losses from the new international economic- order that is taking shape under WTO, it is essential to highlight the features of the Uruguay Round first. These can be summed up briefly into the following categories depending upon the major areas open for negotiations in the Eighth Round:

Agreement on agriculture: This provides a ~me work for the Long term reform of agricultural trade and domestic policies over the years to come, with the objective of introducing increased marked orientation in agricultural trade. It provides for commitments in the area of market access, domestic support and export competition. The members have to transform their non- tariff barriers like quotas into equivalent tariff measures. The tariffs resulting from. this transformation, as well as other tariffs on agricultural products are to be reduced on an average by 36% in the case of developed countries and 24% in the case of developing countries. The reductions are to be undertaken over 6 years in the case of developed countries and 10years in the case of developil}g countries. The least developed countries need not make any commitment for reduction.

Agreement on trade in textiles and clothing: This provides for phasing out the import quotas on textiles and clothing in force under the Multi- Fibre Arrangement since 1974, over a span of 10 years, Le. by the end of the transition' period on 1st January 2005.

Agreement on market access: The member nations will cut tariffs on industrial and farm goods by an average of about 37%. The USA and the European Union will cut tariffs between them by one half.

Agreement on TRIMs: The Agreement on Trade Related Investment Measures (TRIMs) calls for introducing national treatment of foreign investments and removal of quantitative restrictions. It identifies 5 investment measures which are inconsistent with the GATT provisions on according national treatment and on general elimination of qualitative restrictions. "These are measures which impose on the foreign investors the obligation to use local inputs, to produce for exports as a condition to obtain imported goods as inputs, to balance foreign exchange outgo on importing inputs with foreign exchange earnings through export, and not to export more than a specified proportion of the local production". 12 All specific measures in the above categories being applied by any member will have to be notified within 90 days of the entry into force of the Agreement establishing the WTO, and they will have to be eliminated in a stipulated time period.

Agreement on TRIPs: Trade related Intellectual Property Rights (TRIPs) pertain to patents and copyrights, Whereas earlier on process patents were granted to food, medicines, drugs and chemical products, the TRIPs Agreement now provides for granting product patents also in all these areas. Protection will be available for 20 years for patents and 50 years for copyrights.

Agreement services - For the first time, trade in services like banking, insurance, travel, maritime transportation, mobility of labour etc. has been brought within the ambit of GATT. The GATS (General agreement on Trade in Services) provides a multilateral framework of principles and services which should govern trade in services under conditions of transparency and progressive liberalization. It spells out certain obligations like grant of MFN status to the other member nations with regard to trade in services, maintenance of transparency and also a commitment for liberalization in general terms.

Disputes Settlement Body - Settlement of disputes under GATT was a never ending process. There was ample scope for procedural delays, objections could be raised at each stage of the dispute settlement process, and penal reports could be rejected by the offending party. The Disputes Settlement Body (DSB) set up under WTO seeks to plug these loopholes and thus provide security and predictability to the multilateral trading system. It has now been made mandatory to settle a dispute within 18 months. The findings of the disputes settlement panels will be final and binding on all parties concerned.

In addition to the above, the Uruguay Round also reached agreements on the understanding and implications of certain 'articles of GATT 1947, viz., shipment inspection, rules of origin, import licensing, anti-dumping measures and countervailing duties, safeguards, subsidies etc.

India and WTO:

No other issue in recent times has generated so much heat than the likely repercussions of the new international economic order on world in general and developing countries in particular. According to the supporters, the Uruguay Round agreement, the Marrakesh Declaration (which reiterated the commitment of the ministers of various governments attending the Final Round to the new multinational trade framework) and the ultimate setting the WTO, are expected to bring about substantial gains in world trade and increased income from liberalization, improved market access and greater export opportunities. Besides greater predictability of the trading environment. The Government of India has also been harping on this tune. However, critics have pointed out that the entire negotiation process was ruthlessly dominated by the developed countries. (particularly the USA) and the results that have emerged (in the form of various Agreements noted above) are highly tilted in their favor. In this section we study the likely favorable and unfavorable effects of the new world economic order on the Indian economy, i.e. how

integration of the Indian economy into the global economy is likely to effect us,

Advantages of India

i. World Bank. OECD and the GAIT Secretariat have estimated that the income effects of the implementation of the Uruguay Round package will add between 123 to 274 billion, US annually to world income. The GATT Secretariat's estimate of the overall trade impact is that the level of merchandise trade in goods will be higher by 745 billion US in the year 2005, than it would otherwise had been. The GATT Secretariat further projects that the largest increases will be in the areas of clothing 60%, agriculture, forestry and fishery products 20% and processed food and beverages 19%. According to the Government of India. since our country's existing and potential export competitiveness lies in these product groups, it is logical to believe that India will obtain large gains in these sectors. Assuming that India's market share in world exports improves from 0.5% to 1% and that we are able to take advantage of the opportunities thus created, the government believes that the trade gains may conservatively be placed at 2.7 billion US extra exports per year. A more generous estimate will range from 3.5 to 7 billion US per year.

However, Muchkund Dubey has argued that the above estimates suffer from several infirmities. Firstly, the GAIT estimate of increase in world trade is itself of dubious value. Secondly, in the fact of a trend till recently of a decline in India's share of the world exports, it is unrealistic to assume that this share will go up from 0.5% to 1%. Thirdly, increase in world trade depends not only on trade liberalization but a number of other factors like quality consciousness, proper infrastructure for export production, assured supply of export products, level of technology, etc. and India suffers from a relative disadvantage vis-a-vis the developed countries in most of these factors. Not only this, indulging in projection in a world full of economic and political uncertainties is a risky game, more so if the intention is to mask

reality and indulge in half truth.

i. The phasing out of the MFA (Multi-Fibre Arrangement) by 2005 will benefit India as the exports of textiles and clothing's will increase. While the developed countries had demanded a 15 years period, the developing countries (including India) had insisted on a 10 year period. Acceptance of the developing countries' demand in the Uruguay Round has been enthusiastically received in these countries. However, the catch here is that the phasing out schedule favors the developed countries as a major proportion of quota regime to the extent of 49% is going to be removed only during the tenth year, i.e. by 2005. Thus the Uruguay Round does not provide an immediate market access for the Third World textile exports. By the time the MFA is completely phased out in 10 years, the developed countries could gear themselves to effect improvement in quality, efficiency and competitiveness. Countries like Portugal, Greece and Spain in the European Community and Mexico in the NAFTA block are going to strengthen their textile industry in the phase-out period. Towards this end, Portugal has recently been extended a grant of \$1 million by the European Union to modernize its textile industry.

Moreover, as pointed out by Bibek Debroy, when quotas are removed, they will be eliminated not only for India, but for everyone else. There will therefore be considerable competition from China, Vietnam, Pakistan, Bangladesh, Indonesia and Malaysia. The question thus basically boils down to evaluating the competitiveness of India's garment exports. In this respect, India does not fare well vis-a-vis its competitors. There are a number of supply side constraints like higher costs and prices, poor quality and unreliability of the end-product.

i. The third benefit that India expects relates to the improved prospects for agricultural exports as a result of likely increase in the world prices of agricultural products due to reduction in domestic subsidies and barriers to trade. While on the one hand earnings from agricultural exports are likely to increase, on the other hand India has ensured

that all major programmes for the development of agriculture will be exempted from the disciplines in the agricultural Agreement. Thus, the operation of the public distribution system will not be affected by the provisions of the Agreement; agricultural subsidies granted by developing countries need not be withdrawn till such time they remain within the prescribed limits specified in the Agreement; and protection necessary for developing the agricultural sector in the underdeveloped countries' might be continued. In fact, as stated above, India hopes that the reduction of subsidies in the USA and the European Community will enable it to increase its earnings from agricultural exports.

ii. The Uruguay Round Agreement has strengthened multilateral rules and disciplines. The most important of these relate to anti-dumping, subsidies and countervailing measures, safeguards and disputes settlement. This is likely to ensure greater security and predictability of the international trading system and thus create a more favorable environment for India in the new world economic order.

Disadvantages of India

The most important advantage of the new world economic order claimed by its supporters is that it will increase the volume of trade substantially and as a result, India's export earnings will expand considerably. However, as stated above, the estimates of quantitative gains by India are suspect and the projections may prove wrong. In addition, Dubey argues that there are meager prospects of increase in agricultural exports from India due to the very limited extent of agricultural liberalization. Moreover, there will hardly be any liberalization of our textile exports during the next 10 years, with most of the liberalization expected to come at the end of this period. The gains expected by the Government of India on account of tariff reductions on goods may also not materialize as number of goods of export interest to India is very small. Not only this, "There will be erosion of the preferences enjoyed by India and India will not probably be

graduated out of the generalized system of preferences (GSP).

The most serious disadvantages to India are likely to flow from the Agreements pertaining to the TRIPs, TRIMs and services, and it is to a discussion of these disadvantages that we now turn. The question of loss of sovereignty and interference in the functioning of the nation-state is also a serious issue.

Trade related Intellectual Property Right:

TRIPs. Protection of intellectual property rights—patents, copyrights, trademarks etc. has been made more stringent in the Uruguay Round. This has been done to protect the interest of multinational corporations and the developed countries as the Agreement on TRIPs is highly weighted in favor of patent holders. However, as correctly pointed out by Muchkund Dubey, IPRs (Intellectual property rights) protection is anti-competition and anti-liberalization and goes against the spirit of opening up the world economy and global integration. It amounts to legalizing the monopoly of MNCs, Thus protection of IPRs is, itself, a barrier to trade. Let us now see how the Agreement on TRIPs is likely to work against India.

The first point to be noted in this context is that the TRIPs Agreement goes against the Patent Act of India, 1970 in almost all important areas as would be clear from the discussion below:

- i. Under the Indian Patents Act only process patents can be granted in food, chemicals and medicines. TRIPs Agreement provides for granting product patents also in all these areas; (ii) Under the TRIPs Agreement methods of agriculture and horticulture and bio-technological process (including living organisms like plants and animals) are patentable, there cannot be any exceptions as under the Indian Act; (iii) TRIPs Agreement provides that the general term of a patent shall be 20 years. The Indian Patents Act provides for a general term of 14 years for botjl product as well as process patent. In sectors

like food, chemicals and medicines, process patents are granted for a duration of 5 to 70 years; (iv) in India, there are reasonable and effective provisions for the compulsory licensing of patents and also for the revocation of patents in public interest. Under TRIPs Agreement, there are no' such provisions; (v) Under TRIPs no ceiling can be placed on royalty demanded on patent~ like in the Indian Pdtents Act; (vi) Importation will be treated as working of a patent in the TRIPs Agreement contrary to the patent philosophy in India; and (vii) TRIPs also reverses the burden of proof. Under the Indian legal system, the patentee has to establish a prima facie case that his patent has been infringed. However, under TRIPs the patentee will just have to Recuse a person or a company of patent infringement and the person of company will have to prove that lie did not infringe the patent.

This shows that to meet the requirements of TRIPs, the .entire Patents Act as applicable in India will have to be changed. As argued by many experts, most of the changes will be detrimental to Indian Interests.

- ii. Under the Patent Act of 1970 in India, only process patents are granted to drugs and medicines. This means that an Indian company only needs to develop and patent its own process for producing a drug, it is not required to invent the drug itself. The company can then legally manufacture this drug, even if it is protected under a product patent abroad. Finally, Indian drug companies are allowed to obtain what are called licences of right, which allow them to produce, regardless of the process used, inventions (again, usually pharmaceuticals) patented abioad. Licenses of right can be obtained only 3 years after the original patent is granted.

The effects of these laws have been positive for India. Indian drug prices are considered to be among the lowest in the world, and this is not at the

expense of quality. In addition, the indigenous pharmaceutical industry has grown rapidly after the passage of the 1970 Act. Not only this, the market share of Indian drug companies in the local drug market has grown from 30% in 1970 to 61% in 1993. Today, India is, in fact, an exporter of drugs to other parts of Asia, Europe, and even USA. All this will change in the new order. The granting of product patents will effectively place the reins of the Indian pharmaceutical industry in hands of MNCs who will exploit this advantage to the full by hiking the prices of drugs and medicates considerably. Once product patents are introduced, generics cannot come to the market until after the expiry of the patent. Thus the introduction of product patents in India is certainly going to affect sections of the poor who will not have the generic option open. In addition, as more and more potential medicines of MNCs are prescribed by the doctors, many Indian drug companies will be forced shut down. Drug company profits will start flowing overseas more quickly and skilled labour may face unemployment as production moves overseas.

iii. The extension of intellectual property rights to agriculture (via the patenting of plant varieties) has serious consequences for India. In India, plant breeding and seed production are largely in the public domain. Plant breeding is undertaken by agricultural universities and units of ICAR (Indian Council of Agricultural Research), whereas seed multiplication is in the hands of the National and State Seed Corporations. This is due to the reason that India being a poor country where agriculture is the livelihood of the majority of the population, the government must bear the responsibility of ensuring the supply of adequate quantities -of seeds at reasonable prices to the framers. The aim is not to maximize profit as would be the case in the private sector, but to sustain the livelihood of the majority of the population on the one hand, and to achieve self sufficiency in foodgrains on the other hand. Patenting of plant varieties will transfer all the

gains to the multinational companies. Almost all new varieties will belong to MNCs simply by virtue of their massive financial resources. As noted by Suman Sahai, Research is unfortunately as much a matter of talent as of money. More money means more resources to invest in breeding and it means greater speed in putting varieties on the market, In terms of financial resources, there is absolutely no comparison between MNCs and Indian companies. In fact, the research budgets alone of some of these MNCs are more than the budget of the Indian Union. If Indian research institutions are unable to compete financially and are denied access to patented genetic material (as TRIPs Agreement is designed to ensure), the Indian scientists will find it extremely difficult to breed new varieties. This will gradually become the sole privilege of the large foreign companies. As a result, the control over our genetic resources will pass into the hands of MNCs who will not find it difficult to control the seed production in this country. Since control of seed production implies control over food supply, the entire Indian food security system, will be jeopardized and thrown out of gear.

Results

The intellectual property regime under the TRIPs agreement is more stringent than the existing one in India, encompassing more monopoly element. This gives the innovators more incentives and protection and calls for more investment in R&D. However, its impact on a developing country like India is to be examined, particularly on public research system. It is still very early to assess the impact of IPR on various sectors of the economy in general and rural sector in particular. It is beyond doubt that we have to document our own biological wealth and traditional knowledge so that the benefits arising out of this can be used for rural development and could help in preventing biopiracy.

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