TRIPS Agreement on New Patent Regime: An Extreme Compromise

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The western world must have been more than satisfied at the outcome of the Uruguay Round of GATT Negotiations as a triumph of their tremendous pressure and diplomatic manoeuvring to achieve new standards of free trade. It is claimed that all countries are supposed to benefit from the new framework. Paradoxically, in the area of technology, including the vital elements for human health, the Uruguay Round does not bring any freedom or respite from monopolies. The TRIPS Agreement on Patents on the other hand rather strengthens the monopolies and particularly in the human health care areas increases the sufferings of the poor manifold.

The global patent system in the TRIPS Agreement does, in effect, contain a number of provisions that would go against the general public interest in every country, both the developed and the developing:

- extension of product patent rights in an absolute nature over pharmaceutical products worldwide;
- increase the duration of patent protection to 20 years from the date of application (It would be possible to have product patent for 20 years and then process patent for 20 years - perpetuating monopoly. Shorter the period of enforceable monopoly, the better for poor nations and communities);
- microorganisms also become patentable (encouragement to fiddle with nature);
- treat importation at par with the local working (production) of an invention from patent rights angle (a worst kind of extension of rights);
- thus strengthen the rights of patent-holders, both in respect of product patents and process patents;
- provide indefinite protection for secret technologies.

Is this system going to benefit the mankind?

The TRIPS Agreement consolidates new forms of protectionism, which are not exercised through tariffs but through the appro-
The assumption is questionable. In the first place, the rationale of conferring monopoly rights over knowledge which can be used by anyone at once and, therefore, many may benefit from its use concurrently. It makes sense for society, as noted by Prof Hettinger (1992) to grant exclusive rights to tangible objects because by its very nature the use by one person requires excluding others. But this is not the case of a "public good" like knowledge. Secondly, it is not true that a reinforced and expanded protection on intellectual property rights worldwide, shall increase the flow of technology and capital to developing countries. On the contrary, studies undertaken by the United Nations (1993) suggest that innovatory companies in the North shall growingly opt, in the new post-Uruguay scenario, to directly sell the products or services that incorporate the innovations, rather than transferring the technology through foreign direct investments and licensing agreements. It is in this concept that the system of compulsory licence in the TRIPS Agreement has been dropped. The likely result: more exports by developed countries, and less opportunities for industrial and technological development for developing countries.

Thirdly, strong patent system establishes monopoly of worst kind. This has been the logic of monopoly to charge as high a price as possible with the purpose of maximizing profits. These prices have no consideration with buying capacity of the consumers. The following table will bear this out:

<table>
<thead>
<tr>
<th>Drugs/Brand</th>
<th>Company</th>
<th>India</th>
<th>Pakistan</th>
<th>UK</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ranitidine (Zantac) 300 mg x10s</td>
<td>Glaxo</td>
<td>13.91</td>
<td>241.44</td>
<td>502.70</td>
<td>1080.72</td>
</tr>
<tr>
<td>Times Costlier</td>
<td></td>
<td>(17.35)</td>
<td>(36.13)</td>
<td>(77.68)</td>
<td></td>
</tr>
<tr>
<td>Diclofenac Sodium (Voveran) 50 mg x10s</td>
<td>Ciba</td>
<td>5.48</td>
<td>55.62</td>
<td>100.10</td>
<td>344.52</td>
</tr>
<tr>
<td>Times Costlier</td>
<td>Geigy</td>
<td></td>
<td>(10.16)</td>
<td>(18.28)</td>
<td>(62.93)</td>
</tr>
<tr>
<td>Piroxicam (Doloxen/Feldene) 20 mg x10s</td>
<td>Pfizer</td>
<td>26.14</td>
<td>72.50</td>
<td>117.70</td>
<td>925.92</td>
</tr>
<tr>
<td>Times Costlier</td>
<td></td>
<td>(2.77)</td>
<td>(4.50)</td>
<td>(35.42)</td>
<td></td>
</tr>
</tbody>
</table>

(Prices converted into Indian Rupees)
The above scenario is directly related to the patent system practised in these countries. It is the same enterprise which is charging highly differential prices in different countries as it is possible to exploit the markets on the consideration of extent of patent monopoly available.

According to Ralph Nader (1995), with the establishing of the global patent system, "they (MNCs) are now moving towards uniform prices in order to avoid the downward ratchet effect of cross-country comparisons. This trend is raising prices for new drugs in the poorest countries".

Finally, increased profit neither necessarily means more private R&D, nor a lower contribution by the public to technological development. Prof. Love (1994) has demonstrated that 12 out of 17 significant drugs developed in the United States between 1987 and 1991 were obtained with significant support from government, and that these drugs were much more expensive than those developed without such funding.

Who worries about the societal helplessness?

The social implications and cost changes to society due to the intellectual property legislations in the developing countries, was never considered a relevant issue by the governments of developed countries and the powerful industrial lobbies of MNCs which managed those changes at the Uruguay Round. Such costs, however, are likely to be substantial, illustrated in the above table and by several studies in the case of medicines:

- In accordance with a World Bank's economist, the minimum welfare loss to a sample of developing countries (Argentina, Brazil, India, Mexico, Korea, and Taiwan) would amount to a minimum of US $3.5 billion and a maximum of US $10.8 billion and US $14.4 billion (Nogues, 1990).
- A "national health disaster" has been anticipated by the Indian Drug Manufacturers' Association as a result of the implementation of the TRIPS Agreement in India where only 30% of the population can afford modern medicines in spite of the fact that drug prices in India are one of the lowest in the world.
- Comparisons of prices of drugs between India and countries where product patent protection exists, indicate that in many cases they are between 15-60 times costlier (B.K. Keayla, 1996). The gap in prices would be narrowed soon.
- Similarly, the economist A Subramanian (1992) noted that drug prices in Malaysia, where patent protection existed, were from 20% to 76% higher than India, which reflected a profit-maximizing behaviour based on "what the market can bear".
- A study conducted in Argentina (Pablo Challu, 1991) estimated that the introduction of product pharmaceutical patents in the country would imply an annual additional expenditure of US $194 million with a reduction of 45.5% in the consumption of medicines, as a result of a price increase of around 270%.
- Ralph Nader and James Love (1995) while rejecting TRIPS approach contend that "there would be no generic drugs - every drug would have monopoly patent protection for ever. The poorest consumers including large portions of citizens in
the poorest countries would suffer from even greater barriers to access to medical care. Middle class consumers in the US also would be forced to pay much higher costs for drugs than they do today”. They have also pleaded “to convene a meeting of US and international consumer and health organizations to discuss new framework for trade agreements that address intellectual property rights and health care.”

Conclusions
Substantial consumer welfare losses and the exclusion of a larger proportion of the population (between 75-80%) from the market of modern medicines, are some of the costs to be borne by our country which is under pressure to adopt TRIPS new patent protection for pharmaceuticals. Economic gain by large MNCs will be privileged over the health and life expectancy of millions of suffering people. No mechanism to mitigate these societal implications have been discussed during Uruguay Round negotiations. The issues are quite complex and serious from public interest angle. Any compromise in a haste and without indepth study of IPR issues are fraught with lasting consequences.

Thus TRIPS in the present form is a great compromise for the developing countries including India.

(The views expressed in the paper are of the author)