TRIPS, WTO and IPR - How Far Have We Gone With the DOHA Round?

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Genesis of the DOHA Round
In November 2001 at the Inter-Ministerial Conference of WTO, the DOHA Development Round (also called DOHA Development Agenda) was born with a wide net work of objectives incorporating newer approaches to manage global trade and make it more fair and equitable. During the last eight years since the Round was initiated, several Ministerial and Mini Ministerial meetings have been at the negotiating table to resolve a large number of issues affecting trade related issues. The key players have been US and Western Europe representing developed countries and Brazil, China and India representing many of the developing countries interest. Members of the African Countries Union have also taken active part in the negotiations. While there was some progress at the Paris meeting in 2005, Peter Mendelson, the then European Trade Commissioner said ‘the DOHA Round is too big to fail. It is not about trade. It is about maintaining the credibility of multilateral cooperation, showing that multilateral institutions can find global answers to global issues prove that trade can be put at the service of development.’ Nevertheless for lack of agreement among the major players, the negotiations were suspended twice in July 2006 and then again in July 2008. The 2008 conference which lasted for nine days failed to arrive at a consensus, the main issue at that time being non-acceptance of the proposed safeguard mechanism mooted by the developing countries to protect their interests by re-levying tariffs when domestic industry is threatened. The most contentious issues continued to be the argument that only major reductions in farm subsidies by US and European Union would enable progress in negotiations. In fact Shri Kamal Nath, the then Commerce Minister of India said ‘I am not risking the livelihood of million farmers’.

DOHA Round and Development
Even though the DOHA Round has many components beside direct trade related matters, the major issue has been related to Members intent on protecting their domestic produce while wanting to increase access to markets through a rule based system under the WTO. Most members of WTO believe that agreement on the DOHA Round will benefit global development including that of the developing economies. Limited studies by the World Bank, University of Michigan, Copenhagen Commission and WTO concluded that improvement in world trade through removal of trade barriers and reduction in tariffs could lead to increase in global welfare valued between $ 500 and $ 3000 billion. And yet there are some economists who aver that going by the experience from 1995 (when WTO came into existence) to date, there have been little improvements in developmental status of particularly developing and least developed countries, nor are there any trends in that direction.

DOHA Round and TRIPS
The best known feature of the importance of DOHA Round on the provisions under the TRIPS Agreement is related to Paras 5 to 7 of the DOHA Declaration dealing with TRIPS and Public Health. In essence these articles reiterate the provisions which were already incorporated in TRIPS, namely, wherever Public Health issues are affected due to restrictions imposed by the TRIPS Agreement, public good will supersede private rights embodied under the patent system. Para 5(b) indicates that each member has the right to grant compulsory licenses and has the freedom to determine grounds for such grant. Article 5(c) gives members the rights to determine what constitutes national emergencies or extreme urgency. Article 5(d) gives the freedom to Member States to establish their own regimes for exhaustion of

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rights (parallel imports). Para 6 recognizes that WTO members will get assistance for using their compulsory licenses for procuring drugs needed for meeting their national health emergencies. Even though WTO mandated finalization of the rules for implementation of all these provisions before the end of 2002, it was not until the end of 2003 that the modalities were finalized by the TRIPS Council. In actual practice, the procedure involved is so cumbersome and bureaucratic that only twice these provisions have been invoked during the last six years. Para 7 affirms the commitment of developed country members to provide incentives to their enterprises to promote and encourage technology transfer to least developed countries pursuant to Article 66.2 of TRIPS.

Unsolved Issues
The most contentious and unsolved issue delaying finalization of the DOHA Round is related to agriculture subsidies in the developed countries and tariff protection systems in the developing countries, even though other issues such as Non Agricultural Market Access (NAMA), cotton subsidies, etc are also relevant. The main issue finally boils down to provisions for special safeguard mechanisms; issues of timing and degree to which developing countries could impose protective tariffs in the event of an unexpected and major surge in imports as a result of tariff reduction and its impact on domestic production. It would appear that further discussions could lead to a compromise formula regarding these specific issues both in terms of quantum of tariff to be imposed and the modalities of implementing a proper system acceptable to both the exporting, developed countries and the importing developing ones. However, in practice going by past experience of safeguard provisions under international agreements, a practical implementation is neither practical nor effective. For example, safeguard mechanisms have been in place including functioning of organizations such as the International Court of Justice under the UN, Dispute Settlement Board under WTO, Anti-Dumping and Anti-Competition Legislations in National Laws, Compulsory Licensing Provisions under TRIPS, Para 6 of DOHA Declaration on Public Health and Intellectual Property Rights and a host of others. Thus, even if Special Safeguard Mechanisms (SSMs) are agreed upon and a compromise formula arrived at, it is a moot point as to how effectively it can be utilized to protect domestic industries. Commercial activities such as surge in imports are dynamic and often times transitory in character and by the time bureaucratic remedies such as tariff hikes are set in place, the situation could change or may even be reversed.

Future of DOHA Development Round
In spite of major differences among the members of WTO on the final version of the DOHA Development Agenda, several countries have called for actively resuming talks and for moving at an accelerated pace. Brazil, India and the WTO have been in the forefront. Even though the November 2009 Ministerial Meeting of WTO may not be a forum for negotiating DOHA Round, it will be an occasion to work out processes for speedy resolution of many of the pending issues. The erstwhile deadline of end 2009 for finalizing the DOHA Agenda is clearly outside the realm of possibilities. The target now could be mid 2010. At the WTO Public Forum in September 2009 at Pittsburgh, Pascal Lamy said ‘their negotiators now embark on the work programme that we have established for the next three months and that they then assess our collective ability to achieve the 2010 target’.

The major issues on which agreement needs to be reached are agriculture, tariffs, market access and special and differential treatment to make them more precise, effective and operational and issues on implementation of current and future provisions dictated by the WTO. If the efforts are to succeed, there needs to be better understanding of common goals and common benefits, departure from the policies of protectionism at all costs and an attitude of give and take among all members of the world body.