
Editorial

It would be a pity if the Doha Declaration on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Public Health gets lost in the new wave of bilateral and regional trade agreements and the World Intellectual Property Organization's (WIPO's) pursuit of a system of universal patents. The losers will be the poor people of both developing and developed countries.

Developing countries accepted TRIPS not because the adoption of intellectual property protection was high on their list of priorities, but because they thought the overall package offered — including the reduction of trade protectionism in developed countries — would be beneficial. Now many of them feel that the commitments made by developed countries to liberalise agriculture and textiles and to reduce tariffs have not been honoured, while they have to live with the burden of the TRIPS agreement. Recent events suggest that developed countries do not even seem to recognise their obligations and are pressing for the higher standards of protection of intellectual property rights (IPRs). This is evident from the adoption of new standards of compliance for IPRs in bilateral and regional agreements. These agreements now seek:

- an extended period of protection beyond 20 years; and
- the adoption of data protection norms that would not only delay entry of low-cost competitive products on the expiry of patents, but would also invalidate compulsory licences for public health emergencies unless specifically provided in national laws.

Both of these will effectively circumvent the safeguards in the TRIPS agreement for countries with no or insufficient manufacturing capacities. The extended period of patent protection will result in delaying the entry of generics not only in those countries bound by the bilateral/regional trade agreements, but also in other countries, if they are dependent on those countries for their requirement.

The provision to protect test data against unfair commercial use is now stretched to protect the commercial interests of the originator well beyond 20-year patent life. The Central America Free Trade Agreement (CAFTA) lays new standards of protection, which will become a benchmark for all bilateral agreements.

Not satisfied with these new provisions in the bilateral/regional trade agreements, the innovative industry has now roped in WIPO to perpetuate its monopoly and endorse 'evergreening' through the creation of a system of universal patents that completely ignores the interests of developing countries. The move aims at doing away with the flexibility provided in the TRIPS agreement that would have enabled each country to provide a patent regime commensurate with the level of its economic development.

The UK Commission on Intellectual Property Rights (CIPR), after an extensive study, reported that:

'It is our contention that intellectual property systems may, if we are not careful, introduce distortions that are detrimental to the interests of developing countries. Very "high" standards of protection may be in the public interest in developed

countries with highly sophisticated scientific and technological infrastructure (although we note, as above, that this is controversial in several respects), but this does not mean the same standards are appropriate in all developing countries.’¹

The CIPR report further observes that:

‘To achieve that end, so far as possible developing countries should not be deprived of the flexibility to design their IP systems that developed countries enjoyed in earlier stages of their own development, and higher IP standards should not be pressed on them without a serious and objective assessment of their development impact.’¹

Thus, bilateral agreements and the WIPO initiative add new dimensions to the ongoing debate on how national IPRs regimes could best be designed to integrate development objectives and IPRs. The generics industry therefore needs to assume a greater role in alerting the general public, intellectuals, the media and the governments of developing countries of the consequences of these developments, not only for public health, but also for the future of the generics industry, which provides low-cost competition.

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References

1. Commission on Intellectual Property Rights (2002) ‘Integrating Intellectual Property Rights and Development Policy’, CIPR, September, available at <http://www.iprcommission.org>.