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OPINION IN LEAD

LDCs request indefinite extension for enforcing pharmaceutical IP rights

In a move that is set to reignite the global debate on the role of pharmaceutical patents from a public health standpoint, least-developed countries (LDCs) members of the World Trade Organization (WTO) have once again tabled a proposal for extending the transitional period to LDCs for enforcing intellectual property (IP) rights on pharmaceutical products. Only this time, WTO LDC members are seeking an indefinite extension, as long as a WTO member remains an LDC.

The proposal was presented by Bangladesh, on behalf of the LDC Group at a meeting of the Trade-Related Aspects of Intellectual Property (TRIPS) Council in late February. Considering the high exposure of LDCs to multiple health risks associated with poverty, and the high prevalence of HIV and other non-communicable diseases such as cancer, the LDC proposal states that it is imperative for WTO's poorest members to "retain maximum policy space to enable them to confront their health burdens with effective and affordable strategies."

Currently, access to medical treatment for a large number of individuals in LDCs is possible because of the availability of low-cost generic drugs which are procured through the support of international donors. This is because the treatment options for many life threatening diseases are either non-existent or highly limited in the LDCs due to the market failure of patent based innovation system. If LDCs are not granted the flexibility to refrain from providing IP rights on pharmaceutical products, patent protection will place many critical treatments outside the reach of LDCs since donor organizations and their supply-chain partners will refrain from the purchase and distribution of antiretroviral and other drugs when faced with the possibility of patent infringement lawsuits.

Access to many patent protected pharmaceutical products is critical to facilitate access to affordable medicines in LDCs that are inundated with numerous development and health challenges given their low level of economic development. Against this argument, LDC members have specifically requested a waiver for implementing their obligations under Article 70.8 and 70.9 of the TRIPS Agreement that deals with patent protection, and marketing rights for pharmaceutical and agricultural chemical products respectively. Currently, LDC members of the WTO are exempt from having to implement all the provisions of the TRIPS Agreement until 2021 according to a decision taken in June 2013. However, the WTO General Council had, in 2002, approved a specific waiver for Article 70.9 applicable to pharmaceutical products that is to be reviewed annually until its termination on 1 January 2016.

Considering that the TRIPS Council has already adopted a general extension in favour of LDCs back in 2013, there is looming uncertainly about whether LDCs need to further extend the 2016 deadline that is otherwise due to expire in 2016. Stressing the need for absolute clarity about the right of the LDCs to not collect pharmaceutical patent applications and grant exclusive marketing rights, many observers have suggested that LDCs seek a declaratory or interpretative statement from the TRIPS Council and General Council stating that the 2013 extension covers pharmaceutical patents, regulatory data and exclusive marketing rights, and thus further action on the 2016 extension is not necessary. Meanwhile, there are experts who argue that continuous or indefinite extension of such waivers could have considerable impact on LDC's integration into the knowledge-based global economy, and consequently limit technology transfer.

Though the recently submitted LDC proposal for an indefinite extension will only be tabled for detailed discussion at the next meeting of the TRIPS Council scheduled in June 2015, the proposal has already garnered support, mainly from Nepal, China, Brazil and India. Surprisingly, even the European Union (EU) has given general support to the idea. However, in light of opposition faced by LDCs from the developed world in their previous requests for extension of the TRIPS Agreement, it remains to be seen if countries like the United States (US), Australia and EU among others, will accept the duly motivated request of the LDC Group.

Considering that LDCs face crushing public health needs in additional to economic and financial constraints, they are in desperate need for access to affordable generic pharmaceutical products. The extension of the specific pharmaceutical waiver for LDCs is one of the most effective WTO mechanisms to ensure increasing access to medicines to the LDCs in a large scale. Thanks to existing TRIPS extension to LDCs, Bangladesh is currently the only source of generic Sofosbuvir, an antiviral drug for the treatment of hepatitis C and a medicine that is in high demand in LDCs and developing countries. The generic version is nearly 99 percent cheaper than Sovaldi that sells for US$1,000 a pill in the US. Given the importance and the relevance of the transitional period to LDCs for enforcing IP rights on pharmaceutical products, LDCs must intensify their advocacy and take a firm stance on the issues of IP rights related to pharmaceutical products, and importantly, developing and developed country members should recognize and honour the request of the LDCs for an unconditional extension.

ANALYSIS

South Asia's latest ambition: Sub-regional approach to connectivity

During the South Asian Association for Regional Cooperation (SAARC) Summit held in Kathmandu last November, three different agreements—one on energy cooperation, and the other two on rail and road connectivity—were put forward for signature. However, the Summit was only able to deliver the Framework Agreement for Energy Cooperation (Electricity) since compromise could not be reached on the agreements related to rail and road connectivity within the SAARC framework.

Against this backdrop, a motor-vehicle agreement has been recently negotiated at the sub-regional level between select SAARC countries. Officials of the participating countries met in Kolkata in February to discuss the proposed "Motor vehicles agreement (MVA) for the regulation of passenger, personal, and cargo vehicular traffic between Bangladesh, Bhutan, India, and Nepal (BBIN)" or the MVA agreement.

The main objective of the MVA agreement is to facilitate seamless transit of passenger and cargo vehicles between the participating countries. The agreement shall allow passenger and cargo vehicles to travel in the participating countries without the need for trans-shipment of goods and passengers at the border crossings. This agreement shall also provide for easy movement of private vehicles and non-regular passenger vehicles across the border. Considering the desperate need for deeper regional integration in South Asia, the proposed agreement is all set to not only provide stimulus to economic development in the region through better connectivity, but also encourage people-to-people social and cultural contact and promote tourism among the participating countries.

The February meeting reportedly discussed the possible institutional structures for effective implementation and monitoring of the agreement. In this regard, participating countries are expected to bilaterally negotiate arrangements for the implementation of the agreement. Additionally, participating countries have also agreed to set up individual national committees and a sub-regional joint committee for overall facilitation of land transport, and to coordinate and monitor the implementation of the agreement. Importantly, the much awaited MVA agreement is expected to be signed at the transport ministers' meeting to be held later this year.

In spite of the growing demand for regional agreements that would bring down prohibitory transportation costs that continues to impede the regional trade prospects in absence of seamless transport connectivity in South Asia, the proposed agreement was bound to take the sub-regional approach since Pakistan has remained non-committal to a regional MVA agreement. However, this sub-regional agreement is open to participation by all SAARC countries. Hence, the onus is now on Pakistan to join this sub-regional agreement and enable regional members' easy access to Central Asia via Afghanistan.

Meanwhile, it has been reported that there have been talks to undertake 28 road construction projects with an estimated cost of US$8 billion for better connectivity in the sub-region. It is most likely that the financing agencies such as the Asian Development Bank and the World Bank, which are already financing infrastructure development in the region, will also provide significant contribution to finance the development of necessary infrastructure for better sub-regional connectivity. Additionally, the Aid for Trade (AfT) initiative of the WTO can also provide some support for developing infrastructures that are vital for enhanced trade. However, significant additional investment will be required to create supporting infrastructures to exploit the benefits of the sub-regional MVA agreement. Studies have shown that if the existing border infrastructures between the participating countries are upgraded, trade volume could potentially go up multiple times than that of the current level.

At the SAARC level, a funding mechanism already exists. Aptly named the SAARC Development Fund (SDF), the institution has the mandate to finance infrastructure development in the region, among others. Sadly, the "economic and/or infrastructure window" of the SDF has been dormant till date. Moreover, the SDF only has a capital base of US$300 million, which is nowhere close to the funding needed to support the development of necessary infrastructure in the region. The World Bank, in its recent report "Reducing Poverty by Closing South Asia's Infrastructure Gap" published in December 2013, reveals that the region's growing demand for infrastructure has enlarged existing infrastructure gap. The Report argues that addressing such gaps will require investing as much as US$2.5 trillion by 2024: one third to be spent on the transport sector.

At the same time, India has pitched the idea of a SAARC Development Bank (SDB) to finance infrastructure development in South Asia. The proposed bank is expected to finance construction of infrastructures such as railway lines, roads, waterways, ports and customs stations to expedite easy and cost-efficient trade. The proposal was approved by all the SAARC countries during the 8th meeting of the South Asian Free Trade Area (SAFTA) Ministerial Council held in Thimphu on July 2014. However, the Indian government has now reportedly discarded the idea to open the SDB, labelling it as "unviable" and "entity that will not be able to compete in size with other big multilateral financial institutions for financing infrastructure projects in developing countries". Indian establishment has been wary that the shortfall to be borne by India through the proposed SDB to fund the region's infrastructure needs—even after obtaining contributions by other multilateral institutions and other external commercial borrowing routes—will be very huge.

Nonetheless, the creation of an effective funding mechanism like the SDB is the need of the hour since the sub-regional approach to connectivity is due to take place, which will demand significant investments in infrastructure development. The Bank can provide the member countries—albeit to four countries participating in this sub-regional approach to connectivity in the first phase as it seems now—with access to capital to finance infrastructure in order to provide a big push to sluggish intra-regional trade in goods. Undoubtedly, the proposed Bank can surely provide timely stimulus to the outcry for greater regional integration. But since the establishment of the SDB is currently in limbo, to immediately start with, the SDF should be upscaled and made to work on the infrastructure sector until the SDB formally starts its work on the ground.

NEWS

Nepal Ministry told to fix floor price of sugarcane

The Cabinet on 26 February directed the Ministry of Industry to set the minimum support price of sugarcane amid the demonstrations by farmers across *Tarai*. Last week, hundreds of sugarcane growers staged a protest on the East-West Highway at Hariban, Sarlahi demanding that the government set the floor price for their products reflecting the rising production costs. Farmers have threatened to hold violent demonstrations if their demand are not met.

It has been a tradition for sugarcane growers and sugar mills to engage in a bitter confrontation over the floor price during harvest time. The government does not set sugarcane prices, and factories and farmers are told to sort things out themselves, and this provision leads to tensions flaring up every year. On 3 January 2011, the local administration was forced to impose a daylong curfew on either side of the East-West Highway up to 13 km in Sarlahi district following a strike organized by farmers demanding that cane prices be fixed. At least 40 police personnel were injured in clashes with the irate farmers.

The cane price is normally determined in Nepal based on the price offered by Indian mills to their farmers.
“We have not received any formal directive from the Cabinet,” said Uttam Bhattarai, Secretary at the Industry Ministry. “However, we are in favour of settling the longstanding issue between sugar mills and sugarcane producers with a win-win deal,” Bhattarai said. He added that the ministry was awaiting the written directive and would act accordingly after receiving it.

The matter was bucked up to the Prime Minister’s Office after growing disputes between the farmers and sugar mills. Sugarcane farmers said the crushing of sugarcane had started two months ago, but there was no sign of determining the new rate for this season. Although farmers have demanded a hike in the rates in line with increased production costs, sugar producers have been ignoring their demand. This year, farmers are asking for NPR 525 per quintal for their sugarcane. Last year, the rate was NPR 476 per quintal.

While sugarcane producers have been demanding a price hike, sugar producers said that they were unable to pay what the farmers were demanding. They said that the price of sugarcane should be reduced as sugar prices had fallen this year.

Nepal produced 2.93 million tonnes of sugarcane in 2012, up from 2.71 million tonnes in 2011. The area under sugarcane farming has increased to 64,472 hectares in 2012 from 62,998 hectares in 2011, according to official statistics.

Source: www.ekantipur.com, 27.02.2015.

Bangladesh nominated as LDCs coordinator again

Bangladesh has been nominated as coordinator of the LDCs at the WTO for the year 2015. “The LDCs nominated Bangladesh as their coordinator at WTO again for the year 2015 due to its vital role in bargaining with the developed world on behalf of the LDCs,” according to a press release shared on 22 February. Bangladesh was first elected as the coordinator of the LDC group in 1996 and since then it has served in that capacity many times. There are currently 48 LDCs on the UN list, 34 of which to date have become WTO members.

Source: www.dhakatribune.com, 23.02.2015.

UN talks agree to negotiating text for global climate deal

Delegates from just under 200 nations agreed on 13 February to a text that will form the basis for substantive negotiations on a new global climate deal, which these countries aim to adopt at a December meet in Paris, France. The 86-page document contains options and sub-options put forward by countries on possible language for the eventual agreement, currently organised in twelve sections ranging from mitigation commitments to technology development and transfer.

The bid to secure a negotiating text was slated as the main deliverable for last week’s six-day session by the new co-chairs of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), the UN Framework Convention on Climate Change (UNFCCC) body charged with hammering out the new climate pact.

“We now have a formal negotiating text, which contains the views and concerns of all countries. The Lima Draft has been transformed into the negotiating text and enjoys the full ownership of all countries,” said Christiana Figueres, Executive Secretary of the UNFCCC, referring to a much shorter non-paper penned by UN officials.

That latter text was contained in the annex of the outcome document from last December’s climate meet held in Lima, Peru. During the ADP session, many delegations scrambled to insert various textual proposals into the Lima draft. The ADP co-chairs and some parties suggested ways to start streamlining the Paris deal draft. This met with resistance from other parties who raised process-related concerns, which eventually stymied further work in this area at the meeting, a move criticised by the EU among others.

The ADP will meet again in June in Bonn, Germany to begin streamlining this text. The co-chairs said last week that they would reflect parties’ views over how to slim down the text in a scenario note prepared ahead of the June meet.

Source: Bridges Weekly, Vol. 19, No.6, 19.02.2015.

High-level panel to prepare study on Technology Bank for LDCs

The UN Secretary-General's High-Level Panel agreed to prepare a study on the creation of a technology bank that would aim to address science, technology and innovation (STI) gaps in the LDCs. The decision was taken at a meeting in Gebze, Turkey, which convened from 16-17 February 2015.

The study will, *inter alia*, address questions on technology transfer, including intellectual property rights; assess the Technology Bank's potential to assist in the transfer of technologies to LDCs and develop domestic capacities; and consider how the Technology Bank can leverage existing international initiatives to limit duplication of effort and streamline management costs.

The Panel "focused on concrete articulation of the practical and operational aspects of the Technology Bank for LDCs," said the UN High Representative for LDCs, Landlocked Developing Countries (LLDCs) and Small Island Developing States (SIDS), Gyan Chandra Acharya. He added, "Once operational, the Bank will make critical contributions to transforming the lives of the poorest segments of the global community." Panel Chair Romain Murenzi said that the Panel "will propose practical measures with the highest impact" to provide the world's poorest nations with access to technology to transform their lives.

Efforts to improve the state of science and technology in LDCs and build a knowledge base to use such technology are expected to contribute to LDCs' ability to fight poverty and improve socio-economic conditions, according to the UN. The sector's development is further expected to help bridge the technology gap and the digital divide.

The 11-person Panel, composed of LDC representatives and development partners, will deliver its recommendations on the scope, function and organization of the Technology Bank to the UN Secretary-General in July 2015.

Source: sd.iisd.org, 18.02.2015.

WTO members indicate extensive preferences to enact LDC services waiver

Several WTO members indicated concrete sectors and modes of supply where they intend to provide preferential treatment to LDCs' services and services suppliers at a high-level meeting on 5 February. Most of the preferences presented at the meeting of the WTO Council for Trade and Services (CTS) build on offers that have previously been made by members in the context of the Doha Round negotiations. In addition, some members have offered to add new commitments and/or establish equivalence with preferences that they have granted in their most liberal free trade areas.

Those unilateral preferences for LDCs services exports will first need to go through the respective preference givers' domestic legal procedures and subsequently be notified at the WTO before they become binding.

Several LDC delegates qualified the outcome of the meeting—which was attended by trade ministers from Uganda and Bangladesh—as "impressive" and "unexpected." The quality of the engagement and depth of the signals presented to "operationalise" the waiver were acknowledged by several delegates at the end of the high-level gathering. The meeting took place, as envisaged under the terms of the 2013 Bali Ministerial Decision, six months after the

LDC Group submitted its collective request in July 2014 regarding the preferential treatment it wanted to see for LDC services exports.

In order to release the potential economic benefit of the waiver, the Council on Trade in Services was instructed at the 2013 WTO Ministerial Conference to launch a process aimed at promoting ‘‘the expeditious and effective operationalisation" of the waiver.

The LDC services waiver decision stems from the outcome from a previous WTO Ministerial Conference held in Geneva, Switzerland in 2011. However, in the two years that followed, no preferences had been requested by LDCs or granted to them, prompting WTO members to reconsider ways to move this decision forward.

Source: Bridges Weekly, Vol. 19, No.5, 12.02.2015.

Bhutan's seed bank to ensure food security

Boasting of more than 300 local rice varieties that have withstood varying weather conditions over the ages, Bhutan is relying on its seed bank—a conserve of seeds and other genetic resources of indigenous plants—to tackle food security issues arising out of climate change.

Nestled in the southern slopes of eastern Himalayas, Bhutan is one of the world's smallest countries, with 69 percent of its population of just 760,000 people dependent on agriculture. Around 56 percent are farmers, the community most aware of local symptoms of climate change that is perceived as a threat to the loss of on-farm agro-biodiversity, said Ugyen Tshewang, Secretary of Bhutan's National Environment Commission (NEC).

"Our National Gene Bank will definitely play an important role for us in tackling climate change because it has all the indigenous seeds. For example, there are more than 300 varieties of rice and many varieties of corn and others staples," Tshewang said. "The local varieties are more resilient because they have passed the test of time and are adapted to the local conditions they have passed through the cold weather, hot weather, frost and snow," he added. The essence of a gene bank is to preserve a diversity of seeds for posterity and for research, Tshewang explained.

Established in 2005, it holds 1,268 accessions of cereals, legumes, oilseeds and vegetables. Rice, maize, wheat, barley, buckwheat and millets are the major staple cereals that are cultivated in Bhutan, which is opposed to the introduction of genetically modified crops/food, Tshewang informed. Officials estimate the presence of 350 landraces (locally adapted varieties) of rice, more than 40 of maize, 24 of wheat and 30 of barley in the country.

"We have also developed eight climate resilient rice varieties in the wake of climate change," says Tenzin Drugyel, Deputy Chief of the Ministry of Agriculture and Forests (MoAF). Some of the local symptoms of climate change that Bhutan has seen recently include floods from a glacial lake outburst (GLOF) and erratic monsoons. In the wake of these emerging challenges, among other interventions, Drugyel said, evaluation and adaption of genetic resources (plants and animals) resistant to biotic and abiotic stresses including drought, pests and diseases, is crucial.

As per the Community Perspectives on the On-Farm Diversity of Six Major Cereals and Climate Change in Bhutan report, research should focus more on these traditional varieties. A recent paper authored by various departments of the MoAF and United Nations Development Programme (UNDP)-Thimphu's Global Environment Facility-Small Grants Programme says that "the impact of climate change could directly offset the traditional seed systems in several forms and on-farm agro-biodiversity that is vital for household food security."

Source: www.business-standard.com, 10.02.2015.

India to prune duties for Pakistan, Sri Lanka under SAFTA

India will bring down the list of sensitive items that are presently shielded from duty cuts under SAFTA for Pakistan and Sri Lanka in a calibrated manner.

"I think in the next committee of experts meeting, we will see a further pruning of list," said A M Gondane, Joint Secretary, Ministry of External Affairs, India at a conference on 'enhancing India-Pakistan trade' organised by a Delhi based think-tank on 2 February. He added that India had already almost dismantled the sensitive list for all least developed country members of SAARC.

"We will also be doing it for Pakistan and Sri Lanka. Sri Lanka had earlier told us that bringing down the sensitive list would have revenue implications for them, but I think some movement is likely to happen soon," Gondane said.

On what could be done to enhance trade between India and Pakistan currently stuck at a little more than US$2 billion, Gondane said that one needed to go beyond rhetoric and try to analyse what the real problems were.

"Two countries may have political differences, but it need not restrain trade and economic relations," pointed out Ishrat Husain, Dean and Director, Institute of Business Administration (IBA), Karachi. Husain said that trade between India and China had prospered despite political differences and so had China - Taiwan trade. "The same can happen for India and Pakistan and the two countries need to seriously look at it," he said.

Source: www.thehindubusinessline.com, 02.02.2015.

Activities

National consultation on South Asian country study on products with regional trade potential and associated non-tariff barriers with special focus on women in WMSMEs

SAWTEE organized a half day national consultation program with support from UNDP on South Asian country study on products with regional trade potential and associated non-tariff barriers with special focus on women in micro, small and medium enterprises (WMSMEs)—A case of Nepal on 12 February 2015. The objective of the workshop was to share the findings of a research carried out in select districts in Nepal and gather inputs on the study from related stakeholders. The study had selected two products, namely *allo* and hand-made paper for research.

Presenting the findings of the research Dr Hiramani Ghimire, Executive Director said that the study showed challenges such as the like transport problems, documentation hassles, procedural obstacles in customs, transit problems and lack of branding that should be overcome to uplift the status of the enterprises and sectors covered by the study.

They stressed on the importance of developing markets internally as well as in the South Asian region for Nepali products. One suggestion was made to adopt appropriate policies for resolving the payment-related hassles in countries where Nepali products are being exported. They further stressed on the importance of reinforcing the plans related with using the Nepali handmade papers and Allo products in the public sector to encourage and promote WSMEs. The participants also highlighted issues related with the sustainability of the raw materials, product development and design, effectiveness of the roles of relevant Ministries, capacity building trainings, effective campaigns for information dissemination and appropriate policy measures targeted to women engaged in micro, medium or small enterprises.

More than 50 participants, including representatives from different entrepreneurial organisations, women entrepreneurs, policy makers, private sector and media, participated in the programme.

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