

TRADE AND INTELLECTUAL PROPERTY: DEVELOPING COUNTRY PERSPECTIVE

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ABSTRACT: *With time, the International property protection and enforcement have come to the forefront as a key international trade issue for several nations. It very plays a crucial role in international trade, economic relations, and economic growth. With the protection of intellectual property rights, developing countries are able to take part actively in international trade. This gives an understanding of the intellectual property rights, types, historical perspective and impact on developing countries. The purpose of this paper is to provide the reader a clear idea of trade and intellectually property in developing countries. The paper is of extreme importance because it is one of the few papers that highlights the issues of trade and Intellectual property from a developing country perspective.*

KEYWORDS: Developing countries, Intellectual property rights.

INTRODUCTION

The matters of Intellectual property rights (IRP) have been of national concern. Every nation state has developed IPR laws that reflect their needs. International property protection and enforcement have come to the forefront as a key international trade issue for several nations. Intellectual property is defined as the creation of mind, names, literary and artistic world, images, inventions, and designs that are used in commerce. Intellectual property is categorized as industrial property and literary and artistic work. Industrial property includes trademarks, inventions, copyrights, and industrial designs. Literary and artistic works includes musical works, poems, novels, and architectural designs. World trade covers nine different intellectual property trademarks, copyright, geographical indications, trade secrets, integrated circuits, industrial designs, microorganisms and plant varieties. The central issue of intellectual property is when the incentive to innovate collides at a certain point with the need to have competitive markets.

The four main issues of intellectual property rights as far as trade issues are concerned are moral dimensions of gene patenting, the scope of intellectual property rights protection, the future of copyright in the digital environment, and enforcement. There are claims that developing countries patent have very little relevance to the development needs and are not very useful. Most of the developing countries have faced several difficulties in protecting their plant varieties and farmers traditional knowledge from the developed world, which mainly attributes to lack of strong rules and regulations. Strengthening intellectual property rights influences international trade positively. It can create ownership advantage that can allow firms to compete efficiently in foreign markets. In developing countries, strengthening intellectual property rights increases the market power for foreign firms reducing trade to the benefit of licensing.

Strong intellectual property rights are necessary for developing countries because it encourages domestic innovation because of market failure. It also facilitates global technology transfer from countries that are considered developed because of information asymmetries in contracting. Pharmaceuticals have brought health benefits to developing countries. Intellectual property rights in pharmaceuticals have two basic areas of impact that have an effect on public health. The issue of access puts more emphasis on the link between intellectual property rights, omission of competitors and the availability and pricing of new medicines. The paper will discuss trade and intellectual property from developing country's perspective by examining types of intellectual property rights, history of intellectual property rights, the TRIPS Agreement, WTO and technology transfer, and impact on developing countries.

Types of Intellectual Property Rights

According to Ilias and Ian (2008), intellectual property rights are the outcome of human inventiveness and creativity. The most common ones are:

Patents

Patents are the strongest form of intellectual property rights. It is issued by government agencies upon successful evaluation of an application. A patent confers the inventor with the right to keep others from economically exploiting the innovation. For an innovation to be patented it must have an inventive step and it must be useful. The patent application has to describe the innovation adequately to enable those that have specific skills in that field to practice it. The area under discussion of patents includes industrial processes, machines, and composition of articles of manufacture. The grant of patents to developing countries leads a domination of international firms. This might work not in the favor of flow of technology and foreign investment. It might restrict the technological advancement of these countries. However patents allow developing countries to use property rights without obtaining ownership because they can pay royalty fee. This is very important for developing countries because they will not strain the little resources they have.

Copyrights

A copyright applies to original work of authorship like motion pictures, books, sound recordings, and photographs. In order for copyrights to claim creative expressions, they must be fixed with tangible medium. Protection under copyrights usually extends to the existence of the owner by fifty years. Intellectual property rules are very significant for the development of first-rate innovation. Under the copy protection, the economy of developing countries becomes protected. As a result of the protection, developing countries will realize investment benefits and other forms of economic growth.

Trademark

Trademarks are words, signs, symbols, or devices that can clearly distinguish goods or services of one enterprise from another one. In trademark, there is no originality; the main requirement is a mark that is not a general description. A trade can only be valid if it is registered. There is no time limit in the protection of trademarks as long as they are used and renewed once in a while. Trademarks in the developing countries allow them to cover imported goods and other products that are produced by the foreign firms in the host country.

Trade secrets

Trade secrets are secret business information. They include devices, formulae, techniques, methods, and processes that can offer competitive advantage over competitors because they are not usually known. Trade secrets only apply when logical efforts are undertaken to uphold secrecy. IPR instruments that are suited to specific forms of innovations have been developed. An integrated computer circuit right protects the layout design of integrated computer circuits. A geographical indication protects reputation regarding quality linked with a specific region of origin. A database right prevents illicit use of database sets and this will help developing countries to advance their trade developments.

Historical Perspective

Intellectual Property Rights is a very sensitive area for developing countries. With appropriate implementation and proper timing, intellectual property rights could lift the socio-economic conditions of developing countries. United nations have highlighted the importance of technology in trade and development. The situation of oligopoly and monopoly in the world of technology markets hinders developing countries from benefiting fully from strong intellectual property rights. Weak intellectual property in the developing countries does not mean that investors in the developed countries will lose but it means that the relative financial benefits that are associated with their inventions will become less. During 1950s and 1980s, developing countries were in a position to desist the implementation of intellectual property rights with a special status in the IPR system. It was evident that regional trading blocs such as the Andean Pact, and Latin American Free Trade Association followed systems of intellectual property rights. In 1970, India was the first developing country to adopt patent laws that had great restrictions on the patent holders. India had the largest impact on its pharmaceutical industry because of such legislation. Brazil and Argentina set up national offices to control technology transfer but the initiatives and practices did not lead to a strong intellectual property. In 1980s, there was a shift in scenario. In developing countries, the terms changed further than what was expected from simple US pressures (Mirza, 2006).

Intellectual property rights have assumed an increased role and importance in investment, international trade, economic relations, and economic growth. In the current worldwide economic scenario of opportunities and challenges for developing countries, it has to be on invigorating domestic efficiency as well as qualitative management while promoting creativity. As mentioned before, intellectual property is concerned with the creation of human intellect. High confidence in the intellectual property system offers a strong stimulus for intellectual creativity. Protection of intellectual property rights allows countries to participate actively in international trade. Increasing internalization of corporate production and distribution is eroding physical barriers to tradability of goods, international transactions, and the mobility of capital (Alikhan, 2000).

The rising borderlessness of trade and technology has created both challenges and opportunities for developing countries. Technology has become a very crucial aspect of trade and world trade is becoming a very significant factor in the growth process. International industrial and trading activity is being drawn towards trans-border alliances at an increasing rate. In such a changing economic scenario, developing countries are becoming active participants as beneficiaries and initiators of change. Developing countries are using their productive sector to diversify and broad base their manufacturing activities largely with the utilization of the intellectual property system for qualitative production for exports. The

technological development of industrialized countries and industrializing developing countries has evolved with the existence of intellectual property rights protection (Alikhan, 2000).

Developing countries should go ahead with techno-economic improvements more forcefully. Technology has become a crucial asset in trade, economic development, and investment. Trade increases with investment and investment increases with effective intellectual property protection. In the current internalization of trade, fears of erosion of economic sovereignty and technology and investment invasion are being exaggerated. International trade in goods and services that are protected by intellectual property rights is on the increase in developing countries. The economic value of various developing countries is growing swiftly.

The systems that govern intellectual property promote socialization via innovation and knowledge creation. Regardless of their existence in the past years, intellectual property was not publically debated but the negotiations to ratify the agreements of World Trade Organization (WTO) on Trade Related Aspects of Intellectual Property Rights (TRIPS) acted as the catalyst that brought this to public debate. Increasing trade flow through liberalization is still a priority for policy makers in various countries. Trade liberalization plays an important role in economic growth for countries. International trade is an imperative instrument that reduces poverty in developing countries by making possible a process of sustained economic growth, expanding employment opportunities, and developing productive capacities. In developing countries, exports enable them to acquire goods by means of importation. Importation of goods is very crucial for economic growth and poverty reduction. Exports make it possible for developing countries to transform natural resources that are underutilized and surplus labour into foreign exchange (Alikhan, 2000).

Regardless of the potential benefits of trade for developing countries, the rules that are set out in multilateral and bilateral trade remain unfair to developing countries. This is so because majority of the gains from trade are accrued to developed countries. The relationship between intellectual property rights and trade is not clear from a theoretical point of view. A strong intellectual right leads to ownership advantage to the firms that serve the foreign markets. It provides a legal way out when their assets are violated. Strong intellectual rights can also increase the bilateral exchange to the foreign markets. They increase bilateral exchange through reduction of costs that are associated with loss prevention of knowledge assets. Strengthening intellectual property rights influences trade positively for developed countries. The discrepancy in national intellectual property rights regimes are creating effects that are similar to non-tariff barriers. Exporting firms in the developed countries are facing additional costs as a result of exporting to developing countries only when they are engaging in activities that are designed to inhibit imitation (Alikhan, 2000).

Developing countries find it necessary in their long-term interest to protect the intellectual property rights of their products like pharmaceuticals, films, and software. Failure to protect their intellectual property rights may discourage genuine manufacturers from selling their goods in those countries and inhibit the development of local knowledge-based industries. Developing countries claim that the protection of intellectual property will inhibit their economic development. This is because they are not in a position of paying for the import of justifiable non-infringing intellectual property. If developing countries are required to pay for the import of genuine non-infringing intellectual property, it will lead to less intellectual property. It will also lead to less technology that is available to their people and industries as

well. The outcome of this is that it will lessen the prospect of economic development and expanded trade in the developing countries.

If a nation forces its citizens to use only what is licensed, for example copies of computer programs, very few people will be capable of obtaining such programs and the country will fall further behind technologically. Developing countries believe that by offering greater protection for intellectual property, they will not be able to expand their trade with other countries. This is because they will not be able to export original books, movies, records, and computer programs. When a country is not offering adequate protection to intellectual property, multinational companies that need intellectual property protection for their products will become reluctant to locate in such countries. For example, a recording company will not be willing to locate a compact disc (CD) manufacturing company plant in a country that does not offer sufficient protection against record piracy. These companies will refuse to license genuine distributors and overlook the market. As a result of this, genuine taxpaying channels of distribution will not develop inside the country. Furthermore, such a country will not develop domestic expertise in licensing and distribution.

It is widely acknowledged that the market of developing countries is not protecting intellectual property rights. A market that is not protecting intellectual property rights will likely be flooded with illegitimate products that are inferior. When legitimate producers of intellectual property are not available in the market because of lack of protection, the market will sell products of inferior quality. The accessibility of pirated products in the market may look like an economic advantage in the short term but in the long term, it will impede the development of a country. Trade laws in a number of developing countries have been modelled on the laws of Europe or United States. As much as these models differ in various aspects, they both depend greatly on private enforcement of the law by intellectual property rights owners instead of the government.

The TRIPS agreement

The agreement on Trade-Related Aspect of Intellectual Property Rights mandates the level of protection of intellectual property rights in national laws. As an essential premise, TRIPS agreement necessitates that all countries (both developed and developing) adopt the same level of protection for Intellectual Property Rights. Meeting the terms that are laid down by the TRIPS agreement inflicts huge costs on developing countries. The TRIPS agreement sets up industrial property for the developing countries that they did not have before. Moreover, developing countries are being forced to act in accordance with the extensive enforcement obligations of the agreement such as border measures and criminal sanctions to contest for piracy and counterfeiting. The huge economic cost of compliance with the TRIPS agreement is compounded by the fact that developing countries are net importers of intellectual property. The compliance with TRIPS agreement for developing countries will bring about a steady flow of foreign currency from developing countries (Correa, 1999).

During the TRIPS negotiations, developing countries were not included in the bilateral negotiations. This means that they did not have access to the same level of information as the negotiating parties. When intellectual property protection in developing countries is being analyzed, systems of legal protection become very significant. There are systems of IPRs that are enshrined in the TRIPS agreement which are characterized by individualization attached to their holders in the romantic liberal traditional rights. Industrialized countries have forced

developing countries to initiate negotiation of an agreement on TRIPS with a clear objective of universalizing the standards of IPRs protection (Correa, 1999).

WTO and Technology Transfer

The trade related aspects of intellectual property rights was an outcome of deliberation of multinational trade negotiation. TRIPS Agreement puts down the inclusive rules that could cover IPRs. In the process of negotiation of the Uruguay Round, several developing countries had reservations regarding the changes brought up by TRIPS to the existing national standards of enforcement of IPRs. This happened because developing countries were too highly dependent on developed countries for technology. At that time, it was widely speculated that the transfer of technology could become very hard with the enforcement of TRIPS. When technology transfer in developing countries is examined, it becomes clear that the trend is not quite encouraging. The volume of technology transfer can be measured wrongly if the technology fees are used. Developing countries are faced with the challenge of making choices that could encourage the transfer of the latest technology and the diffusion of such technology (Cohen, 2004).

The typical justification used to establish monopoly rights by patents is the fact that they prop up innovation. During the period of industrialization, most of the Western European countries as well as USA used their patent systems to build up their domestic industries. Over twenty-five International countries harmonization closes up similar preferences for national prudence for using patent in the developing countries today. Developing countries as a term tends to pay no attention to individual differences among countries. Countries that have creative capacity and industry are in a position to develop new technology because they are able to achieve inventions that can be patented (Cohen, 2004).

Impact on Developing Countries

World Bank Economic Global Perspective believes that special reasons for both developed and developing countries to follow TRIPS agreement. This is because TRIPS agreement offers developing countries with better access to apparel and agricultural markets that are available in rich countries. Strong IPRs encourage additional technology transfer and innovation. On the contrary, the promise of long lasting benefits to the developing countries looks uncertain and costly to achieve in a number of these nations. There are administrative costs as well as problems of higher prices for key technological inputs and medicines become visible in the minds of policy makers in the developing countries. There are specific short-term costs that are linked with intellectual property for developing countries. These costs are higher prices for protected properties and technology. The case for stronger intellectual property rights in the developing countries must focus on the long-term benefits such as strong stimuli to local innovation, foreign direct investment inflows or larger technology (Cohen, 2004).

Certainty is a fact of IPR that benefits developed countries through implementation of intellectual property rights in developing countries. Implementations like this stimulate the local innovation in developing countries by allowing them to import foreign technologies and have hands-on experience in the use of technologies. IPRs offer developing countries with crucial foundation for complex business structures. It also indicates that private property rights are generally well enforced. Strong IPRs promotes technological activities in developing countries. It ensures that there are better trademark and copyrights protection that encourages

quality improvement. Economies that do not have technological capabilities can stimulate worldwide innovation by adding to effective demand for new products (Cohen, 2004).

Despite the fact that strong intellectual property can improve ownership advantage, it can increase or decrease bilateral exchange. According to market power concepts, strong intellectual rights can reduce bilateral exchange. It ensures that there is a temporary monopoly that prevails over the protected knowledge. Firms that are able to secure a stronger patent protection in a foreign market can exert market power to restrict quantity and increase the unit price of bilateral exchange to come into level with that of the market. In addition, strong intellectual property rights can strengthen market segmentation and lower its capacity of substituting products. This move will create a negative relationship between the strength of IPRs and bilateral flows within the market conditions, and firms will be forced to reduce the quantity supplied and increase the price of protected products. The harmonization of trade agreements has not increased exports of developing countries.

CONCLUSION

Despite its potential benefits for the developing countries, intellectual property rights remains unfair for developing countries because most of the gains from trade benefit the foreign firms from the developed countries. The trade related aspects of intellectual property was as a result of deliberation of multinational trade negotiation. According to TRIPS Agreement, the intellectual property rights cover all nations equally. While the move aims to bring developing countries at par to developed countries, it has come too soon for them because it has promoted moral dimensions of gene patenting and enforcement.

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