Rich countries shouldn't forget their history of development

TRIPS Waiver for LDC until they develop

1. Pharmaceutical TRIPS waiver must be extended for LDC

WTO is going to introduce the pharmaceutical patent protection under Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement in January 2016. It means the pledged special waiver on TRIPS for LDC (Least Developed Countries), including Bangladesh, expires by 31st December 2015.

TRIPS is a binding agreement for all WTO members and it aims to establish a strong minimum standards for intellectual property rights (IPR) including patent protection for pharmaceuticals. Developing and Least Developed Countries have been expressing their concern on this strong patent protection as it will not only be harmful for the development of their pharmaceutical industries, it will also undermine the entire public health service to be affordable to poor.

Taking the concern into account, the WTO Ministerial Conference, in Doha on 14 November 2001 further extended the transitional period for LDC to introduce pharmaceutical patent protection until January 2016.

The TRIPS agreement recognises the "special" concerns and needs of LDC vis-à-vis IP system in its preamble for maximum flexibility in implementing laws and regulations domestically. The agreement also recognises the continuing needs of LDC members for technical and financial cooperation so as to enable them to realise the economic, cultural, social, technological and other development objectives of IP protection. Article 67 requires developed countries to provide technical and financial cooperation in favour of developing country members, including LDC, on request and on mutually agreed terms and conditions. Article 66.1 provides that the Council for TRIPS, "shall upon duly motivated request by a least developed country member, accord extensions" of the implementation period for LDC.

2. TRIPS is a brainchild of the coalition of industries of Rich Countries

The key aim of TRIPS, when it was enforced in 1995 with the establishment of the WTO, was surely to serve the interest of the developed countries, more specifically, of the multi-national companies. According to John Madely, the TRIPS Agreement was actually the brainchild of the coalition of industries of developed nations including USA, EU and Japan. The main idea of the agreement came from the pharmaceutical, software and entertainment industries while the CEO of Pfizer was happened to be the Chairman of IPC (Intellectual Property Rights Committee).

It is sure that they didn't think about the interest of poor people to have an easy and affordable access to life saving medicine as well as the public health services provided by the governments.

3. Rich Countries failed to keep their Words: Poor countries to bear the burdens

From the very beginning of TRIPS agreement, developed countries have been failed to realize their commitments on TRIPS implementation. They were supposed to ensure technology transfer and capacity building initiatives for the LDC to avoid unfair monopoly of corporations and to ensure poor people's affordable access to commodities. But eventually all the developed countries failed to do that. Or in other words, they didn't bother to do that.

Who's right to serve?
Source: http://www.citizenvox.org/files/2011/11/access-cartoon.jpg

In order to ensure LDC benefitted from TRIPS, Article 66.2 requires developed country Members to provide incentives to enterprises and institutions in their territories to promote and encourage technology transfer to LDC members. But, the crud truth is, it is yet to be realized. This Article is also reaffirmed as development partners' action, under Trade as one of the eight priority areas for action, in the Istanbul Programme of Action for the LDC for the Decade 2011-2020 (IPoA). The IPoA further calls upon development partners, under Productive Capacity (Science, technology and innovation) as the first priority areas for action, to urge WTO members to continue implementing Article 7 of Doha Ministerial Declaration on TRIPS and Public Health in 2001.

4. Impacts of TRIPS on the Pharmaceutical Industries in LDC: Case of Bangladesh

Bangladesh is the only country to have adequate pharmaceutical manufacturing capability among the 48 countries classified as LDC by UN. Bangladesh is now able to meet 96% of the country's pharmaceutical needs and exports a wide range of pharmaceutical products to 72 countries in Asia, Africa and Europe. Local companies mostly dominate the country's pharmaceutical market. The top 10 companies represent 64% while top 20 represent 82% of total pharmaceutical market in the country.

The local pharmaceutical manufacturers, however, are yet to be capable of haing their own research and development. They have been dependently manufacturing generic medicines using imported generic active ingredients and formula.

Therefore, the major changes that will occur due to the implementation of TRIPS in Bangladesh Pharmaceuticals Market are:

- Withdrawal of protection for local manufacturer;
- The implementation of Patent laws (TRIPS) which will allow the foreign research company to manufacture the Patent

product exclusively at any price for the patented period (12-20 years);

- Price determination & control by Drug Administration of Bangladesh will no more viable;
- The Drug (Control) Ordinance to be obsolete;
- Bangladesh Pharmaceutical Market should be opened to any manufacturer of the world. Even imposing tax & tariffs will not be able to restrict any foreign company.

5. Potential impact on the public health

These changes, ultiately, will have deep influences on the economy of LDC as well as on social & overall health services. From the economic point of view the adverse effects will be:

- The local companies will face fierce, uneven and unfair competitions with the giant MNC (multinational companies).
- Small & medium scale manufacturers will bog down facing severe competition in selling their products even in home.
- Local manufacturer will face financial disaster and they might have been end up downsizing the employees, which in turn, will lead to unemployment in the country.
- In absence of price control, MNC will charge high prices for their products and many people will not be able to afford the increased cost for medicine and healthcare. Ultimately, 'Health for All' will be undermined.
- Especially in case of patent drugs, the premier pricing will be much more prominent.
- Many unnecessary products having potentiality of abuse (like Phencidil, Viagra, alcohol based tonics etc.) will be available easily to derail the young generation of the country and it will cause severe cultural damage.
- Local companies will even fail to attract foreign investors. Rather they will be encouraged to invest in foreign enterprises.
- New investment in pharmaceutical manufacturing will be discouraged due to free import of drugs.
- Technology transfer will be decreased due to the same reason.

This is how LDC e.g. Bangladesh will suffer a lot if the further extension of the waiver for the pharmaceutical industries is not made. LDC will have to import the raw materials in high price and ultimately prices of the medicines will increase. Increased price of life saving medicines will deny the poor people's access and right to necessary medicines and healthcare. Export of medicine will also stop the benefit of comparatively low production cost for the poor people. As the obvious consequence, the entire public health sector of the country will end up in a very fragile situation.

Presently the pharmaceutical industry of Bangladesh is hugely dependent on importing raw materials as 97% of it is imported. There are only 15 companies in the country that produce 43 different raw materials. Bangladesh is still lagging behind research and development in this sector. Capacities of producing new molecules are yet to be achieved. The proposed Industrial park for producing raw materials is to start functioning from 2018. Under these circumstances, poor countries, that is called LDC by UN, cannot go with the full implementation of the TRIPS.

6. Public Health and Development Goals

Under-developed countries like Bangladesh doesn't have the ability to allocate adequate budget for the public health. Most of the LDC are hardly skilled and capable of producing medicines according to the people's demand. Low cost medicines are truly necessary in these countries to fight against the life threatening diseases like malaria, AIDS, etc. which was one of the 8 goals of MDG. These targets are yet to achieve at satisfactory level of MDG target, let alone the further advancement of post 2015 development agenda.

Bangladesh is also one of the most vulnerable countries to climate change impacts. Various diseases are spreading over the country due to flood and other natural disasters from which poor people are mostly suffering. Low cost medicine is also needed to fight this situation. If prices of medicine goes far beyond the reach of poor people government will have to invest more, as a result, government will have to cut allocation from various social development sectors like education, social safety nets, agriculture etc.

7. Rich countries got the benefit of patent waiver! Why not LDC now?

If we look at the history of the industrial revolution, we will find that, rich countries intentionally kept their industry out of the intellectual property rights for centuries to develop their industry. Their industries were not forced to compete with the giant, subsidized multinational corporations and this is how they developed. They also intentionally avoided IPR to provide their people easy access to knowledge, education and research at low cost.

Industrial revolution would not be possible if United Kingdom purely protected the IPR. UK started to implement the IPR related laws at the end of eighteenth century. Switzerland purposefully kept their cloth and medicine industry out of IPR until nineteenth century to ensure expansion of these industries. United States did not provide copyrights to English writers for about 100 years to ensure low cost knowledge development of its people. Japan kept its food, medicine, beverage and chemical industry out of IPR until 1975.

Many more examples are there. So it is clear that rich countries took the opportunity of the IPR waiver as they needed in past, on their way of industrial and economic development. But, now they want to apply it on the poorer countries when it is their turn to develop. This is unfair. This is injustice.

8. Poor nations must get the waiver until they come out of LDC

So, we demand that the developing and least developed countries like Bangladesh and Nepal must get another extension of TRIPS waiver, especially on pharmaceutical industries. This waiver must continue until the poor and under-developed nations develop enough to come out of the 'LDC status'.

9. Conclusion

Countries like Bangladesh and Nepal, being victimized by the development of the other part of the world, the industrialist development that caused the climate effects upon these countries, have justified reason to have the special consideration of TRIPS waiver. Bangladesh spent a huge amount of its annual budget in meeting the import cost, climate adaptation and in repaying external debts. Multi-national companies of the rich countries are siphoning huge amount of capital off the country exploiting the weak structural systems. This is how the developed countries are being subsidized and being indebted to the poorer countries of the world. So, if the waiver is not expanded, another burden will be on them and that will be beyond their means of bearing.

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