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INTELLECTUAL PROPERTY RIGHTS AND FOREIGN TRADE

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Among the issues being hotly contested in the Uruguay Round of GATT negotiations, are the nature and extent of market access countries are prepared to offer to other negotiating countries and the level of legal protection extended to intellectual property rights within the respective countries. It is a matter of surprise to the developing countries as to how Intellectual property rights (IPR) which are basically in the nature of private rights got into the GATT agenda of trade negotiations among governments. The broadening of GATT agenda with items such as agriculture, and services has brought forth a variety of problems threatening the very fabric of World trading system and the viability of GATT itself. The situation is further compounded by the unseemly haste on the part of some of the developed countries to negotiate bilateral agreements with developing countries sidelining GATT and similar multilateral arrangements. The emerging scenario appears grim for Third world countries like India seeking economic development through fair trade while preserving its sovereignty in economic decision-making. In this paper we will examine how the demands on IPRs coming from countries like America tend to undermine whatever little economic strength we have built up over the years through an apparently innocuous demand for reform of our

intellectual property laws, particularly the Patent Law.

It must be admitted that from the American point of view there is justification to demand higher levels of protection for patents, trade marks, copyrights, designs etc., which are products of American inventors, manufactures and entrepreneurs. they believe that the answer to their increasing trade deficits is to demands higher prices from consumers of their technology, however unreasonable the price may be in the eyes of international forums and technology importing countries. The latter are left with little option to make decisions conducive to the promotion of their national interests. The question is not whether intellectual property rights deserve legal protection — it certainly does; the question is what items to protect, for how long and to what extent. The question again is whether similar accommodation and treatment will be offered to what the developing countries export to the developed countries. The threat of retaliation against unyielding countries through tariffs and barriers is a game which both can play. Of course, it will hurt the developing countries most. Nevertheless countries can avoid losing their hard-won freedom again to the commercial monopolies who may be worse than their colonial predecessors.

Patent rights India are protected under the Patent Act of 1970. It is the product of mature deliberation by two expert Committees extending over two decades. It attempted to strike a fair balance between the competing interests of the private party who invented the product and those of the public who have a legitimate monopoly right in defined parameters with a view to encourage inventions. With these objectives Indian Patent law distinguishes between process patent and product patents and allowed only processes to be patented in the field of chemicals, food and drugs; the idea being that people may be encouraged to develop such products of great public good through alternative processes wherever possible. The multinational companies of the developed world who have patented their products would naturally prefer the rest of the world to depend exclusively on their products whatever be the price and how so ever long they enjoyed the monopoly. They conveniently ignore the fact that till recently in most parts of the so-called developed world they had patent protection only on processes and not products. They also do not want to appreciate the immense harm that economics of developing countries may suffer by dumping of such products manufactured elsewhere.

The Indian Act restricts the duration of the monopoly right of the patentee in case of process patent to 7 years from application and in respect of other inventions to 14 years. The companies of developed countries want this exclusive right to exploit the market in the developing countries for a longer period of 20 years uniformly for all products. apart from being anti-public interest in content this demand is perhaps scientifically unsound in

the present circumstances where technology gets obsolete no sooner than it is commercially exploited.

Another feature of the Indian Patent Act against which Western countries with advance technology are objecting is the compulsory licensing provisions. These provisions are intended to ensure that the patents granted by the Government are worked to the fullest extent without undue delay. they are also intended that reasonable requirements of the public are satisfied while protecting the monopoly right of the patentee. It cannot be said to be an unjustified restriction in so far as they are part of the legal systems of many countries, have been endorsed by international conventions, and appeals to logic and ultimate public good.

The complaint against India in respect of intellectual property rights other than patents, is one of inadequate enforcement in the legal system of the country. No doubt judicial administration is dilatory and time-consuming. It certainly needs to be toned up for all consumers of Justice, domestic as well as foreign. But the system gives equality of treatment to Indian as well as foreign companies and no one can accuse our police, prosecutors and courts to be discriminatory against foreign nationals. the Constitution of India ensure observance of fair procedures and equal treatment.

It is perfectly justified if technology transferring countries demand stricter enforcement of the IPR laws to regulate piracy and related crimes. The Government of India will be well advised to increase penalties for violations, set up special cells in the enforcement system and expedite IPR administration including its judicial enforcement. The

Government cannot afford to be soft against economic offenders, be they Indian or foreign. Equally the Office of the Controller of Patents and Trademarks will have to be streamlined in order to ensure expeditious disposal of patent applications. Even the demand to shift the burden of proof in prosecutions involving IPR violations in appropriate cases deserves to be considered in the context of the past experience in this regard. In other words, though the principles in our Patent law including the relative rights and obligations of parties are laudable, their enforcement needs to be augmented if foreign concerns have to have faith in the delivery of justice through the system in case of violations of technology over the rest of the world, it cannot be extended to the total obliteration of economic sovereignty of these countries. Neither the U.N. Charter nor the Universal Declaration of Human Rights will permit such a development to happen however much economic interests of developed countries so desire. It is therefore important that less developed countries are not pressurized beyond a point to surrender their sovereignty in intellectual property-related trade negotiations. Using the governmental machinery to support such monopoly interest of the commercial world, is an unfortunate

development against which all right-thinking people must protest.

In several forums in India apprehensions are being raised whether the Government of India will succumb to pressures and dilute the patent law as part of the economic liberalisation package. The long term effects of such a development will be disastrous to Indian industry and scientific establishment. When Indian patent law is very much in tune with the norms of Paris Convention on the subject and in view of its reasonableness in balancing competing private and public rights, there is no reasons why Government of India should yield for the sake of some immediate economic benefits. It is the misfortune of this country that very few people outside the commercial and scientific circles understand the implications of intellectual property rights and their controls. The Government, for obvious reasons, did not feel the necessity of taking the public into confidence on the issues involved nor its stand on them. With the economic crisis in hand and political instability looming large, India is exposed to an uncertain future in trade negotiations, multilateral or bilateral. Only political statesmanship and nationalist commitment can face up to the pressures and save an otherwise well-intentioned legal regime India now has on the intellectual property area.