LDCs and Agreement on TRIPS

Understanding the Implications

(Second and Concluding Part)

by Dr Iftekhar Ahmed Chowdhury

In a world where globalisation is a key-catch phrase, the least developed countries cannot but feel a threat of marginalisation. The systemic impediments along their path, and their structural constraints often appear to be insurmountable. Yet these must be overcome.

(Continued from Tuesday)

Software Protection

Despite their negligible share in this trade in the global context, software development is viewed by many developing, and least developed countries, as an economic opportunity, and quite rightly so. Computer programmes have been accepted as literary works in the TRIPS Agreement. This makes them patentable under copyright law. However, the functional nature of software has posed a major challenge to copyright law, particularly because of the fundamental distinction between ideas, which are not patentable, and expression, which is copyrightable.

Copyright has many advantages in an international matrix. Unlike patents no registration is necessary in each country for obtaining protection. An important element of copyright law on computer programmes which has implications for LDCs is the ascertaining of the extent to which it permits reverse engineering. Reverse engineering provides key to the understanding, and development of programmes. If any reproduction, including the decompilation for reverse engineering of a protected software is not permissible and interfaces are copyrightable, the development of competitive products would be severely curtailed.

The strong stand adopted by the major software producers in the world, contributed to the adoption of copyright standard. It is generally accepted that legislation should appropriately protect software producers against piracy. The establishment of a standard of protection on computer programmes in the TRIPS Agreement requires that national legislations strike a balance among the interests involved. In view of the potentials of computer programmes in effecting economic prosperity through the earning of foreign exchange, our national legislations should allow for the existence of requisite scope for legitimate reverse engineering and the development of competitive products.

Strategy for Work During the Transitional Period

All these developments which I have just described are doubtless of great concern. This should not however lead us to ignore the flip side of the coin. Indeed, there are positive aspects that merit attention. Even though it is true that the TRIPS Agreement is not fully responsive to the needs of least developed countries and some of the policies pursued by the companies in developing through patents biotechnologically or genetically engineered products may be inimical to the trade interests and economies of these countries, it has to be accepted that in the long run the acceptance of a uniform minimum standards for protection of intellectual property rights would be in the interest of all countries, irrespective of their stage of economic development. There is certainly some merit in the argument that IPR protection is only a minor element in the decisions by companies to invest in the other countries. At the same time, it is being increasingly recognised that given the choice between countries where IPR protection is being granted and enforced according to WTO rules and those where such protection does not exist and enforcement is weak, the investment would go to countries where IPR protection is effective. Companies would also be reluctant to transfer patented technology to countries where as a result of weak enforcement there is a possibility of patent rights being infringed through piracy. Least developed countries which are now taking positive and coordinated steps to encourage foreign direct investment can ill afford to ignore the advantage which the adoption and the enforcement of the WTO system could provide in the long run for the development of their economies.

The effective enforcement of IPRS would also assist these countries in bringing under control sale of pirated books and other counterfeit goods. Sale of such products often cuts into the demand for domestically manufactured goods that are produced by obtaining authorisation from holders of IPRS. A number of counterfeit products such as cosmetics, pharmaceutical products are also a risk to human health.

It would be therefore in the interest of least developed countries to use the transitional period available to them to prepare themselves for implementing the Agreement by securing solutions to problems that have arisen since its adoption of the TRIPS Agreement. In some cases, as for instance WHO resolution on pharmaceuticals goes to show, it may be possible to rely on the flexibility available in the provisions of the Agreement to take measures that are necessary to protect the national concerns and interests. In other cases, where legal situation is not so clear it may be necessary to take advantage of the reviews provided for in the Agreement, to secure necessary clarifications and amendments in the provisions. In both these cases the assistance provided by WIPO and other organisations could play a crucial role.

The great deal of useful work particularly on the *sui generis* system that can be adopted at national level to prevent foreign companies from claiming patents by using community knowledge appears to have been done by non governmental organisations both in developed and in developing countries. The proposals made include :

— Combining breeders rights with the recognition of farmers rights as defined by FAO;

— expending protection to commercial as well as to farmers varieties;

— adoption of systems for registration of genetic resources used traditionally for medicinal and other purposes.

Countries like India and Thailand are giving active consideration to adopting legislations that would prevent biopiracy. I understand that WIPO has undertaken a research project with a view to analysing practical problems that arise in providing proprietary rights for traditionally accumulated knowledge.

It would be necessary for us to give in this seminar some consideration as to how the least developed countries could take benefit for these studies in deciding on the approach they could adopt in the 1999 review of Art 27.3 which contains provisions governing extension of protection to plant varieties and microorganisms. Simultaneously some thought would have to be given as to how WIPO and other organisations like UNCTAD and WTO could assist us in preparing ourselves for raising these issues during the major review in 2000.

Further it may be necessary for us to consider whether as a matter of strategy, it may be desirable for least developed countries, as has been suggested by some experts, to consider postponing formal enactment of legislations to implement the provisions of the Agreement till the end of the transitional period. The legal obligation to enact the legislation to implement the Agreement would apply only from the year 2006. The main advantage of this approach would be that if the enactment of the legislation is postponed, the least developed countries would be able to benefit from the information on the legislations adopted by developing countries which are under an obligation to implement the Agreement by 2000. It would be also possible for them to take into account the results of the major review in adopting their legislations.

The enactment of the legislations is only a part — relatively a minor one — of the work that would have to be done to adopt the system. The adoption of the Agreement would result in significant increase in the applications for registration of patents and trade marks. Already the "mail box" obligation for registration of patents, which the least developed countries are required to accept during the transitional period, has resulted in significant rise in the patent applications. The officials from patent, trade mark and copyright offices would have to be trained in modern methods for the examination of application.

This is not all. The Agreement requires countries to establish effective mechanism for enforcement of the IPRS by the civil authorities, the customs and the police. The task of implementing the Agreement at practical level is thus formidable and as the UNCTAD study on 'The TRIPS Agreement and developing countries' points out the costs are expected to be substantial. To ensure effective implementation of the Agreement, it would be therefore necessary to adopt during the transitional period a programme for work on strengthening the institutional and technical capacities of IPR offices. For drawing out such a programme and for implementing it, the least developed countries would have to depend greatly on the technical assistance from WIPO.

Role of WIPO

WIPO has a key role in assisting LDCs in developing their IPR system in order to enable them to fully and effectively comply with the provisions of the TRIPS Agreement. The proposal of Director General Kamil Idris to establish a Focal Point on WIPO for the LDCs is one idea that is worthy of praise. The Director General's hands should be strengthened to enable him to implement this project for which adequate budgetary provisions should also be provided.

Another positive decision is one that pertains to the undertaking of a study to recommend measures for protecting IPRs in electronic commerce. I see scope in WIPO working closely with the WTO in this aspect. In fact currently the WTO Committee on Trade and Development, which I have the honour of chairing, is addressing the issue of electronic commerce from the perspective of developing, and least developed countries. Our Committee would be very pleased to tap the intellectual resources of other Agencies such as WIPO and UNCTAD in this field.

In fact in order to assist in devising ways and means as to how the LDCs can implement the TRIPS Agreement, WIPO can effectively coordinate with WTO. There is also the need to avoid duplication of efforts. Perhaps there could be a role for WIPO in associating itself in areas relevant to its interests and functions in the inter-Agency Integrated Programme of Actions that the WTO-UNCTAD-ITC and other Bretton Woods Organizations are proposing to implement.

Action at National Level

After a thorough examination of the TRIPS Agreement, we should immediately start contemplating national legislation to protect our interest in vital sectors such as biological resources (plants), pharmaceuticals and computer programmes. In all LDCs, the Ministries of Law should be sensitized, and activated with regard to this. In these Ministries a special IPR Cell may be established for this purpose. Technical assistance from WIPO may be sought to this end.

Permanent Interministerial Committees should be set up in LDCs comprising representatives from Ministries of Commerce, Industries, Cultural Affairs, Law, Foreign Affairs, Customs and Home in order to monitor IPR-related activities. This type of unified body dealing with IPR issues has emerged in many developing countries after the coming into force of the TRIPS Agreement.

In accordance with their Treaty obligations, developed country members of the WTO, apart from WIPO, are to render financial and technical assistance, in particular to LDCs in this area. In order to qualify for this assistance, tangible national projects and programmes should be designed, and quickly approved by the competent recipient domestic authorities. It has been experienced in the past that due to delay in project-preparation and finalization, allocated assistance from WIPO has lapsed. It needs to be emphasized that the projects and programmes should be well-coordinated, well-planned and demand-driven.

It goes without saying that LDCs need to enhance human resource development in the IPRs field. Training and fellowships are indeed being provided by Geneva-based Agencies like WIPO and WTO. It is important that the trainees should represent the spectrum of departmental activities that I have elaborated earlier, and should be younger or mid-level officials with sufficient service-life ahead of them in order for their countries to reap benefits fully. In many developing countries, including LDCs, frequent transfer of officials, particularly between unconnected posts, pose a problem that is best avoided.

Efforts must by made to raise the level of awareness in the civil society with regard to IPRs. Seminars can be largely helpful. Colleges and universities should become associated in their own interest as this will widen their sources of external funding support.

Conclusion

In a world where globalisation is a key-catch phrase, the least developed countries cannot but feel a threat of marginalisation. The systemic impediments along their path, and their structural constraints often appear to be insurmountable. Yet these must be overcome. LDCs must be elevated from the morass of underdevelopment, and even regress, and put on the track of progress and development. Agencies like WIPO must, as they indeed do, assist. For, despite our divergences, the globe is one world. Human civilisation will have truly come of age if, as we enter the next millennium, we are able to evolve the concept that it is the responsibility of *all* to ameliorate the pains of *some*. This is an idea whose time has surely come!

Implications of Russian Economic Crisis

by A F M Mohiuddin

The US, for defending its own interest, must engage actively with Russian leadership that can arrest a potentially dangerous Indonesia-like social upheaval, or else the turmoil will have serious economic and social ramifications in the world given the size of Russian economy and a nation with the world's second largest stockpile of nuclear weapons.

MOSCOW'S nascent financial markets are once again enshrouded in the mist of deep despair. The rouble, Russian currency, has just been devalued. IMF's $22.6 billion bail-out package in last July could not salvage faltering Russian economy, nor could it at least prevent a disastrous economic malaise.

There is conspicuous nervousness in global financial markets after the rouble devaluation. Everywhere a profound sense of grim reality seems to prevail as though a global economic recession is imminent. Probably an economic doomsday — hastened by Asian financial distress — that will not spare any economy in the world by pushing the global economy possibly toward the last Great Depression of this millennium. Specially rouble devaluation, which Moscow consistently tried to shield, and ward off speculators, has sent deep shock wave to the already fragile financial markets of the world.

Could the financial markets be so ruthlessly amoral for Boris Yeltsin? May be yes. But again, isn't Russia a certified bottomless economy, unable to meet its most basic financial obligations? If this is true then obviously continuous plunge of financial markets is not amoral, rather a consequence of bad management, fragile fundamentals of macro-economy coupled with oscillating transition from intervention to free market reforms, a shaky capital market and Yeltsin's dwindling political clout.

Though Yeltsin quickly replaced his young prime minister Sergei Kiriyenko with the veteran Victor Chernomyrdin, who was five months ago fired on account of eyeing on grabbing the helm of Russia and making slow progress on market reforms, the financial markets are not still optimistic. For Chernomyrdin's plain record shows that he is in fact no better in pushing reforms agenda in line with the IMF prescriptions.

Actually when he was prime minister until the appointment of Sergei, he rather unwillingly accepted IMF dictations and often inclined to drop market reforms and austerity measures. Anyway, it is the destiny which badly engulfed reform-minded Sergei and eventually prompted him to devalue rouble that resulted in his dismissal from the country's premiership.

However, the implications of Russia's deepening financial crisis are far-reaching and disastrous to global economy. First of all, this terminal phase is now a full-blown catastrophe. The Russian stock plunged in its lowest level — all time low since the start of capitalism. Many commercial banks in Russia are already defaulting. Mr Chernomyrdin's assurance that citizens' savings in nationalized banks will not be affected remains more a word than what reality says. For the Russian Central Bank is in its terminal phase drained out of foreign reserve, even IMF package could not prop up to the required level. Joblessness, skyrocketing inflation, soaring interest rates coupled with price-hike are tearing away the social mobility of Russian people's psychic composition.

This worst ever crisis in a capitalist economy, albeit in transitional period, may eventually spill over all other fragile financial markets of the world, specially South-American ones. Europe, however, may not be able to ward off the contagion of the grim reality unless swift and decisive actions are taken. There is unequivocal clamour from European economists that Europe must act now decisively to ensure that the Russian crisis does not precipitate a global economic recession. Any attempt by IMF to block second phase of bail-out funds to Russia will have to be mitigated. And Europe must make all out effort to pull Russia out of this crisis. For European multi-billion export industry involving Russia will be in jeopardy if it stays away from helping out Russia and restoring international investors' confidence. As global financial community feels that there is "total collapse of investors' confidence" in Russian economy which European Union can collectively address and work towards reinstating investor confidence through brushing off Russian financial market volatility.

Furthermore, Europe should not rub hands in glee because of consistent plunge of Asian markets as some European economies are also facing serious predicament. London's capital market is all time low now, the growth has remarkably shrunken. France is facing rising unemployment, clandestine resentment is on the rise among the workers of state owned industries for better wages in keeping with the wages in neighbouring German state industry workers. Thus, the Russian crisis is inescapable and Europe will have to count heavy loss for any deferral in terms of containing and helping Russia.

Indisputably Russia must solve the crisis through painful reforms, but to implement those reforms entails additional financial support from global financial communities. Otherwise the reforms will be erratic and will trigger unprecedented social chaos in Russia. Thus, current deepening crisis will culminate in global recession by ricochetting the industrialized economies.

In fact there is ample justification for Japan's recent call, albeit its own financial house in total mess, to hold an emergency summit of G7 countries to discuss the Russian crisis so that all industrialized economies can take a collective stance to combat it and possibly protect the world from a potentially disastrous economic recession.

Accordingly the United States, the IMF's largest and most influential contributor, will have to come forward immediately with additional financial support if it really wants Russian nascent capitalism to survive. Any attempt on the part of US in terms of backing off from the economic turmoil of Russia will encourage Russian policy-makers to retreat to Soviet-style command economy. And this will herald an end to Russian market reforms.

Therefore, to avoid such situation, the US together with other G7 nations must cobble together more money, if necessary, for Yeltsin's beleaguered government. The US, for defending its own interest, must engage actively with Russian leadership that can arrest a potentially dangerous Indonesia-like social upheaval, or else the turmoil will have serious economic and social ramifications in the world given the size of Russian economy and a nation with the world's second largest stockpile of nuclear weapons.

At least for this starkly chilling reason, the US government ought to dispatch an additional package to Russia in order for it to consolidate the necessary reforms. If not, the tidal wave of deflationary impact may be about to cross over to Atlantic.

In actual fact, a politically unstable and economically volatile Russia will pose delicate threat to Russia-America relationship. Unpredictable, often inconsistent Yeltsin may just otherwise have to lean to his country's nuclear technology to dispatch them to nuclear-hungry Third World countries in exchange of cash currency. The inconceivable social upheaval may force Russians to reassess capitalism as something bringing unendurable sufferings for them, thus reversing to Soviet-style communism. The voters are already disenchanted with Yeltsin's sluggish reforms and his indifference to address rising unemployment problem.

The communists, already dominating the parliament, have now begun to signal their demand of constitutional amendment curtailing power of the president and investing more power to the legislature. And any kind of delay on the part of US and other industrialized countries to help Russia come out of this turmoil will just reinforce the communist-led parliament's demand of constitutional amendment. And this can eventually lead to the communist demand to hold interim elections. The Europe and US cannot afford to give Russian communists a chance for political manoeuvring that will lead reform-minded Russians to capitulate to communist political camouflage.

Heavyweight Kohl Fights for His Political Life

Helmut Kohl of Germany is facing a tough fight for an unprecedented fifth term as Chancellor of Germany. It will be touch and go whether Gerhardt Schroder can snatch election victory for the Social Democrats. *Gemini News Service* looks at how Kohl has dominated German, and often European, politics for two decades. **Derek Ingram** writes from London.

IN the middle of next year, a few months away from the millennium, German MPs will leave provincial Bonn and take their seats in the glittering new Reichstag building in Berlin. The first session there of the Bundestag (parliament) will be on 23 May.

Just 24 years after Adolf Hitler died in his bunker nearby, Berlin will have once more become the capital of Germany. Ministries will move one by one in a process to be completed at the beginning of 2000.

Who will preside over Germany as Chancellor at the opening of the 21st Century is something that will be decided in a few days when German voters go to the polls. They may choose a new face.

As the leaders of first Russia and now the United States become lame ducks, could a third head of government — Chancellor Helmut Kohl — be about to lumber off the international stage ahead of Bill Clinton and Boris Yeltsin?

It is touch and go whether he can win a record fifth term of office in the coming elections. Gerhardt Schroder, leader of the Social Democrats, has been higher in the opinion polls and Kohl is getting many of the campaign boos.

Kohl's departure would be the end of an era for Europe. He is the longest serving Chancellor since the ambitious Otto von Bismarck, who ruled from 1871-90. Both presided over an expansion of Germany, but there the comparison ends.

The aggressive Bismarck started off as prime minister of Prussia, waged three wars and ended as Chancellor of the German Empire. Kohl took over as leader of West Germany in the 1982 elections and found the eastern half of Germany, then known as the German Democratic Republic, falling into his lap as the Cold War ended.

He handled with consummate political skill the reunification of East and West Germany in 1989-90, but he has not managed successfully to blend the two parts. Although the Wall has long gone, the people of the East still feel apart, suffering high unemployment and a lower standard of living.

It is hardly surprising, since in its remarkable recovery from the devastation caused by World War Two, West Germany roared ahead to economic prosperity in a free market economy while the East went down a totally different ideological and economic path, rigidly Marxist and state-controlled.

Under leaders like Walter Ulbricht and Erich Honecker, East Germany was the most tightly managed and ideologically constricted of all the so-called satellites of Eastern Europe.

Kohl, for all his political brilliance, has been described as an economic illiterate. He was a dunce at mathematics in school and some would say he has remained so ever since. But he has always been wise enough to leave the economic management of the country to others and West Germany has prospered.

As Germans go to the polls on 27 September Western Europe is at a crossroads. On 1 January, Britain excepted, the members of the European Union will adopt a common currency. The mark and franc will be no more and the euro will take their place. Kohl has been the strongest supporter of this dramatic change, but he may not be there to see it through.

Europe without Kohl will seem a strange place. His massive 6ft 4 inch frame that seemed to dwarf even tall leaders like John Major and Bill Clinton and reduced to midgets Francois Mitterrand and most Japanese prime ministers, his warm style — not to mention his lusty appetite for good food and wine — have been a feature of every summit of the European Union and the Group of Eight for nearly two decades.

He has been a leader in every sense of the word and popular with almost all his colleagues, the major exception being Margaret Thatcher, who was horrified at the reunification of Germany and referred to him disparagingly as "a typical German". He never forgave her for opposing reunification.

Kohl was skilful in his foreign policy, never throwing his country's weight around, being only too well ware of Germany's historic reputation for aggression and responsibility for the Holocaust. He was just old enough to remember life under the Nazis, being only 15 when the war ended and just escaped military service.

Kohl is a leader in a world desperately short of leaders. We look around today in vain for men or women of political stature. Clinton has proved a disappointment and is now damaged goods. Yeltsin is long past his sell-by date. Jiang Zemin of China has yet to prove his stature.

Chirac has proved no Mitterrand or de Gaulle — or even a Giscard d'Estaing. Italy has produced no one since Alcide de Gasperi who stayed in place as prime minister for seven years in the immediate post-war period — longer than anyone since.

India has produced no Nehru or Indira Gandhi. Tony Blair has yet to show heavyweight leadership quality. Only Nelson Mandela, and in a curious way, the present Pope, John Paul II, have achieved real international charisma.

In the second half of the 20th Century, Germany has been just as much of a stabilising influence in Europe as it was a destabilising one in the first half.

Much of that is due to the great qualities of its first post-war Chancellor, Konrad Adenauer, who at the age of 73 took over government from the allied military rule that had lasted for four years after the war, and proceeded to build a democracy out of the ruins of Nazi Germany.

Kohl has proved a worthy successor. Adenauer retired at the age of 87, so at 69 he sees no reason to leave the stage. At the polls Schroder will have a tough fight on his hands.

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Asian Crisis Favours Transnational Corporations

Farhan Haq writes from Geneva

DIRECT foreign investment has been safe from the financial storm sweeping Asia, which has created optimum conditions for transnational corporations, according to a UN study distributed Tuesday in Beijing and Geneva.

The flow of direct foreign investment to the five countries that have taken the brunt of the crisis — South Korea, the Philippines, Indonesia, Malaysia and Thailand — remained steady in 1997 and shows signs that point to cautious optimism for 1998.

The UN Conference on Trade and Development (UNCTAD) predicted that direct foreign investment would dip slightly this year not only in those five countries but in Asia as a whole.

Future trends will depend on global economic conditions as well as on the impact of the crisis on Gross Domestic Product, income and employment, said the UNCTAD study.

But due to the continued attractiveness of the elements drawing direct foreign investment, the outlook is one of "cautious optimism," the UN agency said in its advance on the chapter dedicated to Asia in its annual report on investment.

At a conference given Tuesday in Beijing, UNCTAD Secretary-General Rubens Ricupero said the crisis and its fallout had altered many factors that influence direct foreign investment and operations by transnationals in the countries affected.

One of the consequences he mentioned was a drop in share prices for foreign investors.

Furthermore, the existence of firms in need of capital and the liberalisation of policies on mergers and takeovers made it easier for foreign investors to enter markets through the acquisition of shares.

Ricupero said such conditions paved the way for access by transnational corporations or the expansion of their operations.

Firms from the United States, western Europe and Asian countries least hit by the crisis have taken advantage of the opportunity to invest in faltering economies in the region, especially Thailand and South Korea, Ricupero pointed out.

Another factor which has fuelled the increase in direct foreign investment was the boost to competitiveness in terms of international costs in the countries affected by the crisis, thanks to currency devaluations.

Direct foreign investment in export-oriented industries, like factories producing electronic goods, has risen in Thailand, just as it did in Mexico in the wake of the late 1994 peso debacle, Ricupero added.

But the Brazilian economist warned that some consequences of the crisis would affect direct foreign investment in the short- and medium-term.

The UNCTAD report indicates that there is a growing sense of agreement that economic growth in the region will decline this year, as well as in 1999.

But there is less agreement on how far it will drop and how fast faltering economies will get back on their feet.

Both aspects largely depend on how soon efforts are adopted to stabilise financial markets and the external financial conditions of economies shaken by the crisis.

UNCTAD stressed that a number of countries in the region have not been directly hit by the turmoil. — IPS/APB