

TRIPS transition for pharmaceutical patents

MOHAMMAD TOWHIDUL ISLAM

THE dilemma of the least developed countries (LDCs), in dealing with the WTO TRIPS Agreement is associated with the possibilities of exploiting the TRIPS flexibilities. Amongst such flexibilities, the provision for "the period of transition to compliance" that allows the LDCs not to offer patent protection to pharmaceuticals until January 1, 2016, constitutes the major leeway for them. It is believed that the rationale for such exemption period lies generally in the need for promoting the creation of viable technological bases by preserving policy spaces for the LDCs.

However, this transition period can provide some strategic advantages: it may enable those LDCs which have vibrant manufacturing capacity in pharmaceuticals to freely copy medicines which are not patented in the LDCs and to use them for domestic consumption needs and export purposes. In an LDC like Bangladesh, the issue of patenting pharmaceuticals becomes crucial, because of its potentials of exploiting such strategic advantages.

Indeed, the above is a challenge for Bangladesh in implicating the TRIPS regime of patent so that it is not confined to public health concerns only -- it also animates the concern of economic development at the same time, especially in facilitating the promotion of its vibrant domestic pharmaceutical industries. The existing legal framework of Bangladesh in relation to patent is, however, less than favourable to face up to such challenge in the way of exploiting the benefits of the transition period. The main reason of this fact is rooted in the Patents and Designs Act 1911, which historically incorporates a liberal approach of providing patent protection to cover a wide range of inventions -- trivially modified ones that fall within the definition of "invention."

The century old patent legislation deals with the protection of both the "product and process patent." According to the provisions of this Act, Bangladesh is bound to provide patent protection to pharmaceuticals as "product or process patent." Therefore, Bangladesh cannot

refuse to provide patent protection to pharmaceuticals based on the exemption period provided for in the TRIPS since it is a country with an already existing patent regime.

The second problem in this respect relates to the relevancy of the "no rollback clause" of the present patent regime of Bangladesh. This is because Paragraph 5 of the TRIPS Council Decision of November 29, 2005, contains "the no rollback clause" by providing that "least-developed country Members will ensure that any changes in their laws, regulations, and practice made during the ... transition period do not result in a lesser degree of consistency with the provisions of the TRIPS." The plain reading of this clause reveals that the country providing patent protection under the existing intellectual property regime is impeded from getting the benefits of the TRIPS transition period. From this perspective, Bangladesh is also thus barred from taking the benefits of the exemption period.

There is no denying that this fact puts Bangladesh in a seriously disadvantageous position in respect of voicing its concerns regarding protecting public health in general and promoting domestic pharmaceutical industries in particular. Indeed, Bangladesh is in this unenviable situation mainly due to the fact that it was too late for Bangladesh to enact new legislation. The government of Bangladesh, however, took a somewhat "extra-legal" initiative to evade the implications of this disadvantages position. Surprisingly, an executive order (DPDT/P&D Law/2007/74129) was issued by the Department of Patents, Designs and Trademarks (DPDT) on January 7, 2008, which provided for the establishment of a mailbox in the DPDT with the purpose of storing patent applications in the areas of pharmaceutical products and related processes and conferring exclusive marketing rights (EMRs) to the applicants.

The legality of this initiative is questionable for a number of reasons: firstly, any rule related to the TRIPS cannot be implemented by such an executive order, for a treaty provision does not have any direct efficacy in Bangladesh unless such provisions are converted into domestic

legislation through an Ordinance or an Act of Parliament. Secondly and most importantly, the implication of such executive order is in conflict with the existing regime, and thus in conflict with the TRIPS Council Decision of 2005.

Apart from the question of its legality, another problem of this order was that it did not provisionally allow generic manufacturers in Bangladesh to receive any help from the DPDT in legally utilising the clinical test data for generics approval. It, therefore, appears that the issuance of this executive order has created confusion and further complexities in respect of implicating the TRIPS transition for pharmaceutical patents.

However, the TRIPS Council decision of 2013 (June 11, 2013) to extend the transition period until July 1, 2021, has created an opportunity for Bangladesh to reconstruct its policy of patenting in pharmaceuticals. One of the most important aspects of this decision is that it has relaxed the condition of no rollback for the LDCs. In other words, the decision of 2013 allows the possibilities of refusing patents even by those members of the LDCs who already have an existing regime of intellectual property rights.

There is, however, a debate on whether this decision to extend is a plenary one, and applies equally to pharmaceutical patents. Professor Frederick Abbott argues in favour of its generality and says that the decision of 2013 includes pharmaceutical patents. If this argument sustains, then Bangladesh will be able to take the benefit of the TRIPS transition period in not patenting pharmaceuticals. In doing so, the major argument for Bangladesh will come from the fact that it is not bound to provide patent in pharmaceuticals until July 1, 2021, or whenever it ceases to be in the least developed category if that happens before 2021. In line with this argument, Bangladesh may thus come up with a fresh legislation to allow the postponement of patent protection, thereby resolving the public health concerns in general, and promoting the domestic pharmaceutical industry in particular.

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Little knowledge is dangerous

MD. MOJIBUR RAHMAN BHUIYAN

I have always been of the opinion that little knowledge can be dangerous. After reading the article by Advocate Omar H. Khan Joy titled "Trade Union: Cloudy past, gloomy present, shining future," published in *The Daily Star* on May 1, my belief has been reaffirmed.

He is worried about the rioting, vandalising, torching and boycott of work by workers. Mr. Khan also alleges that trade unions are not aware of the workers' legal rights and corresponding duties. He has also alleged that trade unions somehow give a license for hooliganism, and that leaders of the trade unions are corrupt. The most common problem is the lack of knowledge.

The reasons behind his allegations are unclear, they tarnish the image of trade unions, when the reality is another matter entirely.

There have been no revolts, riots, vandalising, torching, or stoppage of work by workers where there are unions. For example, in Hazaribag, Dhaka, there are unions in the tannery sector, and everyone is aware of the peaceful atmosphere prevailing there. I was general secretary of the Karim Jute Mills Workers' Union in Demra and president of five other unions in Tarabo, Kanchpur, Siddhirganj. There was never a single demonstration or strike anywhere, which was possible due to the harmonious relationship between the employers and the trade unions.

In fact, a big reason behind demonstrations and vandalism is the absence of trade unions. There is no communication or any form of dialogue between workers and employers. Employers do not allow the workers to form unions and dismiss workers if they initiate plans to form a union. Mid-level management often treats garment workers as slaves. They are compelled to work in inhuman working conditions for long hours for very low wages.

Desperate people take desperate action. Garment workers, frustrated at being unheard for so long, finally raised their voices. Some workers were killed during movements by garment workers. After that, they were

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Children in brothels

ASNA ZAREEN

LARGELY, the people view the brothel sex workers as the most disgraceful and see them as an ignominious community. They are kept aloof from the mainstream society.

However, changes have happened in brothels especially due to the intervention of HIV programs but there is still a long way to go. There are 14 registered brothels in Bangladesh. More than 20,000 children are born and live in the brothels according to different studies. Prostitution is not being legally accepted as a profession but has not been declared as illegal either.

Girls are recruited in brothel through affidavit. Affidavit is a tool for Sardarni to involve underage girls into forced prostitution. There are mainly 3 types of sex workers in brothel, Chukris (Bonded sex workers), Independent sex workers and Madam (Sardarni). Chukris are the girls who work under madam typically called "Sardarni". Chukris are bonded girls and are ranked the lowest in a brothel society. They are usually forced into prostitutions and are predominantly below the age of 18. They have less freedom. Independent sex workers are those who can work freely and earn. Madams (Sardarnis) are aged sex workers mostly retired who keeps bonded sex workers under them. They are the most powerful in brothel and have considerable control over sex workers.

Brothels are typically in a confined place and physical environment is poor and grimy. Rooms are congested, ill-ventilated, poorly lighted and divided into small compartments with partitions. It is difficult to comprehend how people live there year after year. I have found in few cases three generation of a family are living in the same brothel.

The children who are born in brothels have the same rights as any other children of the society according to the United Nations Child Right Convention, and Bangladesh has ratified it. However, from

the very beginning of life these children face discrimination and challenges in accessing their basic rights. They grow up in an environment that is totally estranged from mainstream society in terms of life style, grooming, language, behaviour and custom. These children tend to have underdeveloped psychosocial life skills due to social exclusion and rarely get to see positive role models. Being a single parent, stigma of the profession, odd working hours and unhealthy brothel environment are major challenges for parenting these children. These factors make the girls particularly vulnerable, who in some cases get forced into this work. The boys' scenario is almost the same as a lot of them end up as drug dealers, addicts and pimps.

The children remain mostly untended when their mothers attend the clients and become vulnerable for abuse and exploitation. Day care centres / crèches / night shelter is an available option in a brothel for the children being raised there while their mothers attend customers. Here, children receive food, have recreational activities, medical facilities, education and psychosocial support for their proper development. The stigma of being a sex worker and the unhealthy environment of brothel make it inevitable for them to send the children to an institution or being raised with the extended family as an attempt to keep the children away from the brothel environment and also to hide their identity of being a sex worker's child. Thus as the children are getting older, they need to be withdrawn from the brothels and be placed in institutions. Physical, social and emotional development of a child being in family is crucial, so there is still debate as what is the ideal age for a child to be withdrawn from brothel.

There are few organizations that run shelter home for brothel children and provide lodging, food, education, psychosocial support and finally assist

them to mainstream in the society. But the disjointed family structure of these children adversely affects their personality growth and sense of self esteem. It is found from practices that to reduce the stigmatization and isolation of the children of sex workers and child sex workers it is vital for them to socialize with mainstream children. The mainstream society perceives the children of sex workers as ramification of sin, thus in most of the cases they need to hide their identity. These children have a critical background and are brought up in institution where the environment is quite favourable to them. Thus when they step out from the institution into mainstream society they face challenges. Hence we need to equip them adequately. How much have we equipped them mentally and socially to adapt in the society or on another take how much we have prepared the society to embrace them as respectful citizen of the society are questions that needs to be pondered on. It is a dilemma.

Children, who are forced into prostitution need immediate rescue from brothels. They develop severe mental illnesses like post traumatic stress disorder, depression, behavioural problems and become prone to self harm. There are other health hazards as well. Above all there is a total lack of confidence and self-esteem among them. Thus restoring self-esteem and repairing emotional damages received through the process of sexual exploitation and abuse is an important process for rehabilitation and reintegration for these children. Sometimes, it is difficult to withdraw a children at the age of 16 and above from sex work. Reasons are valid. First of all this is the age when they can earn maximum which is not easy to replace by other jobs. Others are weekly / daily cash in hand and the freedom they can enjoy. We have to prepare individual plan for them through following case management process merely vocational training for rehabilitation and integration

no antidote here.

To stop children from entering brothels is also not an easy work. This issue is very complex and cannot be addressed in isolation. It needs the concerted and continuous effort of multiple stakeholders. Those who are involved and benefit from this trade, the perpetrators, invisible vested interest groups and probable clients all need to be addressed. Here different government agencies and committees on children issue, service providing organizations, sex workers network and media can play a vital role.

Above all, the role of social acceptance is a critical factor in enabling a child to be free from the grip of exploitation. We have to work with different groups of people in society to change the social perceptions. The parents, children, community people and the professional groups like lawyers, police, teachers, doctors and religious leaders need to change their mind-set and attitude towards dealing with these children. It is imperative to promote positive and protective behavior and provide a supportive environment for these children.

Last but not the least while working on this issue, one thing strikes my mind, we dishonor the girls and women for their lascivious character of selling their body to earn money. Nevertheless, what about the men who buy sex merely to satisfy their sexual needs and some cases are also responsible for bringing a child in earth without a father's identity? These children's rights are violated from the very beginning of life. How can these men escape from their responsibility? It is probably because, we still live in a patriarchal society, where we can not utter a single word to show our hatred and disgrace to these men and hence all our hatred and disgrace are focused only for those girls and women.

The writer is Programme and M&E officer, IAPP TA Project, FAO.

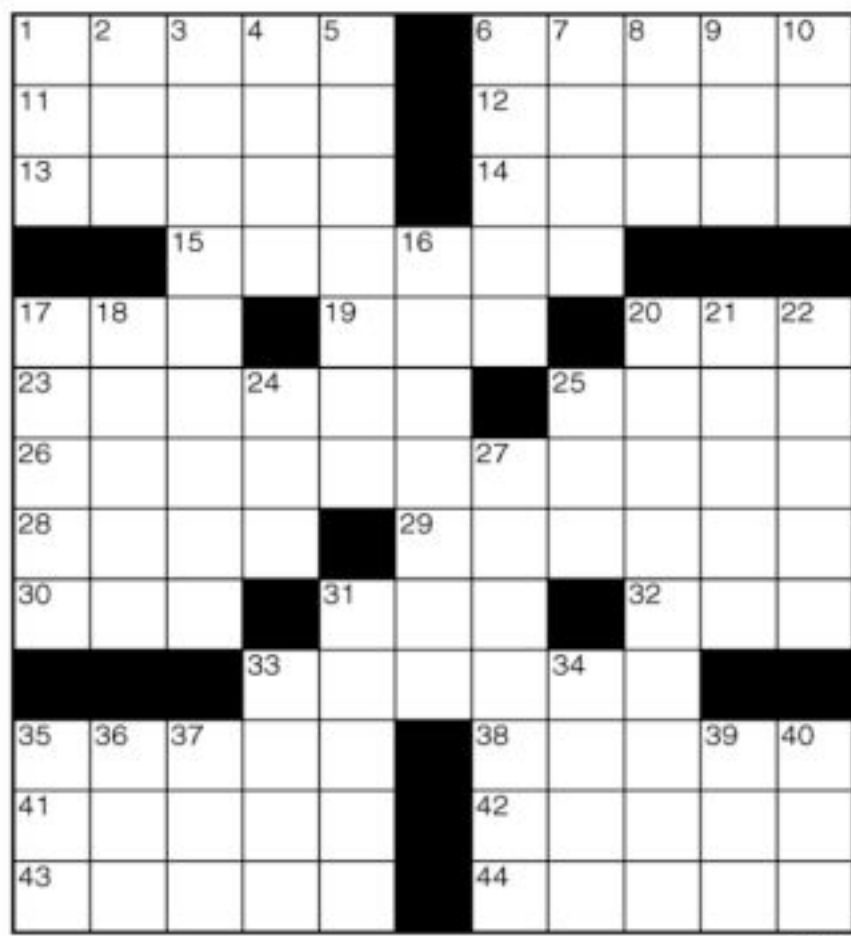
CROSSWORD by Thomas Joseph

ACROSS

- Film prize
- After a while
- Texas city
- Fight site
- Wrongful acts
- One of the Bradys
- Insulted, in slang
- Soft food
- "been real!"
- Motor part
- Broadway's Stritch
- Lose color
- Bright color
- Numerical prefix
- Baby rocker
- Blue hue
- Funny fellow
- Arthur of "Maude"
- Cotton cloth
- Desk item
- Incline
- "Superman" star
- 2013 animated snail film
- Spirited horse
- Car type

DOWN

- Make a choice
- Traffic caution
- Bridge event
- Opposed to
- "The Barber of Seville" composer
- Oxford features
- Parched
- Wallet bill
- Conclude
- Devilfish
- Lettering aid
- Texas river
- Sighed cry
- Carton material
- "Skyfall" singer
- Enchantress who aided Jason
- Swearing-in vow
- Ga. neighbor
- Studio workers
- Grew more intense
- Inlet
- Detective's find
- Tax agency
- Volleyball Need
- Garden visitor
- Hornets' org.
- Cargo unit



CRYPTOQUOTE

UGR DYSC BORPUVORW UGPU POR
RKDSKRQ RYDVTG UD BDYKRC HVOR
SDKR POR QDTW PYQ MYEPYUW.

-- NDGYC QRHH

Yesterday's Cryptoquote: ANYONE WHO HAS NEVER MADE A MISTAKE HAS NEVER TRIED ANYTHING NEW. -ALBERT EINSTEIN

Yesterday's answer



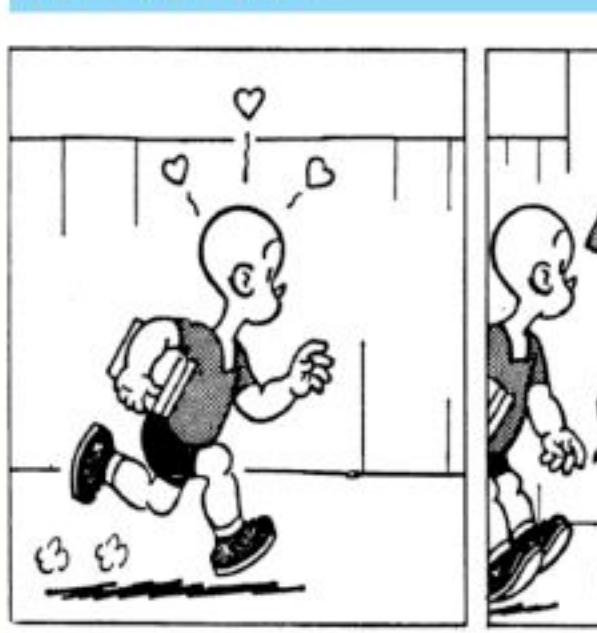
A XYDLBAAXR is LONGFELLOW

One letter stands for another. In this sample, A is used for the three L's, X for the two O's, etc. Single letters, apostrophes, the length and formation of the words are all hints. Each day the code letters are different.

BEETLE BAILEY



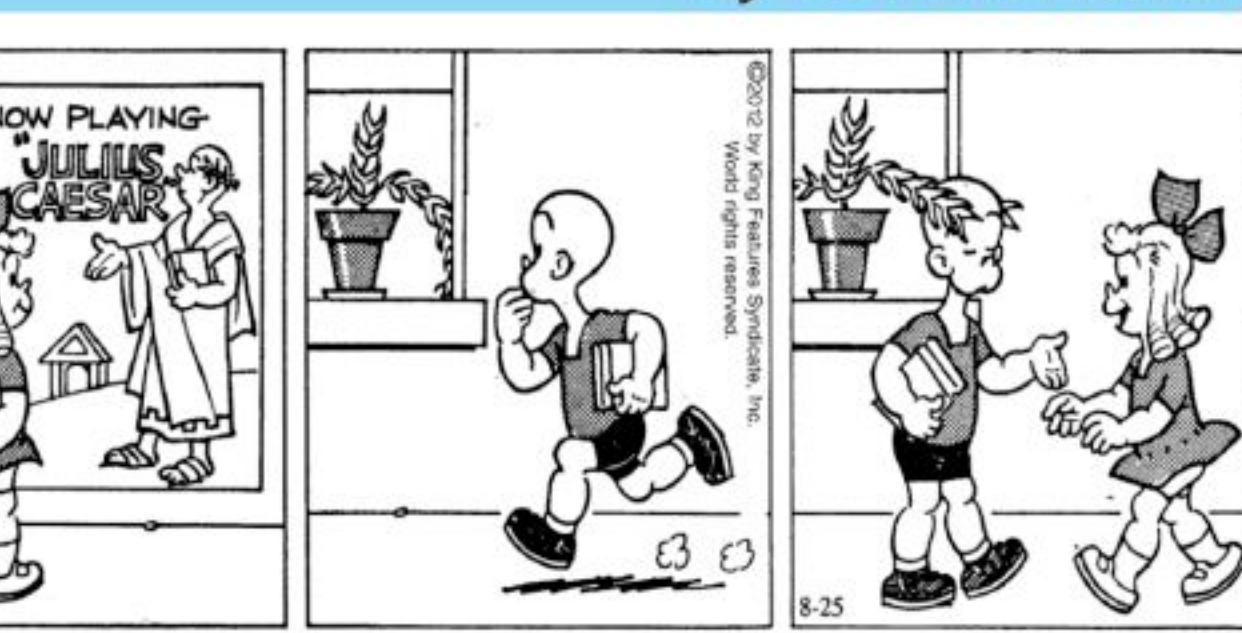
HENRY



by Mort Walker



by Don Trachte



QUOTABLE Quote

Love and business and family and religion and art and patriotism are nothing but shadows of words when a man's starving.

O. Henry