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***Centre for WTO Studies**, 7th Floor, IIFT Bhawan, B-21, Qutab Institutional Area, New Delhi - 110016*
Tel: 91-11-26965124, 26965300, 26966360 Ext-725,710 Fax: 91-11-26853956 Email: cws@iift.ac.in
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WTO cuts 2012 global trade growth outlook
AFP

21 September 2012, Singapore: The World Trade Organization on Friday slashed its 2012 global trade forecast to 2.5 percent from 3.7 percent, citing the eurozone debt crisis as a key factor behind the downgrade.

The sputtering US economy and a slowdown in China were other factors dragging down global trade, the Geneva-based body said.

"The global economy has encountered increasingly strong headwinds since the last WTO Secretariat forecast was issued," the WTO said in a press statement released in Singapore.

"Output and employment data in the United States have continued to disappoint, while purchasing managers' indices and industrial production figures in China point to slower growth in the world's largest exporter.

"More importantly, the European sovereign debt crisis has not abated, making fiscal adjustment in the peripheral euro area economies more painful and stoking volatility."

In April the WTO had warned that world trade growth, which slowed in 2011 after a big rebound in 2010, would weaken again this year.

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Exports contract for fourth month in a row
Asit Ranjan Mishra , Mint

September 14, 2012, New Delhi**:** India's merchandise exports continued to fall in August for the fourth straight month on waning global demand, and its trade deficit widened, according to official data released on Thursday.

Exports contracted 9.7% in August to $22.3 billion (around Rs.1.2 trillion today) and imports shrank 5.08% to $38 billion, leaving a trade deficit of $15.7 billion during the month, the commerce department said.

The latest data, however, provided a "slight ray of hope" after a dramatic 14.8% shrinkage in exports in July, commerce secretary S.R. Rao said.

"I hope this will give us some confidence that we can make up," Rao said, adding that some sectors such as pharmaceutical, engineering and textiles were showing some signs of improvement.

The dismal overseas trade numbers came a day after the government said factory output stagnated in July, rising a miniscule 0.1% compared with the year-ago period, reinforcing evidence of an economic slowdown.

The fall in exports of engineering goods in August had been expected because of depressed global market conditions, according to Aman Chadha, chairman of lobby group Engineering Export Promotion Council of India. Engineering exports declined 9.7% in August to $4.67 billion.

A recovery in merchandise exports is now expected as the US market is stabilizing, Rao said. Good monsoon rainfall will allow India to export more petroleum products as domestic demand would decline, according to him. "We will be watching for next couple of months for a clear trend to emerge."

In the five months to August, exports shrank 5.96% to $120 billion, while imports contracted 6.2% to $191.1 billion. The trade deficit declined to $71.1 billion from $76.2 billion a year ago.
There might be a turnaround from October, said M. Rafeeque Ahmed, president of industry grouping Federation of Indian Export Organizations. The cost of credit is still a cause of concern for the export sector and a general reduction in interest rates would benefit manufacturing as well as exports, Ahmed said.

The Reserve Bank of India is widely expected to hold its policy rate at its current level of 8% in its scheduled mid-quarter monetary policy review on Monday due to high inflation despite a sharp slowdown in industrial activity.

Wholesale price inflation for August, to be released on Friday, is expected to be higher than the 6.9% registered in July.

The composite leading indicators released by the Organisation for Economic Co-operation and Development (OECD), a club of developed countries, show a loss of momentum in emerging economies, including India.

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India may not achieve export target of $360 bn in FY13: FICCI
PTI,

23 September, 2012, New Delhi: The exports target of $360 billion for the current fiscal is unlikely to be achieved due to the global demand slowdown, a survey said today.

The country's exporting community is not optimistic about a possible improvement in the overall export conditions over the next two quarters, according to Ficci's Export Survey.

"The government's export target of $360 billion for the year 2012-13 seems difficult to achieve," it said.

It added that rising cost of raw materials and weak demand from overseas are primary factors that are bothering members of the Indian export community.

According to the survey, raw material prices have gone up by 20-30 per cent in the last three years.

"India's external sector is once again amidst a difficult situation owing to the global economic scenario," it said, adding that majority of the survey participants said they foresee no change in the export conditions over the next six months.

About 65 per cent of about 80 participants said export conditions currently have deteriorated compared to the last six months of 2011-12.

India's exports plummeted by 9.7 per cent in August, a deceleration for the fourth consecutive month.

"In fact the participants didn't seem too optimistic about a possible improvement in the overall export conditions over the next two quarters," it added.

However, it said that market diversification of exports was yielding some positive results for Indian exporters.

Regions like Africa, Middle East, South East Asia and Latin American would see an improvement in demand in the next six months (July-December 2012), it said.

"Until now Europe and the US have been the primary export markets for India. The new strategy for India should be targeting other countries like Africa and Middle East to take the next leap forward," the survey said.

It also asked to diversify its product basket and emphasise more on exporting technology intensive goods.

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Trade deficit likely to fall 20% in FY13
Sharmistha Mukherjee, Business Standard

September 23, 2012, New Delhi: This financial year, India's trade deficit is likely to contract to about a fifth of the deficit in 2011-12, owing to a fall in gold imports.

Ajay Sahai, director general, Federation of Indian Export Organisations (FIEO), said, "Much of the gold was imported for creating assets in the last financial year. The stock market and the real estate sector were not doing well. Now, with the markets expected to perform better, gold imports are likely to decline at least 50 per cent by the end of the year."

In 2011-12, 969 tonnes of gold, valued at about $54 billion, were imported. Gold imports are estimated to decline by $25-30 billion in the current financial year. "This fall in gold imports would help contain trade deficit at $150 billion in the current financial year," Sahai said.

In the last financial year, imports of gold and petroleum had led to the trade deficit ballooning to a record $185 billion, or about 10 per cent of the gross domestic product.

With gold prices touching record levels in recent months and the government raising duties on importing the commodity, gold and silver imports fell about 46 per cent to $2.6 billion in August. Data with the Ministry of Commerce and Industry show these imports dropped 62.5 per cent to $16 billion in the first five months of the current financial year.

"While the import of silver may increase for industrial purposes, owing to the economic revival, gold imports have already dropped 38 per cent in the April-August period. The import of coal has also been under control. However, much would depend on the allocation of coal available domestically for power generation," Sahai said.

In August, coal imports rose to $1.7 billion, compared with $1.5 billion in the corresponding month last year.

Declining imports this year may lead to containing trade deficit in the current financial year. While this deficit widened marginally to $15.7 billion in August, for the April-August period, trade deficit fell to $71.1 billion, against $76.2 billion in the year-ago period. However, the contraction in the trade deficit came amid a fall in both exports and imports.

In the previous two financial years, the trade deficit had risen year-on-year, which shows a steep decline in demand abroad. The high trade deficit had, in turn, raised India's current account deficit, which includes net trade in services and net investment income, to a record 4.2 per cent of the gross domestic product.

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Pakistan to give India MFN status
Amiti Sen, Economic Times

21 September, 2012, New Delhi: Pakistan has agreed to stick to the deadline of removing import ban on all products from India and giving it the most favoured nation or MFN status by the year-end subject to the condition that India reduces duties on about 200 items of interest to the country that includes key textile and farm products.

The two commerce secretaries, who concluded their two-days meet in Islamabad on Friday, agreed to allow most goods to be traded through the Wagah-Attari land route--an issue being pushed by India.

Indian commerce secretry S R Rao and his Pakistani counterpart Munir Qureshi also signed three agreements for cooperation in customs matters, redressal of trade grievances and conforming to quality standards to remove non-tariff barriers.

Civil aviation ministry officials from both countries also discussed ways to ensure better air connectivity between the two capitals.

The fresh commitments are of significance as it would further lower trade barriers that have been already brought down considerably following a slew of measures taken by both after the ice-breaking meeting between commerce secretaries in April last year.

""It was agreed that after Pakistan has notified its removal of all restrictions on trade by Wagah-Attari land route, the Indian side would bring down its Safta sensitive list by 30% before December 31, 2012, keeping in view Pakistan's export interests. Pakistan would transition fully to MFN (non discriminatory) status for India by December 2012 as agreed earlier,"" as per the joint statement issued after Friday's talks.

Removal of restrictions on trade through land route will give a big boost to exports from India as Pakistan allows only 137 products to be brought in from the land route forcing most Indian exports to be sent through the sea route linking Mumbai with Karachi that increases costs.

""We are willing to bring down our sensitive list for Pakistan under Safta by another 30% (approximately 200 items) and include all items of interest to them like yarn and fruits as soon as it allows our goods to be exported through the land route,"" a government official told ET, adding that it has to be, of course, followed by an extension of the MFN status by Pakistan.

""Pakistan has already made its intention of giving MFN to India clear when it dismantled its positive list in favour of negative list early this year. Now India has to show that it means business by giving us market access for products that we want,"" a Pakistani official told ET.

While Islamabad welcomed India's recent move to reduce duties on 264 items over through years by trimming its senstive list under Safta, it is keen on just a few products where the market is still restricted.

India's exports to Pakistan slipped 24.74% last fiscal to $1.53 billion, but is still more than three times higher than its import from the country at $422 million.

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India-Dubai trade touches $20.5 bn in H1 2012
PTI

27 September, 2012, Dubai: Trade between India and Dubai has reached over $20.5 billion (77 billion dirhams) in the first six months of 2012, accounting for 13 per cent of Dubai's total foreign trade.

Executive Chairman, Ports, Customs and Free Zone, and Director General of Dubai Customs, Ahmed Butti Ahmed, said the total value of Dubai's imports from India reached $9.5 billion (35 billion dirhams) during the first six months of 2012. The imports primarily include diamonds, jewellery, electronic devices and mineral oil.

The value of exports to India, comprising mainly gold, diamonds, jewellery and copper wires, stood at $5.17 billion (19 billion dirhams) during the same period.

The value of Dubai's re-exports to India (mainly diamonds, jewellery and silver) stood at $5.98 billion (22 billion dirhams).

Following his meeting with the Indian Economic Consul to Dubai T Tiju, Ahmed said Dubai's trade relationship with India has been witnessing a considerable growth. This has been mainly due to the distinctive ties between the governments and people of the two countries and the joint economic agreement.

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Boosting trade with Asean

Biswajit Dhar, Mint

September 24, 2012: This year, India is commemorating its two decades of economic partnership with the Association of Southeast Asian Nations (Asean). The relationship —that coincided with India’s look east policy—began with India joining the grouping as a dialogue partner, a step that culminated in the Free Trade Agreement (FTA) that became operational in 2010.

FTA with Asean marked a major step in the evolution of the country’s integration with the global economy. Its engagement with Asean marked a departure from its earlier position regarding bilateral and regional trade agreements. Until the start of its close association with the grouping in 2003, India was almost unequivocally wedded to the multilateral trading system. The only exceptions to this being bilateral deals that it had concluded with its immediate neighbours in South Asia. Since then, India has aggressively pushed for concluding FTAs/Preferential Trade Agreements with its major partners.

Not only has it reached out to most of the East Asian Summit members, it has actively engaged with several members of Asean to deepen and widen its economic engagement and conclude comprehensive economic partnership agreements.

The FTA negotiations were initiated as a part of the Framework Agreement on Comprehensive Economic Cooperation between India and Asean. The framework agreement set out the road map for deepening economic cooperation between the two sides through the establishment of an India-Asean Regional Trade and Investment Area (RTIA). RTIA was to be realized through progressive elimination of tariffs and non-tariff barriers in substantially all trade in goods and by progressive liberalization of trade in services. At the same time, the partners agreed to establish a liberal and competitive investment regime that facilitates and promotes investment within RTIA.

The process of negotiating an FTA in goods, that took nearly six years to complete, raises the crucial question about its outcome and the prospects it holds for trade between the two sides. FTA, when fully functional by 2016, will eliminate tariffs in a phased manner on 80% of the items traded. Import tariffs will not be eliminated for 10% sensitive items, while the tariffs on the remaining 10% items will be brought down to 5%. In the third category of products, the reductions will be completed by 2019. This tariff reduction plan is expected to give a fillip to India’s merchandise exports to Asean region, which has stagnated around 11% of its total exports in the past years.

It must be said in this context that the level of trade between the two partners hardly justifies the long standing economic relations that exists between the two. While at the turn of the century, Asean absorbed 6.5% of India's total exports, after nearly a decade of intense trade policy dialogue, mostly centring on FTA; this share had barely crossed double-digits.

One of the problems that can clearly be seen in the trade ties is the narrowness of the product basket on both sides. At the same time, the major products in terms of value (on both sides) have remained largely unchanged over the past few years. There is, thus, no gain saying that the only way in which this trade can attain the desired buoyancy is through a diversification of the trade basket. Over the past several years, petroleum products have been the single most important item in the exports of Asean members taken as a whole and India. More recently, electrical and non-electrical machinery have gained prominence in India's imports from the region, which indicates a shift towards non-conventional items. India will have to consider ways in which it can diversify its exports to its partners in the East, in particular, by joining the production networks that have so successfully provided dynamism to the region as a whole.

One may argue that the conclusion of FTA with Asean will not result in the realization of all potential gains for India unless the country does the necessary homework to exploit markets in one of the fastest growing regions in the world. It needs to be recognized that substantial reduction or even elimination of import tariffs does not automatically ensure larger market access since "behind the border measures" are becoming ever so important. These measures include various forms of standards, the more prominent ones being the technical barriers to trade and food safety (sanitary and phytosanitary) measures. In order to maximize the gains from FTA, Asean and India must find mutually agreeable solutions to address the issue of standards. At the same time, the two partners must consider taking facilitation measures that would help in reducing the cost of doing business.
In today's world, economic relations cannot be strengthened without adequate focus being given to trade in services and investment. Over the past two years, Asean and India have tried to resolve the issues that will help fast-track negotiations on services and investment. An early conclusion of agreements in both these areas can provide the wherewithal for getting the trade in goods off the ground.

Biswajit Dhar is director general at Research and Information System for Developing Countries, New Delhi.

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India to ask Malaysia to increase bilateral trade target
PTI

New Delhi: India will ask Malaysia to revise the bilateral trade target upwards as the current goal of USD 15 billion by 2015 is expected to achieve by next year.

"We have set up a target of USD 15 billion by 2015 but I am confident that the target will be achieved by 2013 itself. I will be proposing to my Malaysian counterpart to revise this target upwards," Commerce and Industry Minister Anand Sharma told reporters here.

He was talking after meeting the members of the India Malaysia CEO Forum.

He said the CEO forum has discussed ways to increase cooperation in sectors like infrastructure, IT, pharmaceuticals and biotechnology.

"They have made their recommendations. Malaysian companies have successfully executed 52 infrastructure projects in India and 22 more are under implementation," Sharma said.

Malaysian infrastructure firms are involved in airport and highway construction.

The minister said businessmen of both the countries are engaged in exploring business opportunities in each other nations.

To boost trade and investment, India and Malaysia implemented a comprehensive market opening pact last year.

India was Malaysia's 13th largest trading partner in 2010. Bilateral trade between the countries stood at USD 13.53 billion in 2011-12.

From Indian side, the CEOs Forum was co-chaired by Malvinder Mohan Singh, Executive Chairman Fortis Healthcare and Tan Sri Krishnan Tan Boon Seng, Deputy Executive Chairman, IJM Corporation from Malaysian side.

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Steel minister disapproves plea for removing steel from Japan, Korea FTA
Press Trust of India

September 24, 2012, New Delhi: Disapproving the demand for removal of steel from free trade pacts with Japan and South Korea, Steel Minister Beni Prasad Verma today advised the industry to become more competitive by reducing cost of production.

"I don't know what the industry is clamouring for. They have to understand that when import duty would be near zero by 2025, they have to compete. You have to lower operation cost, raise competency level and deploy latest technology. Only then, your cost of production will come down," Verma told PTI.

In view of growing imports of steel from Japan and Korea, leading private sector producers JSW Steel and Essar Steel had earlier this month demanded taking steel out of the purview of free trade pact with the two Asian economic superpowers.

India had signed FTA with South Korea in January 2010 and with Japan in August last year.
Under FTA, duties on most of the products, traded between the countries, are either eliminated or reduced sharply.

Verma said since India is a signatory to the WTO, it has to reduce import duty to near zero by 2025. It would be better if the domestic industry gears up from now on to achieve the competitiveness.
"There is still a 3.5% duty on steel imports. So, the industries in India must gear up to competition because, today or tomorrow you will enter into that near zero phase," he said.

Moreover, India has an adverse balance of trade with both Japan and Korea leaving it with less bargaining power to lobby for a product removal from the FTA purview.

"When you are contributing less (to bilateral trade), your negotiating power is also less. When you are in surplus, you can say we want to put iron, steel and others out of the purview," he said.
JSW Steel's Chairman and Managing Director Sajjan Jindal had alleged that since economies of Japan and South Korea are not doing well, they are dumping lots of steel into India at a very low price, taking advantages of these FTAs.

Essar Steel Executive Director (strategy and business development) Vikram Amin said, "There is a definite case to exclude steel products from the ambit of the FTA with Korea and Japan."

India's steel imports stood at 6.83 million tonne (MT) in 2011-12.

According to Joint Plant Committee of the Steel Ministry, imports went up to 2.88 MT during April-July period of the current fiscal over 1.88 MT in the same period of last year, notching a growth of over 53%.

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Basmati trade expects better returns this year
Vijay C Roy, Business Standard

September 18, 2012, Chandigarh: Basmati farmers are expected to get better returns this year due to higher prices in the international and domestic markets. An increase in exports by 10-15 per cent is also expected, over last year.

According to exporters, the current price of basmati rice in the international markets is $1,050-1,100 per tonne (par-boiled) and about $1,350 per tonne (raw) for the PUSA 1121 variety, comprising 75 per cent of total exports. Last year, the price was $750-850 per tonne. In the domestic market, non-branded basmati is Rs 45-50 per kg (par-boiled) and Rs 60-70 per kg (raw rice). Last year at this time, the domestic price was around the same level but it came down drastically to Rs 30-36 per kg (even in some cases, Rs 20-30 per kg) with the new crop's arrival. This year, traders feel the price will not go down to that level.

Vijay Setia, past president of the All India Rice Exporters Association (AIREA), said, "Besides Iraq, Iran (as a market) is coming up in a big way, which will drive exports. The current prices will be stable because of emergence of new countries for export. The domestic market is also emerging and we expect the prices will be stable."

AIREA executive director Rajen Sundaresan, said, "As both Thailand and USA have suffered drought, India will again be the major rice exporter. It will depend on how our exporters assess the market and get competitive prices. I feel this year there would be an increase of 10-15 per cent in exports compared to last year."

Last year, India exported 3.2 million tonnes of basmati across the globe. In the year before that, it was 2.3 mt.

Exporters say this year's drought-like conditions didn't have much impact on basmati transplanting. Rajen added, "Last year, basmati was transplanted in about 1.91 million hectares (ha); this year, it was 1.66 mn ha (provisional). However, there are reports that farmers also opted for direct seeding of rice technology, which requires less water and doesn't need transplantation. Production would be more or less the same as last year."

However, millers maintained there would be a decrease in the non-basmati area. Final data is yet to be compiled but as on September 9, the total area under paddy was 35.6 mn ha. Last year, for the whole kharif season, it was 39.1 mn ha.

AIREA says it has also taken an initiative to spread awareness among the farming community in basmati growing belts like Punjab, Haryana, Western UP, Uttarakhand, Himachal, etc, and other stakeholders on the prudent use of pesticides. It has done so to address the growing concern on the rejection of rice consignments on almost a daily basis because of pesticide residues above the permissible limit in the processed grain. In 2011-12, India exported 124,000 tonnes of basmati rice to the US. Value-wise exports were Rs 500 crore. But, says AIREA, roughly 30 per cent of the total exports to the US were rejected due to high pesticide content.

AIREA seniors said: "Controlling the pesticide residue is not in the hands of the exporter or the dealer but the farmer. The right pesticide's right dose at the right time and right equipment is the only formula that will work. We have, through various meetings, workshops and events been trying to educate farmers about the negative impacts on the incorrect use of pesticides, resulting in the presence of residues even after processing. Most of the pesticides commonly used on paddy in India are not registered in the US. Farmers need to adopt good agriculture practices. This can only happen by generating awareness."

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Export curb likely on rice, wheat, sugar & cotton
Anindita Dey, Business Standard

September 25, 2012, Mumbai: The government might soon review its export policy for rice, wheat, sugar and cotton. Shipments abroad of these commodities might be curbed till the full harvest arrives and the festival season ends.

Their export is currently allowed under Open General Licence, meaning no permission is required. According to officials, the departments of food and consumer affairs have both objected strongly to the free commercial export of rice, wheat and sugar, with their high prices in the domestic market. Rice and wheat stocks available in storages were for maintaining buffer stock levels and for the Public Distribution System (PDS); these could not be diverted for retail consumption in the domestic market, they said.

The domestic price of rice has been going up. The first advance estimates of the Union agriculture ministry says rice output is being projected at 85.6 million tonnes (mt), compared to a record 91.5 mt last year. Official sources said the recommendation is to restrict free export of rice for the rest of this financial year, except for the top-end basmati rice, mainly produced for export. The price of rice across the country has gone up by two to 30 per cent year over the year, barring the eastern states, which are having a second crop.

Sugar is witnessing a rise in prices and officials feel even if the output of cane is high, productivity (conversion to sugar after crushing) will be lower due to lack of rain. Export of sugar had stopped since domestic prices began rising. The ministry has recommended banning export till at least December, when the festive demand is over and the second harvest will arrive in the market.

Across the country sugar prices have gone up by 25-58 per cent year on year and might go up further. Output this year is estimated to be the same as last year.

A ban on sugar export, say officials, wouldn't hit millers, as the government proposes to raise the price of levy sugar for the PDS to Rs 22 a kg from the Rs 13.5 a kg fixed since 2002. This would help the industry recover around Rs 12 a kg from selling sugar under PDS.

A shortage in cotton output is expected due to erratic rain. The free export policy comes to an end in a month. The textile ministry had already recommended a ban on export till the market showed surplus availability for the domestic industry.

Cotton prices in Tamil Nadu and Uttar Pradesh have risen 25 per cent over a year. The first advance estimates, show cotton production at 32 million bales (of 170 kg each), compared to last year's 35.2 million bales.

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Textile industry may miss $40.5 billion export target
Sutanuka Ghosal, Economic Times

September 21, 2012,Kolkata: Difficult times in the US and Europe continue to affect the Indian textile industry so much so that the export target of $40.5 billion for the current fiscal seems to be unachievable. In the first half of current fiscal, the industry has not seen much growth, with the garment sector being the worst sufferer. Cheap garments from Vietnam, Cambodia, China and Bangladesh are flooding the US and European markets as both the countries have become cost-conscious in view of an impending financial crisis.

"The situation is pretty bad in the US and Europe. The export target of $40.5 billion appears to be tough to achieve. We are almost on the verge of completing the first half of current fiscal and there is no sign of a major uptick in exports till now," said DK Nair, secretary general of Confederation of Indian Textile Industry.

The textiles ministry had revised the export target for textile products to $40.50 billion for 2012-13, an increase of about 22% compared to the $38.18 billion that was set last year.
Importers from Europe and the US have not placed much orders for the upcoming Christmas festival this year. "The impact on Indian garment exports has been largely on account of Europe's inability to buy from India. In fact, the European buyers have not placed much order in the July-August period. The shipments, which generally take place in October-November, are much lower this time. The spring-summer demand from the overseas markets is also low. We do not think that the ministry's target of $18 billion apparel exports will be achieved this year," said Gautam Nair, managing director of Matrix Clothing.

In the period April-July this year, apparel exports have gone down by 14.28% to $4.2 billion as compared to $4.9 billion in the corresponding period of the previous year. "To boost exports in the near term, government should increase duty drawback, give packing credit and other measures," said Prashant Agarwal, joint manager director of Wazir Advisors. Agarwal feels that, in the long term, the Indian textile industry has to invest more to increase efficiency and productivity to remain competitive. "Chinese garments are becoming costlier and Vietnam has increased wages. Therefore, garments in these countries are becoming costlier.

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Honduras pips India at US garment stores
Times of India

September 27, 2012, New Delhi: First, it was Bangladesh and Vietnam. Now it's Honduras that has beaten India in the race to garment stores in the US, which accounts for nearly a third of India's apparel exports.

Latest available data shows that India has been pushed to the seventh slot in the US garment import sweepstakes by the central American country after it registered a 16.5% fall in shipments in July. While local players blame the slowdown, Honduras's proximity and probably preferential access to the world's largest economy would have tilted the scales in its favour.

Although US households have indeed cut down on discretionary spends such as buying garments and jewellery, the impact seems to be more pronounced in the case of Indian exports. For instance, among the top seven garment exporters to the US, only India and Mexico witnessed a fall in the value of consignments in July, while shipments from China remained flat. During April-July 2012, Indian apparel exports to all countries shrunk by over 13% to $4.2 billion compared to $4.9 billion a year ago. The fall has been attributed to a slowdown as exports to major markets such as Europe that accounts for almost half the shipments declined 24% while those to the US were down almost 11%.

In recent years, inflexible labour laws, rising wages and poor infrastructure have been blamed for India's fall from the second slot in global export of garments. The decline has been sharper since the quota regime was disbanded in 2005, a move which was actually expected to benefit Indian manufacturers.

But Bangladesh's status as a least developed country, which allows its garments preferential access in markets such as Europe, along with cheap labour, have meant that India has lost the battle. In fact, several Indian companies have set up shop across the eastern border and are now tapping the European market, aided by access to cheaper raw material from India after New Delhi and Dhaka settled for better trade ties.

India is hoping that a bilateral trade deal will help it narrow the gap with Bangladesh, if not overtake its neighbour, as the EU has agreed to lower the import duty.

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WB CM seeks Anand Sharma's intervention in shrimp export
PTI

September 13, 2012, Kolkata: Faced with Japan's ban on shrimp from India, West Bengal Chief Minister Mamata Banerjee today urged Union Commerce Minister Anand Sharma to take up the issue with the concerned authorities to protect the interests of the country's fishermen.

"India exports shrimp, mainly black tiger prawns, worth over Rs 1000 crore. A major consignment has been rejected by the Japan government, substantial quantity of which was from West Bengal", Banerjee said expressing concern for the state's fishermen.

Sharma, she said, has assured her to look into the matter and take appropriate steps in this regard. Reportedly Japan, like the EU, has imposed strict standards for import of shrimp from India following the alleged presence of banned antibiotics in some consignments.

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FDI in multi-brand retail won't take away right of States: Centre
The Hindu

September 19, 2012, New Delhi: The Central Government, on Tuesday, strongly rejected the opposition BJP claim that international investment protection treaties and undertakings under WTO would override the right of the State government to reject entry of multi-national food chains under the newly-approved 51 per cent foreign direct investment (FDI) in multi-brand retail policy. An official spokesman of the Commerce and Industry Ministry said here that it would be the prerogative of the States to allow a multi-brand store.

The policy itself was a national policy, and could potentially be applicable to all the States that were desirous of implementing it. The local and State-level regulations which governed shops and establishments were the prerogative of the respective State governments, the spokesperson added. "The policy explicitly acknowledges this position. The opening up of FDI in multi-brand retail trading is a liberalisation measure and remains so with all the conditionalities, given the fact that at present FDI in multi-brand retail trading is not allowed in India. The decision does not violate any commitments/obligations arising out of India's international agreements," the spokesperson said.

MARKET ACCESS

Giving further details, the spokesperson said market access, in the context of FDI policy, implied the ability of a foreign investor to enter the investment space in India and the limitations thereon. A foreign multi-brand retail investor could invest in India only after the government decision was notified. An official release said that the Bilateral Investment Promotion & Protection Agreement (BIPA) was a post-establishment investment agreement. This implied that once an investor entered the country, that investor must be treated the same as a domestic investor unless the limitations to national treatment were clearly spelt out at the pre-establishment stage. The FDI policy was a pre-establishment instrument and, therefore, not covered by BIPA, it added.

PRE AND POST

Similarly, for the Comprehensive Economic Partnership Agreement (CEPA), it said under these agreements, India had taken both pre and post establishment commitments. In the pre-establishment commitments, the FDI policy has been bound, which means that any rollback would require consultations with the partner country and could entail quid pro quo in terms of concessions in other areas. Within the FDI policy, commitments may be taken only in some specified sectors (positive listing). Since FDI in multi-brand retail trading was not allowed when these agreements were negotiated, none of these agreements is affected by the recently approved policy. Moreover, state and local regulations are not a part of such commitments.

The spokesperson said India has not undertaken any commitments in this area under the General Agreement on Trade in Services (GATS). As such, there is no impact of the policy on our commitments under the WTO. Investment is not a part of WTO disciplines except through Mode 3 under GATS.

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US working on investment treaties with India, China
Press Trust of India

Washington, September 20, 2012: Months after it unveiled a model bilateral investment treaty (BIT), a top Obama Administration official has said the US is working on BIT with a number of countries, including India, China and Mauritius.

This is a part of the Obama Administration's effort to promote investment policies and enhance trade, the US Trade Representatives Ron Kirk said at Coalition of Service Industries 2012 Global Services Summit.

"Earlier this year, the Administration concluded a thorough review of the US' model bilateral investment treaty (BIT). We enhanced transparency and public participation, sharpened the disciplines that address preferential treatment to state-owned enterprises and strengthened protections relating to labour and the environment," he said.

"With these new policy tools, US negotiators are now advancing efforts to secure high-standard BITs with trading partners such as China and India, as well as Mauritius. We have also resumed exploratory BIT discussions with a number of countries including Ghana, Cambodia, Russia, and the East African Community (EAC)," he added.

Kirk said the US is focused on enhancing services trade through existing agreements.
For example, the US-Korea agreement, which is in force, provides new opportunities for US service suppliers in the $580 billion Korean services market.

"Similarly, US investors and service suppliers are starting to take advantage of new opportunities under our recently implemented trade agreement with Colombia," he said.

Kirk also said direct dialogue is essential for enhancing services trade and investment. For example, China is the fastest growing auto market in the world. Through bilateral engagement, the US persuaded China to open its market for certain mandatory auto insurance.

"Of course, when negotiations and dialogue are not able to remove discriminatory barriers to trade sufficiently, it may be necessary to utilise appropriate trade enforcement tools.

"In July, a WTO Panel agreed with US claims that China's pervasive and discriminatory measures in the electronic payment services (EPS) sector deny a level playing field to financial services suppliers from the US and other countries," Kirk said.

China has now accepted the Panel's ruling and the US is working with China to ensure that these practices end, he added.

Kirk said the US is eager to seize the full potential of its trade and investment relationship with Russia at the bilateral as well as multilateral levels.

"Last month, the US welcomed Russia as the 156th Member of the WTO. Now, WTO rules could - and should - offer important transparency and predictability for US service suppliers doing business in Russia," he said.

"But because the WTO Agreement does not apply between the US and Russia at this time, Russia does not have to apply the WTO rules, or its market-opening commitments, to US service suppliers. "That's why the Obama Administration is strongly encouraging Congress to pass legislation as soon as possible that will terminate Jackson-Vanik (amendment) and authorise permanent normal trade relations with Russia," Kirk said.

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India, China Begin To Engage With Domestic Industries On ITA Expansion
World Trade Online

September 25, 2012: The governments of China and India are beginning to more intensely engage with stakeholders in their domestic high-tech industries about which priorities they might pursue in an ongoing effort in Geneva to expand the the list of products covered by the tariff-cutting Information Technology Agreement (ITA), according to a U.S. industry official.

Up until now, the government of India has been reluctant to engage at all in efforts aimed at expanding the 1996 trade deal, citing the domestic sensitivities of its industry. But New Delhi now seems to be shifting its position, if only slightly, said John Neuffer, vice president for global policy at the Information Technology Industry Council (ITI).

“The government is now actively working with stakeholders in India to pull together their own product list,” Neuffer said in a conference call yesterday (September 24) with reporters. He explained that he did not know how far this process has advanced, but took it a positive sign given that India had previously shown no interest in ITA expansion.

“I don't know if there's been a turnaround. But at least now India seems to be vectoring towards engagement,” he said. “I think that's a good sign.”

China, which observers see as generally supportive of ITA expansion but reluctant to divulge its views, is also talking with its industry about what its priority products could be, Neuffer added. “I myself have had a number of conversations with the Chinese government, and I'll say that over the months of discussions with them, they are more and more engaged internally, so we expect them to be supporters of this thing,” he said.

Neuffer's remarks followed ITI's release yesterday of a statement also signed by 55 other industry associations that calls for the conclusion of the ITA expansion effort within a year. The Communications and Manufacturing Association of India (CMAI) was one of the signatories supporting the statement.

No industry associations from China signed on to the statement in support of the ITA expansion effort. However, industry associations in China are not independent from the government, so such groups generally only take a position on a matter if the government has approved it, one private-sector observer said.

Observers following the ITA expansion effort in Geneva have underscored the importance of China and India participating in the initiative.

This is not only because they are large emerging economies and major traders in technology products -- and thus essential to ensuring that a "critical mass" of countries participate -- but also because they are members of the current ITA. The “review” framework under which ITA participants are now trying to expand the deal requires that any expansion of the agreement be completed by consensus of current members, one source noted this week.

The relevant portion of the 1996 declaration says that ITA members shall meet periodically to review the coverage of the ITA “with a view to agreeing, by consensus, whether … [the agreement] should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products.”

Neuffer, in speaking with reporters, specifically acknowledged the importance of including India in the talks but stopped short of saying that the country's participation is critical to the success of ITA expansion. “Our objective is to get all ITA members fully on board with expansion," he said. "We're hopeful that India will come on board."

The release of the industry statement comes as government officials in Geneva planned another round of technical talks this week on what kinds of items should be on the table. The Canadian mission is hosting the talks this time around on Sept. 26-27.

Officials are viewing this as an exercise that will help shape formal negotiations later down the road, but say that negotiations have not actually started yet.

So far, only 11 ITA members are participating in these intensive technical talks because they are the only participants who have submitted “wish lists” of products they want covered. They are Australia, Canada, Costa Rica, the European Union, Japan, Korea, Malaysia, Norway, Taiwan, Thailand and the United States.

Aside from those 11 members, another 20 or so ITA participants are closely following this process as they consult with their own domestic industry, including China.

The small group has come up with about 350 different kinds of goods in a “consolidated list,” although this is not an agreed list and there is still debate over what should be considered IT-relevant (Inside U.S. Trade, Aug. 3). It is also significantly larger than the proposed list submitted by U.S. industry groups.

Asked about the additional products, Neuffer said that his group has not yet sorted through all of them. “I'm sure there are some things that we would have no problem with adding … and there may be some things that may not make a whole lot of sense for us, that we may not see as ICT-relevant,” he said, referring to information and communications technology.

The statement released yesterday was similar to one sent out by 40 industry groups in March of last year. In that release, the groups expressed support for advancing the ITA initiative, but did not set a timeline.

In addition to CMAI, there were 15 other groups who signed the statement today that did not sign on last year. They included associations from countries that are participating in the 11-member small group talks, like the Australian Information Industry Association and the U.S.-based Business Software Alliance.

Also joining the statement was Brazil Association of IT Companies, although Brazil is not a member of the current ITA and many observers doubt that it is interested in joining. The current ITA participants, sources say, are also largely focused on expanding the deal's product scope, with geographical expansion of the agreement a second-tier priority.

According to its website, CMAI's membership includes a number of Indian companies like Tata along with multinationals like Intel and Ericsson.

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WTO: forums mooted to voice concerns
The Hindu

18 September 2012, Thiruvananthapuram: States which have to bear the impact of the World Trade Organisation's (WTO) negotiations should form "anchor bodies" to voice their demands and concerns at the international level, Planning Board Vice-Chairman K.M. Chandrasekhar has said.

Inaugurating a two-day seminar on 'WTO and its impact on the Kerala Economy' organised under the joint aegis of the Institute of Management in Government (IMG), and the Centre for WTO Studies Indian Institute of Foreign Trade in Thiruvananthapuram on Monday, Mr. Chandrasekhar said that IMG could ideally become such a forum of Kerala as the State had to bear the impact of the negotiations. WTO was in limbo at present.

A decade ago WTO had played a critical role and it had created great excitement among the intelligentsia and people of different genre. Various ideas and concerns were raised about the future of the negotiations.

India had developed a motley group of likeminded developing nations, including Pakistan and Egypt to put up a resistance. But during the Doha round of talks, India got isolated. Subsequently China joined the block of resistance. The thrust of the negotiations was on agriculture.

The United States and the European Community then finalised an agreement protecting their mutual interests. The tenor of the negotiations then changed and Brazil and India worked out a counter text with the support of other nations. South Africa, Thailand, Egypt and such others formed the G-20 block of nations.

This block held on during the Cancun meet and the Doha round of negotiations continued to remain incomplete. This was despite the developing countries' interest to complete the round. India had a pivotal role in the negotiations. In this context, the States which had to bear the outcome of the talks should have "anchor bodies" to raise their demands, he said.

IMG director Nivedita P. Haran welcomed the gathering. Abhijit Das, professor and head of the Centre for WTO Studies, and Sajal Mathur of the Centre addressed the seminar.

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India may move WTO against US visa fee hike by Oct end
PTI

September 23, 2012, New Delhi: India is expected to soon seek consultations with the US under the aegis of World Trade Organization (WTO) on visa fee hike for professionals, which discriminates against Indian software companies that send employees to America on short-term contracts.

Although the commerce ministry had internally started the process in April, collecting all the relevant information and data to make a strong case in the WTO is taking time, a senior official told PTI.

"But now we have finalized our case. We are putting all the evidences together. The US visa fee hike is a discriminatory move against Indian IT firms. We are expecting that by October end, we will formally file the complaint and seek consultations under WTO," the official said.
The US had raised visa fee in 2010 to fund its enhanced costs on securing border with Mexico under the Border Security Act. India has been protesting against the measure at different forums.

An American law (Emergency Border Security Supplemental Appropriations Act, 2010) has substantially increased the fees for H-1B and L-1 categories of visas for applicants that employ more than 50 employee in the US or have more than 50 per cent of their employees admitted on non-immigrant visas (called the "50/50 rule").

"... which is prima facie discriminatory for Indian companies," minister of state for commerce and industry Jyotiraditya Scindia had said earlier.

According to industry experts the H1B visa fee has been increased to USD 2,000 per visa application and L1 by USD 2,700 per visa application.

Some of the top Indian companies — TCS, Infosys, Wipro and Mahindra Satyam — were affected by the US action on visa fee. The US is the largest market for the Indian software exports.

As per the procedure of WTO, consultation is the first stage of a complaint filed with the global trade body.

Consultations give the parties an opportunity to discuss the matter and to find a satisfactory solution without proceeding further. After 60 days, if consultations fail to resolve the dispute, the complainant may request adjudication by a panel.

Meanwhile, New Delhi and Washington have also completed consultations on other issues in WTO that include avain influenza and steel.

In April, India had complained that the US had wrongly imposed countervailing duties, a kind of restrictive duty, on certain hot-rolled carbon steel flat products from India.

"We have asked for setting up of panel under the WTO's dispute settlement mechanism on the steel issue," the official said.

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Europe upholds Darjeeling tea's authenticity
Sutanuka Ghosal,Economic Times

7 Sep, 2012, KOLKATA: There's good news for the producers of Darjeeling tea, the champagne among tea varieties. The European Trade Council and the German Tea Association have agreed to confer the protected geographical indication (PGI) status on Darjeeling tea, the first commodity from India to get such a tag. This implies that the brew produced only in Darjeeling can be sold as

Darjeeling tea in the European Union.

"As of now, blenders in EU countries generally mix 49% of any tea with 51% of Darjeeling tea and still sell it as Darjeeling tea. But it has now been decided that only those packets that contain 100% Darjeeling tea can be sold as Darjeeling tea," Tea Board chairman MGVK Bhanu told ET from Germany. The packets will also have the Darjeeling logo and PGI logo labelled on them.

Darjeeling was granted the geographical indication status by the European Union in October last year, authenticating its origin. However, the implementation of this status involves a phasing-out period within which products which do not conform to the law and are not authentic from the hill district of Bengal will be driven out of the market.

It has also been decided that the European Trade Council and the Darjeeling Tea Association along with the Tea Board will jointly promote Darjeeling tea in the European market.

According to the EU notification, the blenders in Europe have been handed out a caveat in the sense that only those who had products in the market five years before October 14, 2009, can continue selling their blended products as Darjeeling tea for the next five years. "There is hardly any Darjeeling tea left with the European buyers. Henceforth, only Darjeeling tea will be available in Europe," said SS Bagaria, chairman, Darjeeling Tea Association.

Industry officials estimate that around 40 million kg of tea gets sold as Darjeeling tea across the globe every year. In this context, the EU's decision is considered important. The process of granting a geographic indicator, which means that only the produce of a particular area can be sold by its generic name, started with India according the GI status to Darjeeling tea in 2003.

Since, it was mandatory to get home protection, the Indian government passed a Geographic Indicator and Protection Act in 1999 after which Darjeeling tea was given the GI status in 2003. The granting of GI status in the home country - India in the case of Darjeeling tea - is only the first step towards the protection of the commodity's generic brand.

In 2007, the Tea Board of India and the Darjeeling Tea Association invoked a provision in the EU Commission Regulation 5001 to ask Brussels to accord the PGI status to Darjeeling Tea.

"We have also made an application before the Japanese Property Right Organisation for granting of the Production of Regional Origin (PRO) in Japan and also before the Trade Administration Authority (TAA) of USA for granting of Community Collection Mark in the USA," said Sanjay Bansal, chairman of Ambootia Group. He added that PRO and TAA were similar to the PGI tag.

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Drug patents on the rise: 3,488 in 5 years
Sushmi Dey, Business Standard

September 24, 2012, New Delhi : For those who say India is a country of generic drugs, this could be a revelation. India granted as many as 3,488 patents to pharmaceutical products between 2005 and 2010.

Compare India's pharma patent number with that of Brazil, another BRIC (Brazil, Russia, India and China) nation, in a similar time band. A research paper, "Pharmaceutical Innovation, Incremental patenting and Compulsory Licensing" by Carlos M Correa, a professor at University of Buenos Aires, points out that just 278 patents were granted in Brazil between 2003 and 2008.

According to the same paper, 951 pharma patents were granted in Argentina between 2000 and 2007; and 439 were approved in Colombia between 2004 and 2008. However, in South Africa, where patents are simply registered without much verifications and patentability requirements, 1,426 were registered in 2008 alone, the paper added.

While data reveals patentability has encouraged local drug innovation in India, experts suggest the country needs stricter checks and balances to prevent incremental innovation.

It was in 2005, India changed its patent law and started granting patents in medicines. That year, only three pharma patents were granted. The number rose to 113 in 2006 and 772 in 2007. The trend continued with as many as 1,369 patents being approved in pharma in 2008 and 1,046 in 2009, as per the Indian patent office.

Experts attribute this significant change in the patent regime to entry of product patents. According to an intellectual property right (IPR) lawyer, India granted as many as 970 pharmaceutical product patents between 2007 and 2011.

In 1994, India, along with various other developing countries, signed the World Trade Organisation's (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which mandated it to start granting patents on medicines no later than 2005. Unlike many countries, India used the transitional period provided in the agreement to the full. It changed its patent law only in 2005 to comply with the TRIPS agreement and started granting patents to drugs.

The change in the intellectual property scenario has also triggered significant shifts in India, particularly in the pharma sector. While research and development activities have substantially increased with various domestic companies investing to develop new chemical entities, Correa points out the large number of grants can only be explained by patents over incremental innovations.
The concerns, therefore, have also raised debates on interpretation of provisions like section 3 (d) of the Indian Patent Act which prevents patenting of frivolous and incremental innovations. An current case in the Supreme Court, between Swiss drug maker Novartis and the government along with a host of generic drug makers, is revolving around interpretation of this provision.

"Though India has introduced the provision of section 3 (d) in its patent law, it has not been implemented uniformly, which is important," says Leena Menghaney, campaign co-ordinator (India), Medecins Sans Frontieres, which campaign for access to essential medicines across the world. Agrees Amit Sengupta, the co-convenor of Jan Swasthya Abhiyan, a public health advocacy movement. According to Sengupta, it is not enough to have section 3 (d) theoretically, implementation of the provision is important which will happen only through proper examination of grants.

More recently, the government granted compulsory licence to domestic drug maker Natco allowing it to manufacture the generic version of Bayer's anti-cancer drug Nexavar, even as the latter has a patent on it. The move is aimed at safeguarding public interest as Nexavar is an expensive drug.

Experts say pharmaceutical companies in India need to be IP conscious. "The pharma industry is going to be affected in the next 15-20 years due to IP issues. Therefore, the companies need to be IP conscious now," says Prathiba M Singh, patent and trade mark attorney and managing partner of Singh & Singh Law firm.

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Bayer petition against Natco over manufacture of Nexavar dismissed
Divya Rajagopal, Economic Times

September 16, 2012, Mumbai: In a major boost to generic drug makers , the Intellectual Property Appellate Board of Chennai has dismissed German drug maker Bayer's plea, seeking a stay on the the Compulsory License issued to Hyderabad based drug maker Natco to manufacture the anti cancer drug Nexavar, media reports say. The CL issued by the Controller of Patents in March this year, had given Natco the permission to manufacture and sell the kidney cancer drug at less than 3% of the cost charged by the German drug maker.

"We are yet to see the copy of the order, and cannot comment on the ruling", said M Adinarayana, Company Secretary Natco. Bayer could not be reached for a comment on the story. The next step for Bayer would be to knock on the doors of the Supreme Court, analysts say.

Compulsory license is a patent system under the World Trade Organisation (WTO) where a government allows a company to manufacture a patented drug , without the consent of the innovator company. In march this year, India granted its first ever CL, by ordering Natco to sell the cancer drug at Rs 8800 for a month's therapy, and pay 6% royalty to Bayer on the total sales.

India is in the middle of raging patent battle, where domestic drug makers are locked into a bitter legal battle with the multinationals over their patented products. Last week, the Delhi High Court ruled in favour of Cipla regarding a patent infringement suit filed Swiss drugmaker Roche, over its cancer drug Tarceva. Another Swiss drugmaker Novartis, awaits the most awaited ruling from the Supreme Court, over its cancer drug Glivec. Novartis has challenged Section 3(d) of the Indian Patent Act which deems "frivolous" inventions as non patentable.

India has close to 2.5 million cancer cases every year, the World Health Organisation says, and the anti-cancer drug market is estimated to be 1,500 crore. However health activists say that the cost of cancer drugs is still abnormally high and affordable for a large number of patients.

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India: Balancing Public and Private Interests In The Intellectual Property Regime
Patralekha Chatterjee, Intellectual Property Watch

18 September 2012, New Delhi: In this month, there have been two court orders in India that underscore the complexities underlying the country’s intellectual property regime. Last Friday (14 September), the Chennai-based Intellectual Property Appellate Board (IPAB) which is responsible for hearing appeals on patent applications, rejected a petition by German pharma major Bayer AG, seeking a stay on an order of India’s Controller of Patents granting a compulsory licence (CL) to Indian generic drug maker Natco Pharma Limited, for a drug used to treat liver and kidney cancer. “We are happy. That is all I want to say at this point,” M Adinarayana, Natco company secretary, told Intellectual Property Watch by telephone soon after the IPAB came out with its order.

Public health advocates have welcomed the order. “This decision once again affirms that courts can and should act in the interest of public health in the case of pharmaceutical products,” Leena Menghaney of Médecins Sans Frontières’ Access Campaign said in a public statement. The case is India’s first compulsory licence (CL).

At the time of writing, Bayer’s future course of action is not known. In May this year, in an emailed statement, Bayer told Intellectual Property Watch, “We will rigorously continue to defend our intellectual property rights which are a prerequisite for bringing innovative medicines to patients.” James Love, director of Knowledge Ecology International (KEI), said in a statement, “It is possible and indeed likely that Bayer will continue to litigate this issue, which will soon be scheduled for another hearing on its merits, now that the stay has been rejected.”

“It is important that the U.S. and German governments, and the European Commission, resist the temptation to interfere with the Indian legal system while this matter is litigated,” Love said. “What is at stake is nothing less than the right to live.”

“The decision,” Love continued, “is also a test of the 2001 WTO Doha Declaration on TRIPS and Public Health, which says that WTO Members should implement their patent laws ‘in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.'" KEI, an international nongovernmental group, has been working on the access to medicines movement for more than 20 years. TRIPS is the 1994 World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights.

Other Key Cases

The IPAB order in the Bayer versus Natco case comes hot on the heels of the Delhi High Court ruling this month involving Cipla, another Indian generic drug maker, and two pharma multinationals, namely Swiss drug maker F. Hoffmann-La Roche Ltd. and the New York-based OSI Pharmaceuticals Inc. In this case, Cipla was being accused of infringing Roche's patent on cancer drug Tarceva, which Cipla sells under the brand name Erlocip.

The Delhi High Court in its order on 7 September held that Roche's patent on the drug is valid. However, it also said that Cipla did not infringe Roche's patent as it has been selling the polymorph B (variant of the basic drug compound) form of the drug which is known as erlotinib in generic terms. The two recent court orders provide a backdrop to another landmark case involving Indian generic drugmakers and a multinational pharma company that is in the news this week.

Today, 18 September, arguments in the final hearing of the much-talked about Glivec patent case were scheduled to resume in the Supreme Court. Swiss drug major Novartis AG is challenging the denial of patents to its blood cancer drug called by its brand name Glivec in India (Gleevec in the United States). In this case, Novartis is pitted against the Government of India, top Indian generic drug manufacturers (Natco, Cipla, Hetero, Ranbaxy) as well as the Cancer Patients Aid Association(CAPA). Newly appointed Additional Solicitor General Paras Kuhad is representing the Union of India; CAPA's case is being argued by Anand Grover, another top Indian lawyer who is also currently the United Nations Special Rapporteur on the Right to Health. Other top Indian lawyers like Harish Salve are defending the generic companies.

The legal dispute in the Glivec case centres around a provision of India's 2005 patent law, called Section 3(d), which states that "the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant." The dispute brings to the fore a fundamental question: what is an "invention"? Or more precisely, how much innovation is required to obtain a patent in India?

The ongoing case in India's highest court is the final act in a legal battle that has been going on since 2006 when Novartis unsuccessfully pitched for a patent for Glivec. The case has already moved through various rungs of India's legal system including the IPAB and is now in the country's top court.

Final Arguments

The final arguments in this case began on 11 September in a packed room in India's Supreme Court, For many in the court room, it seemed like a crash course in chemistry as Gopal Subramanium, a distinguished lawyer and formerly the country's solicitor general and now senior counsel for Novartis, quoted chunks from various chemistry textbooks and cited international conventions to make his client's case that Glivec was indeed a genuine medical breakthrough, had been granted a patent in nearly 40 countries and was deserving of a patent in India. Treatment with Glivec, the Novartis brand, costs about 1.2 lakh Indian rupees (or around USD 2,250) per month. The monthly tab for the Indian generic versions is below 10,000 Indian rupees (about USD 185).

Novartis says it is not fighting this legal battle for money but to vindicate its "honour". During the court hearing, the company's lawyers have repeatedly sought to draw attention to its patient assistance programme in India. Novartis claims that 85 per cent of the patients in India were being provided Glivec free of cost. “The purpose is not to make money from the poor. This is not the purpose but am I not entitled for patent for our drug? We are fighting the case on principle,” Subramanium said in the Court last week. Public health advocates point to the discretionary nature of such assistance programmes.

Novartis lawyer Subramanium has argued in court that the grant of patent to Glivec would not hurt public health in India as “authorities were free under the law to direct the company to compulsorily part with licences relating to the drug any time three years after the grant of patent,” as the legal correspondent of one Indian newspaper pointed out in his report.

The flexibility issue is a severely contested territory. In a report titled “India’s patent laws under pressure” this month in The Lancet, one of the world’s most prestigious medical journals, Peter Roderick and Allyson M. Pollock pointed out: “The Obama Administration has been consistent in its efforts to stop compulsory licences, with the Deputy Director of the US Patent and Trademark Office describing the granting of this licence as the “most egregious” example of anti-TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) behaviour. ”

But significantly, these provisions of India’s IPR regime are inspiring health and IPR activists in other developing countries.

“The Treatment Action Campaign (TAC) and Médicins Sans Frontières are currently lobbying for South Africa to adopt a number of the public health safeguards that are upheld in India’s law. In our campaign, we have looked at the Indian laws as a model of pro-public health interpretation of TRIPS,” Catherine Tomlison of TAC’s Fix the Patent Laws Campaign told Intellectual Property Watch.

“In our campaign we are calling for South Africa to reject new use and new formulation patents, as rejected in section 3(d) of India’s patent laws,” Tomlison said. “Currently South Africa does not exclude new uses and new patents from patentability and as a result many medicines are under patent and extremely expensive in South Africa, where affordable generics are available in India.”

“We are also calling for South Africa to require examination of patent applications and to allow for opposition by third parties. We have looked extensively at the Indian experience in implementing examination and opposition as well as the financial and capacity requirements. The Indian experience has shown us that implementing patent examination not only pays for itself with user fees but also generates a significant amount of money for government that can be put back into service delivery. We have been informed by South Africa’s Department of Trade and Industry that the IP policy should be made available this month and that the public comment process will last three months,” she added.

Other African countries, including Botswana and Swaziland, are also in the process of amending their laws to better utilise the flexibilities allowed under TRIPS to protect health. Botswana, for example, has adopted pre-grant opposition.

A spokesperson for MSF told Intellectual Property Watch that MSF has chosen not to comment on the Novartis hearings because it felt that doing so might interfere with the judicial process, but the medical and humanitarian NGO was taking a very keen interest in the case and awaiting the outcome of the court’s decision.

Speaking on the wider context, however, Michelle Childs, director of policy advocacy for the MSF Access Campaign, told Intellectual Property Watch: “It’s now more important than ever that developing countries use all the public health flexibilities in international trade law; this includes effective compulsory licensing provisions to ensure access if a patent has been granted, but medicines are unavailable or priced out of reach for those who need them. Countries need all the tools at their disposal – it is not an either/or choice; you need preventative measures to stop monopolies being wrongly granted, as well as an antidote to high priced patented medicines."

Will India strike the balance between patents, patients and profits? It is hard to predict. The ongoing cases raise fundamental questions about the definition of "invention", what qualifies for a patent under India's IP regime and the challenges of striking a balance between public and private interests in an emerging economic power, where, paradoxically, the vast majority are still not covered by health insurance and where most people have to pay for their own treatment.

The final outcome of the cases may not be known for weeks, possibly months. But one thing is clear: they could change the game in the health care sector as well as the intellectual property rights regime in India and across the developing world.

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Free trade for a fair world?
T S Vishwanath, Business Standard

Trade liberalisation can be a tool for reducing income inequality

September 27, 2012: CUTS International has come out with a draft report "Making trade a tool for poverty amelioration in the 21st century". The report is based on a survey that collected perceptions of global trade and development experts, and is expected to guide discussions of the High Level Panel on the Future of Trade that was set up earlier this year by World Trade Organisation (WTO) Director General Pascal Lamy.

Interestingly, despite the fact that the Doha Round of the WTO has been languishing for long, a majority of respondents to the survey are reportedly of the view that the multilateral organisation will be able to address the challenges that it faces, provided future trade negotiations have inbuilt features and greater orientation towards development issues, especially on problems faced by the developing world. However, for this to happen, there is need for a renewed spirit of cooperation that balances strengths and weaknesses for the benefit of all.

To arrive at this conclusion, the report has gone about seeking responses on some of the issues that have been raised by interest groups over the past few years. For instance, the report seeks to develop a "Geneva Consensus" that seeks to involve inter-governmental organisations that cover a wide variety of governance issues. The survey report states that these issues travel down to countries and, thus, there is a need to develop coherence among them to address global economic challenges, including trade policy. A majority of participants called for convergence between state and non-state actors for developing such a consensus.

However, this "majority" view may need debate. Given the complexity of relationships that exist between the state and non-state players, at present, this would be difficult to manage in a practical way if countries want to ensure the completion of the Doha Round. The WTO negotiations have always been government-led and it would be best to keep it that way. Each member country has to work towards building a broad consensus on its position among state and non-state players in its own constituency.

Another important aspect raised in the survey is about the use of trade liberalisation as a tool for reducing income inequality. The survey participants are of the view that trade liberalisation should be an opportunity to address structural rigidities to reduce income inequality.

The idea is good and governments must look at how trade liberalisation does not lead to any reduction on the policy space available to developing and least-developed countries to build competitiveness in their economies. The focus should not be on protection but building competitiveness. Interestingly, a large portion of those surveyed were of the view that trade liberalisation has no role to play in reduction of income inequality.

The report goes on to say global value-chains are shaping economic development and giving countries new opportunities to engage in industrial activities, which are often characterised with higher domestic value-added. The WTO, the report states, is missing an opportunity in regulating these issues and countries are filling this gap by engaging in free trade agreements (FTAs).

Though the survey makes a point, it is important to point out that FTAs are not exactly filling the gap that the WTO is giving up. Regional or bilateral trade agreements cannot replace multilateral trade agreements that even today remain at the core of trade policy planning for many countries, including India. FTAs can only cover reciprocal market access issues, while the WTO has the capability to address issues such as the lack of opportunities for developing or least-developed countries.

Even as the survey provides several significant points for consideration, it is important for any panel that looks into the future of trade to address the issue of removing imbalances among member countries of the WTO in accessing markets and moving up the value chain to create higher employment opportunities in the domestic market. The discussion should centre on getting the WTO to deliver economic growth for all its member countries. This can only be done if the multilateral trade negotiators connect with realities across the globe, and not remain insulted from the issues impacting countries.

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