

Summary of presentation by Gopa Kumar IP Provisions of EFTA's FTA Compromises Development

Inclusion of intellectual property issues in a free trade agreement with developed countries results in notching up of standards on intellectual property protection and its enforcement. Free Trade Agreement(FTA) increases the level of intellectual property (IP) protection in two ways. First it forces developing countries to harmonise their IP law by acceding to a series of international convention. Secondly explicitly asking to expand the IP protection to certain subject matter. FTA with European Free Trade Area's (EFTA) increases the level intellectual protection and its enforcement and its implications for developmental objectives of developing countries especially India. Five key areas of concerns are explained below.

1. It forces partner countries to provide data exclusivity protection to test data submitted for the marketing approval of pharmaceuticals and agrochemicals. As per the FTAs parties to the agreement is to provide 5 years of data exclusivity to pharmaceutical products and 10 years to agrochemicals. As a result, national drug regulatory authority cannot provide marketing approval of generic drugs during the period of data exclusivity protection. Thus it delays the introduction of generic drugs and agrochemicals even in the absence of patent protection. It may also have the potential to neutralise the compulsory license provisions of patents act. Currently India does not provide any such protection. Introduction of data exclusivity would compromise access to medicines and would undermine right to health.
2. FTAs with EFTA also obligate countries to accede to International Convention for the Protection of New Varieties of Plants 1978 (UPOV 1978) or the International Convention for the Protection of New Varieties of Plants 1991 (UPOV1991). It is not clear whether countries can accede to UPOV 1978. Nevertheless, both these conventions reduce the policy space available under TRIPS Agreement. Under the TRIPS Agreement each country has the freedom to design an effective sui-generis system for the protection of plant varieties. Using this flexibility India designed a sui-generis protection for plant varieties and farmers rights. This Act needs to be amended as a result of FTA with EFTA.
3. FTAs also force countries to accede to WIPO Copyright Treaties. These treaties make the circumvention of technologies preventing the copying of digital materials. Considering the knowledge gap existing between developed and developing countries such provision will widen such gap by denying access to technological and scientific knowledge by protecting them through technological measures. The FTA may force countries like India to accede to the WIPO copyright treaty and compromise access to knowledge.
4. It also insists on extension of patent term to compensate the delay in granting the marketing approval. This would force countries like India to extend the life of patent beyond 20 years prescribed in the TRIPS Agreement.

5. Irrespective of the above substantial issues related to the protection of intellectual property FTAs with EFTA prescribes regular review of provisions of intellectual property with a view their effective implementation and the future development. This would put developing countries like India under constant pressure to enhance the level of protection.

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