PRESENT STAKES AROUND PATENT POLITICAL ECONOMY: LEGAL AND ECONOMIC LESSONS FROM THE PHARMACEUTICAL PATENT RIGHTS IN INDIA

Samira Guennif *
Julien Chaisse **

ABSTRACT

* Samira Guennif (guennif@seg.univ-paris13.fr) holds a Ph.D. in Economics from the Research Centre in Industrial Organisation, University Paris XIII. Since 2003 she is Associate Professor and she is teaching at post-graduate level in microeconomics, macroeconomics, employment and history of economic and social facts, Department of Health, Medicine and Biology, University Paris-Nord. Prior to taking up this post, she was Associate Researcher in Patent and Public Health for the Agence Nationale de Recherches sur le Sida (ANRS) and Ensemble contre le Sida, Paris, and Visiting Research Fellow in Economics and Public health, Centre for Human Sciences (CSH), New Delhi, India (2001-2003). Her areas of expertise include industrial organization, economic development and public health. She has extensively published and taught on these different subjects.

** Julien Chaisse (julien.chaisse@wti.org) joined the World Trade Institute as NCCR-Trade Alternate Leader in March 2007. He is responsible for research on multilateral rules on trade and investment. Before joining the WTI, he taught EC law, international public law and international relations at the Institute of Political Studies, Aix-en-Provence (2004-2007). He also worked in India for the French Ministry of Foreign Affairs, as Scientific Secretary at the Centre de Sciences Humaines, New Delhi (2003-2004). He has been regularly involved in different multi-disciplinary projects related to the World Trade Organization law. He was educated successively at University of Aix-Marseille III, University of Tübingen (Germany) and University of Rennes I (France). He also graduated from the Academy of International Trade Law (Macau) and he is currently awaiting the submission of his Ph.D thesis on “The Influence Exerted by WTO Law on the EC Legal Order” at University of Aix-Marseille III (Centre d’Etudes et de Recherches Internationales et Communautaires). His research interests include foreign trade and foreign direct investments, international economics, international business law, WTO law and the central question of its enforcement by the Members States. He has taken part in several seminars and has written and published papers on these different areas.
The Intellectual Property Rights (IPR) regime adopted by any country is essentially a tool that strives to ensure both the growth of the domestic pharmaceutical industry and people’s access to medicines. But, contrary to the very easily advanced theory, there is no paradox between the two. From this perspective, the Indian experience has shown that it is precisely the relaxation of its national IPR regime that promoted the growth of its domestic industry, thereby ensuring a better patient access to medicines. However, the globalisation process does not overlook any sector, which means that medicines too are submitted to the new legal framework established within the WTO. To understand better the stakes involved in the ratification of the TRIPS agreement in India, this paper addresses several issues. It begins by establishing that opting for the intellectual property regime is not without consequences. It determines the extent of progress achieved in the industrial and health sectors both in the developed as well as developing countries. Then, it analyses how the TRIPS agreement establishes a strong IPR system that aims to reconcile protection of innovation and public health promotion by providing for “exceptions” at the global level. Finally, after having dealt in detail with Indian reticence and tardiness in making its legislation TRIPS compatible, the paper presents the prospects available presently for India.

**KEYWORDS:** WTO; TRIPS; public health; patent; medicine; India

I. INTRODUCTION

The rationale behind patenting an invention can be traced to the community of interests between society and the inventor. For society, it means that an individual can be guaranteed access to new therapies that are safe and effective and obtain disclosures of an invention to promote innovation. For the inventor, he gets the benefits in the form of a monopoly on the use of the patented product or process. Certainly, patents are an incentive for innovation in a sector where processes and products are the fruit of expensive research and development (R&D) programmes, which often expose companies to problems of appropriation. Thus, interests

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1 In fact, companies experienced great difficulties in obtaining maximum benefit of their R&D activities and seemed unable to recover the considerable sum invested in the development of new treatment. They were under the constant threat of their competitors copying their products. So, it