

India adopts WTO patent law with Left Front support

By Kranti Kumara
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In a move designed to make India's patent legislation conform with the World Trade Organization's *Trade Related Intellectual Property Rights* (TRIPS) patent regime, the United Progressive Alliance (UPA) government has pushed a patent amendment bill through India's Parliament with the support of the Stalinist-led Left Front. The patent amendment covers the food, pharmaceutical and agribusiness sectors and can be expanded over time to other sectors.

The Indian government became a signatory to TRIPS after it joined the WTO in 1995. The so-called developing countries were given a "transition" period of 10 years to bring their national laws in accordance with TRIPS. The previous Hindu-supremacist Bharatiya Janata Party (BJP)-dominated government passed two amendments, one in 1999 and the other in 2002, to the 1970 Indian Patent Act to prepare the groundwork for full implementation of TRIPS rules.

In December 2004 the Indian Congress-led UPA government issued a presidential ordinance to bring the country into mandatory compliance with TRIPS by January 1, 2005. The government had six months to codify this ordinance by obtaining the approval of the parliament. This was done on March 23, when, after virtually no public debate, India's parliament passed the third amendment to India's 35-year-old patent act.

The latest amendment has been dubbed TRIPS-plus by a number of commentators because it actually goes beyond WTO requirements. For instance, the new legislation allows a pharmaceutical company to obtain additional patents when one of its already-patented drugs is discovered to be of use in combating other illnesses and conditions, thus extending the number of years over which the company will exert proprietary control over the said drug's production and marketing.

Similarly, the new legislation goes beyond TRIPS in the obstacles it places on the Union government authorizing the production of patented drugs by generic manufacturers to meet public health emergencies.

Indian companies that are now producing generic versions of drugs for which patent applications were submitted between the signing of the WTO agreement in 1995 and January 1, 2005 will be allowed to continue doing so only if they pay a "reasonable" royalty to the patent holder. This is an all but ironclad guarantee that the prices of such drugs will increase and increase sharply.

With the adoption of this bill the Indian government has overthrown a key tenet of the 1970 Indian Patent Act that restricted patents to manufacturing processes rather than end products. Under the old patent regime, drugs patented in other countries could be analyzed and manufactured without paying royalty. This provision served to nurture the development of an indigenous pharmaceutical industry and by the 1990s Indian drug companies had become the fourth largest in the world when ranked by volume of drugs produced.

Product-patents granted under India's new TRIPS-plus regime will remain in force for twenty years. During this time the patent-holder will have exclusive rights over the manufacture and sale of the drug. The transnational pharmaceutical industries have utilized their patent rights—in

reality a state and WTO-enforced monopoly—to charge high mark-ups. Millions of people infected with HIV/AIDS in Africa and other parts of the Third World have thus been deprived of proper treatment, condemning them to early deaths.

The Indian drug industry has been instrumental in supplying cheaper generic drugs to the world market, especially the antiretroviral (ARV) drugs that have proven beneficial to persons infected with HIV/AIDS. At a time when western pharmaceutical companies were charging over \$1000 per month per patient for such drugs, the Indian drug industry was able to develop generic versions which were marketed for about \$12 per month.

With the adoption of TRIPS-Plus the monopoly rights of the transnational drug companies have been reinforced, making the development of such life-saving generics increasingly problematic and ensuring, at the very least, that the price of such drugs will rise.

Even the *New York Times*, a vehement advocate of the interests of the US transnationals, conceded in a January 18 editorial that India's patent legislation could have a serious adverse impact on the health of "hundreds of millions of people in India and worldwide." "These rules," said the *Times*, "have little to do with free trade and more to do with the lobbying power of the American and European pharmaceutical industries."

Although the impact of India's new patent regime on the availability of cheaper generic drugs has received the greatest attention, it could also have immense consequences for Indian agriculture, which provides two-thirds of all Indians with their livelihood. Critics of the legislation warn that its ambiguous wording could open the door for transnational agribusiness companies to seek patents over common seeds or only slightly modified versions of common seeds and thereby appropriate seed-types that have been rendered resistant to cold, salt and drought through thousands of years of agricultural practice.

Currently 80 percent of the seeds used in planting in India are supplied by the farmers themselves from seeds saved from previous crops. Farmers also have the right to barter seeds among themselves, thus enabling them to obtain seeds at little cost and without too much difficulty.

The 1970 Indian Patent Law was the outgrowth of a report submitted by a 1959 committee that examined the reasons for the high cost of drugs in post-independence India. The Committee concluded the high prices resulted from the monopoly control foreign-based pharmaceutical companies exercised over the production of drugs thanks to the prevailing patents regime.

The dismantling of India's 35 year-old patent regime is in keeping with the Indian bourgeoisie's abandonment of its post-independence national economic strategy in favor of a drive to make India a cheap labour center of manufacturing, office-processing and pharmaceutical and computer software development for the world capitalist market.

To attract foreign capital and promote the development of "internationally competitive" Indian firms, public spending has been slashed, public sector enterprises privatized or closed down, free trade

zones established where traditional worker rights and labour standards don't apply, and public investment diverted from agriculture to the mega-projects sought by big business. Now, to comply with the WTO, a patents regime is being put in place that will drive up the cost of drugs.

Relatively cheap drugs has arguably been the only benefit India's working population has derived from the country's health care sector, which is one of the most privatized in the whole world. The various levels of Indian government spend just 1 percent of annual GDP on health care.

As part of their strategy to pry open the markets of developing countries for the transnationals, the US and other advanced capitalist countries introduced the issue of intellectual property rights and patent grants (previously considered as non-trade issues) into the 1986 Uruguay round of the General Agreement on Tariffs and Trade (GATT) negotiations.

Initially, the Indian ruling elite along with those of other developing countries such as Brazil and South Africa opposed the inclusion of TRIPS as part of the world trade negotiations. But in 1989 they capitulated and agreed to the advanced capitalist countries' demands that, under the pretext of creating worldwide uniformity in patent grants and intellectual property rights, a legal mechanism be created whereby the multinationals could profit from the product patents they had obtained from western governments.

In order to mollify critics, the developing countries obtained some "flexibility" in the wording of TRIPS, including the power to grant manufacturing licenses of generic versions of patented drugs (compulsory licensing) when required to "protect public health" and to facilitate challenges to patents application before they are granted (pre-grant opposition).

In practice, however, the right to grant licenses to manufacture patented drugs to meet health emergencies has proven hollow, because it opens the country to the threat of expensive litigation and even trade sanctions. For example, when the Thai government attempted to issue a compulsory license for the manufacture of AIDS drugs AZT and DDI, in 1999-2000, to tackle an estimated 1 million HIV infections, the US government stepped in and threatened the Thai government with trade sanctions if it went ahead and issued the license.

Compliance with WTO regulations is not simply a matter of aligning national laws through legislation. It involves substantial administrative expenditure by national governments, expenditure that ultimately is borne by the masses. According to the World Bank economist Michael Finger, such administrative cost for overseeing just 3 sections of the WTO treaty will be in excess of \$150 million per year, a considerable sum even for a large country like India.

The Left Front, which is led by the Stalinist Communist Party of India (Marxist), or CPI (M), provided the votes necessary for the UPA to secure passage of the patent amendment act. It did so, although it is well aware of the serious impact the act will have on access to the latest life-saving drugs.

The Left Front justified its support for the WTO-inspired legislation by claiming that it had won concessions from the government on the bill's wording, particularly the sections regarding pre-grant challenges and compulsory licensing.

On its website, the CPI (M) states that "The Left Parties have been consistently of the view that TRIPS was and continues to be an iniquitous agreement balanced heavily in favour of multinational corporations." But it then claims that since the WTO agreement was already been signed by a previous government—without parliamentary approval, it should be pointed out—the "left" could do nothing except try to make the best out of a bad situation by securing some minor amendments.

In one breath the CPI (M) calls these amendments "a major advance," then in the next concedes that they are so weak they could be "frittered away" when the new law comes to be implemented.

The political duplicity of the CPI (M) is further underscored by the fact

that even though it voted for the patents bill, it continues to maintain that the "the Left Parties ... have differences with the present Government on the approach to Intellectual Property Rights (IPR)" and will "continue to apply pressure on the Government through mass mobilisation to balance its position on IPRs in favour of the Indian people." In fact, the CPI (M) and its Left Front allies have mounted no mass mobilisations. In keeping with its policy of supporting the Congress against the Hindu supremacist BJP, on the grounds that the Congress, the traditional governing party of the Indian bourgeoisie, is the "lesser evil," the Left Front seeks to confine the opposition of the working class and oppressed masses within the framework of impotent protests.

The Left Front's claim that the Congress is a "secular" bulwark to the BJP is patently false. The Congress, which implemented the 1947 communal partition of the subcontinent, has for decades connived with the Hindu right. Even more importantly, it is the opportunist and Stalinist politics of the CPI (M) and its sister party, the Communist Party of India, which for decades have subordinated the working class to one or another bourgeois party, that has created conditions where the BJP and other communalist and caste-ist parties have been able to come to the fore.

Significantly, the BJP and its right-wing allies postured as opponents of the patent legislation, staging a walkout when the bill was introduced in the Lok Sabha (the lower house of India's parliament). BJP leaders even mocked the Left Front for its support, declaring that "the Left flaunts red flag only outside (the) Parliament and waves green flag inside."

The BJP's opposition was of course totally demagogic and double-faced. The wording of the bill was based upon a December 2003 draft prepared by the previous BJP-led coalition government. Moreover, the BJP and its National Democratic Alliance coalition identified themselves completely with the imposition of big business' neo-liberal reform agenda.

Nevertheless, the Left Front's subordination of the working class to the neo-liberal UPA regime opens the door for the BJP and other right-wing forces to exploit the inevitable popular, anti-government backlash.

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