THE POSITIVE AND NEGATIVE EFFECTS OF BILATERAL AND REGIONAL INVESTMENT TREATIES ON INTELLECTUAL PROPERTY

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Abstract

Investment treaties on intellectual property are agreements between countries to attract foreign direct investment[1] by exploitation of intellectual property while providing benefits which are subject to the agreed terms and conditions. These treaties encourage investments between states and non-governmental organisations.[2] There are different types of investment treaties like bilateral, multilateral and regional. This study analyses the positive and negative effects of bilateral and regional investment treaties on intellectual property, and provides recommendations to minimise the issues therewith.

Introduction

Bilateral Investment Treaties (BITs) are formed between two countries and Regional Investment Treaties (RITs) are formed among several countries within a region. The latter may have sometimes been referred to as Investment Chapters of Regional Trade Agreements (RTAs). BITs could sometimes exist in the form of a Free Trade Agreement (FTA) such as the 1994 US-Canada North American Free Trade Agreement (NAFTA) and the Canada-European Union Comprehensive Economic and Trade Agreement (CETA). Although intellectual property (IP) rights are territorial, investment treaties could lift them up to create bilateral and regional economic relationships to gain competitive advantages by mutual exploitation of innovations.

Sri Lanka has become party to several investment treaties on IP, such as India-Sri Lanka Free Trade Agreement (FTA) (2001), USA-Sri Lanka BIT on Encouragement and Reciprocal Protection of Investment (1993), USA-Sri Lanka BIT on Agreement on the Protection and Enforcement of Intellectual Property Rights (IPR) (1991) and Japan-Sri Lanka BIT on Concerning the Promotion and Protection of Investment (1982). In addition, we are party to several Regional Economic Integration Treaties such as Agreement on

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[1] Y. Mupangavanhu, 'African Union rising to the need for continental IP protection? The establishment of the Pan-African Intellectual Property Organization' (2015) 59 (1) Journal of African Law 1, 3.

[2] *Republic of Ecuador v. Occidental Exploration and Production Company* [2005] EWHC 774 (Aikens J).

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South Asian Free Trade Area (2006), Framework Agreement on the BIMST-EC Free Trade Area (2004), Global System of Trade Preferences among Developing Countries (1989), Charter of the South Asian Association for Regional Cooperation (1985) and First Agreement on Trade Negotiations among developing member countries of the Economic and Social Commission for Asia and the Pacific (1976).

Positive effects

There are many benefits of Investment Treaties on IP for both developed and developing countries. For instance, if USA and Sri Lanka have a BIT on a patented pharmaceutical drug, the latter could seek price benefits, while the former could insist to restrict providing compulsory licences during the agreed period. Compulsory licensing is a process where a third party may obtain a non-exclusive licence from the Director General of IP to exploit a patent. According to Section 86 (2) (a) of the IP Act 2003 of Sri Lanka,

> '*Any person, body of persons, a government department or a statutory body may make an application to the Director General for the purpose of obtaining a licence to exploit a patent*…'[3]

According to Section 86 (2) (b) of the said Act,

> '*Upon the receipt of such application, the Director General may issue a licence for exploitation if he is satisfied that the applicant has made efforts to obtain approval from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time*'.[4]

A similar feature is found within the Compulsory Licensing system in the UK. Accordingly, if the patent holder had not commercialised his invention over the last three years, he is prevented from enjoying the exclusive rights on it because a compulsory licence could be granted to a third-party applicant.[5]

The developed countries could form BITs including not only the provisions of the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS) 1994, but also the 'TRIPS-plus' provisions to maintain a higher standard in which they are interested in,[6] and bring in significant revenue by exporting IP. [7] Developed countries could use investment treaties to create protection of IP for different areas. For instance, in the case of ***Anheuser-Busch, Inc v. Budvar***, the advantages of a

[3]Intellectual Property Act No. 36 of 2003 of Sri Lanka, s 86 (2) (a).

[4] ibid s 86 (2) (b).

[5]The Patents Act 1977 UK, s 48.

[6]Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2) European Intellectual Property Review 97.

[7] Carsten Fink, Patrick Reichenmiller, 'Tightening TRIPS: Intellectual Property Provisions of U.S. Free Trade Agreements' in Richard Newfarmer (eds.) 'Trade, Doha, and Development: A Window into the Issues' (2nd edn, IBRD 2006) 289.

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BIT between Austria and Czechoslovakia in terms of protecting a trademark were considered in depth.[8]

In the European Union (EU), the '*Principle of Free Movement of People (FMP)'*, have an impact upon the territorial IP rights. Investment treaties could provide a solution to this by imposing certain restrictions or providing exemptions among the members.

On the other hand, the Developing and the Least Developed Countries (LDC) could receive significant benefits from investment treaties, as they depend on many innovations generated in the developed world, to satisfy their basic needs such as public health, agriculture and genetic resources.[9] For instance, developing states and LDCs which do not have the adequate infrastructure, technology and human resources in order to carry research and development on biological materials such as micro-organisms, endemic plants, animals, plant varieties, forest produce and any substances therein, could share them with developed countries in exchange for the outcome of such researches such as scientific know-how, training, experience, products or processing techniques for free or a concessional price in order to improve public health, agriculture and genetic resources.

Innovations are created by using inventors' resources[10] by following specific inventive steps. [11] Therefore, it would not be unreasonable for developing countries to accept any reasonable terms and conditions embodied in BITs in order to gain access to essential IP products and services available in developed countries. Although investment treaties are mainly focused on patents, they could also be formed to exploit copyrights as the right holder could outsource the job of publishing [12] to a publisher abroad and generate royalty.

Furthermore, in the health sector, investment treaties could support more for developing effective vaccinations for diseases such as Ebola which devastated many LDCs. The RITs in African countries provide numerous benefits among members by expanding market and resources.[13]

Negative effects

There would be no significant issues if all investment treaties contain only minimum standards laid down by TRIPS. Unfortunately, it does not seems to happen right now, because most of the developed

[8][2011] E.T.M.R. 31.

[9] Commission for Intellectual Property Right 'Integrating Intellectual Property Rights and Development Policy' (CIPR 2002) 10.

[10] Charlotte Waelde, Graema Laurie, Abbe Brown, Smita Kheria and Jane Cornwell, *Contemporary Intellectual Property Law and Policy* (3rd edition, OUP 2013) 7, para 1.23.

[11] Intellectual Property Act No.36 of 2003 of Sri Lanka, s 63; and Patents Act 1977 UK, s 1 (1) (b).

[12] David Bainbridge, *Intellectual Property* (8thedn, Pearson 2010) 31, [1].

[13]Olasupo Owoeye, 'The TRIPS Agreement and regionalism: free trade and access to medicines in Africa;' (2015) 37(4) E.I.P.R 232, 238. as cited in (S.J. Powell and T. Low, "Is the WTO Quietly Fading Away? The New Regionalism and Global Trade Rules" (2011) 9 Georgetown Journal of Law & Public Policy 261, 267).

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countries tend to include 'TRIPS-Plus' provisions, such as providing exclusivity for data, extending patent terms, creating links between patents, prohibiting parallel importation and restricting compulsory licences.[14] For instance, most of the FTAs between EU and the developing countries contain provisions to extend patent terms for medicines. [15] Under these circumstances, three main negative effects could be identified in the area of investment treaties on IP such as the implementation of higher economic standards, adverse effects on the harmonization of IP law and negative effects on the public health.

Implementation of Higher Economic Standards

Investment treaties may maintain substantially higher economic standards which would adversely affect even the non-signatories of those treaties. Consequently, importance of multilateral negotiations under the umbrella of World Trade Organisation (WTO) could be undermined. [16] In addition, despite long term economic disadvantages, many developing countries accept BITs including 'TRIPS-Plus' provisions due to short term benefits.[17] For instance, EU and USA have imposed higher patent protection conditions upon LDCs in Africa, by including 'TRIPS-Plus' provisions in investment treaties.[18]

According to the 'Most-Favoured-Nation (MFN)' principle for the purpose of IP protection, with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a WTO member state to the nationals of any other state shall be accorded immediately and unconditionally to the nationals of all other member states.[19] In other words, this principle equalises the granting of privileges among member nations. [20] For instance, if USA and Sri Lanka are to sign a BIT on IP protection, the same benefits should be offered to other WTO members, subject to some terms and conditions provided in the said agreement. The General Agreement on Tariffs and Trade (GATT) 1947 (as amended in 1994) and the General Agreement on Trade in Services

[14]Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2), European Intellectual Property Review 97.

[15] Daniel Acquah, Extending the limits of protection of pharmaceutical patents and data outside the EU - is there a need to rebalance? (2014) 45(3) International Review of Intellectual Property and Competition Law 256.

[16] N.S. Gopalakrishnan, 'Principles for intellectual property provisions in bilateral and regional agreements - reflections on the ongoing negotiations of an EU-India FTA'(2013) 44(8) International Review of Intellectual.Property and Competition Law 920.

[17]ibid 920.

[18] Thaddeus Manu, 'Essential medicines and the complexity of implementing nationally based compulsory licensing: on the need for a regional system of compulsory licensing in sub-Saharan Africa' (2014) 36 (1) European Intellectual Property Review 39, 40.

[19] Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS) (as amended on 23 January 2017), art 4.

[20]Peter Drahos, 'BITS and BIPS, Bilateralism in Intellectual Property (2001) 4 Journal of World Intellectual Property 791, 802.

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(GATS) 1995, both contain the MFN principle along with an exemption to it.[21]

However, TRIPS does not expressly provide many exemptions to the MFN principle, though it was formulated to achieve the principles of GATT. [22] The exemptions provided in the Article 31 *bis* have a limited scope. Therefore, those economically higher terms and conditions of investment treaties like so called TRIPS-Plus, infiltrate into countries that are not signatories to those treaties. For a instance, a string of investment treaties signed by developed states like USA and EU could establish new IP standards which consequently prevent the developing countries and LDCs relying on the flexibilities provided by TRIPS. This is not what was truly expected from the mandate of TRIPS. For instance, though in terms of compulsory licensing in copyrights, the licensee has the right to deny payments on grounds of unfair terms in the licence,[23]a BIT containing higher economic standard may sometimes deprive such rights and open a forum for unfair terms. Consequently, entities such as 'Patent Trolls'[24] may sometimes attempt to obtain undue advantage from conflicts arising out from BITs.

Furthermore, it could be harmful if a BIT was created in a manner that it could prevent the application of domestic competition laws. As a result, a set of anti-competitive terms and conditions such as unfair price fixing, limiting of production and avoidance of selling to potential buyers could be included in the BIT. In addition, there could also be anissue if such BIT falls within the scope of Technology Transfer Block Exemption (TTBE), which provides exemption to the agreed parties to avoid any effect from the competition law.

Adverse effects on the harmonization of IP Law

Investment treaties could have an adverse impact upon the harmonization of IP**.** The TRIPS agreement has made an effort to globalize the general principles of IP. According to TRIPS, a balance must be struck between the right holders and the beneficiaries when protecting and enforcing IP. [25] For instance, compulsory licences could be granted if the patentee refuses to issue a licence on reasonable commercial terms and conditions. [26] In addition, though the patentee has a right to commercial exploitation of his patent, once the patent expires, anybody could exploit it. These general principles have been established by the TRIPS to enable flexibility in the process of harmonization of International IP Law.

However, investment treaties which contain 'TRIPS-Plus' provisions could significantly damage the fundamental character of aforesaid general principles of

[21] General Agreement on Tariffs and Trade (GATT)1947 (as amended in 1994), art I ; and General Agreement on Trade in Services (GATS) 1995, art II

[22]TRIPS, preamble (a).

[23] Lionel Bently, Brad Sherman, *Intellectual Property Law* (4th edition, OUP 2014) 302, para 7.1.

[24] Sujitha Subramanian, 'Patent trolls in thickets: who is fishing under the bridge?' (2008) 30 (5) European Intellectual Property Review 182.

[25]TRIPS, art 7.

[26] ibid art 31 and art 31 *bis.*

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IP embodied in TRIPS. For instance, a 'TRIPS-Plus' agreement might contain a provision to extend the duration of a patent beyond twenty years, which would ultimately, prevent the public interest in exploiting the patent after the statutory prescribed period mentioned under Section 83 (1) of the IP Act No.36 of 2003 which says, '…*a patent shall expire twenty years after the filing date of application for its registration*'.[27] The purpose of patent law is not to provide an eternal absolute monopoly, but to offer a time limited exclusive right to the patentee to commercially exploit the patent [28] and conclude licensing contracts [29] and assignments [30] subject to a public disclosure.[31] This limited monopoly is a type of reward [32] to encourage him. Therefore, it is expected that the public has the right to commercially exploit the patent without any restriction from the patentee after the patent expires. However, that objective could not be achieved in the case where a BIT had 'TRIPS-Plus' provisions, which could give discretion to a state to extend the patent continuously and dominate the market as long as they expected. Consequently, such an imbalance status of IP protection would be extended as a global standard due to the application of the MFN principle.[33]

Negative effects on the Public Health

Investment treaties could negatively affect public health among member countries. The right to access essential medicine is a part of a human right of physical and mental health.[34] However, due to 'TRIPS-Plus' investment treaties, the said human right could be infringed in certain situations. For instance, although there is a scarcity of essential medicine in Sub-Saharan Africa, they are not contemplating upon the flexibility provided by TRIPS. This could be attributed to political pressure and risk of economic sanctions.[35]

In terms of public health, 'Compulsory Licensing Systems' have become vital components of IP, especially in LDCs and developing countries. Although TRIPS has not provided specific restrictions for issuing compulsory licenses, BITs have created tight restrictions in this regard. For

[27]Intellectual Property Act No.36 of 2003 of Sri Lanka, s 83 (1).

[28]TRIPS, art 28 (1) (a) and (b); and Intellectual Property Act No.36 of 2003 of Sri Lanka, s 84 (1) (a).

[29] ibid art 28(2); and Intellectual Property Act No.36 of 2003 of Sri Lanka s 84 (1) (c); and Patent Act 1977 of UK, s 30 (4).

[30] Intellectual Property Act No.36 of 2003 of Sri Lanka, s 84 (1) (b); and Patent Act 1977 UK, s 30 (2).

[31]ibid s 71 (3); and Patent Act 1977 UK, s 14 (3) and s 72 (1) (c) and (d).

[32] Charlotte Waelde, Graema Laurie, Abbe Brown, SmitaKheria and Jane Cornwell, *Contemporary Intellectual Property Law and Policy* (3rd edition, OUP 2013) para1.31.

[33]Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2), E.I.P.R 97, 99.

[34] International Covenant on Economic, Social and Cultural Rights (ICESCR), art 12.

[35] Thaddeus Manu, 'Essential medicines and the complexity of implementing nationally based compulsory licensing: on the need for a regional system of compulsory licensing in sub-Saharan Africa' (2014) 36 (1) European Intellectual Property Review 39, 40.

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instance, in US-Vietnam BIT, compulsory licensing is limited to emergency situations, antitrust remedies and public non-commercial use.[36] This is not compatible with the Doha Declaration,[37] which has given absolute freedom to determine the grounds upon granting compulsory licences. For instance, in the UK, a compulsory licence could be granted if the patentee had not exploited the patent within a period of three years from the grant.[38]In ***NatcoPharma Ltd v. Bayer Corporation,*** Court upheld the decision of the patent controller granting compulsory licence to Natco Pharma to commercially utilize the sale of a drug for cancer patients in India.[39] The ground for granting this licence was a refusal made by Bayer Corporation to issue a licence to Natco on their request.

Thus, if a developing country or least developed country, becomes a party to a BIT with a developed country, then the former is supposed to follow the conditions set out by the BIT which would sometimes in the end restrict its IP rights to keep the latter in a dominant position. This has become a noteworthy issue, especially when importing patented pharmaceutical products, because BITs could sometimes unfairly prevent or control access to essential medicine.[40] In addition, certain long-term BITs could define highly restrictive conditions in respect of the compulsory licensing of drugs. Consequently, this would create an unfair monopoly and always keep the developed country in an unapprovable dominant position.

Generally, LDCs tend to seek benefits of IP by adopting at least the minimum standards of TRIPS while developing countries preferred to adopt it with minor modifications. For instance, in India, an innovation is patentable only if it is remarkably different in terms of properties with regard to efficacy.[41] Whereas the Section 3 (d) of the Indian Patent Act says,

'*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 of 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'*.[42]

The rationale behind such provision is to increase the availability and accessibility of medicine to the large population of India. In the case of ***Novartis v. Union of India,***Court held that when designing the

[36] Carsten Fink, Patrick Reichenmiller, 'Tightening TRIPS: Intellectual Property Provisions of U.S. Free Trade Agreements' in Richard Newfarmer (eds.) 'Trade, Doha, and Development: A Window into the Issues' (2nd edn, IBRD 2006) 289, 290.

[37] WTO Ministerial Conference in Doha on November 14, 2001.

[38]The Patents Act 1977, s 48 (1) and 48 (A).

[39]*Bayer Corporation v. Union Of India* (Bombay High Court), (Writ Petition No. 1323 of 2013) Judgment dated 15 JULY 2014 (Sanklecha CJ); and *Bayer Corporation v Union of India* (special leave petition-(Supreme Court), Order dated 12 December 2014.

[40]Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2), E.I.P.R 97, 98.

[41]The Patent Act 1970 of India (as amended in 2005), s 3 (d).

[42]ibid s 3 (d).

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patent law, a special reference must be given to the economic conditions of the country, its scientific and technological advancement and its future needs.[43] This approach is consistent with basic patentability standards [44] laid down in TRIPS.

However, such flexibility could be diminished by investment treaties, if they seek to force the implementation of higher economic standards preferred by developed countries, to keep them in a dominant position. This situation could have been different only in case where the patent is owned by a developing country which has the advantage of bargaining. However, it is a rare occurrence because most of the developing countries in general, need to adhere to the terms and conditions imposed by the developed countries in order to have access to a preferential market available within the latter.

Another issue is the Bio-Piracy where developed countries gain exclusive rights over the biological materials such as micro-organisms, endemic plants, animals, plant varieties and substances in the developing and least developed countries. This could prevent, restrict or interfere with the use of the biological material and products. [45]Although, plants and animals other than transgenic micro-organisms are not patentable in terms of Section 62 (3) of the IP Act 2003, investment treaties which include TRIPS-Plus provisions could provide a platform where developed countries gain exclusive monopoly rights over endemic plant varieties in Sri Lanka.

Recommendations

Over control or less control over IP could cause problems. [46] Therefore, a balance must be struck between the agreed parties in investment treaties. According to David Vaver, though balance is not a universal solvent, it emphasizes the need for equal treatment and respect.[47] This point must be considered when preparing investment treaties on IP. In the sphere of pharmaceutical industry, investment treaties should not impose extreme restrictions on compulsory licensing, especially on Anti-Retroviral Drugs, as such licences are effective methods which could open the doors to those drugs without any hindrance. [48] Investment Treaties should not restrict the '*Principle of Exhaustion*,'[49]because this principle could assist developing countries to enjoy the benefits of parallel importing of IP, especially in the realm of essential

[43]*Novartis AG v India (Supreme Court of India)* Civil Appeal No 2706-2716 of 1 April 2013 (Novartis case), [38] [AftabAlam J]; AIR 2013 SC 1331.

[44]TRIPS, art 27 (2), (3).

[45]JagathGunawardana, 'The Bio-Theft and Bio-Piracy Issues' [2019] vol (v) Judges Journal 163.

[46] Graham M. Dutfield and Uma Suthersanen, 'the innovation dilemma: intellectual property and the historical legacy of cumulative creativity' (2004) 4 IPQ 379, 421.

[47]D Vaver, 'Intellectual property: still a "bargain"?' (Editorial) E.I.P.R. 2012, 34(9), 579, 586.

[48] Horace E. Anderson, 'We Can Work it Out: Co-Op Compulsory Licensing as the Way Forward in Improving Access to Anti-Retroviral Drugs', (2010) 16 B.U. J. Sci. & Tech. L. 167.

[49]TRIPS, art 6.

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medicine[50]. A sound example is the African Regional Trade Agreement (ARTA) which has significantly improved the parallel importing of drugs within its designated free trade zone.[51]

In order to achieve a successful balance between intellectual property rights and public interest, investment treaties should be streamlined. For instance, desirable practices such as MPI Principles 2012 introduced by Max Planck Institute for Innovation and Competition (MPI) may be of assistance in this regard.[52] According to these principles, parties to investment treaties should develop their 'own proactive agenda' and 'evaluate the impact' of it against the public interest.[53] This would be a significant strategy for a developing country such as Sri Lanka, to do an impact assessment about the long-term implications to the status of international economy and the public health sector, especially in terms of the pharmaceutical industry. MPI principles insist that the terms and conditions of an investment treaty should go through a 'Public Negotiation Process'[54] and the agreement should be subjected to previous 'international obligations'.[55]

One of the main issues in respect of investment treaties is the effect to public health, because of extreme restrictions on compulsory licensing and also on parallel imports. Such issues could be averted by applying the MPI principles, because they guide to be consistent with the general principles laid down by TRIPS on Public Health.[56]

Further, if more MFN exemptions could be introduced within TRIPS, it could then avoid the adverse effects of BITs over non-signatories of those treaties. Such exemptions could avoid spreading higher economic 'TRIPS-plus' standards throughout the world. The TRIPS flexibilities such as parallel trade and compulsory licensing could be put forward by the RTAs between Sri Lanka and other developing countries to strike a balance between the interest of public and that of the pharmaceutical patent holders.

In order to minimise the bio-piracy issues arising as a result of investment treaties on IP, the unauthorised exports of biological material should be strictly prohibited by using the available laws such as Fauna and Flora Protection Ordinance and Forest Ordinance. According to Forest Ordinance it is prohibited to export forest produce including, plants, parts of plants, extracts of plants, leaf litter and topsoil that is use to isolate useful micro organisms, without a permit. The Fauna and Flora Protection Ordinance by Section 40 (1) has prohibited exporting of, (a) any mammal, bird, reptile,

[50] OlasupoOwoeye. 'Access to medicines and parallel trade in patented pharmaceuticals' (2015) 37(6), E.I.P.R. 359.

[51] OlasupoOwoeye, 'The TRIPS Agreement and regionalism: free trade and access to medicines in Africa;' (2015) 37(4) E.I.P.R 232.

[52] Jeremy De Beer, 'Applying best practice principles to international intellectual property law making' (2013) 44(8) IIC 884, 886.

[53] Rochelle Cooper Dreyfuss, 'The Max Planck principles as an aspect of global administrative law' (2013) 44 (8) IIC 906, 909.

[54] MPI principles 2012, para 17.

[55] ibidpara 20.

[56] ibid para 21.

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amphibian, fish, coral or invertebrate whether dead or alive; (b) the eggs, feathers, or plumage of any bird, the horns, antlers, skin or hide of any mammal or reptile, or any part of any mammal, bird, reptile, amphibian, fish, coral or invertebrate; except under the authority of a permit.

The unauthorised activities on plants could be restricted by Section 42 of the Fauna and Flora Protection Ordinance which prohibited to, (a) remove, uproot or destroy or cause any damage or injury to, any plant which is for the time being included in Schedule V and which is growing on the property of any other person or in any public place ; (b) destroy any plant which is for the time being included in Schedule V, and growing on his own property ; (c) sell or expose for sale any plant for the time being included in Schedule V ; (d) remove ,uproot or destroy, or cause any damage or injury to any tree upon which any orchid or any other epiphytic plant is growing'.

Further, a Material Transfer Agreement (MTA) of biological material could be entered into between an exporting party and an importing party and the relevant government department, to prevent bio-piracy issues and share the benefits among the parties.[57]

Conclusion

Despite the benefits enjoyed by both developed and developing countries as party to investment treaties on IP, one cannot overlook the impending disadvantages as well. The negative effects has reduced the degree of flexibilities provided by TRIPS, and therefore has an adverse impact upon the developing countries and least developed countries compared to developed countries. Providing compulsory licences, parallel importing of IP, the principle of exhaustion, MPI principles, prohibiting unauthorised exports of biological material such as micro-organisms, endemic plants, animals, plant varieties and substances are important in striking a balance between the interests of the IP rights holder and that of the public to utilize investment treaties in a more effective manner.

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[57]JagathGunawardana, 'The Bio-Theft and Bio-Piracy Issues' [2019] vol (v) Judges Journal 163, 166.

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