



## Marketing India

Even the finest products need packaging and marketing to succeed. India as an investment proposition for foreign companies is far from being the finest, and needs promotion much more than some other countries. The prime minister, Mr P V Narasimha Rao, has done a reasonable job in marketing India's foreign investment policy at the annual conference of the world's top businessmen at Davos. He said little that was new, and made no new promises. He was engaged in atmospherics, in telling captains of global business that India was serious as never before about a new, outward-looking economic policy. He did not offer to match the more favourable terms and conditions offered by some other developing countries. He concentrated instead on the change in Indian attitudes, and on the enormous attractions of the domestic Indian market. Global businessmen are not unaware of these attractions, but long experience has taught them not to trust Indian claims that it is opening up. However, Mr Rao is viewed as a different sort of politician, and carries conviction where others do not. It is remarkable that a former socialist like him, who had virtually retired from politics, could become prime minister and launch the most radical changes despite running a minority government. Opposition parties have implicitly accepted the need for changing with the times. This speaks well for the Indian political and economic system, and constitutes good marketable material.

A year ago, the then industry minister, Mr Ajit Singh, was supposed to go to Davos to unveil a new, liberalised India to foreign investors, but found his own government so equivocal and confused that he ultimately decided to skip the meeting altogether. That convinced world business that there was no new India, just the old familiar mess. Mr Rao is doing a lot to create a new India, but it is common knowledge that he has does not carry conviction with all members of his Cabinet or party, many of whom would be willing to reverse his policies if feasible. Nor are most businessmen in India convinced that his reforms are truly irreversible. Clearly, Mr Rao will have to convince his own countrymen that India has turned a new leaf before he can hope to convince foreigners. However, it is not necessary to have an optimal product before trying to market it. By global standards, the climate for foreign investment in India is dogged by uncertainties, but it is certainly much better than in the past. Even if the pessimists turn out to be right, it could be argued that this is the right time to get into India before the window of opportunity closes. So there is scope for attracting both optimists and pessimists among foreign investors. The scale of such an inflow cannot rival the flows going into well-established investment destinations like Thailand and Taiwan, but even what looks marginal by global standards will be significant by Indian standards. Interest is being shown by big oil companies like Shell in developing oilfields and refining crude, by telecom multinationals in making and installing switching equipment on a massive scale, and by some global utility companies in putting new thermal stations. Many of these proposals will fall by the wayside. But even if a few of them fructify, they will bring in large sums and fill vital gaps in our infrastructure and basic industries. If Mr Rao has carried conviction even with one or two such large companies in Davos, he will have paid for his

# IPRs: Lessons from the Indian model

*It is necessary to create a differential international regime for the protection of intellectual property rights, says Deepak Nayyar.*

The implicit rationale for, or the philosophical foundation of, the intellectual property rights system in India is embodied in three underlying objectives. First, it seeks to strike a balance between the interests of producers on the one hand and consumers on the other, that is, those who develop the scientific knowledge or innovate and those who use the goods or services derived therefrom. Needless to add, every country attempts the same, but where the balance is reached depends on the level of development. The levels of income in the economy and the stage of development in society are thus particularly important in this context.

The logic of exclusions from patentability follows from this objective: Methods of horticulture and agriculture, as also food, are excluded because such a large proportion of the population is dependent on agriculture for a livelihood and the purchasing power of the poor even for food is limited, while drugs and medicines are excluded because millions do not have access to basic health care.

Second, it endeavours to ensure rewards for the owners of knowledge or the innovators but, at the same time, aims to place a limit on the monopoly profits or the quasi-rents which may be appropriated by the entity that commercialises the technology or transforms the scientific knowledge into a marketable product. This is the logic of compulsory licensing. There are two underlying principles set out in the patents Act: patents are granted to encourage inventions and to secure that the inventions are worked in India; and patents are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.

Third, it attempts to create an environment which is conducive for the diffusion of existing technologies and the development of new technologies, insofar as technology is a basic determinant of development in a society that is a late-comer to industrialisation. The patentability of processes alone, but not products, in some sectors and the reduced term of protection for patents derives from this objective.

It would be reasonable to ask: Is the Indian approach to intellectual property rights relevant for developing countries in general or those at similar levels of income and technological development? In my judgement, the answer must be in the affirmative although there may be differences in degree, emphasis or nuance.

For one, technology is strategic in the process of industrialisation. The direction and speed of technological development influences not only the pace but also the quality of economic growth. Thus, an economy that industrialises should be able to move from importation to absorption and adaption of technology

through to the stage of innovation, at least in some sectors, on the path to sustained industrialisation. In the pursuit of this objective, late industrialisers in Europe, Asia and Latin America have sought to facilitate their technological transformation through intellectual property rights systems which are, or were, conducive to catching-up with the industrialised countries.

It is important to recognise that, unlike comparative advantage based on natural resource endowments, comparative advantage derived from knowledge or skills can only be acquired through a framework of policies which fosters rather than hinders the learning process. Economic history is replete with examples of technological leap-frog. Clearly, at this juncture in the world economy, when absolute poverty is an important international concern, developing countries need to capture rather than forego such opportunities.

For another, intellectual property rights systems must recognise differences in levels of development between economies. There are two dimensions of this proposition: what purpose does a good service if it is available only at a price which is beyond the reach of the majority of people in a society? For instance, medicines or computer software at international prices are simply not affordable in a country with average in-

source rather than private property.

From the perspective of developing countries, therefore, it is both necessary and desirable to create a differential, rather than uniform, international regime for the protection of intellectual property rights. Quite apart from the wider considerations set out above, the proposed uniform regime across countries raises two specific issues which need to be highlighted. First, the real constraint for several late industrialists in the developing world is that they do not possess the critical minimum in terms of resources for R&D. Hence, technological leads and lags may be determined not so much by scientific ability as by resource availability.

Second, there is a basic contradiction between the protection of intellectual property rights through a patents system which does not allow late industrialisers to develop such technologies on their own, and systems of restrictions on, or licensing of, exports of technologies which are closely held (or captive) so that late industrialists cannot import such technologies.

In recent years, there has been a sharp acceleration in the pace of technical progress, particularly in sectors such as information, communications and biotechnologies. This has led countries which are technology-leaders and technology-exporters to seek a major change in the international regime for patent protection to include new products and processes particularly in the sphere of biotechnology, for copyrights to include computer software and informatics and to strengthen related aspects of the system for the protection of intellectual property rights extending as far as trade secrets. The underlying logic is that technical progress in many of these sectors is more susceptible to replication, which may erode the rewards for innovators.

So far, the international system for the protection of intellectual property rights has been embodied in the legal and institutional framework provided by the World Intellectual Property Organisation. But this is not perceived as enough. Therefore, the industrialised countries launched a strong initiative in the Uruguay round of multilateral trade negotiations to create an extended and tighter international system for the protection of intellectual property rights, with provisions for dispute settlement and enforcement as part of the multilateral trading system.

The text of the draft agreement, circu-

lated by the Director General of GATT in December 1991, seeks to expand the scope of the intellectual property rights system, increase the life of privileges granted or rights conferred, extend the geographical spread where the privileges or rights can be exercised, reduce the restrictions on the use of rights conferred, and, above all, create an enforcement mechanism with retaliation across

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sectors.

The important departures from the system of intellectual property rights, or the patents law, in a country such as India must be recognised rather than ignored. Exclusions from patentability would be confined simply to animals and animal varieties, and plant and plant varieties. It would be no longer be possible to limit patentability to processes alone which would statutorily extend to products. The burden of proof would be reversed. Importation would be deemed as the equivalent of working a patent. Compulsory licensing would be possible only under a very restrictive set of conditions, while automatic licences of right would disappear. The term of protection for patents would be extended to 20 years. Needless to add, the acceptance of these changes would necessitate amendments across-the-board in the patents law of India and several developing countries.

The implications of this proposed regime, for the absorption, diffusion and adaptation of technologies, let alone innovation, in developing countries, are far reaching. Much needed technologies may no longer be available at affordable costs. The emergence of domestic technological capacities may be pre-empted. Transfer of technology may slow down. The incidence of restrictive business practices by transnational corporations may increase. These are just some of the important implications and consequences, which suggest that the emerging international system for the protection of intellectual property rights is bound to be inequitable and inimical from the perspective of developing countries.

The need for a more balanced and equitable system is obvious. The interest of technology-followers and technology-importers is just as important as the interest of technology-leaders and technology-exporters. It is essential to ensure rewards for innovators but, surely, the protection of monopoly profits or quasi-rents for transnational corporations should not take precedence over the interests of consumers in a world characterised by uneven development. It would seem that the proposed agreement on trade-related aspects of intellectual property rights, about to be concluded as part of the Uruguay round, does not have such a balance. The interests of the industrialised countries are the focus of attention, while the interests of the developing countries are the object of neglect.

In conclusion, it would be a mistake to consider the debate on trade-related aspects of intellectual property rights in isolation. It needs to be situated in the context of the political economy of multilateral trade negotiations in the Uruguay round, with linkages across sectors and issues, which seeks to change the rules of the game for the international trading system. What is more, it needs to be recognised that the contentious and controversial negotiations in the GATT only skim the surface.

The phenomenon is not simply about the rules of the game for international trade. It is far more complex than that and must, therefore, be placed in its wider context. The rise of transnational corporations, combined with prodigious technical progress, has brought about a fundamental change in the organisation of production, marketing and distribution in the world economy. It has pushed the frontiers of international trade far beyond goods, into services, technology, information and knowledge, dismantling the traditional divide between them.

This process has just begun. Technical progress has always been labour saving. What is new about recent developments is that informatics and robotics are displacing not only the muscles but also the brains embodied in labour. This is likely to have a profound impact on output, employment and trade in the world economy. Most of these developments are concentrated in a few industrialised countries and, within these countries, in a few corporate entities. The degree to which the national interests of the industrialised countries coincide with the corporate interests of the transnational firms is uncertain. The national interests of the developing countries, however, are very different, in view of the far-reaching implications for the development process.

■ Excerpted from a lecture delivered at a conference on 'Global dimensions of intellectual property rights in science and technology' in Washington.

## IPRs protection systems must recognise differences in levels of development.

come levels as in India.

Second, there are sectors where the benefits of knowledge need to be socialised, rather than privatised, for human development. For example, the increasing commercialisation of plant-breeding research in the developed countries, supported by patents systems, has far reaching implications for food and agriculture in developing countries. In a world where a very significant proportion of humankind does not have enough to eat, scientific research on plant-genetics or plant-varieties should be a public re-