IMPLICATION OF TRIPS AGREEMENT IN TANZANIA: CASE STUDY OF PHARMACEUTICAL PATENT AND HIV/AIDS

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Trade Related Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMs), Competition Policy, and International Trade

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Abstracts

This paper discusses implications of TRIPS Agreement in Tanzania with a special focus on Pharmaceutical Patents and HIV/AIDS. The TRIPS Agreement has brought opportunities for both South and Northern Countries, but it has seemed to benefit more those countries with Patent compared to those with no Patent. The Universal Declaration for human rights points out that the access to public health (health care) is the right of every human being, thus it expose the potential human rights that needs to be considered when implementing TRIPS Agreement in Developing countries.

The analysis finds that, protection and enforcement of pharmaceutical process and products in Tanzania will form a basis of charging higher price to the essential drugs and technology transfer hence limits the access of low income earners to these drugs. Moreover, the paper finds that the enforcement of TRIPS in Tanzania will have two major impacts, first patents will show the way to higher drugs prices high hence restrict access to it, secondly, the patents will not promote Research and development on diseases that prevailing in Tanzania i.e tropical diseases

Moreover the findings have showed that those household families who are taking care of HIV/AIDS patients or where there are many people who are infected with this disease their income always decreases dramatically. Hence threaten to food security due to reduction of output.

In relation to HIV/AIDS in Tanzania, the high price charged to these drugs does not mean that without patents everyone could have access to drugs; however there are those people who still will not afford even at below cost, factors such as lack of information, poor infrastructure and so on can act as an obstacles to them.

Finally, the paper supports the consensus reached by other authors that Developing countries should adopt alternative measures (policy options) to have access to low price medicine (drugs), these policy options include parallel importation, full use of transition period and flexibilities, differential pricing and compulsory licensing.

Keywords: TRIPS Agreement, Pharmaceutical, Patent, HIV/AIDS and Tanzania
1. Introduction:

Relationship between Public health and Intellectual Property rights to an LDCs countries is a complex issue which can not be explained by a single school of thought alone, there have been voluminous literature which have tried to explain what should be done in order for LDCs to benefit from TRIPS Agreement. It is argued that LDCs are poor so they should not be subject to pay high price on patented goods, because even the western developed countries like United Kingdom, and US did not enforce the TRIPS though they are main beneficial of this agreement currently\(^1\), Instead LDCs countries should promote Non Intellectual Property options for example encourage of an open source of software as one way to encourage development.

According to UNAIDS (2001), The data shows among the 28.1 million people living with HIV/AIDS in Sub Saharan Africa, 4.2 million of them are from East Africa where Tanzania is located. HIV/AIDS has an impact on the overall enjoyment of the right to healthcare and human rights such as right to education, right to food, right to development, and so on HIV/AIDS is one of the biggest challenges in Tanzania particularly in the southern regions where a large number of people have been affected, and these regions were identified as the major source of food in the country due to natural endowments of the climate and soil. Thus if Tanzania does not take appropriate measures to curb this situation its impact can also be observed in the major economic indicators like GDP Growth, labour supply, poverty, domestic productivity and domestic saving.

The least Developed countries including Tanzania have not benefited much from TRIPS agreement, due to number of factors\(^2\). This forced the world to adopt different strategies\(^3\). However in spite of these efforts, TRIPS Agreement to LDC s has not delivered as much as it was expected, For example

\[It\ \text{is estimated that in 1999 nearly 1.2 billion people lived on less than $1 a day, and nearly 2.8 billion people on less than $2 per day. About 65\% of these are in South and East Asia, and a further 25\% in sub-Saharan Africa. There were an estimated 3 million deaths from HIV/AIDS in 2001, 2.3 million of them in sub-Saharan Africa. Tuberculosis (TB) accounts for nearly 1.7 million}\]

\(^1\) See Gilles Saint –Paul (2004), pg 1
\(^2\) Supply side constraints i.e. low financial capacity, low technology, lack of experts, weak institutional framework e.t.c
\(^3\) one among them is the adoption of Millennium development goals, which among other things it advocate is the reduction of poverty and hunger, ensuring environment sustainability, improving health and education and increase the global partnership in trade
deaths worldwide. On present trends, there will be 10.2 million new cases in 2005. There are also over 1 million deaths annually from malaria. In 1999 there were still 120 million children not in primary school. Sub-Saharan Africa has the lowest current enrolment rate at 60%". (See IPS, 2002).

From the brief introduction given, the scope of this paper will take a discussion on TRIPS implication on Pharmaceutical patent, access to medicine and TRIPS agreement on potential human rights, domestic policy strategy and International negotiation strategy. The findings of this paper do not differ from other literatures on patents and patents legislation, it is true that any innovation should be accredited, awarded and protected. This has been agreed in principle by our countries through the signing of TRIPS⁴, the main question arise here is how the enjoyments of human rights in Tanzania can be incorporated in the patents protection.

2. HUMAN RIGHTS AND PUBLIC HEALTH UNDER INTERNATIONAL LAW

Article 27 of the UDHR⁵ 1948, provides for the right of everyone to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is author (Mwalimu, 2002). The universal declaration for human rights is non-binding to members hence in 1966 the International covenant on Economic Social and Cultural Rights incorporated the same provisions of UDHR to form legal basis that Intellectual property rights should be recognized as human rights though still there are some controversial agreement on this⁶.

In spite of the current problems of understanding the link between intellectual property rights and human rights, IP⁷ is now within the framework of Human rights thus any discussion along IPs can longer ignore human rights because the IP is characterized by the search for the proper balance between the inventors and authors rights and public interest (Max Plankt Institute, 2001). Intellectual property rights aims at protecting the public interest for a certain periods of time through giving exclusive rights to right holders in certain duration of time because inventing a new drug is a costly investment,

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⁴ See Mwalimu, 2002, pg 6  
⁵ Universal human rights declaration  
⁶ If you look Robert Ostergard, Jr., (1999): Vol. 21 p156-178 and Peter at www.indp.org/trips.htm, they have explained in details the link between Human rights and Intellectual Property rights  
⁷ Intellectual Property Rights
for example the average price for the new medicine is about $800 million (Gilles Saint Paul, 2004). However after 20 years the protected work and invention is given to the public domain, thus anyone can use it without the consent of the author.

**In respect to the International law**, healthcare as fundamental human rights is recognized in the WHO constitution of 1946. Though United Nations charter 1945 does not make any specific indication to healthcare rights, it obliges all UN member countries to “take action” to achieve universal respect for, and observance of, human rights, which is one of the four foundational purposes of the United Nations. Likewise UN charter of 1945 through Article 1, 55 and 56 establish a legally binding treaty to every state and Government to recognize the human rights. Under this context the patent can create a monopoly that will restrict completion, hence earn more profits while the states of human rights are getting worse, there are number of human rights that have been identified: right to food, right to enjoy benefits of scientific progress and its application, traditional knowledge, the right of people to freely dispose of their natural wealth and resources and the right to health which is the main topic of this paper.

**Right to food**, Article 25 of Universal Declaration for Human rights and Article 11 of International covenant on Economic Social and Cultural Right recognizes “everyone’s right to ‘an adequate standard of living for himself and his family including adequate food…and to the continuous improvements of living conditions”. Majority of the poor Tanzanians produce for subsistence consumption, and they have no way they can cultivate without depending on access to means of production and seeds. Thus they have been cultivating their seeds over centuries and exchanged then between their communities (Mwalimu, 2002). The implementation of TRIPS Agreement in Tanzania has led the farmers to give up their seeds ownership to foreign companies; hence consequently this has affected the food security in the country. For example in Kenya the data shows that the farmers produce only 70% of the production (Judith Achieng, 1999). In US the Monsanto Company has recently employed Pinkerton detectives to find prosecute farmers who are harvesting seeds from its patented crops. If such enforcement

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8 See Shafqat Munir1 paper online, this statement is taken from his work
9 See the US based Institute for Agriculture and Trade Policy (IATP) report
is stimulated in Tanzania it will violate the human rights of hundreds of millions of farming families who depend on recycling seed for survival (Mwalimu, 2002). Furthermore it will also violate Article I of International covenant on Economic Social and Cultural Right

Rights of everyone to enjoy the benefits of scientific progress and its applications, this is governed by Article 15 (1) (b) of International covenant on Economic Social and Cultural Right. Enforcement of the Intellectual property right in Tanzania will have an implication on the access and use of technology of its social and economic development. The time granted for patent (20 years), it will make difficult for Tanzania to transfer the technology since it is associated with higher costs. In a nutshell the enforcement of TRIPS will not facilitate Technology transfer to a poor county like Tanzania; hence it will even restrict or reduce ability for the country to learn through imitation.

Traditional knowledge, In Tanzania production process and number of activities are carried basing on traditional knowledge, it is from this knowledge people are able to earn income, afford health care and access to food. This paper is on the view that, people in Tanzania especially farmers will be affected because the TRIPS wants any innovation to be new, this means that it will exclude these people from their right to technology and knowledge. This view is supplemented by Mwalimu (2002), who says, TRIPS requirement of patentable inventions knocks off indigenous people who have been using inverted arts and technologies for generations. Moreover Mwalimu (2002), argues that the definition of “patentable subject” almost dismisses the knowledge systems of the innovations of indigenous people and farmers because they innovate communally over time and even generationally

The subject matter of rights to health are given a broad coverage under international law, Article 25 of the universal declaration for human rights recognize every person’s right to a standard of living adequate for his/her health, this is also underscored by Article

10 States that “in no case may a people be deprived of its own means of subsistence”. 13 see Oxfam paper presented on intellectual property rights and knowledge gap (2002)
12 This is explained as the information possessed by people
27 and Article 28 which advocates on the right to a social and international order in which the Declaration’s rights can be fully realized. Binding and non-binding measures or instruments of both regional and international14 have been adopted to elaborate the rights to health. These measures which aim at achieving full human rights on healthcare include those necessary for the ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’ and “creations of conditions which would assure to all medical service and medical attention in the event of sickness’ (see Mwalimu, 2002). The UDHR15 has achieved the status of customary international law, namely those practices recognized, with substantial uniformity, by states as being required by prevailing international law. As such, its norms are legally binding upon all the world’s countries.16

There are many different statements, declarations and treaties that recognize or established Universal declaration for human rights as part of customary international law17. Enforcement of TRIPS in Tanzania will have two major impacts, first patents will show the way to higher medicines (drug) prices high hence restrict access to it, secondly, the patents will not promote Research and development on diseases that prevailing in Tanzania.

3. PHARMACEUTICAL PATENTS AND HIV/AIDS IN TANZANIA

According to article 27 (1) of TRIPS Agreement, allows all members of WTO to apply patents to both products and process in all areas of technology as long as they fulfill the requirement under this article. It is from this Article that pharmaceutical products and process is qualified for patents, hence the patents holder will have a legal rights to defend any kind of copies or reproduction of the same patented drugs by another state or person. According to United Nations Development Programme Report on Human development (2000, pg 84), it states that the protection of pharmaceuticals products and process has generated a controversy and has exposed TRIPS Agreements as a main debate on the

13 the right to share in scientific advancement and its benefits
14 WHO, UNHDR and ICESCR
15 Universal declaration of human rights
16 See Shafqat Munir
17 These treaties include the Declaration on the Rights of Disabled Persons (1975), the Helsinki Final Act (1975), the Declaration of Alma-Ata on Primary Health Care (1978), the UN General Assembly’s recent Millennium Declaration (2000), the Vienna Declaration and Programme of Action (1993) and the UN General Assembly’s recent Millennium Declaration (2000) and the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975),
access of medicine (drugs) particularly for diseases like malaria, HIV/AIDS and Tuberculosis in poor countries. Due to the patents granted to Pharmaceutical products and process, the rights to health of Tanzanians particularly in the Southern regions where infections is high will have low access of HIV/AIDS drugs, this will led those household families who are taking care of HIV/AIDS patients or where there are many people who are infected with this disease their income will decrease dramatically. Thus in agricultural sector it will show the way to reduction in output which might threaten food security.\textsuperscript{18} The findings shows that developing countries are leading with a higher number of infected people as the data indicates that 95\% likewise the death-to-date from HIV/AIDS approximately to be 95\%, (UNAIDS 2000). Access to ARVs (Life saving drugs for HIV/AIDS Patients) is the major problem that facing Tanzania, in spite of the efforts done by the government in the collaboration of UNAIDS, Non Government Organization and US government\textsuperscript{19}. The application of TRIPS agreement has given the monopoly to Pharmaceuticals Company which makes them to charge higher prices on these drugs for example in case of Tanzania TPI\textsuperscript{20} has entered into agreement with Thailand to assist them in technology and started producing ARVs, but the issue is that all the raw materials are imported from china and India so it has not been so easier for them to sell ARVs drugs at cheap price as they want to cover their costs of production.

Though this paper appreciate the efforts done by research institutions on finding medical solutions and the relevancy of patents on pharmaceutical products and process, on the other hand it finds that the protection and enforcement of pharmaceutical products and process in Tanzania will form a basis of charging higher price to these drugs and technology transfer hence limit the access of low income earners to these drugs. For example the paper by Challu (1991) on the consequences of pharmaceutical product patenting finds that mean price of patented pharmaceutical products increased by a mean of 200 percent upon the introduction of patents to these products. Furthermore according

\textsuperscript{18} See UNAIDS June report 2000 in Geneva, pg 26
\textsuperscript{19} Through assistance from Thailand Tanzania pharmaceutical industry since 2005 has started producing ARVs but all raw materials are imported from china and India, Moreover in the near future another Pharmaceutical company known as Shelly’s will start producing ARVs but the problem is with the presence of raw materials within the country
\textsuperscript{20} Tanzania Pharmaceutical industry
to World Bank Report (2000/01), The Intellectual Property rights can sometimes act as hindrance factor\(^2\) to poor people in the developing countries to access the essential public goods like health. UNAIDS report (2000) reveal that the high price charged on ARVs resulted from patent rights granted to these companies which makes them to have full control over manufacturing sales of these drugs. The situation becomes more intense in Tanzania because people are depending on private purchase of these drugs compared to Northern countries; hence developing countries are paying more than the rich countries.

Another study by Bala K, Lanza O, Kaur SR. (1998), on retail prices shows that 10 out of 13 frequently used drugs are more expensive in Tanzania than in Canada, this implies that Tanzania need to work 215 days in order be able to buy these drugs while Canada it is only 8 days (Kirsten Myhr, HAI, 2000). However WHO recognizes that there are other factors that influence access to drugs\(^\footnote{22}{\text{ratio\_nal selection and use of drugs, affordable prices, sustainable financing and reliable health and supply systems}}}\). While these factors requires the treatment of the whole person rather than just a symptoms of disease, the affordability to drugs is relevancy to Tanzania, the presence of TRIPS determine the affordability of drugs for example in “Kenya where drugs are not subject to price controls and where there is little or no medical insurance, patent holders face no pressure whatsoever to market their drugs at affordable prices” (see Mwalimu, 2002). From this analysis it is clear that patent rights over pharmaceutical products it affects the access of HIV/AIDS medicine in low income countries like Tanzania. Additionally this paper finds that there other factors that determine the affordability of drugs\(^\footnote{23}{\text{local taxes, import duties and tariffs, limited competition and mark-ups for wholesaling, dispensing, and distribution}}}\). In case where some drugs are not under patents\(^\footnote{24}{\text{No patent granted initially or has expired}}}\) still its access will depend on the country itself. In relation to HIV/AIDS in Tanzania, the high price charged to this drugs has an impact on access ARVs drugs, but this does not mean that without patents everyone could have access to drugs, however there are those people who still will not afford even at below cost, factors such as lack of information, poor infrastructure and so on can limit these people from accessing the drugs.

\(\footnote{21}{\text{They are charging higher prices for these products}}\)
(International Federation of pharmaceuticals manufacture, 2000). Nevertheless, although the access to HIV/AIDS drugs has been limited by the higher price charged by these companies hence limit the treatment to infected patients in Tanzania, still the patents to these products remains crucial and important one. The question rise from this paper is what measure Tanzania should implement in Intellectual property rights area to make patented drugs prices at the possible low-cost consistent human rights obligations.

4. TRIPS AND TRIMS IN THE GLOBAL PERSPECTIVE.

The link between TRIPS and TRIMS has been the subject of many authors and books; this has resulted in many explanation of the relationship. A weak IPR regime increases the probability of imitation, which makes a host country a less attractive location for foreign investors hence encourage investors to invest in distribution sectors rather than production, while strong protection may shift the preference of multinational corporations from FDI towards licensing (Beata, 2002). Imperative of TRIPS Agreement varies from one industry to another and on the rationale for investment, being the highest in the case of R&D facilities and the lowest for projects focusing exclusively on sales and distribution (Mansfield, 1994 & 1995).

In Tanzania, the presence of Intellectual Property rights tend to affects much the sensitive sectors like pharmaceutical sector, electrical equipments, and chemicals compared to the effects it poses to non-sensitive sector, this argument is complimented by the study done by Beata 2002 and Mansfield 1995. Thus in most cases investors are not ready to invest in the areas which their patents are not protected. This is to avoid free rider that may arise, however it should be noted that the cost of research in innovation is very high for example it is estimated that the cost for new medicine is about $800 million²⁵.

The major question to ask is whether these investors should register their patents in the country or not? How will the country control the monopoly of these companies and benefit at the same? Tanzania Patent Act of 1987 does not give details on how the monopoly of foreign companies can be controlled, and how the country can benefit incase the companies patent is registered outside the country, however it just gives the

²⁵ See Gilles Saint Paul, 2004
procedures to be followed before granting a patent to foreign companies. The knowledge based products such as drugs, chemicals and electrical equipment needs to be protected in order to award the patent holder rights, however this can encourage monopoly which is the major concern for an economists, Monopoly creates market failure, thus affects the well being of the people by reducing their consumption, on the legal perspective, the inventive needs to be protected in order to award the innovator. The duration for patents last for 20 years, thus incase Tanzania grants them will mean that the country will be importing employment. In spite of other factors that hinder the accessibility of affordable drugs particularly ARVs, the presence of these companies in Tanzania will facilitate the affordability and access to essential products, for example the presence of Tanzania Pharmaceutical companies and Shelly’s Pharmaceutical companies.

Tanzania have tried promote investment on pharmaceutical industries by allowing the physical investment (local working content of the patent) and use of local raw materials which had aimed to create the link with other sectors, However the availability of raw materials have become a serious issue, for example Tanzania Pharmaceutical Industry (TPI) has started producing ARVs in the country since 2005, in collaboration with Thailand companies but the raw materials are imported from china, now you can imagine what will happen In case china decided to stop exporting raw materials for ARVs in the country. Nonetheless, the technology brought should remain free and not private (technology transfer). However in the real world there is no any company that will be able to bring her technology and allow public to copy free of charge without being paid for their innovation. For example Shelly’s company planned to start producing ARVs one year back but they were not able or allowed to use the technology being used by TPI in producing ARVs in the country.

Though the aim is to make ARVs drugs affordable to everyone by reducing the price at lowest margin, but it seems as it is not working out because these companies are importing raw materials from India and China at higher costs, so they need to curb out

26 Creation of employment
27 Procurement problems, lack of capacity to produce medicine, availability of nurses and DRs, distribution system and so on.
their costs by increasing price, from economics perspective every business man is looking for profits, unless otherwise the government intervene and subsidies the accessibility of ARVs as it has done currently.

5. DOMESTIC STRATEGIES AND INTERNATIONAL NEGOTIATION STRATEGY

Sometimes it is hard for Tanzania to know the exactly measures and way on how they can benefit from Intellectual Property rights particularly on the access to HIV/AIDS drugs. Tanzania can make a good use of the following opportunities to benefits from TRIPS Agreement.

Firstly, make a good use of transition period and flexibilities allowed under different provisions, Developing countries have been granted a long implementation period under WTO-TRIPS Agreement, they are required to have obliged to TRIPS Agreement by 2016, Tanzania can prepare for any inconveniences and consequences that might arise from the implementation of TRIPS Agreement i.e. promotion of local pharmaceutical production. Nevertheless, this allows Tanzania to produce essential drugs without introducing patent rights until 2016, thus Tanzania can use this opportunity to produce ARVs and other drugs for tropical disease, for example in 2005, one of the pharmaceutical company entered into agreement with Thailand for technology assistance in order to be able to produce ARVs, this project was divided into two stages where stage one included adults and the second stage included children and it was said that the company has ability to produce drugs for 100,000 per month. Tanzania Patents Act of 1987 allows the inclusion of patents for both products and process without excluding pharmaceutical productions. Before starting the production of drugs, the companies should make sure neither the raw materials nor final products is patented and in case it happen that patents exist, the company should be required to apply for voluntary license from the holder of the patent.

28 Tanzania pharmaceutical industry (TPI)
29 Government should promote an support more pharmaceutical industries like TPI which are ready to collaborate with other companies or countries to produce ARVs in the country
30 Article 7(1), Article 8 and Article 13 of Tanzania patent Act of 1987
Secondly, use of compulsory license, The TRIPS Agreement Article 31 allows ‘other use without authorization of the right holder’ (see www.jdhr.org). The compulsory license can be used by the government or the third part without the authorization of the holder. It is not limited to specific purpose, but it should meet certain requirements such as easy procedures in issuing compulsory license as well as the availability of provisions that guide this. This include; - “Abusive pricing making the product inaccessible for the majority of the population, patent owner’s refusal to deal; non-commercial use by the government; and for public interest” (see Mwalimu 2002). The law usually provides the basis, on which licenses can be granted31, According to (www.jdhr.org ) states that these powers of the law are found under Article 7 and Article 8 of WTO-TRIPS Agreement which “ provide for “the promotion of technological innovation and the transfer and dissemination of technology”, as well as “measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socioeconomic and technological development”. Moreover the legality of compulsory license is mentioned under Article 1, 27.1, 30 and Article 40 of TRIPS Agreement. Incase of emergency the country can use compulsory license ensuring the availability of drugs or product required by the public, in most cases it helps to promote public interest, in Tanzania this is allowed under section 52 to 59 of Patent Act of 1987.

Thirdly, application of parallel importation, Tanzania National drug policies and regulations have to include and involve the right to shop globally at the lowest and best price. The Doha Declaration allows for each country to establish and adopt the regime that fits its domestic policy requirement, at this era Parallel importation is very crucial and important to country like Tanzania where its economy is still very small and lack competition. In some countries like India where parallel importation has been adopted, it has proved to reduce the drug prices. LDCs members are automatically qualified under the Doha declaration to use this opportunity to import drugs. However in Tanzania parallel import is not allowed thus the country needs to amend its Patent Act of 1987 section 37 in order to allow for parallel importation.

31 For example incase of public health, abuse of patent rights or the refusal of a voluntary licence from the patent-holder.
Fourthly, Tanzania needs to strengthen the legal and institution frameworks that will grant incentives to pharmaceutical companies that deals with research on discovering the new drugs at the same time helping the poor to access the available drugs. This should go hand in hand with the promotion and encouragement of the people to study the subjects related to medicines in order to get more Doctors and Nurses who are competent enough. Moreover there is a need for a country to recruit a competitive staffs from India and Europe to work on the pharmaceutical companies,\(^\text{32}\) apart from that the local people should also get the best education by opening more universities on medical trainings rather than depending on the three available universities.\(^\text{33}\)

Fifthly, Promote Research and development for the drugs those are mostly required domestically. Tanzania should set aside enough budgets to encourage research, for example currently it sets aside 0.3 of G.D.P for research and development which is very small compared to Japan who sets 75% of GDP for research, patents alone cannot promote research and development rather it will just bring the drugs into the market Tanzania national drug policy should point out guidelines and strategies for a the new conditions on technology transfer, regulations on patents and orientation for R & D, as it might have a great impact on the access of drugs to the poor Tanzanians.

Sixthly, Involvement of the ministry of health, Non Government Organization and different stakeholders on the revision process that guide the patents laws from the initial stage (beginning).This collaboration can help make sure that compulsory license and parallel importation are defined under and included in the patent laws so that it can avoid exploitation from patent landlords.

Seventhly, Negotiate the use of different pricing, TRIPS Agreement does not mention the use of different pricing, however this is one of the measures that can be adopted and used under international cooperation and not by individual governments. The use of different prices in developed and developing countries can increase the affordability to drugs.

\(^{32}\) Executive Directors in the interview with the press said that on of the biggest challenge pharmaceutical companies are facing in Tanzania is the lack of competent experts from Tanzania, thus Shelly’s company has employed more Indians and Europeans in the sector.

\(^{33}\) Muhimbili university, Bugando university and Kilimanjaro Christian medical center
(Watal J., (2001). The same price are maintained in developed countries while in developing countries the price are set low in order to allow majority of the poor who lives in these countries to afford. Though this is not mentioned under TRIPS Agreement, but it can be justified under Article 7 and Article 8 of TRIPS Agreement which requires the countries to assure access and affordability drugs to the public. However one of the major problems of the low pricing is that it can allow the low price medicines (drugs) to be exported to the wealthy market. Tanzania can adopt this measure during the International Negotiations on TRIPS Agreement, because currently a number of pharmaceutical companies are offering ARVs to LDCs at cheap price34.

Lastly, Tanzania national Public policy, needs to incorporate TRIPS Agreement in its strategies, it also need to consider other factors that might be obstacles to access drugs including the government procurement policy, For example the government should identify the drugs required and order it in advance rather than waiting for them to finish and start ordering35. The distribution process of these drugs are also need to be stated clear in the public health policy, because it is has proved to be another difficult in access to drugs. Nonetheless, other policies such as investment policy, National Trade policy, industrial policy, technology process and HIV/AIDS/STD policies are required to be linked with Intellectual property rights so that the controversial issues can be avoided.

**Conclusion**

This paper shows that the TRIPS Agreement sets out the minimum standards that Developing countries should abide when implementing patent right protection. The application of the TRIPS Agreement in Tanzania is likely to have an impact on the access of technology advancement, food, traditional knowledge and health. The impact on access to HIV/AIDS drugs (ARVs) is associated with the monopoly of patent holder arise from strengthening the patents protection to all pharmaceuticals process and products. This monopoly might create difficulties in accessing the essential drugs in Tanzania. Though this kind of monopoly can create a limitation to access of essential drugs, still Tanzania can make a good use of several options allowed under TRPS Agreement to address the issue of price and access of these drugs, this include:– parallel importation, compulsory licensing, differential pricing and promote on Research and Development for drugs needed locally. Nevertheless though, a Patent right is essential in the global world but the issue of public health should be given enough weight when implementing TRIPS Agreement both at Global and National Level.

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34 UNAIDS is one of the organization that made this offer to African countries.
35 This role should be done by Medical stores department tenders
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