

TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS: WTO THREAT TO PUBLIC HEALTH

TRIPs

Patent rights are being extended around the world through the provisions of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The TRIPs agreement will give rise to factors that can put access to medicines out of reach for millions of people in the developing world. The TRIPs agreement obliges WTO members to adopt and enforce high standards of intellectual property rights protection.

THE ISSUES

One-third of the world's population does not have access even to essential medicines, and in the poorest regions of Africa and Asia this percentage rises to 50 percent.

About 14 million people die each year from infectious diseases, many of which are preventable or treatable, such as diarrheal diseases, malaria and tuberculosis. According to the World Health Organization, up to 45 percent of deaths in Africa and Southeast Asia are thought to be due to an infectious disease. The death toll is unacceptably high in developing countries, even as health indicators show improvements in many countries of the world. This health crisis is caused by several inter-linked factors, such as poverty, lack of access to health services, water and sanitation. A vital factor in the promotion of public health is the supply of effective and affordable medicines and peoples' access to such medicines and treatments. This access should not be a luxury reserved for the rich but is a human right for all.

Worldwide, public concern is mounting at how the introduction of strict patent regimes in developing countries required by the WTO TRIPs agreement is causing the price of patented drugs to be set at high levels, often unreachable for poor people. The effective monopolies granted by TRIPs allow pharmaceutical giants to suppress competition from alternative, low-cost producers and to charge prices far above what is reasonable. This is done at the expense of many ordinary consumers who are too poor to afford treatment.

THE PROBLEM

In 2001 at the Doha ministerial, all WTO members—including the U.S.—agreed that public health should hold primacy over patent rights, and agreed to not allow WTO patent rules to block access to affordable medicines. The right of governments to use the existing public health safeguards set forth in the TRIPs agreement was also affirmed. But since that agreement, the U.S. has obstructed negotiations to provide access to affordable medicines by poor countries.

The declaration on TRIPs & Public Health made at Doha was seen as a major victory for developing countries as it recognized the problems of such countries with insufficient pharmaceutical manufacturing capacities and mandated that a solution be in place by December 2002. Although the TRIPs Council came up with a draft agreement, it could not be implemented due to opposition by the U.S. The U.S. blocked a deal over concerns that any new WTO regime should not cover non-infectious diseases. The U.S. had initially tried to dilute the pact by limiting the coverage of diseases to malaria, AIDS and other infectious diseases. Developing countries wanted to avoid naming specific diseases in order to maintain more flexibility.

U.S. pharmaceutical firms pushed the Bush administration to reject a plan that would formally allow poor countries to waive patents and use generic drugs when treating infectious epidemics. The impasse caused the WTO negotiations to miss an important deadline and made the United States an obstacle to a potential deal.

This is an important issue for developing countries' ability to protect public health and treat disease. As per the December 2002 draft agreement, countries with insufficient manufacturing capacities should be allowed to buy patented medicines from non-patent holding manufacturers in other nations during times of national emergency. However, the TRIPs agreement states that, while countries could issue compulsory licenses for the production of patented medicines to non-patent holding domestic manufacturers during emergencies, these medicines cannot be exported.

ALTERNATIVES

The key principle that should guide the discussions in the WTO is that access to essential and vitally needed medicines is a fundamental human right. Protecting people's health must take precedence over the strict protection of intellectual property and the very high profits which drug companies derive from this. The WTO TRIPs must lift restrictions on the export of drugs to developing countries that have decided to override a patent or do not recognize drug patents but which do not have the capacity to produce cheap generic equivalents. Governments need a permanent guarantee that they can put public health and the welfare of their citizens before patent rights, without having to face the kind of legal pressures or threat of trade sanctions. The ultimate goal is to abandon TRIPs in favor of the needs of local and domestic communities; until that goal is met, the WTO should do the following:

1. Agree not to exert bilateral or regional pressure on developing countries that take measures to exercise their rights under TRIPs to protect public health and promote access to medicines, nor to pressure them to implement unnecessarily strict and potentially harmful intellectual property protection standards or "TRIPs-plus" measures;
2. Observe, with immediate effect, a moratorium on dispute settlement action against developing countries which hinders their ability to promote access to medicines and protect public health (including the use of compulsory license and parallel importation measures);
3. Allow developing countries the option of excluding medicines from patenting on humanitarian or public-health grounds, in order to meet the objectives of saving lives, countering and controlling epidemics, and ensuring that the poor obtain access to essential medicines for the treatment of poverty-related diseases;
4. Strengthen the existing public-health safeguards within TRIPs to ensure that governments have the unambiguous right to override patents in the interests of public health;
5. Adopt a pro-public health interpretation of the Agreement through the flexible use of existing safeguards and exceptions. These include upholding the right of countries to grant compulsory licenses for local manufacturing, import and export, and their right to implement parallel importation measures;
6. Remove the burdensome conditions that governments have to fulfill in the issuing of compulsory licenses, so that licenses can be granted on a "fast track" basis for public health purposes;
7. Extend the implementation deadlines within TRIPs for developing countries in relation to patent protection (both product and process) for medicines. ▲