



### **TRIPS and Public Health**

- Controversy Over the TRIPS and Public Health Agreement
- Advocacy on TRIPS and Public Health: Letter from the European Consumers' Organization

### **Gender and Trade Announcements**

- Summer Institute: Capacity Building and Knowledge Networking on Gender, Macroeconomics and International Economics
- African Social Forum - Second edition
- Asia Social Forum

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## **TRIPS and Public Health**

### **Controversy Over the TRIPS and Public Health Agreement**

Farah Fosse, International Gender and Trade Network Secretariat, December 2002

#### **Developing Countries Struggle to Reconcile TRIPS and Public Health**

Last November, at the World Trade Organization's (WTO) Fifth Ministerial in Doha, members came to a landmark decision to allow developing countries to override drug patents and make and/or import generic copies of pharmaceutical products to meet their public health needs. These decisions and the will to implement them were written up in the Trade Related Intellectual Property Rights (TRIPS) and Public Health section of the Doha Declaration. Paragraph 6 of the Declaration lays out the problem of countries that cannot produce medicines domestically and therefore need to import generic medicines. The paragraph mandates that the TRIPS council and the General Council of the WTO find an expeditious solution to enable these developing countries to use compulsory licensing. Compulsory licensing is "authorization, given by a government, to use a patented invention without the consent of the patent-holder."<sup>1</sup>

For many developing countries without domestic pharmaceutical industries, importing affordable drugs is crucial for their people, economies and future. In particular, the countries of Southern Africa are facing a severe public health crisis. In six of the Southern African countries more than 5 million adults are currently living with HIV/AIDS and in four of these southern African countries the national adult HIV prevalence has risen higher than 30%. Of the 5.5 million people needing treatment for HIV/AIDS in Southern Africa only about 300,000 are receiving it due to the unaffordable prices of the antiretroviral drugs (UNAIDS and WHO report.) Under the WTO system of international trade laws the ability of countries to protect their public health and the support systems of households and communities have been, and continue to be, damaged. This has resulted in a high social cost and increasing burdens for women who bear the responsibility of social reproduction. In times of health crisis, when public health systems fail, it is women who must care for the sick at a risk to their own health. Women also become responsible for providing food and maintaining other household needs.

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<sup>1</sup> Definition from the WTO website: [http://www.wto.org/english/tratop\\_e/trips\\_e/tripfq\\_e.htm#CompulsoryLicensing](http://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm#CompulsoryLicensing)

Unfortunately, the question of exactly how countries will be able to get licenses to make generic copies of patented drugs and the rules that will accompany the licensing procedure and export were left open at Doha. This has led to a series of recent negotiations on these implementation issues. Many of these consultations on implementation took place at a recent meeting of 25 WTO members in Sydney, November 14-15<sup>th</sup>.<sup>2</sup> Though the WTO members in Sydney agreed that poor countries access to drugs is a "priority," the negotiations have not resolved major differences around this issue.<sup>3</sup> Rather, recent consultations have been marked by retrogression on the part of the major developed countries – in particular the US, EU, Japan and Switzerland. Implementation decisions on TRIPS and Public Health faced an end of the year deadline that will not be met.

These implementation issues are not new and may play a pivotal role in determining the future of the WTO. At the WTO Ministerial in Singapore (1996) developing countries first complained of bad faith implementation by the larger countries in the areas of textiles, special and differential treatment and asymmetries in WTO processes.

Since Singapore, developed countries have sought to dispose of these issues through plenary speeches and other forms of lip service. The issues were completely ignored during the Seattle Ministerial (1999), which in part led to the collapse of negotiations there. After Seattle, members decided to address implementation issues as part of a 'confidence building exercise.' When this 'exercise' proved fruitless developing countries' proposals on the issues became part of the process leading to Doha (2001). In the Doha Declaration coming out of the Ministerial meeting, WTO members expressed the will to solve implementation issues.

The issue of TRIPS and public health illustrates a major problem in the WTO, namely that *equal* rules do not have the same effect on *unequal* countries. As Professor Brook Baker from Health GAP writes, "There is a marked imbalance between the capacity of rich countries like the U.S. to access generic medicines when emergencies or other public health needs arise and the rights of a country like Malawi which has no pharmaceutical manufacturing capacity whatsoever."<sup>4</sup> Rules that are written without regard to the public health needs of countries like Malawi will be inherently discriminatory.

### **Current State of Consultations on Implementation of TRIPS and Public Health**

After the Sydney mini-ministerial the chairman of the TRIPS Council, Ambassador Motta of Mexico put forward a chairman's informal text on the implementation of the TRIPS and Public Health Agreement. This text has been circulating among WTO members and some NGOs since the 24<sup>th</sup> of November and has been the subject of heated consultations. According to the original plans, such a legal text was to have been completed and approved by the TRIPS Council at a formal meeting at the end of November and then by the General Council at its meeting in December. Yet, the discussions are still far from resolved. The comments from the US and other major developed countries, namely the EU and Japan have sent the discussions back to pre-Doha issues. Motta is receiving criticism from developing countries and civil society for reflecting the US and pharmaceutical companies positions both in the draft and in changes he later introduced to it.

According to Oxfam and other NGOs working with developing countries on the implementation proposals, developed countries in Sydney and since have been pressuring developing countries to accept an unworkable mechanism. Several of the African countries have stated that the rich countries have been

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<sup>2</sup> The countries invited to the Mini-Ministerial were: Brazil, Canada, China, Columbia, Egypt, the European Commission, Hong Kong, India, Indonesia, Japan, Kenya, Korea, Lesotho, Malaysia, Mexico, New Zealand, Nigeria, Senegal, Singapore, South Africa, Switzerland, Thailand, the US and one representative from the Caribbean

<sup>3</sup> Seneviratne, Kalinga, IPS, Trade: Scepticism remains over rules on access to cheaper drugs, from SUNS #5237 Tuesday November 16 2002.

<sup>4</sup> Pharma's Relentless Drive for Profits Explains US Trade Negotiations, Professor Brook K. Baker, Health GAP, Dec. 10, 2002

working to divide the African group. In particular, the US has been applying massive pressure on African capitals.

The TRIPS Council session is currently in recess to give members time to decide on a process for implementation of compulsory licensing. Based on Motta's draft proposals the African group had already left consultations, effectively saying "enough is enough." WTO Director-General Dr. Supachai Panitchpakdi, who chairs the Trade Negotiating Committee, asked members to reflect over the year-end break. He plans to hold consultations in early 2003 to seek solutions.

The African position was set out in a statement at the TRIPS Council by Kenya on behalf of the group, and received the support of other developing countries from Asia and Latin America. In the statement Kenya stated, "we are far from getting a practical and workable solution to serve the objective of [the Declaration]... some of the proposals (in the Motta text of 24 November) appear to be replacing the Declaration and adding extra obligations on members instead of addressing the difficulties identified in [the TRIPS and Public Health Agreement]"<sup>5</sup>

### **The United States and Pharmaceutical Industry Position**

For a period after the Doha Ministerial the United States Trade Representative (USTR) and the European Commission's Directorate-General of Trade seemed to be making an effort to reach a compromise on implementing the TRIPS and Public Health Declaration. By the summer though, the USTR lost policy-making control to the White House as big pharmaceutical corporations exercised increased power in decision-making. Since this time the EU, Japan and Switzerland have also been taking hard positions to advance the interests of their pharmaceutical industries. The pharmaceutical industry, which is the largest lobby group in the United States and the largest campaign contributor in the world, gave millions to the US candidates and played a decisive role in ensuring Republican control of the House and Senate in the US.<sup>6</sup>

Paragraph 4 of the TRIPS and Public Health agreement states that "the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all." Despite this agreed upon text, it seems that the major countries have been trying to negotiate a 'solution' to implementation problems that will lead to the fewest medicines permissible to treat a very limited number of illnesses.

According to trade diplomats, in recent negotiations the US and Japan have gone back to their initial pre-Doha positions on implementation issues and have been criticized by developing countries for repeating their stands in spite of the TRIPS and Public Health Agreement. The major sticking points in the negotiations relate to the definitions of pharmaceutical products, public health problems and the eligible importing and exporting countries.

The US is hoping to limit the scope of the agreement so that it will only definitely cover HIV/AIDS, Tuberculosis, and Malaria, in a limited number of countries. The US intends to create an environment where compulsory licensing could be very rarely used. Paragraph 1 of the Doha declaration reads, "We recognize the gravity of the public health problems afflicting many developing and least developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics." Under any ordinary reading of this passage the use of "especially" would mean that it applies to the three diseases mentioned in particular, as well as 'other epidemics,' but is not restricted to them. In relation to this a US representative stated that, "We should not endanger the progress achieved at Doha and the careful balance that was successfully struck by being diverted away from helping poor countries and or

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<sup>5</sup> Raghavan, Chakravarthi. SUNS #5246, December 2, 2002. Trade: TRIPS consultations on implementing Doha recessed.

<sup>6</sup> Pharma's Relentless Drive for Profits Explains US Trade Negotiations, Professor Brook K. Baker, Health GAP, Dec. 10, 2002

towards non-epidemic 'lifestyle' health issues."<sup>7</sup> These so-called "lifestyle" epidemics could include asthma, cancer and other diseases in developing countries that are major killers and that the pharmaceutical companies would still like to profit from. So that even if big pharmaceutical companies lose their exclusive market rights related to the largest three killers they can continue to profit from sales of patented medicines for all other diseases in developing countries. They plan to sell these drugs at monopoly prices so that only local elites and middle classes will have access to them while the majority of people will have no access to drugs for treatable conditions.

The U.S., along with Switzerland, the E.U., and Japan, has also tried to limit the compulsory licensing to medicines only. The US is strongly insisting on a narrow interpretation of the definition of pharmaceutical products, one that does not include processes and diagnostic kits. Furthermore, pharmaceutical companies have reportedly insisted in behind the scenes meetings that their future profits in vaccines be protected. Japan has taken the hardest line on this subject, insisting that the Doha Declaration did not cover vaccines as a pharmaceutical product and these should not be included. The definition of a 'pharmaceutical product' in the November 24<sup>th</sup> draft decision eliminated the word 'vaccines' which was included in earlier drafts. At later discussions a number of countries, including the EU, said the term should be put back into the new draft. Japan and the hardliners who had originally raised the issue did not object.

On the issue of countries that are eligible to import under compulsory licensing, the US wants OECD members and 'high income' developing countries to be excluded. If this were the case it would be unlikely that generic producers would expand production solely to meet the needs of small and poor countries because they would not be guaranteed a sufficiently large and potentially profitable market. Generic producers want to be able to sell in large, middle-income countries like Argentina and South Africa. Many countries, including the 'high income' countries of Korea, Singapore and Hong Kong China, were not agreeable to this position, noting that the Doha declaration made no such limitation. Motta has been holding bilateral discussions with countries that were not willing to rule themselves out.

The US and others also tried to limit the definition of 'domestic markets' to be supplied under compulsory license so that they would not include regional markets or arrangements. The African group of countries wants the option to be able to order generic drugs as a group. The markets of many African countries are so small that the cost to a generic drug supplier would be prohibitive if they were just supplying to one country's market. The current text states that a member can issue a compulsory license for production and supply 'predominantly for its domestic market', which implies room for exporting.

In general, the US has been taking very strong, retrogressive and in some cases reactionary positions to thwart an agreement on the implementation of TRIPS and Public Health. At one point the US proposed a traveling disease criteria for the scope of diseases, leading to the assumption that the US would only permit public health measures that would have an affect on its population. In some smaller discussions, the US even sought a footnote to exclude the export of 'bio-terrorism' via compulsory licensing.

### **The European Commission Stances on TRIPS and Public Health**

The European Commission (EC) seems to be trying to distance itself from the US and other countries with strong stances in order to present itself as a bridge-builder. In reality though the EC is pushing for a set of highly restrictive "safeguards" on exports, including requirements on the packaging of generic products and notification to patent owners and the WTO. These obligations and others are allegedly designed to control diversions, or leakage, of generic products into developed country markets where they could supposedly undercut patented drugs. The EC has also insisted that these restrictive conditions on exporters be subject to the dispute settlement procedure. If these 'safeguards' were put into place though the obligations would be so onerous that no manufacturer or country would want to undertake

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<sup>7</sup> Raghavan, Chakravarthi SUNS #5246, Trade: TRIPS consultations on implementing Doha recessed December 2002, Geneva.

them. Furthermore, the companies would not want to run the risk of a costly lawsuit at the WTO. Developing countries and generic drug producers claim that there is no evidence that generic products have ever been diverted in significant ways to countries where patents are in place. Indonesia, which was very critical of these 'safeguards,' commented that these recommended safeguards were even stronger than ones required to deal with narcotic drugs.<sup>8</sup>

The EC has also proposed a burdensome "notification" procedure whereby generic producers would have to issue notifications each time they filled a compulsory license order and that the governments issuing the license would have to notify the TRIPS council itself for each authorization. These cumulative conditions would further discourage any potential 'supplier' or exporting country from going through the trouble of making generic drugs under compulsory licensing.

The directorate-general of trade in the EC may not have much support regionally though as the French President, the Belgium Parliament and the EU parliament have all endorsed the NGO position on the use of a simple Article 30 approach which provides that "Manufacturing shall be allowed if the medicinal product is intended for export to a third country that has issued a compulsory licensing for that product, or where a patent is not in force and if there is a request of the competent public health authorities of that third country." In other words, generic drugs can be issues to a country through compulsory licensing, if there is no patent or if a public health crisis necessitates the drug. Regionally the EU has passed a law<sup>9</sup> which allows the country planning to use the medicine to make decisions on authorizing the license and compensation for the patent owners.

Six associations of developing country generic manufacturers have sent a joint letter to WTO delegations, asking trade negotiators to agree upon a solution consistent with this approach. In the letter the manufacturers stated that, "There is no evidence that compulsory licensing has been over-used by any country, and in those cases where governments determine the public interest is served by issuance of a compulsory license, they should have the practical ability to do so, not undermined by a deliberate and discriminatory regime of inefficiency that is masked as a free trade instrument."<sup>10</sup>

The EC also plans to create a "community patent" that will legalize cross-border compulsory licensing in Europe. This "solution" is highly restricted for developing countries under the November 24<sup>th</sup> draft text. The EU's own internal laws regarding intellectual property and access to essential pharmaceutical products are almost completely in line with what developing countries and NGOs are calling for around TRIPS and Public Health. Yet, in WTO consultations the EU is pushing a stringent and unworkable plan around implementation of TRIPS and Public Health.

### **Waiver or Temporary 'Solution' to the TRIPS and Public Health Problem**

If these proposed restrictions and limitations on compulsory licensing do not succeed in making the agreement useless, pharmaceutical companies have another strategy that they are pushing through the major countries. They propose that any solution be temporary, in the form of a waiver (to the requirements of TRIPS article 31 for compulsory licensing) that is subject to further negotiations. This temporary nature of the agreement will create uncertainty for generic producers so that they will not want to enter the market. As Raghavan points out in SUNS,<sup>11</sup> this waiver approach would enable the US, Japan, Switzerland and the EC to proclaim that they are helping developing countries to import cheap drugs while ensuring that no such drugs would be created.

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<sup>8</sup> Raghavan, Chakravarthi. Trade: Implementing Doha health declaration or playing a con game? SUNS #5244, November 28, 2002, Geneva.

<sup>9</sup> Amendment 196 to the EU Directive on Medicines Act.

<sup>10</sup> Raghavan, Chakravarthi. Trade: South, including LDCs, don't need restrictive TRIPS decisions. SUNS #5245, November 29, 2002, Geneva.

<sup>11</sup> Raghavan, Chakravarthi. Trade: Implementing Doha health declaration or playing a con game? SUNS #5244, November 28, 2002, Geneva.

The November 24<sup>th</sup> text essentially calls for a waiver and further work to create an amendment or legal mechanism to enable countries in need to import cheap pharmaceutical products. The waiver decision would end when an amendment took place, calling for work on an amendment to begin on January 1, 2004 and adopted by June 20, 2004. There is no consensus among developing countries on the issue of a waiver and amendment though a large number of countries said they preferred an authoritative interpretation of Article 30 of the TRIPS Agreement.<sup>12</sup>

### **NGO Positions**

A group of NGOs closely following the negotiations (including the Consumer Technology Project, Medicins Sans Frontier, Oxfam and Third World Network) have asked the developing countries to walk away rather than agree to such "poisonous proposals, riddled with conditions, and with limitations and burdens that make the Doha declaration unworkable." These NGOs charge that the US, EU, Canada, Switzerland and Japan have escalated their efforts to make the solution "more restrictive, more burdensome, and more problematic in terms of precedent, and have demonstrated bad faith" in addressing the problems which were recognized in the Doha Declaration.<sup>13</sup> In particular, these groups hold that there cannot be a compromise on the scope of diseases that will be covered by the agreement.

NGOs, led by Consumer Project on Technology Project (CPT), have also stated that developing countries could get all the pharmaceuticals they need from other developing countries without a TRIPS Council decision and the restrictive conditions that could come with it. The developing countries can use the same instruments that the US, EC, Canada and other developed countries have been using which are laid out in Articles 30, 31.f and 31.k of the TRIPS and the Doha Ministerial Declaration on TRIPS and Public Health. The NGOs maintain that there should be no desperation regarding the need for an immediate solution to implementation.

### **Beyond TRIPS: Ensuring Access to Essential Medicines**

Many NGOs are pointing out that the TRIPS agreement is stacked against developing countries and public health beyond the issue of compulsory licensing and that even if WTO members come to an agreement over this issue, the task of ensuring access to affordable medicines for people in poverty will be far from complete. As patent protections are extending, changes beyond compulsory licensing rules will be needed. India, for example, who manufactures large amounts of generic drugs, will be required to apply patent protection to new medicines created in 2005 on, making it difficult for generic suppliers to compete with patented drugs there and leading to higher prices for generic drugs, even if compulsory licensing rules are more relaxed.

Another problem is that even if compulsory licensing rules favorable to developing countries are agreed upon at the WTO, the pharmaceutical companies are pressuring the USTR to impose TRIPS-plus rules<sup>14</sup> in regional and bilateral trade agreements, including the Free Trade Area of the Americas and the Southern Africa Trade Union Agreement. The US is also using 'technical assistance' provided by USAID and the World Intellectual Property Organization (WIPO) to advise countries lacking legal expertise on revising their domestic intellectual property systems to meet TRIPS provisions and in turn advising governments to take on TRIPS-plus measures.

For these reasons it is important that NGOs, social movements and developing country governments do not settle for changes in compulsory licensing tools, though these are important, in the fight to ensure affordable essential medicines, vaccines and other pharmaceutical products for people globally. The strong and active civil society movements around this issue have had an effect on the stances of the

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<sup>12</sup> Manufacturing shall be allowed if the medicinal product is intended for export to a third country that has issued a compulsory licensing for that product, or where a patent is not in force and if there is a request of the competent public health authorities of that third country.

<sup>13</sup> Raghavan, Chakravarthi. Trade: Differences unresolved on implementing TRIPS and Public Health. SUNS #5243 Wednesday 27 November 2002, Geneva.

<sup>14</sup> Patent protection rules that are more stringent than the WTO rules.

major governments, most notably the United States and Switzerland, and will need to stay extremely active and vocal to be heard over the billions of dollar coming from the pharmaceutical industry. Furthermore, if the issues of TRIPS and Public Health are not resolved these movements will potentially strengthen the broad movements against the WTO system.

### **International Gender and Trade Network Position and Demands<sup>15</sup>**

The International Gender and Trade Network demands that the scope of the WTO be reduced to trade issues to ensure food security, public health and development. The IGTN demands that TRIPS (along with agriculture and TRIMS) be removed from the WTO and not included in regional or bilateral trade agreements. TRIPS undermines government's right to make public health plans for its people, imposing constraints and limitations on areas of governance that were the sole domain of the state and giving corporations a monopoly over the pricing of medicines.

TRIPS places severe constraints on the production of generic drugs, making pharmaceutical products expensive and unaffordable for men and women in poverty. Furthermore, the intellectual property rights (IPR) system is highly inequitable. Northern-based corporations presently hold 90% of patents and have the capacity to undertake research and development and to navigate cumbersome administrative IPR processes. These processes tend to discourage local research and patenting efforts of people living with fewer resources, especially women and indigenous peoples. Under this international trading system households and communities have been damaged by lack of food security, access to health care and essential medicines, public services and from the eroding rights of governments to plan development based on the needs of their populations. This has resulted in increasing burdens for women who continue to be responsible for the maintenance of family and community.

There must be an ethical basis for directing the process of decision-making and the settling of disputes around intellectual property and for evaluating the entire patent system. The IGTN calls for the integration of existing intellectual property regimes within the U.N. system with particular attention to their coherence with internationally and democratically agreed upon principles of human rights, gender equality and sustainable development. Gender and social impact assessments must be undertaken before patents are issued. The IGTN supports the African group's position on TRIPS and calls upon our governments to consult with all sectors of civil society in the design of patent legislation and to educate citizens on their rights related to issues of IPR. The IGTN calls for a thoroughgoing and comprehensive review, repair and reform of the WTO. Despite the fact that developing country governments have been calling for changes in implementation, special and differential treatment and the asymmetries in the negotiations processes since 1996, the operations of the WTO remain shrouded in secrecy and its decision-making process remains flawed, non-transparent and anti-democratic.

The International Gender and Trade Network calls upon our governments to end the trend towards a more expansive and all encompassing WTO agenda. The WTO should confine its scope and operations to traditionally defined trade issues and satisfactorily address the issues of unequal treatment and imbalances built into the existing agreements so that they promote sustainable, gender-sensitive and poverty-eliminating development. In the area of access to essential medicines for people in poverty, public health and the right to healthcare, not international trade law, must be the guiding principle used in making decisions.

### **Resources:**

Baker, Brook K. Pharma's Relentless Drive for Profits Explains US Trade Negotiations, Health GAP, Dec. 10, 2002.  
IGTN: International Gender and Trade Network at Doha. WTO Fourth Ministerial, Doha, Qatar, November 9-13, 2001  
Love, James, Consumer Project on Technology. Trade: Why the TRIPS and Public Health talks at WTO broke down, SUNS #5246, Dec. 2, 2002, Geneva.

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<sup>15</sup>IGTN: International Gender and Trade Network at Doha. WTO Fourth Ministerial, Doha, Qatar, November 9-13, 2001.

Love, James, Consumer Project on Technology. Trade: How the WTO plans to get its bad reputation back. SUNS #5244, Nov. 28, 2002, Geneva.

Raghavan, Chakravarthi. Trade: TRIPS talks on implementing Doha run into more problems. SUNS #5240, Nov. 22, 2002, Geneva.

Raghavan, Chakravarthi. Trade: Talks continue on key issues to implement Doha health declaration. SUNS #5241, Nov. 25, 2002, Geneva.

Raghavan, Chakravarthi. Trade: Retrogression on implementing Doha Public Health Declaration? SUNS #5242, Nov. 26, 2002, Geneva.

Raghavan, Chakravarthi. Trade: Differences unresolved on implementing TRIPS and Public Health. SUNS #5243, Nov. 27, 2002, Geneva.

Raghavan, Chakravarthi. Trade: Implementing Doha health declaration or playing a con game? SUNS #5244, Nov. 28, 2002, Geneva.

Raghavan, Chakravarthi. Trade: South, including LDCs, don't need restrictive TRIPS decisions. SUNS #5245, Nov. 29, 2002, Geneva.

Raghavan, Chakravarthi. Trade: TRIPS consultations on implementing Doha recessed. SUNS #5246, Dec. 2, 2002, Geneva.

Raghavan, Chakravarthi. Trade: Doha deadlines on developing country issues will be missed. SUNS #5251, Dec. 10, 2002, Geneva.

Raja, Kanaga. Health: AIDS epidemic fuelling famine in southern Africa, says UNAIDS. Nov. 26, 2002, Geneva.

Seneviratne, Kalinga. IPS: Trade: Scepticism remains over rules on access to cheaper drugs. From SUNS #5237, Nov. 16, 2002, Sydney.

## **Advocacy on TRIPS and Public Health**

The following letter from The European Consumers' Organization to Pascal Lamy details the great risks in relation to the Doha Agreement on TRIPS and Public Health and urges the EU to "join the developing countries to press for a much wider, simpler and clearer implementation of the DOHA declaration" in order to "give developing countries clear, unambiguous and ample freedom" to access life-saving pharmaceutical products. Thanks to Development Alternatives with Women for a New Era (DAWN) for passing this letter on to the IGTN.

Mr. Pascal Lamy  
Member of the European Commission  
European Commission  
200, rue de la Loi  
B – 1049 Brussels  
12 th December 2002  
Ref. JM/122002492/go

Dear Commissioner Lamy,

I write on behalf of BEUC, the European Consumers Organisation, to express our grave concern at the evolution of the negotiations in Geneva on access to medicines.

Apart from the substantive issue involving the welfare of millions, the negotiations seem to be proceeding to an outcome that may seriously affect BEUC's trust in the entire WTO negotiation process. I say this on behalf of an organisation that supported the Uruguay Round despite our reservations about the TRIPS agreement at the time.

If the outcome of the current discussions on the paragraph 6 of the Doha declaration on TRIPS and Public Health does not keep faith with the original TRIPS agreement and with the DOHA Declaration, why should we trust any agreement that might be reached in the current global negotiations?

While hard information is difficult to come by, we are concerned about the following possible (and, according to some sources, more or less likely) outcomes:

- A limitation of the agreement to certain diseases such as HIV/AIDS, TB and malaria.

- The exclusion of vaccines and certain medical devices from the scope of the agreement.
- The placing of unreasonable restrictions on the production and export of essential medicines including, but not confined to, a requirement of prior notification and /or approval on a case by case basis.
- The potential involvement of the WTO secretariat in the micro-management of trade rules involving issues of public health.
- A limitation on exports from manufacturers in developing countries to any developed country that invokes the compulsory licensing provisions of the TRIPS agreement.
- Demanding commitments from developing countries not to avail fully of the provisions of Par 7 of the DOHA declaration.

These outcomes would not keep faith with the original TRIPS agreement. They would be in flat contradiction of the DOHA Declaration. They would give priority to the political and economic pressures of the pharmaceutical industry over the lives and well-being of millions of people. (They would also contradict the position taken recently by the European Parliament in the context of the revision of the pharmaceutical directives.)

These outcomes would also deal a heavy blow to any possibility of gaining sufficient public support within the EU for the current global round of trade negotiations.

When BEUC was considering what position to take on the proposed Marrakech agreement, we were concerned about TRIPS in particular. Among other worries we feared that it would place a heavy burden on developing countries and might be used to force them to give priority to enforcing patent rights when they could not provide the most basic needs of shelter, sustenance and security to their people. In discussion with the Commission we were assured that our fears were groundless and that there was sufficient room for manoeuvre in the TRIPS agreement for developing countries to tackle public health needs.

The Commission gave those assurances in good faith but it is now clear that they were naïve. Whatever its original intention or meaning, the TRIPS agreement was (mis)used and (mis)applied in the interests of rich countries and powerful political and economic forces. The US government and the US pharmaceutical industry were the most active in this context but the record of the European pharmaceutical industry and the EU itself, notably during Commissioner Brittan's time, is also a sorry one.

The current EU negotiating position in Geneva would not fulfill the promise of the DOHA declaration. It seeks to place so many restrictions and conditions on access to medicines as to jeopardise the exercise of the rights it purports to promote.

Whatever international agreements may say, powerful economic and political interests can in very large measure determine how they are interpreted, implemented and applied afterwards in practice. To mitigate this factor, the current negotiations should give developing countries clear, unambiguous and ample freedom of manoeuvre to access the medicines that are needed (among many other things) to save the lives of millions. They were supposed to have been able to do that under the original TRIPS agreement and they were promised they could do it under the DOHA Declaration.

Even at this late stage we urge the EU to join the developing countries to press for a much wider, simpler and clearer implementation of the DOHA declaration - noting also that such an approach would be in line with that proposed by the European Parliament.

The issue of access to medicine is the substantive and important issue here. I repeat, however, that a bad outcome to the current negotiations could jeopardise public support in the EU for the entire global trade negotiations.

Finally it would be helpful if we could have an opportunity to discuss these issues with you or with relevant colleagues before final decisions are taken in Geneva.

Yours sincerely,

Jim Murray  
Director

CC President Romano Prodi, Commissioner Neilson, Commissioner Byrne, Commissioner Liikanen, Danish Presidency

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## **Gender and Trade Announcements**

### **Summer Institute: Capacity Building and Knowledge Networking on Gender, Macroeconomics and International Economics**

The International Working Group on Gender, Macroeconomics, and International Economics is pleased to announce the inauguration of a new program, Capacity Building and Knowledge Networking on Gender, Macroeconomics and International Economics. A central component of the program is the two-week intensive course on Engendering Macroeconomics and International Economics. The course will take place in Salt Lake City, University of Utah in the United States from May 19-30, 2003. An international conference on the themes of the program will take place on June 2-4, 2003 at the University of Utah.

The program is being organized by the International Working Group on Gender, Macroeconomics, and International Economics, an international network of economists that formed in 1994. The program has two objectives: first, to engage with fellow economists in order to enhance capacity building for research, teaching, policy making and advocacy on gender equitable approaches to macroeconomics, international economics and globalization; and second, to increase knowledge networking on these themes by strengthening the intellectual links among practitioners in networks working on similar issues.

The program is intended for economists, including advanced graduate students in economics, as well as more experienced academics, researchers and those in government. A total of thirty fellows will be admitted to the program. The fellows of the program will be required, at a minimum, to have completed two years of study in an economics Ph.D. program and have passed their qualifying exams, or have its equivalent such as a master's degree in economics. These requirements may be waived only under exceptional circumstances. Funding is available for up to 20 participating fellows, although the course will accommodate a total of 25-30 fellows per year. Priority will be given to applicants from the global South and transition economies.

The application deadline for the course is January 20, 2003. You can find further information on the program at their website [www.genderandmacro.org](http://www.genderandmacro.org). If you have any questions, please contact: [genderandmacro@economics.utah.edu](mailto:genderandmacro@economics.utah.edu).

### **African Social Forum - Second edition**

The Second African Social Forum will take place in Addis Ababa, Ethiopia January 5<sup>th</sup> – 9<sup>th</sup>, 2003.

The African Social Forum surfaced in January 2002, and started fulfilling the objectives that it was entrusted with: laying the foundations of a space of convergence, democratic debates and mutual guidance, on the one hand, and promoting African participation in the world social movement, on the other.

The second Africa Social Forum will focus on understanding the impact of major trends of the neo-liberalism on the African populations, formulating alternatives together and strengthening the African social movement and consolidating, through our contributions, the world social movement. Another Africa Is Possible!

### **Asia Social Forum**

The Asia Social Forum will be held in Hyderabad, India from the 2nd - 7th of January, 2003. The Asian Social Forum is a follow up of the two successful World Social Forum events organized in Porto Alegre and the decision to have regional and thematic events.

The Asian Social Forum (ASF) is an open forum: the only criteria is that the participants be opposed to imperialist globalization as well as religious sectarian violence, and have a commitment to democratic values, plurality and peace. The ASF will work to provide an inspiring space where movements/ organizations/ groups/ individuals / will come in from all over India and Asia to carry the message of the World Social Forum. Organizations in India, Asia and the rest of the world are invited to participate by organizing conferences, seminars and workshops broadly falling under the themes of the ASF.

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