

FROM DOHA TO HONG KONG VIA GENEVA (III)

The Forgotten Dossier: the Killer Patents

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Since the start of this year, countries such as South Africa, India, Kenya and Thailand no longer have the right to manufacture generic medicines which are not covered by a patent. Indeed, as of 31 December, a ten-year period, deemed transitional, for the application to developing countries of the agreement on the trade-related aspects of intellectual property rights (TRIPS), came to an end. These countries can no longer freely copy medicines developed after 1995.

The TRIPS Agreement increases the duration of patents on medicines to twenty years. Prior to this agreement, patents were valid for between five and 15 years according to the country. For twenty years all pharmaceutical companies will be banned from manufacturing generic versions of new molecules. This means that those with a low income will have no access to new therapies. Health is only for those who can afford it.

The TRIPS Agreement is one of the agreements that were negotiated in the Uruguay Round, signed in 1994, and are managed by the World Trade Organisation. The paradox of this agreement is that it is establishing protection while supposedly seeking to combat protectionism. Implemented by an institution according to which free trade, market access, the privatisation of all activities and competition are the *nec plus ultra* of human relations, it protects patent holders. Some of the TRIPS provisions explicitly concern pharmaceutical products - as if a medicine were a commodity; as if the prime purpose of a medicine were that it had to be profitable to pharmaceutical companies; as if a medicine should not be exempt from market rules.

To this, the champions of TRIPS respond that patents and their resultant revenue are essential for the funding of research and development. This is the traditional argument used by the pharmaceutical companies and their lobbies. What they forget to mention is that less than 10% of medical research is devoted to the diseases affecting 90% of the world population. A scant 1% of all new medicines entering the market concern those diseases.

TRIPS has had one immediate consequence - the price of medicines has soared. Rather than trade, it is health which indicates the true level of development of society. 11 million people die each year from infectious diseases owing to lack of access to essential medicines - that is more than 30 000 deaths per day. Two billion human beings have no access to basic health care because it is too expensive. The right to health of the majority is secondary to the profit of the few.

The direct impact of TRIPS was eventually acknowledged at the WTO ministerial conference in Doha in November 2001: the rules on patents are having a strong, direct impact on the price of medicines. Ministers expressed the desire that the TRIPS Agreement '*should not prevent member countries from taking measures to protect public health*', and stated that the TRIPS Agreement should not prevent countries from protecting public health and, in particular, from '*promoting universal access to medicines*'. They hoped that no complaint would be lodged against a country which, having a pharmaceutical production capacity, were to avail itself of the 'compulsory licence' practice (the production of generic medicines without the consent of the patent holder) and authorise the manufacture of low-price quality medicines. Only a few countries are concerned by this: South

Africa, Brazil, India, Kenya and Thailand. As for the vast majority of countries affected by numerous deadly diseases and having no pharmaceutical industry, an agreement signed on 31 August 2003 allows them to use 'parallel imports' (the right to import medicines from the country where they are least expensive, without the authorisation of the patent holder). But this agreement lays down so many conditions as to be impracticable.

Now that the exemptions for southern countries which have a pharmaceutical production capacity have expired, what about the promises made to those who have no production capacity, who totally depend on the former countries and will no longer be able to obtain generic medicines? Patents kill patients.

With the WTO due to hold its 6th ministerial conference in mid-December, we cannot but note that access to essential medicines is still being thwarted by the TRIPS Agreement, in spite of the interpretative texts adopted in 2001 and 2003. On the contrary, we are seeing the systematic negation of these interpretations by rich countries. The latter, each time they negotiate a bilateral free-trade agreement, incorporate provisions which increase patent protection even beyond that afforded by TRIPS. Rather than increase the flexibility of TRIPS in this vital area of access to medicines, the EU, i.e. the 25 governments, including ours, and the US are endeavouring to eliminate it.

What is more, ten years after the entry into force of the TRIPS Agreement, which promised to increase R & D thanks to increased patent protection, we are far from fulfilling that objective. As stated by Dr Karim Laouabdia, one of the heads of the international organisation Doctors without Borders (MSF), *'as far as the needs of developing countries are concerned, promises have not been kept. The patent system is supposed to boost innovation, but there is no mechanism for guiding that innovation. The system is driven by the pursuit of profit'*.

The option for those countries which are unable to produce generic medicines to import them was introduced by the 2003 agreement in the form of a temporary dispensation from TRIPS rules. This dispensation has to be activated by both the importing country and the exporting country, which have to notify the WTO, thereby proving that they fulfil the numerous conditions laid down by the 2003 agreement. However, over the past two years not a single notification has been submitted to the WTO. As MSF notes, *'there is not the slightest evidence that this agreement actually works'*. In other words, no solution has been found to the problem of access to essential medicines. Nothing has changed - on average, 30 000 people continue to die every day because they could not receive the care they needed.

Faced with this tragedy, African countries no longer want a temporary solution which doesn't work. They are calling for the next ministerial conference in Hong Kong to adopt a reform of TRIPS, in order to find a permanent solution and to facilitate the export and import of generic medicines. At the WTO, the group of African countries has tabled a detailed proposal as a basis for discussion and negotiation.

On 25 October, at a meeting of the TRIPS Council at the WTO, the US objected that any amendment to the TRIPS Agreement could not go beyond a technical transposal of the unworkable 2003 agreement. The European Union, together with Australia, Japan, New Zealand and Switzerland, took the same view. However, the African proposal was explicitly supported by Brazil, China, India, Jamaica and the Philippines.

Once again, the WTO cannot hide its true nature - that of an enclosure within which the richest countries do their utmost to dictate their law to the entire planet.

Once again, the European Union, contrary to its generous rhetoric which no longer fools anyone, is not on the side of the weakest. Our 25 governments are supporting a European Commission which is serving only the interests of the pharmaceutical companies, with scant regard for the millions of lives sacrificed on the altar of profit.

Unless there is a decision to amend TRIPS, so that those who need medicines are given access to them, it would be preferable for no decision at all to be taken in Hong Kong. This is the most important thing of all. It is a question of life or death.

P.S.

* Raoul Marc Jennar is researcher at the URFIG and the Fondation Copernic.