

Chapter 4 TRIPS and Health

“The subject is vital, if I may say so, a matter of life and death!”¹

After reading this chapter you will be able to:

- Describe how intellectual property rights can cause an increase in the cost of medicines
- Explain why access to medicines is a human right
- Know how to find out whether your country is planning to adopt or implement stricter trade-related intellectual property rules than those currently in force
- Identify mechanisms that human rights advocates can use to prevent increased cost of medicines in developing countries.

4.1 Why are international property rights in the WTO?

The WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) introduced minimum intellectual property protection standards for all Members. Before TRIPS, many countries had no such protection, or had relatively light protection rules. Before the TRIPS Agreement, international issues regarding intellectual property rights (IPRs) were governed by the World Intellectual Property Organization (WIPO) and the UN Education, Scientific and Cultural Organization (UNESCO). It was only in 1986 that a small group of countries led by the United States (US), the European Union (EU) and Japan succeeded in including IPRs into the multilateral trade negotiations that resulted in the WTO. The shift was initiated to protect the high-tech industries of developed countries from developing country competition, especially from South East Asia. The fact that the WTO Agreement was negotiated as a single package meant that it was easier to persuade developing countries to accept higher IPR standards by promising them trade-offs in agriculture and textiles. Most importantly, including IPRs in the WTO Agreement gave developed countries a strong enforcement tool: the threat of trade sanctions through the DSM. Since the adoption of TRIPS, IP rules have become standard features of trade agreements, including regional and bilateral agreements.

4.2 How does TRIPS affect the right to health?

Prior to the adoption of TRIPS, countries had various approaches to drug patents, suited to their policies and needs, and many did not grant patents for pharmaceutical products. The TRIPS Agreement introduced the obligation on all WTO Members to provide patents for pharmaceuticals, and imposes a minimum standard of IPRs on Members, whether they are developed or developing countries.

A number of TRIPS provisions affect access to affordable medicines, a crucial part of the right to health and the right to life: the rules oblige states to grant patent owners at least twenty years of exclusive commercial rights, allowing them to have monopoly control over making, using or selling their inventions. The effect is that patent owners can keep prices of patented drugs artificially high, putting them out of reach of many, particularly the most poor and vulnerable people. Thus TRIPS has an impact on access to affordable medicines, particularly in the context of epidemics such as HIV/AIDS.

TRIPS gave different deadlines for implementation according to countries' level of development. Most developing countries implemented TRIPS in 2000, but LDCs are allowed to delay implementation until 2006. The Doha Declaration (see section 4.3 below) extends this delay in

¹ *Statement of India at the TRIPS Council Special Session on TRIPS and Public Health, 20 June 2001, [www.commerce.nic.in/job\(01\)97A9.htm](http://www.commerce.nic.in/job(01)97A9.htm)*

Implementation of TRIPS in India

India currently produces generic versions of the main antiretroviral drugs (ARVs) to treat HIV/AIDS. These drugs will not be affected by the introduction of product patents in January 2005, as they were registered before 1995. However, there are a few new generation ARV drugs currently not being produced in India. If these drugs are in the mailbox, then access to them after the implementation of TRIPS could be a problem.

Mr. K. M. Gopakumar, *Affordable Medicines and Treatment Campaign (AMTC) email interview, 9 July 2004.*

relation to patents on medicines to 2016. The TRIPS agreement also grants a delay on patent rules for countries that previously did not have patents on products such as drug molecules.

India, the largest producer of generic drugs in the world, benefited from the delay: it has until January 2005 to grant patent protection not only to new drugs, but also to drugs invented since 1995. Drugs invented since 1995 were not patented in India because law did not require it, but TRIPS required patent applications to be stored in a so-called “mailbox” so that they can be enforced as soon as India’s law so requires. Introducing patent protection will have dramatic effects: for instance, a study of the impact of TRIPS in India concluded that “by far, the biggest effects of TRIPS concern Indian consumers, for whom we estimate substantial welfare losses.”² It is therefore crucial at this stage that India make the most of the policy flexibilities permitted by the Doha Declaration to ensure that the poor have access to low-cost drugs.

Nevertheless, many developing countries are coming under pressure from richer countries and private corporations – through trade-related technical assistance and bilateral trade agreements (discussed in section 4.5 below) – to implement TRIPS in a way that goes beyond the requirements of WTO rules, and that gives strict protection to intellectual property (IP). Strict IP rules can undermine a State’s obligation to respect, protect and fulfil the right to health and the right to life by making medicines more expensive. In order to ensure that trade-related IP rules do not undermine the enjoyment of human rights, it is essential for countries to use the flexibility that the TRIPS Agreement provides (and the Doha Declaration reaffirms).

Moreover, implementing the TRIPS Agreement has been a difficult and costly process for many developing countries, particularly for those that did not provide patent protection previously. Setting up a governmental intellectual property office is expensive, with high costs involved in training patent examiners, for instance.

Members do have mechanisms to ensure that the cost of drugs is low, the main ones being compulsory licensing and parallel imports:

- A compulsory licence removes the exclusive right of a patent owner. It allows a government to issue a licence permitting the manufacture, use or sale of a drug without the consent of the patent owner, as long as the patent owner is paid for the fact that his or her patent is used (as described in the case of Malaysia). By making equivalent generic versions of patented drugs available, a compulsory licence can have the effect of reducing the price of drugs overall.
- Parallel imports can achieve a similar result by allowing the government to grant a licence for the import of cheaper versions of a patented drug. Parallel import is not explicitly mentioned in TRIPS: the absence of regulation thus gives countries the freedom to decide their own regimes.

By permitting different brands of the same drug to be available in the same market, both compulsory licensing and parallel imports create competition, which usually leads to a reduction of prices.

The TRIPS issue is one of the most visible in the debate on human rights and the WTO. It has given rise to an international campaign on trade and health that has brought together civil society groups working on different issues. Furthermore, it has resulted in an unprecedented political commitment by WTO Members, embodied in the Doha Declaration on TRIPS and Public Health 2001, which elevated the protection of public health to the international trade agenda.³

² Shubham Chaudhuri, Penelope K. Goldberg and Panle Jia, *The Effects of Extending Intellectual Property Rights Protection to Developing Countries: A Case Study of the Indian Pharmaceutical Market*, National Bureau of Economic Research Working Paper 10159, 2003.

³ WTO, *Doha Ministerial Declaration on the TRIPS Agreement and Public Health*, WT/MIN(01)/DEC/2, 14 November 2001.

Malaysia's compulsory licence for HIV/AIDS drugs

Malaysia issued a compulsory licence for government use in October 2003. The authorization allows a Malaysian company to exploit patents on four antiretroviral drugs (ARV) belonging to Bristol Myers Squibb and GlaxoSmithKline. The licence will enable Malaysian public hospitals to be supplied with generic HIV/AIDS drugs from CIPLA, an Indian generic drug manufacturer, whose prices are lower than the patent owners'. The licence is valid for two years from 1 November 2003.

Minister of Domestic Trade and Consumer Affairs of Malaysia, *Authorisation for Exploitation of Patented Invention*, Translation of Original, 29 October 2003, www.cptech.org/ip/health/c/malaysia/arv-license.html

See also James Love, *Comments on Malaysia Compulsory License*, IP-health digest, 3 March 2004, <http://lists.essential.org/pipermail/ip-health/2004-March/006003.html>.

4.3 What is the Doha Declaration on TRIPS and Public Health?

The Doha Declaration on TRIPS and Public Health of 14 November 2001 is a landmark political commitment reaffirming that all WTO Members can use all the flexibilities provided by the TRIPS Agreement to ensure access to affordable medicines. The adoption of the text was a crucial achievement for developing countries and civil society alike that fought tooth and nail to ensure that bilateral trade pressures and threats of litigation would cease being wielded to bully countries into not using the flexibilities. It most notably vindicated South Africa and Brazil, who faced aborted litigation at the national level (South Africa) and in the WTO (Brazil) for using parallel imports on the one hand and compulsory licensing on the other to reduce the cost of HIV/AIDS treatment.

The Doha Declaration stresses that the TRIPS Agreement “can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, access to medicines for all.” Moreover, it enumerates a non-exhaustive list of policy flexibilities permitted by TRIPS, including each country’s freedom to determine the grounds for issuing a compulsory licence and to decide the regime of parallel imports. Finally, this declaration is not only a political statement, but due to its nature as a WTO Ministerial Declaration it can be considered as an authoritative interpretation of the TRIPS Agreement.⁴ It therefore emerges as a crucial tool for the protection of the right to health, especially in developing countries.

You can read the Doha Declaration on TRIPS and Public Health on the web at www.commerce.nic.in/wtotrips3.htm or via www.wto.org/english/tratop_e/trips_e/public_health_e.htm

⁴ Carlos M. Correa, WHO, *Implications of the Doha Declaration on TRIPS and Public Health*, Health Economics and Drugs EDM Series No.12, June 2002.

Flexibility in Sri Lanka

When Sri Lanka introduced new patent legislation in 2003 the law failed to make the most of the policy flexibilities for compulsory licensing and parallel imports permitted by the Doha Declaration. Three petitioners challenged the bill in the Supreme Court arguing that it violated fundamental rights and contravened the constitution. The Supreme Court determined that there was a violation and referred the bill back to the National Intellectual Property Office for re-drafting. The Ministry of Health requested HAI-AP to organize a national seminar on TRIPS and Public Health and advise on appropriate compulsory licensing and parallel import provisions. The Seminar was convened in July 2003, and participants unanimously adopted the draft provisions on compulsory licensing and parallel imports. These were sent to the National Intellectual Property Office. The Amended Bill included these provisions. This was passed by the Parliament in November 2003.

Dr. K. Balasubramaniam, *Health Action International-Asia Pacific (HAI-AP) email interview, 6 July 2004*

Case study: the landmark Thai didanosine case

In January 2004 Bristol-Myers Squibb (BMS), a US pharmaceutical group, dropped a long-standing court battle against two Thai people living with HIV/AIDS over the patent for didanosine, an HIV/AIDS treatment drug. BMS decided to withdraw its appeal and give up its exclusive right to produce didanosine in Thailand claiming that it had decided to “dedicate the patent to the people of Thailand.”

In October 2002 the Thai Central Intellectual Property and International Trade Court issued a landmark ruling stating that patients have the right to challenge a patent because the “lack of access to medicines due to high prices prejudices the human rights of patients to proper medical treatment.” In coming to this conclusion, the Thai court explicitly referred to the Doha Declaration on TRIPS and Public Health.

The case began in 1999 when the Thai Government Pharmaceutical Organization (GPO) sought a compulsory licence from the Thai Department of Intellectual Property in order to produce a generic version of didanosine for the treatment 700,000 Thai HIV/AIDS patients. This request was supported by a number of local NGOs, the Thai Network for People living with HIV/AIDS (TNP+) and Médecins Sans Frontières (MSF). However, following thinly veiled threats of trade sanctions against Thailand from the US government, the Thai Commerce Ministry refused the licence. In May 2001 the Thai Aids Access Foundation, together with two people living with HIV/AIDS, filed the lawsuit against the BMS patent.

The victory in obtaining this ruling demonstrates that the right to health and the right to life can be protected by challenging patents and not yielding to threats from industrialized countries. In practical terms, the ruling means that GPO should now be able to produce a generic formula of didanosine at considerable cost savings to HIV/AIDS patients.

Nathan Ford, David Wilson, Onanong Bunjumngong and Tido von Schoen Angerer, *The Role of Civil Society in Protecting Public Health over Commercial Interests: Lessons from Thailand*, *The Lancet*, Vol. 363, February 2004.

4.4 What are “Paragraph 6” and the “30 August Decision”?

The Doha Declaration is an excellent example of how a human rights issue can be raised in the trade context and obtain the support of key developing countries.

The Doha Declaration on TRIPS and Public Health, in paragraph 6 of the text, called for the need to find a solution to the fact that countries without drug manufacturing capacity could not fully benefit from compulsory licensing. This is due to TRIPS stating that drugs produced under compulsory licence be “predominantly for the supply of the domestic market.” This could have limited the availability of generic drugs for export, meaning that countries unable to make the drugs themselves could lose out on low prices.

In August 2003, after two years of tough negotiations, WTO Members agreed to waive the TRIPS limit on the export of drugs under compulsory licence.⁵ Although the mechanism in the 30 August Decision can already be implemented, a permanent amendment is being negotiated in the TRIPS Council. To ensure that the mechanism is only used “in good faith to protect public health,” a number of countries have agreed to forego or limit their right to use the solution. For instance, several countries have decided to limit their use as importers to situations of “national emergency or other circumstances of extreme urgency.” Asian WTO Members having done so include Hong Kong, China, Korea, Macao, Singapore and Chinese Taipei.

The 30 August Decision sets out a detailed import/export compulsory licensing mechanism that goes beyond the TRIPS main compulsory licensing criteria. In order for a country to qualify as an importer it either has to be an LDC or demonstrate that it has insufficient or no pharmaceutical manufacturing capacity. Exporting countries, on the other hand, are not subject to qualifying criteria. For the mechanism to work, two compulsory licences are needed: one in the importing country and one in the exporting country. Finally, there are a number of other criteria that need to be fulfilled for the licence to be valid, such as notification to the TRIPS Council, posting on a dedicated website⁶ and the establishment of measures to avoid cheap drugs produced for low-income countries being sold in rich country markets.

⁵ WTO, *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, Decision of the General Council of 30 August 2003, WT/L/540, 1 September 2003, www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm

⁶ WTO, TRIPS and Public Health dedicated web-page for notifications: www.wto.org/english/tratop_e/trips_e/public_health_e.htm

Cambodia's accession to the WTO: Doha or no Doha?

When the Cambodian Minister of Commerce, H.E. Cham Prasidh, made his accession speech at the Cancun Ministerial, he expressly referred to an Oxfam briefing outlining TRIPS-plus concerns and said “we believe the package of concessions and commitments that we have to accept certainly goes beyond what is commensurate with the level of a LDC like Cambodia.”* In response, a high-level WTO official involved with Cambodia's accession stated that “the terms of the accession do not preclude access to benefits under the Doha Declaration on the TRIPS Agreement and Public Health to Cambodia as an LDC” (implying that Cambodia would have until 2016 to comply with pharmaceutical patent provisions of TRIPS). According to Céline Charveriat, of Oxfam International, Cambodia could use this statement to defend itself if it is threatened with litigation for using the delays granted by the Doha Declaration.

* www.moc.gov.kh/speeches/cham_prasidh/Accession_%WTO.htm

For the 30 August Decision to be used, WTO Members need first to pass implementing legislation. In May 2004, both Canada⁷ and Norway⁸ passed legislation to allow them to export drugs under the mechanism. So far, no developing country has yet passed such legislation. Although India did include implementing legislation in the Patent Amendment Bill 2003, the proposal lapsed due to elections and has to be re-tabled. It is imperative that India pass this legislation as soon possible, to ensure that once it has to implement the patent rules of TRIPS in 2005, it will still be able to export Indian-produced generic drugs to other developing countries.

4.5 How do accession packages, bilateral and regional trade agreements threaten health?

The TRIPS Agreement sets *minimum* levels of IP protection that governments must respect. Nevertheless, many developing countries have been pressurized into applying stricter IPR standards (termed TRIPS-plus standards). WTO accession negotiations are one of the situations in which developing countries have had to agree to TRIPS-plus provisions. Cambodia, for example, was required to forego the 2016 implementation delay granted to all LDCs by the Doha Declaration and accept a 2007 deadline. Although WTO Members have declared that they will not initiate a WTO dispute with Cambodia if it uses the full delay, doubts remain.⁹ Hence, there is a risk that Lao PDR, Samoa, Tonga, Viet Nam and other countries currently negotiating accession, will face similar TRIPS-plus demands with potentially dramatic effects on access to affordable medicines.

Yet the most alarming developments in relation to IP rules and access to medicines have been happening outside the WTO: bilateral and regional trade agreements, particularly pushed by the US, are gradually undermining the flexibilities reaffirmed by the Doha Declaration on TRIPS and Public Health.¹⁰ In the Asian region, the US has already concluded a trade agreement with Singapore; has begun in June 2004 negotiations for a US-Thailand Free Trade Agreement (FTA);

⁷ Canada, Patent Bill C-9, An Act to Amend the Patent Act and Food and Drugs Act, 4 May 2004: www.aidslaw.ca/Maincontent/issues/cts/patent-amend.htm

⁸ Norway, Regulations amending the Patent Regulations (in accordance with the decision of the WTO General Council of 30 August 2003, Paragraphs 1(b) and 2(a), 14 May 2004: <http://odin.dep.no/ud/engelsk/p2500832/p30003923/032121-290002/dok-bn.html>

⁹ Oxfam International, *Cambodia's Accession to the WTO, How the law of the jungle is applied to one of the world's poorest countries*, 2003.

¹⁰ MSF, *Access to Medicines at Risk Across the Globe: What to Watch Out For in Free Trade Agreements with the United States*, Briefing Note, May 2004.

TRIPS-plus threats in US-Thailand FTA

TRIPS-plus provisions in the proposed Thailand agreement could undermine Thailand's ability to provide generic ARV drugs to the 96,000 people living with HIV/AIDS who need treatment. The most threatening provisions could include: limitations on compulsory licensing, powers to patent holders allowing them to block parallel imports, extra powers to regulatory drug authorities over the licensing of generics and extra protection of data that will delay the marketing of generics, and less opportunity to challenge a patent, thereby undermining the precedent set by the Thai didanosine case.

Oxfam, *Free Trade Agreement Between USA and Thailand Threatens Access to HIV/AIDS*, Briefing Note, July 2004.

and is planning an agreement with Indonesia. Strict IP rules achieved in previous US bilateral trade agreements are used as benchmarks for future negotiations and risk being included in the Thailand agreement.¹¹ Thai civil society has been very active in stressing the need to respect human rights in the planned US-Thai trade agreement. Thai and other groups have also denounced the lack of transparency of the negotiations and the absence of public participation as inconsistent with human rights.¹²

See Box 4.1 for the important role human rights advocates can play by turning to their trade negotiators, parliamentarians and others to ensure that health is not undermined by trade agreements.

Box 4.1 How can I find out if my country is planning to implement TRIPS-plus rules?

There is no clear-cut way

Médecins sans frontières (MSF) has a lot of information and IP-health does warn periodically about planned changes to IP rules, but it's best to look at it on a case by case basis. A first source for information is to contact your country's trade ministry, or the office responsible for IP issues. You could also contact a local MSF office or post a query on the IP-health listserve. (For contact information see section 4.7 below; and Chapter 8.3 for national trade ministries).

Questions to consider are:

- *is my country negotiating or planning to negotiate a trade agreement with the US or the EU?* If this is the case, then there is a risk of TRIPS-plus rules.
- *is my country planning to join the WTO?* If so, it will probably be asked to make TRIPS-plus commitments in order to be allowed to join.
- *is my country reforming its IP laws? Where is the technical assistance coming from?* There is a high risk that the agencies providing technical assistance are encouraging including TRIPS-plus rules in the country's IP laws.
- *is my country a WTO member and an LDC?* If it is, and is reforming its IP laws in advance of the 2006 and 2016 deadlines granted to LDCs, your country is already implementing changes not required by TRIPS. More importantly, these reforms could be introducing TRIPS-plus rules.

3D → Trade – Human Rights – Equitable Economy, August 2004.

4.6 What human rights mechanisms can limit the adverse effects of TRIPS?

Human rights rules and mechanisms can support efforts to ensure that TRIPS-plus rules do not undermine the flexibilities needed to reduce the price of drugs. In countries that have ratified relevant human rights instruments, advocates can use human rights law in national court challenges, and as lobbying tools in campaigns to ensure the government does not apply human rights-inconsistent TRIPS-plus rules.

Several international human rights procedures can also be useful:

Human rights treaty supervisory process

NGOs have the opportunity to submit information in these processes. UN human rights treaty monitoring bodies (treaty bodies) often base their recommendations on NGO information. Treaty body recommendations can provide authoritative arguments to national and regional campaigns on access to medicines, and have been so used (see Boxes 4.2 and 4.3).

¹¹ See for example the US-Chile FTA, US-Central American Free Trade Agreement (CAFTA), US-Australia FTA, US-Singapore FTA, in Oxfam, *Undermining Access to Medicines: Comparison of Five US FTAs*, Briefing Note, 2004.

¹² Letter to President George W. Bush, FTA Watch Special ref.04/2004, 28 June 2004, www.ftawatch.org

Box 4.2 Access to affordable medicines: a human right

Access to affordable medicines is a critical aspect of human rights which states are obliged to respect, including by ensuring they do so in any rules they agree to in the field of trade.

- The obligation to ensure everyone's access to affordable medicines without discrimination is an intrinsic part of the right to the highest attainable standard of health.
Article 12 ICESCR, as interpreted by CESCR General Comment No. 14 (2000).
- The same obligation is also essential for the child's right to health.
Article 24 CRC and CRC General Comment No. 3 on HIV/AIDS, (2003).
- Access to medicines is critical to protect the right to life, particularly in the context of endemic diseases like HIV/AIDS.
Article 6 ICCPR, as interpreted by HRC General Comment No. 6 (1982)

For an explanation of General Comments, see Chapter 5.6

See Chapter 8.3 to find out which human rights treaties your country has ratified.

United Nations Commission on Human Rights

Various procedures of this body can also be used to support efforts to ensure that IP rules do not undermine human rights. One of the main mechanisms is the Special Rapporteur on the Right to Health, whose mandate includes making recommendations on appropriate measures to promote and protect the right to health, and receiving individual complaints about violations of this right.

In 2003 the Special Rapporteur, Paul Hunt, visited the WTO in order to investigate the impact of trade rules on the right to health.¹³

Box 4.3 Examples of how to use human rights procedures

One NGO (3D → Trade – Human Rights – Equitable Economy) submitted briefings to UN human rights treaty supervisory bodies on the impact of trade-related intellectual property rights on access to medicines and human rights. In response, the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC) and the Human Rights Committee (HRC) made strong recommendations on the importance of ensuring that trade rules do not undermine access to medicines. These recommendations have been used in national access-to-medicines campaigns.

The CESCR's recommendations relating to Ecuador explicitly encouraged the "extensive use of the flexibility clauses permitted in the WTO TRIPS agreement in order to ensure access to generic medicine and more broadly the enjoyment of the right to health for everyone in Ecuador." Moreover, it strongly recommended that human rights obligations should be taken into account in all aspects of negotiations for regional trade agreements. These recommendations are being used in 2004 by a coalition of Ecuadorian civil society groups to lobby against a Presidential decree that contained TRIPS-plus standards and to ask for increased transparency and public participation in the US-Ecuador bilateral trade negotiations.

Committee on Economic, Social and Cultural Rights, *Concluding Observations*, Ecuador, E/C.12/1/Add.100, May 2004, paragraphs 55 and 56, available via www.3dthree.org/en/page.php?IDpage=14&IDcat=4

CDES, *Cuanto cuesta el derecho a la salud en Ecuador? Carta abierta al Presidente de la Republica de Ecuador*, 9 July 2004

¹³ Commission on Human Rights, *Report of the Special Rapporteur on the Right to Health, Paul Hunt, Mission to the World Trade Organization*, E/CN.4/2004/49/Add.1, March 2004
<http://ods-dds-ny.un.org/doc/UNDOC/GEN/G04/113/90/PDF/G0411390.pdf?OpenElement>

The terms and conditions of membership are bad for a very poor country....I fear that WTO membership might have negative effects concerning the enjoyment of human rights.

Peter Leuprecht, UN special envoy on human rights in Cambodia *in Associated Press, Joining WTO could hurt human rights in Cambodia, 19 April 2004.*

Human rights advocates in the Asian region and elsewhere should draw their concerns about access to medicines and health to the attention of the relevant Special Rapporteurs. They should, for instance, encourage the Special Rapporteur on the Right to Health to take up their concerns with governments or in his annual reports to the Commission on Human Rights and the UN General Assembly.

The Special Rapporteur's recommendations provide an excellent guide to a rights-based approach to trade rules. In 2004, following a visit to Peru, this Rapporteur issued a warning stressing that the Free Trade Agreement (FTA) currently under negotiation between the US and Andean countries must not ignore international public health safeguards under the WTO, adding that he was "deeply concerned that the US-Peru trade agreement will water-down internationally agreed health safeguards, leading to higher prices for essential drugs that millions of Peruvians will find unaffordable."

Country Rapporteurs can also raise human rights concerns about the human rights impacts of WTO rules. The Special Representative for Human Rights in Cambodia, Peter Leuprecht, for instance, expressed his concern about the human rights impacts of the terms of Cambodia's WTO accession.

4.7 Actions, contacts and further reading

Some suggested actions

- Ask your government office responsible for intellectual property if it has issued a compulsory licence or used parallel imports to reduce the price of medicines.
- Ask your parliamentarians to vote against any TRIPS-plus rules that could undermine your country's ability to facilitate access to medicines.
- Ensure your health ministry is aware of the impacts of trade-related intellectual property rights on the right to health and the right to life.
- Ensure that your ministries responsible for trade and for intellectual property rights are aware of the State's human rights obligations relating to health, transparency and participation in decision-making.
- Encourage your government to assess the impact of intellectual property rules on access to medicines and human rights before beginning negotiations for WTO accession or bilateral/regional trade agreements that may contain TRIPS-plus rules.
- Ask your trade negotiators if they are aware that if they negotiate TRIPS-plus rules in trade agreements they could be violating their country's human rights obligations.
- Lobby your government to use the policy flexibilities allowed by TRIPS and reaffirmed by the Doha Declaration on TRIPS and Public Health, particularly compulsory licensing and parallel imports, to obtain cheaper generic medicines.
- Lobby your government to pass legislation implementing the 30 August Decision to suit your country's needs in generic drugs.
- Participate in regional and international campaigns on access to affordable medicines and ensure that the right to health and the right to life of the most vulnerable groups are always taken into account.
- Submit reports to the United Nations human rights treaty monitoring bodies (see Chapter 7.1 for more details).
- Submit to the UN Special Rapporteur on the Right to Health cases where trade-related IP rules have hindered access to medicine (see Chapter 7.1 for more details).

Useful contacts

The main NGOs and coalitions that have initiated and participated in international, regional and national campaigns in Asia on the impact of trade-related intellectual property rules on access to medicines are:

International

- **Consumer Project on Technology (CPTech):** www.cptech.org/ip/health
- **Health GAP:** www.healthgap.org
- **Health Action International – Asia Pacific:** www.haiap.org
- **Médecins sans frontières (MSF):** www.accessmed-msf.org¹⁴
- **Oxfam International:** www.oxfam.org/eng/campaigns_camp_cutcost.htm
- **Third World Network:** www.twinside.org.sg

Listserves

IP-health: <http://lists.essential.org/mailman/listinfo/ip-health> – Discussions of Intellectual Property and Health Care

India

Affordable Medicines and Treatment Campaign (AMTC): coalition of over 35 organizations campaigning nationally to ensure that IP rules do not prevent access to affordable medicines and the full realisation of the right to health:
www.lawyerscollective.org/lc-hiv-aids/activities/amtc.htm

Thailand

- **FTA Watch:** coalition of NGOs lobbying against the US-Thailand Free Trade Agreement: www.ftawatch.org
- **Thai Foundation for Consumers:** provides information to patient groups about patent protection and access to medicines: www.consumerthai.org/about2.html
- **Thai NGO Coalition on AIDS (TNCA):** part of a large international network of HIV/AIDS activists working on access to affordable medicines.
- **Thai Network for People Living with HIV/AIDS (TNP+):** lobbies and coordinates actions in favour of HIV/AIDS patients.

Further reading

Carlos M. Correa, *Implications of the Doha Declaration on TRIPS and Public Health*, WHO Health Economics and Drugs, EDM Series No.12, June 2002, www.who.int/medicines/library/par/who-edm-par-2002-3/doha-implications.doc

Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) The right to the highest attainable standard of health*, 2000, www.ohchr.org/english/bodies/cescr/comments.htm

Philippe Cullet, “Patents and Medicines: the Relationship between TRIPS and the Human Right to Health”, 79 (1) *International Affairs*, 2003

International Centre for Trade and Sustainable Development (ICTSD) and UN Conference on Trade and Development (UNCTAD), *Resource Book on TRIPS and Development: An authoritative and practical guide to the TRIPS Agreement*, 2004, www.iprsonline.org/unctadictsd/ResourceBookIndex.htm

¹⁴ The MSF Campaign for Access to Essential Medicines is pushing to lower the prices of existing medicines, to bring abandoned drugs back into production, to stimulate research and development for diseases that primarily affect the poor, and to overcome other barriers to access.

Médecins sans frontières, *Access to Medicines at Risk Across the Globe: What to Watch Out For in Free Trade Agreements with the United States*, Briefing Note, 2004,
www.accessmed-msf.org/documents/ftabriefingenglish.pdf

Sisule Musungu, Susan Villanueva & Roxana Blasetti, South Centre, *Utilizing TRIPS Flexibilities for Public Health Protection Through South-South Regional Frameworks*, South Centre Perspectives, April 2004,
www.southcentre.org/publications/flexibilities/flexibilities.pdf

Third World Network, *TRIPS, Drugs and Public Health: Issues and Proposals*, Intellectual Property Series, September 2001

WHO/WTO, *WTO Agreements & Public Health, A joint study by the WHO and WTO Secretariat*, 2002,
www.who.int/media/homepage/en/who_wto_e.pdf