

South American Ministers Vow to Protect Access to Medicines

By Martin Khor | June 15, 2006

Editor's Note: The following article by Martin Khor, director of the Third World Network, describes a recent declaration by ten South American countries to protect access to life-saving medicines from expanded patent barriers. The declaration represents an important move to establish a united position in the face of U.S. and other developed country pressures to provide extended patent exclusivity to transnational pharmaceutical companies. Unfortunately, the declaration must be taken with a grain of salt, since several of the countries that signed on—notably Peru and Colombia—have already acceded to these measures in Free Trade Agreement negotiations with the United States. The hope is that a unified platform will strengthen each nation's leverage to avoid measures that threaten public health in future trade negotiations. LC

The Ministers of Health of ten South American countries have issued a joint declaration on intellectual property committing themselves to avoid “TRIPS plus” provisions—clauses that are stricter than the “Trade-Related Intellectual Property” measures stipulated by the World Trade Organization (WTO)—in bilateral and regional trade agreements. They also agreed to facilitate the use of compulsory licensing and parallel importing and to avoid broadening the scope of patentability and the extension of patentable areas.

Explaining the rationale for their commitments, the Ministers said there was a significant increase in drug prices which affects government programs and consumers. They attributed this as a consequence of the patent system which affects health products that are essential for the prevention and treatment of serious public health conditions, leading to the worsening of the problem of access to essential drugs.

They pledged to continue regional dialogue on Intellectual Property Rights (IPRs) and access to drugs, leading to measures “that ensure the supremacy of the public interest over commercial concerns.”

The Declaration of Ministers of South America over Intellectual Property, Access to Medicines, and Public Health was adopted in Geneva on May 23 by the Health Ministers of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, and Venezuela.

The ministers met on the sidelines of the World Health Assembly (WHA) meeting the same week. Intellectual property rights is a major agenda item at the WHA, which will discuss the report of the World Health Organization (WHO) Commission on Intellectual

Property, Innovation, and Health, and negotiate two resolutions relating to IPRs and health-related research and development.

The draft resolutions are strongly supported by developing countries, while some developed countries have been opposing many parts of the drafts.

The South American Ministers' Declaration said that access to medicines and critical raw materials is an integral part of the right to health, which is a basic human right of every individual and a fundamental prerequisite that governments have a duty to ensure.

Medicines and critical raw materials are key in the healthcare of people. Nonetheless, large populations, particularly people in developing countries, lack or have very limited access to these health tools.

The provision of patents in the pharmaceutical sector has gained increased relevance in the region since the enforcement of the World Trade Organization's TRIPS Agreement.

The Ministers said they are aware of the soaring burden of diseases and conditions that disproportionately



affect their countries, and particularly those illnesses that mostly affect women and children, as well as of the health problems that are emerging or re-emerging, including neglected and non-communicable diseases.

Significant price increase is being recorded in the area of government programs related to pharmaceuticals and in the direct costs to consumers, as well as in the market prices, said the Declaration. It added that this is a consequence of the patent system which affects health products that are essential for the prevention and/or the treatment of serious public health conditions, leading to a deterioration of access to essential drugs.

A growing concern is emerging globally, made explicit in several Resolutions and Declarations by international and intergovernmental bodies, in relation to governments' responsibility to grant access to essential medicines and tools to respond to public health needs.

The Ministers said their countries have in different ways adopted all the flexibilities and safeguards in their national legislations, as provided by the TRIPS Agreement and as reiterated in the Doha Declaration on TRIPS and Public Health.

They added that a growing concern is emerging globally, made explicit in several Resolutions and Declarations by international and intergovernmental bodies, in relation to governments' responsibility to grant access to essential medicines and tools to respond to public health needs.

Both in the Andean countries' group and in MERCOSUR, Ministers of Health have developed their work on the issue of access to essential medicines, thereby considering aspects of intellectual property and public health.

The Declaration said a continued dialogue must be fostered at the regional level concerning the impact of intellectual protection on access to drugs, leading to the adoption of concerted measures in order to ensure the supremacy of the public interest over commercial concerns.

In the action part of their Declaration, the Ministers declared their commitment to undertake seven sets of actions.

First, they committed to promote the implementation of the Doha Declaration on TRIPS and Public Health in their own countries (and particularly the decision of the TRIPS Council, Decision IP/C/W/405, dated 30/08/2003), in relation to the provisions regulating paragraph six of the Declaration, including the granting of compulsory licenses and use of parallel importing mechanisms.

Second, they committed to promote public awareness about the importance of IPRs and Public Health in terms of the successful implementation of the safeguards and flexibilities included both in the TRIPS agreement and in the Doha Declaration.

Third, they committed to strengthen international cooperation initiatives seeking technological capacity by means of (a) promotion of strategic alliances for technology transfer; (b) promotion of strategic alliances for the development of science, technology, and innovation; and (c) creation of a Technical Assistance Network for their countries, to be limited to issues of intellectual property that are relevant to health.

Fourth, they committed to maintaining the flexibilities provided in the TRIPS Agreement in bilateral and regional agreements, while seeking to (a) facilitate the use of compulsory licenses, parallel importing, and "Bolar exceptions;" (b) avoid the broadening of the

scope of patentability and the extension of patentable areas (for example: therapeutic methods, plants, and animals), and second uses; and (c) avoid the linkage between the granting of patents and the granting of marketing approval, in addition to avoiding any other clause that may include “TRIPS plus” arrangements.

The process of marketing approval of drugs is undertaken by the health authorities, and the process usually involves safety and efficacy requirements; however there have been pressures by the United States in negotiations on bilateral trade agreements that marketing approval for generic versions of drugs be denied if there are branded versions of the drugs that have been granted patents.

Fifth, they committed to seek the active role of their Ministries of Health in the negotiation of bilateral trade agreements, in the negotiation among regional groups as well as in the process of modification, updating, and consolidation of national intellectual property rights norms, by means of (a) affirming the needs of the health sector with technical supports, based on the Doha Declaration on TRIPS and Public Health, and the UN Millennium Declaration and (b) training health professionals in the domain of IPRs, including their current and future repercussions with regard to access to essential medicines.

Sixth, they committed to promote and support the continued international dialogue on the impact of patent protection on access to essential medicines and critical raw materials, by means of research initiatives and exchanges of experiences.

Seventh, they recommended the promotion of studies to monitor drug prices and the effects of the TRIPS Agreement in the area of public health in their countries, with the aim of identifying alternatives to the current system that may contribute to the promotion of innovation and the transfer of technology, while favoring social appropriation at affordable cost.

Martin Khor is an economist and director of the Third World Network, based in Penang, Malaysia. He has been covering trade negotiations in Geneva. The Third World Network can be found on line at: www.twinside.org.sg.

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“US-Peru FTA: A Free Trade Agreement Made to Order for the Pharmaceutical Industry”

Accion Internacional para la Salud (AIS)

<http://www.aislac.org/pdf/noticias/2006/AISLACanalysisUS-Peru-FTA.pdf>

Tratado de libre Comercio entre Estados Unidos y Peru

Ariela Ruiz Caro

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