

Oxfam reports show adverse health impact of drug patents on developing countries

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3 March 2001

A series of recent reports on pharmaceutical drugs in the third world by the British charity Oxfam highlight the adverse health impact patent laws are having on developing countries. In the drive to maintain and increase their huge profits, Western drug companies are putting vital medicines beyond the reach of a growing and vast proportion of the world's population.

The 1994 World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) established patent protection for a minimum of 20 years in all fields of technology, including medicine. Developing countries were given until 2000, and Least Developed Countries (LDCs) until 2006 to bring their national legislation into line with WTO rules. All countries have to offer protection on drugs for which patents were filed after 1995.

The WTO rules are complex and appear to permit some exceptions, with countries able to “adopt measures necessary to protect public health and nutrition.” This is supposed to allow the granting of “compulsory licences” for the production of vital drugs. It is also supposed to allow “parallel importing” of patented drugs, i.e. their purchase from whoever sells them the cheapest. As Oxfam explains, the difficulty is being able to utilise the rules permitting exceptions. Most developing countries do not have their own pharmaceutical industry capable of producing on a scale to bring down drug prices. They are only allowed to import cheap “generic” drugs (copies of expensive drugs patented by Western companies), usually produced in countries such as India, Brazil and Thailand, if a compulsory licence has been issued in the exporting country. Even in this case, the TRIPS agreement specifies that a compulsory license can only be issued for “predominantly” domestic needs.

What is more, compulsory licensing can only be obtained after efforts have been made to obtain a regular licence from the patent holder on commercial terms, and if the patent holder is compensated. The result of the WTO rules effectively means, “Governments will no longer be permitted to allow local companies to produce, market, and

export copies of patented drugs.”

Oxfam give a range of examples of the staggering differences in price between patented and generic drugs. Zantac, used to treat gastric ulcers, costs between 15 and 50 times more in the US and Europe than its generic version made in India. When WTO rules are applied in India, drug prices could rise by an average of 250 percent as a result of patenting.

If a country could import the drug fluconazole—used in the treatment of cryptococcal meningitis, an infection associated with AIDS—from Thailand, the annual cost of treatment would be \$104. However, Pfizer, the company owning the patent on the drug, charges \$3,000 for an annual course of treatment and is applying pressure through the WTO to stop Thailand exporting the drug.

Oxfam refutes the argument used by defenders of the WTO agreement that the impact will be minimal in the “Third World,” since most diseases there are long-standing and can be treated using unpatented drugs.

Firstly, there are millions of AIDS sufferers in Africa and the developing countries, with no possibility of affording the triple combination AIDS drugs that are covered by patents. Secondly, Oxfam point to the vast increase of new strains of diseases, including malaria and tuberculosis, which can only be treated by recently developed patented drugs. For example, a World Health Organisation (WHO) study has shown that in the case of pneumonia, which kills 3.5 million people annually, medications that were formerly effective now fail in 70 percent of cases because of drug resistance. A new range of antibiotics is being patented that will be unaffordable in developing countries.

To make sure that the poorer countries do not find ways of using compulsory licensing or parallel importing to avoid WTO rules, the major pharmaceutical companies are using what Oxfam describes as “armies of lawyers” to press their case. Pointing to the vast economic power of transnational corporations, Oxfam cites Pfizer's expected earnings of \$31bn for 2000, a greater income than the Gross Domestic Product of 115 developing countries.

In 1997, the South African government passed a law sanctioning the use of compulsory purchasing and parallel importing for AIDS drugs and other medicines. This month, a court case begins in which 40 pharmaceutical companies are mounting a legal challenge to the law.

The United States government is acting as the main defender of the pharmaceutical companies, with representatives of the industry playing a major role in the committees that develop its trade policy. In January of this year, the US government made a formal complaint to the WTO concerning Brazil's new patent legislation, alleging that it did not comply with TRIPS rules.

Introduced in 1988, the "Special 301" provision of the US government is used to impose trade sanctions on countries to enforce compliance with WTO rules. India, the Dominican Republic, Argentina, Vietnam and Thailand all face Special 301 sanctions by the US over patenting rules for medicines.

Oxfam attacks the argument used by the drug transnationals that the stringent defence of patenting allows them to use their massive profits to finance future research and development. The charity points to the fact that even before the full implementation of TRIPS, operating profits in the pharmaceutical industry have been typically in the range 20-23 percent, hardly reflecting a problem with a lack of patenting protection. The industry spends more than twice as much on marketing as on R&D, and also benefits considerably from discoveries and research that are publicly funded.

Another argument used by defenders of the drug companies is that the cost of medicines is only one aspect of healthcare, and that the provision of drugs such as antiretrovirals used to treat AIDS would be of no use without an advanced health infrastructure to back them up. What Oxfam's analysis reveals in the "Third World" is that a much higher proportion of the small amount governments spend on healthcare goes to pay for pharmaceutical drugs—over one fifth of public health spending in Mali, Tanzania, Vietnam and Colombia, for example. So the high cost of drugs is at least in part responsible for limiting the provision of public healthcare.

In the advanced capitalist countries, most healthcare is provided from public funds or by insurance schemes. For example, in Britain, annual spending on health per person is \$1,193 per annum, of which only 3 percent is paid personally. In contrast, spending per person in India is \$23 per annum, with 84 percent being paid by private households, of which the cost of drugs is the highest item. Thus the increase in drug prices being pushed through under TRIPS will intensify the division between rich and poor in relation to health provisions on a world scale. Already some 2 billion people lack access to basic healthcare and 11

million die each year from preventable diseases.

Oxfam provide a range of examples and statistics to support their case against the drug transnationals. However they present no viable alternative to the existing social set up and its domination by "market forces". They call for reforms to go beyond mere "corporate philanthropy"—by which they mean the media-friendly publicity stunts mounted by the big companies when they offer to supply some drugs for free or at a low prices to a particular country, often with the proviso that the country opposes the importing of generics.

Oxfam demands that companies—such as the British conglomerate GlaxoSmithKline in which Oxfam itself owns shares—"incorporate public-health considerations into decision-making on pricing, R&D and lobbying." But in accepting the profit system and the ability of major corporations to use patents that provide "reasonable rewards to inventors", Oxfam is evading the obvious conclusion from their own reports: The laws of the capitalist market are incompatible with a defence of the universal right to health care and the enjoyment of the benefits of medical science by the mass of the world's population. Oxfam even provides an example that amply demonstrates why the pharmaceutical giants will not give an inch over drug patenting and are demanding its strict implementation throughout the world. When a US court granted pharmaceutical conglomerate Eli Lilly an extension on its patent for Prozac that was two years shorter than it had requested, its share value fell by almost one third, wiping out \$38bn of its market capitalisation.

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The Oxfam reports, *Patent Injustice: How World Trade Rules Threaten the Health of Poor People, Dare to Lead: Public Health and Company Wealth* and *Fatal Side Effects: Medicine Patents under the Microscope* can be viewed at: <http://www.oxfam.org.uk/cutthecost/indepth.html>



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