

Expert Meeting at the European Parliament: Trade Agreements and Access to Medicines

23rd February 2009



On 17th February 2009, an expert meeting on the European Union – Andean Community trade agreements brought together diverse actors involved in Intellectual Property (IP) and Access to Medicines. Participants included representatives from the European Parliament on behalf of the International Trade and Development Committees; officials from the European Commission (EC) on behalf of DG Trade; DG SANCO; and DG DEV; as well as intellectual property experts, and representatives from both European and Andean civil society organisations.

The aim of the meeting was to raise awareness amongst policymakers about the impact of overly rigid intellectual property (IP) policy at European Union (EU) level and convince Members of the European Parliament to take action to protect access to medicines in the Andean community (CAN) countries. The meeting offered a timely platform to openly debate the negative impact that the EU's IP strategy has on access to medicines and to look for opportunities to reconcile IP policy towards developing countries with public health and development priorities.

The latest round of trade negotiations with Colombia, Ecuador, and Peru in Bogota concluded the week prior to the meeting and it seems there is still a long way to go to ensure that Access to Medicines has been appropriately protected in the chapter on IP.

The meeting began with a brief introduction from Else Boonstra of the Evert Vermeer Stichting, EU Coherence Programme, underlining the importance of policy coherence for proclaimed priorities such as, development.

The second presentation, by Sophie Bloemen from Health Action International (HAI), emphasised the imbalance in the EC's proposed text to the CAN, which is dominated by the IP right holders' perspective and protection of those rights. Promoting such stringent IP rights prolongs the monopoly on a medicine which in turn, affects the affordability of medicines in developing countries as it delays the entry of cheaper generic medicines into the market. Ms. Bloemen called for "the right balance between the protection of IP right holders' interests, the protection of public health, and free competition."

The two guest speakers, German Holguin, Director of the Colombian public health NGO, Mision Salud, and Xavier Seuba, author of the first expert analysis of the proposed EC chapter on IP, presented crucial public health and technical issues arising from the EC's proposals for the text of the IP chapter. Both speakers did an admirable job of outlining the policy incoherence inherent in the EU's approach to trade, intellectual property and access to medicines.

German Holguin, Coordinator of the Andean civil society organisations in the EU-CAN NGO Alliance, presented a powerful case for the impact of high IP rights on access to medicines. His presentation was extremely useful in highlighting the potential public health threats for Andean populations from incoherent high-level EU policymaking on IP.

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Xavier Seuba presented the technical aspects of the IP chapter and described the consequences of these provisions from the perspective of public health protection. Seuba's analysis as a Lecturer in Public International law specialising in IP was very valuable for bringing to light the worrying trend of ratcheting up IP rights protection through border measures and enforcement provisions without due consideration for the potential impact in other policy areas, namely public health and development.

Following each of the guest presentations, the meeting was opened up to all participants to engage in discussion. The meeting co-chairs, MEP Helmuth Markov (GUE/NGL) and MEP Thijs Berman (PSE) ensured that all participants had ample opportunity to comment and question both the speakers, and other representatives present.

The main issues arising from the plenary discussion were as follows:

- **Policy incoherence on IP and access to medicines** where the EC's trade proposals contradict EU commitments in international fora. Andean civil society views the IP proposals to the CAN as close to offensive as it disregards the consequences of the IP provisions.
- **IP enforcement and border measures** such as, criminal penalties on all IP infringements and border measures that, in effect, create barriers to legitimate trade. The proposed provisions on these issues go beyond EC law (*EC plus provisions*). Teresa Alves, from HAI and Alexandra Heumber, from Médecins sans Frontières described the recent case of the Dutch seizure of generics in transit from India to Brazil in relation to the provisions in the EC proposal to the CAN as a prime example of overly-ambitious border measures in action, in this case, hindering the arrival of essential anti-hypertensive medicines to patients in Brazil.
- **The data exclusivity provisions** recently added by the EC in its proposal demands can, in practice, delay access to generic medicines. The proposals project internal EU regulations onto the Andean Community countries. This is the first instance of such proposals being made to developing countries in trade agreements.
- **The strategy of associating counterfeits with legitimate generics** to create confusion, used by the pharmaceutical industry and the EU Commission in order to advance IP rights. An intervention by the DG Trade representative, which referred to dangerous counterfeits in connection with the enforcement of border measures to generics in transit, was rebuked by civil society representatives as an inexcusable blurring of two very separate issues.
- **The fragmentation of the CAN regional bloc** by the EC through the negotiation process, which is at odds with the initial goal of fostering regional integration and development. Xavier Seuba noted that the same had happened with the group of African, Caribbean and Pacific (ACP) countries and is happening again with the Association of Southeast Asian Nations (ASEAN) countries. This fragmentation is becoming a frequent occurrence that weakens the bargaining position for developing country regional blocs. However, DG Trade's representatives attributed the fragmentation of the CAN bloc to internal divisions between the Andean countries, which was refuted by delegates from the Bolivian embassy.
- **The uncertain influence of the European Parliament over the EC** was highlighted by several participants. The main question seemed to be whether MEPs have sufficient influence to follow-up requests and directives with actions to prevent incoherence affecting public health and development. However, both MEPs chairing the meeting did make a strong commitment to "do everything in our limited power to address this issue" in current and future negotiations with developing countries.

Given that the European Commission, on behalf of EU Member States, has committed to prioritising public health and development issues over commercial interests in a number of multilateral fora, it is essential that all parties are aware of the policy incoherence currently being displayed by trade negotiators in these and other agreements.

The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), which includes flexibilities to accommodate public health needs, and the 2001 Doha Declaration signed by all World Trade Organization (WTO) members, including the EU, specifically enshrines the principle of public health priorities taking precedence over IP policy. Moreover, the more recent Global Strategy and Plan of Action (GSPA) on Public health and intellectual property, adopted by all World Health Organization (WHO) members in May 2008, reiterates the commitment to public health over purely commercial interests.

During the question and answer sessions and the plenary discussions, DG Trade was offered several opportunities to present their position. Marianne Gumaelius, Deputy Head of Unit at DG Trade, acknowledged that the goal for negotiators was to protect the IP rights of European industry. Whilst recognising this role of commercial protection, a number of participants voiced concern that this approach disregarded the damaging side-effect of reduced access to medicines that has been demonstrated in impact evaluations conducted on IP and access to medicines in developing countries.

Despite this, DG Trade's interventions were very technocratic in nature and seemingly oblivious of developments in global fora like WHO and WTO on the question of IP and Access to Medicines. The rigidity of DG Trade's position in the meeting illustrates the tough battle that is being fought and the current failure of Europe's moral duty to implement a consistent approach to its public health and development commitments.