

Leaked cables show U.S. tried, failed to organize against Ecuador compulsory licensing

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In October 2009, Ecuador's President Rafael Correa issued Decree 118 to improve access to medicines and support public health programs through a protocol that would reduce drug costs.

The protocol established procedures for the compulsory licensing of pharmaceutical patents. Compulsory licensing authorizes generic competition with patented, monopoly protected drugs. Generic competition reduces costs and enables public agencies to scale-up treatment and other services.

Ecuador's protocol limits compulsory licensing to medical conditions that are priorities for public health, requiring interagency cooperation to grant licenses on a case-by-case basis and pay royalties to patent holders.

Nevertheless, cables from U.S. Embassy personnel in Ecuador to the U.S. Department of State, released by Wikileaks, show the United States, multinational pharmaceutical companies, and three Ministers within the government shared information and worked to undermine Ecuador's emerging policy.

According to the cables, shortly before President Correa issued Decree 118, the U.S. mission in Quito explored organizing wealthy countries with patent-based pharmaceutical industries against Ecuador's policy. This effort apparently met with relatively little interest.

The U.S. Ambassador warned officials in Ecuador's Ministry of Foreign Affairs of the "IPR eligibility requirements" of trade benefit programs including the Andean Trade Promotion and Drug Eradication Act, implying that compulsory licensing could jeopardize Ecuador's eligibility. But Ecuador's compulsory licensing protocol complies fully with the World Trade Organization's TRIPS Agreement on intellectual property. And even the Office of the United States Trade Representative has bound itself to "respect[] its trading partners' rights to grant compulsory licenses, in a manner consistent with the provisions of the TRIPS Agreement."

U.S. Embassy officials met repeatedly with multinational pharmaceutical companies, and separately met some of the companies' "well-placed contacts" in "potentially sympathetic ministries." The companies, their government contacts, and Embassy officials shared strategies to prevent or limit Ecuador's use of compulsory licensing.

One of these well-placed contacts, Ecuador's former Minister of Health – who has since been replaced – reportedly assured multinational pharmaceutical companies that her office was investigating the business dealings of local medicine suppliers, with the explicit objective of "gain[ing] some leverage."

The Ministry also reportedly raised a criticism that generics sold under compulsory license might not contain active ingredients. But this confuses patent licensing with the separate and independent drug regulatory approval process. Compulsory licensing of patents does not, on its own, authorize the sale of any medicine – only the use of the patents. Typically, and in Ecuador, a separate agency regulates medicines and determines which are safe for consumers. A product benefiting from a compulsory license must, like other medicines, still obtain the approval of INH, Ecuador's regulatory agency.

The cables betray a strong U.S. Embassy bias against compulsory licensing, and damage the credibility of assurances offered elsewhere that the United States supports the use of TRIPS flexibilities to promote public health

In spite of efforts to undermine Ecuador's access protocol, Ecuador issued its first compulsory license in April 2010, enabling generic imports of the HIV/AIDS drug ritonavir. IFI, the association of multinational pharmaceutical companies operating in Ecuador, issued a statement "democratically accepting" President Correa's decision. The United States has refrained from public criticism.

Ecuador's access to medicines and compulsory licensing protocol remains in place.

The complete leaked cables follow. The cables are dated October 13 and 21 of 2009 and February 10 of 2010, and were recently published in Ecuador's El Universo newspaper. (I have also included a relevant excerpt from a cable sent October 29, 2009.)

The cables include some misinterpretations of law, precedent, and Ecuador's licensing protocol, and should not be considered source documents for technical analysis of these subjects. Source documents are available on the website of Ecuador's intellectual property office, IEPI, or by following the links at:
<http://www.citizenorg/pressroom/pressroomredirect.cfm?ID=3116>.

Public Citizen's Global Access to Medicines Program (formerly with Essential Action) has provided technical assistance to the government of Ecuador since 2007.

Links to cables:

<http://wikileaks.ch/cable/2009/10/09QUITO998.html>

<http://www.eluniverso.com/2011/04/22/1/1355/cable-230726.html>

<http://wikileaks.ch/cable/2009/10/09QUITO1068.html>

<http://www.eluniverso.com/2011/04/21/1/1355/cable-248229.html>