

Working for Big Pharma: U.S. Government Pressures Developing Countries

By Cynthia Williams

In 2012, faced with one of the fastest growing HIV infection rates in Asia and a growing public health threat from hepatitis B, Indonesia's President Susilo Bambang Yudhoyono acted with his country's public health in mind. He issued a presidential decree – authorized by Indonesian law – that ensured access to essential medicines by granting compulsory licenses. These licenses, which covered seven HIV and hepatitis B medicines, allowed generic company production of patented drugs on behalf of the government. The move meant Indonesia could introduce price-cutting competition for previously monopolized drugs and promote access to affordable treatment.

From a public health perspective, it would seem Yudhoyono made the right decision. Big Pharma, however, disagrees. Using the Office of the United States Trade Representative's (USTR) Special 301 Report process, the pharmaceutical industry is trying to gain increased monopoly powers by bullying developing countries, such as Indonesia, into changing their national policies.

The USTR distributes the Special 301 Report annually, identifying countries it says deny adequate and effective protection of intellectual property or deny fair and equitable market access to American companies that rely on intellectual property protection. The USTR categorizes countries on three levels: "priority foreign country," "priority watch list" and "watch list." These designations can pave the way for application of trade sanctions.

Testifying at a USTR hearing in

Patent Monopolies and Access to Medicines

Patents, copyright and trademarks exist to reward inventors and promote creativity. Big business frequently abuses these rights, however, trying to control fruits of ingenuity that should belong to humanity. While patent abuse is an especially serious problem in developing countries, these actions by pharmaceutical companies could restrict access to affordable medicines worldwide.

World Trade Organization rules require countries to provide certain levels of intellectual property protections. The Office of the United States Trade Representative presses developing countries to adopt even stronger pro-monopoly measures, often at the expense of public health, competition and technology transfer. The public domain needs an advocate. Public Citizen's Global Access to Medicines Program helps patients stand for their rights and keeps Big Pharma's bullying in check.

February, Public Citizen's Global Access to Medicines team employed its technical expertise to help developing countries fight back. Public Citizen submitted post-hearing comments on behalf of eight countries targeted by the USTR in its Special 301 Report – including Chile, Colombia, India, Indonesia, Peru, the Philippines and Turkey – which, the team maintains, have domestic policies that do not violate any international agreements or other obligations. Canada is also among the countries for which Public Citizen submitted comments.

"Too often, the Special 301 Report is used to exert U.S. political influence at the behest of private interests," said Peter Maybarduk, director of the Global Access to Medicines Program.

The Trade Act does not require the issuance of the report, which often cites countries for issues that are not intellectual property concerns. Citations have involved

pharmaceutical reimbursement, pricing and procurement decisions, all outside the scope of the Special 301 review.

And while patents can reward inventors, pharmaceutical companies frequently abuse the patent system. For example, companies seek patents on minor changes to old medicines, try to eliminate competition and make lifesaving drugs too expensive for those who need them most.

In its comments, Public Citizen argued that in setting their public policies, these countries were well within their rights under the World Trade Organization's Trade-Related Aspects of Intellectual Property agreement – signed by the U.S. and more than 100 other countries. The agreement provides flexibility to advance the public interest.

Public Citizen also maintains that the report itself is a form of sanction.

"Countries should not be cited

for exercising established public health rights, such as enacting pharmaceutical compulsory licenses," said Maybarduk. "Public policy disagreements are not in the same league as corporate espionage and should never land a country on the priority watch list."

The team proposed several changes to the Special 301 Report, requesting that future versions:

- not include citations for policies that satisfy countries' international treaty obligations;
- clearly articulate criticisms;
- treat policy disagreements differently from criminal activity;
- address intellectual property only, not ancillary public policies;
- exclude citations for not adopting U.S. policy preferences if the cited country has no bilateral or international obligation to do so; and
- give developing countries greater leeway, especially for public interest policies.

The USTR has since removed the Philippines from the watch list.

"The Special 301 Report essentially acts as a blacklist and should be discontinued entirely," said Maybarduk. "If it isn't going away, it can and should be improved."

**See video of
Peter Maybarduk's
testimony:
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