INTER-AMERICAN DIALOGUE'S
LATIN AMERICA ADVISOR

FEATURED Q&A

Will Venezuela Move to Modify Pharmaceutical Patents?

Q Earlier this month, Venezuela's trade minister said the government was carrying out a review of patents, including those on pharmaceutical products, arguing patents elevate the prices of goods and fill the coffers of multinational corporations. Leaders of Venezuela's pharmaceuticals industry say revoking patents and allowing drug makers in Venezuela to produce patented medications could discourage foreign investment in Venezuela and also cause shortages of medicine. Do you agree? Will more medicine reach the neediest people if patents are revoked? How much do protections for intellectual property rights matter in Latin America's health systems?

A Guest Comment: David Vivas-Eugui: "The recent announcements by Venezuela's trade ministry and Intellectual Property Office (SAPI) on patent law and access to medicines have captured the attention of international media. These announcements indicate in broad terms the direction that the Venezuelan government plans to take in relation to patent law, access to medicines and industrial policy. While many of the measures announced are coherent with internal policies and seem in principle consistent with international obligations, a pragmatic approach is needed in their implementation in order to ensure some of the practical goals being sought are actually achieved. The orientation of the intellectual property system in Venezuela seems to be following two trends. The first one has a positive stand toward innovation, technology diffusion and access to medicines. The second trend points toward the 'nationalization' of both foreign and local private undertakings, clearly being the case with recent expropriations. This latter process could also be expanded to cover 'intangible assets.' The Doha Declaration on TRIPS and Public Health of 2001 allows countries to take measures to protect public health and encourage countries to use TRIPS flexibili-

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Obama 'Confident' in Colombia FTA, But Labor Concerns Remain

US President Barack Obama (R) and Colombian President Alvaro Uribe discussed cooperation on drug trafficking and security, clean energy, human development and the possibility of a third term for Uribe. See story on page 2.

Photo: Colombian Government.

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NEWS BRIEFS

Europe's Celesio Buys Majority Stake in Brazilian Company

Stuttgart-based **Celesio** said Monday it had acquired a majority stake in **Panpharma**, a leading Brazilian pharmaceutical wholesaler. The 54 percent stake was acquired by way of a capital increase, although no specific financial details were disclosed. Panpharma holds a market share of about 17 percent, supplying about 30,000 of the 52,000 pharmacies in Brazil, and had revenues in 2008 of $3 billion reais ($US 1.54 billion). The agreement is subject to the approval of the Celesio supervisory board.

Scotiabank Opens New Wealth Managment Office in Miami

Canada's **Scotiabank** on Monday launched a new Miami office that will serve as a hub for the bank's expanding wealth management services in the Caribbean and Latin America. The office will provide private banking services to non-US residents and non-US citizens only, Scotiabank said in a statement. The company has similar locations throughout the Caribbean and in Peru, with plans to open new private banking centers in Chile, Costa Rica, Mexico and Panama. Alan Jenkins will serve as director of the Miami office.

New Zealand Company to Issue Bonds to Develop Uruguay Farms

NZ Farming Systems Uruguay, a large dairy and agricultural company based in New Zealand, today announced it has obtained regulatory approval from the Central Bank of Uruguay for a proposed $30 million bond issue in the South American country. The proceeds will be used to finance debt and to permit continuing development of the company's farms in Uruguay.

Political News

Backed by ALBA and OAS, Zelaya Vows to Return to Honduras

Exiled President Manuel Zelaya of Honduras said he will travel back to his country on Thursday in defiance of an early morning military *coup* that ejected him from power on Sunday, Reuters reported. Speaking in the Nicaraguan capital at a meeting of the heads of state allied with the Bolivarian Alternative for the People of Our America, Zelaya said the head of the Organization of American States, Jose Miguel Insulza, had offered to accompany him to Honduras Thursday after they attend talks over the crisis in Washington tomorrow at the OAS, according to the report. Moreover, UN General Assembly president Miguel D'Escoto Brockmann said Monday he has invited Manuel Zelaya to come to New York this week to report directly to members of the General Assembly on the situation in his country, the Associated Press reported. Meanwhile, about 1,500 protesters, some of them masked and carrying sticks, taunted soldiers and burned tires just outside the gates of the presidential palace in a face-off with security forces yesterday. The soldiers sprayed tear gas to disperse the crowds. The interim president of Honduras, head of congress Roberto Micheletti, said Monday he would not relinquish power to Zelaya and began building a cabinet. US President Barack Obama on Monday restated that the United States still considers Manuel Zelaya to be the president of Honduras and assailed the coup that forced him into exile as illegal. "It would be a terrible precedent if we start moving backwards into the era in which we are seeing military coups as a means of political transition rather than democratic elections," Obama said in the Oval Office after meeting with Colombian President Alvaro Uribe, the Associated Press reported. Some observers say Zelaya, a left-leaning charismatic figure most known abroad for being aligned with President Hugo Chavez of Venezuela, pushed the limits of his constitutional authority, and that the country's judicial and military institutions acted legally in the Sunday coup to check an overextension of power. [Editor's note: see related Q&A in an upcoming issue of the *Advisor*.]

Zelaya

Photo: ABN.

Obama 'Confident' in Colombia FTA Deal, But Labor Concerns Remain

US President Barack Obama on Monday said he was "confident" the US and Colombia could strike a deal on a long-stalled free trade agreement, but he ultimately rejected a timetable for the bill's passage, citing both the need for further progress on human rights in the South American nation and the US Congress' already full legislative plate. Following a meeting with Colombian President Uribe at the White House, Obama told reporters he had instructed US Trade Representative Ron Kirk to work with Colombian officials in order find ways to proceed with the agreement. "There are obvious difficulties involved in the process and there remains work to do, but I'm confident that ultimately we can strike a deal that is good for the people of Colombia and good for the people of the United States," Obama said. He commended Uribe on Colombia's progress in reducing human rights violations and violence against labor leaders, but said even Uribe acknowledged "there remains more work to be done." Labor protections and human rights have been major sticking points in the congressional debate over the US-Colombia free trade agreement, stalled in Congress since 2006, which Obama opposed as both a senator and as a presidential candidate. Obama and Uribe also discussed extrajudicial killings in Colombia, bilateral cooperation to combat drug trafficking and efforts to promote clean energy and human development. In addition, Obama did not shy away from addressing the controversy over Uribe's still unconfirmed plans to seek a third term in office.

While expressing the importance of self-determination for Colombians, Obama noted that "two terms works for us" in the US. He also mentioned to Uribe that George Washington, the country's first president, stepped down from his post despite the fact he could have remained president for life.

After Failing to Win Congressional Seat, Kirchner Resigns as Party Head

In a dramatic reversal of fortunes, Nestor Kirchner, the former president of Argentina and husband of current President Cristina Fernandez, resigned Monday as leader of the Peronist Party, the day following his coalition's decisive defeat in midterm congressional elections. Just two years ago, Kirchner was so popular that political analysts speculated he handed his wife the presidency with the long term aim of legally running again in 2011, thereby ensuring continuous family control of Argentina for more than a decade. On Sunday, he was unable to secure a congressional seat. Kirchner's resignation signals the playing field ahead for Argentine presidential politics is wide open—for the first time since he came to power in 2003. Analysts speculate the presidential contenders could include Colombian-born millionaire Francisco De Narvaez, who beat Kirchner Sunday for the congressional seat, newly elected Santa Fe governor Carlos Reutmann, popular Buenos Aires mayor Mauricio Macri and vice president Julio Cobos, who split with Fernandez over her policy positions last year. [Editor's note: see related Q&A in an upcoming issue of the *Advisor*.]

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ties. Many of the announced measures could be developed under this framework. Nevertheless, no absolute legal assessment is possible until these announcements are transformed into actual measures or legislation. Experts in the field believe that many of Venezuela's goals in the current process could be achieved through a sophisticated set of policies driven by pragmatic reasoning and at the same time respecting international obligations. Finding options to achieve some of these goals might need more than political courage. It would take technical sophistication, political consensus and most importantly an inclusive consultative process with all relevant sectors in Venezuelan society."

A **Guest Comment: José Luis Di Fabio:** "Venezuelan authorities through SAPI have been for the last five years compiling the documentation related to all the patents granted in the country in order to make them accessible to the general public. This exhaustive revision has included those related to pharmaceutical products and has been coupled with the recent announcement to study each one of them in order to detect eventual inconsistencies with constitutional clauses (like the enjoyment of the right to health) while stating the will to respect and honor all international agreements, including TRIPS and other trade-related conventions to which Venezuela is party. Cooperation between trade, intellectual property and health authorities is a critical factor for an effective management of intellectual property rights that takes into account public health needs, including the use of flexibilities in the TRIPS agreement reaffirmed in WTO's Doha declaration of November 2001. IPR protection and patent enforcement are deemed to be rewards for innovation. However, monopolistic practices granted to patent holders often result in high prices for medicines, making them inaccessible for citizens and unaffordable for governments in middle- and low-income countries. Moreover, being a patent holder confers not only rights, but also responsibilities, such as transfer of technology, as acknowledged in Article 66.2 of the TRIPS agreement. Countries should therefore continue to closely monitor the linkage between regulation of pharmaceutical products and its impact on pricing and, ultimately, access, always keeping in mind what's best for public health."

A **Guest Comment: Adrian Cruz:** "In violation of its TRIPS obligations, Venezuela has not protected data from clinical trials since 2002. The country's patent office, SAPI, has not granted a single drug patent in the same period. Intellectual property is the lifeblood of the pharmaceutical industry. If a market violates international IP agreements, it risks not only the aggrieved company leaving but other multinationals as well. Pharma

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Economic News

Brazil Unveils Tax and Interest Rate Cuts to Speed up Economic Recovery

Brazil will cut taxes on 70 capital goods and lower the long-term interest rate charged by state development bank BNDES in an effort to speed up the economy's recovery, Finance Minister Guido Mantega told reporters in Brasilia Monday, Bloomberg News reported. Mantega said the government would also extend existing tax breaks on the purchase of cars, home appliances, construction materials and some food staples until at least October. The tax breaks had been credited by the auto industry and other businesses with keeping Brazil's economy active during the worst of the global credit crisis. Mantega said the country plans to cut the long-term interest rate to 6 percent from 6.25 percent at its meeting today, Dow Jones reported. The so-called TJLP rate has remained unchanged at 6.25 percent since July 2007. On June 9, Brazil's national statistics agency said the country had officially entered a recession as GDP for the first quarter of 2009 contracted 0.8 percent, following a 3.6 percent decline in the fourth quarter of last year. "Brazil was a late entrant into the current world recession, and promises to be an early leaver," Columbia University economist Albert Fishlow told the *Advisor* earlier this month. [Editor's note: see related Q&A with Fishlow and others in the June 19 issue of the *Advisor*.]

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companies depend on IP protection in order to be able to recoup the huge R&D investment for the drugs of the future. As president of Sterling-Winthrop, SmithKlineBeecham, and GlaxoSmithKline Latin American Region, I spent 30 years in constant dialogue with Ministries of Health explaining the importance of IP protection. We were threatened in Brazil in the late 1990s with patent violation for vaccines and in the early 2000s for retrovirals (anti-AIDS), but we were able to diffuse the issue through a ground-breaking technology transfer with semipublic health institution FioCruz. In that manner, we got to keep our patents inviolate for the private sector and FioCruz could produce, under our license, for the public sector and thus lower its costs. If the Brazilians had violated our anti-AIDS patents back in 2000, we would likely have left Brazil or at least not have launched any of the future anti-AIDS products. The mutating nature of the AIDS virus would have meant that the Brazilian government could have claimed to 'save' the poor AIDS victims of the year 2000 but condemned those patients of 2005 and beyond that may have been deprived of the newer generation of retrovirals, so expensive to develop."

A Guest Comment: Peter Maybarduk: "It's worth clarifying what the Venezuelan government has and has not said. The government announced plans to review patent rules. Improving public access to medicines and generic medicine manufacturing capacity are key priorities of this review. The government has not yet announced a detailed policy, and statements by some government opponents seem to have exaggerated the substance of the announcements. A clarifying source is Venezuela's intellectual property office, SAPI, which has posted notices on the subject. Over the last ten years, generic competition worldwide has produced a revolution in HIV/AIDS treatment, reducing prices from $10,000 to near $100 per person per year, and enabling more than three million people to access lifesaving antiretroviral therapy. Competition and domestic manufacturing have helped Brazil save $1 billion since 2001, and develop one of the world's most effective HIV/AIDS treatment programs. Multinational drug companies, based almost exclusively in northern countries, routinely use patent monopolies on key medicines to keep prices at high, anti-competitive levels—often too high to enable widespread treatment, including throughout Latin America. There are several tailored ways Venezuela could improve access to medicines while contributing to pharmaceutical research and development costs, and complying fully with domestic laws and WTO patent rules. For example, by issuing compulsory licenses, Venezuela could authorize generic competition with specific patented medicines, in exchange for reasonable royalties to the patent holder. It is not true the Venezuelan pharmaceutical industry uniformly opposes revisions to patent rules. The generics chamber, Canamega, publicly supports revisions, and domestic manufacturers would benefit from flexibilities allowing them to produce more medicines. Targeted reforms to Venezuela's patent system could protect international investment incentives, while also improving market efficiency, increasing investments in innovative research and development—and supporting access to medicines for all."

David Vivas-Eugui *is deputy programs director at the International Centre for Trade and Sustainable Development in Geneva.*

José Luis Di Fabio *is manager in the area of Technology, Health Care and Research at the Pan American Health Organization.*

Adrian Cruz *is a member of the Advisory Board of Cross Keys Capital.*

Peter Maybarduk *is an attorney for the Essential Action Access to Medicines Project.*

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Erik Brand,
General Manager, Publishing
ebrand@thedialogue.org

Gene Kuleta,
Editor
gkuleta@thedialogue.org

Matthew Schewel,
Reporter, Assistant Editor
mschewel@thedialogue.org

Subscription Inquiries are welcomed at freetrial@thedialogue.org

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Washington, DC 20036
Phone: 202-822-9002 Fax: 202-822-9553

