

A trade environment and the rights of patients - dissertation example

[Law](#)



A Trade Environment and the Rights of Patients

DISSERTATION PROPOSAL Introduction The of global public health has never been worse. Every year, millions of people from impoverished nations die from preventable diseases. Because of environment and lifestyle, old diseases are developing new strains, more harmful and menacing than the previous. 37, 000 die everyday from diseases like pneumonia, HIV/AIDS, tuberculosis, measles, and diarrhea. The tragedy is that even amidst this urgent and compelling need to address this global problem, the right of the people to health care still remains inextricably intertwined with a rigid intellectual property regime.

In a knowledge economy where knowledge is considered private property and is thus deserving of full protection under the law, Intellectual Property laws play a fundamental role in ensuring stability and predictability.

However, it has been suggested that these laws undermine public health by tending to put the cost of essential medicines far beyond the reach of those who desperately need it most.

This dissertation endeavors to examine the tension between intellectual property law and the right of the patient to health care, and to explore the specific ways that the latter can be compromised by the former. It will also look at the possible solutions to overcome this problem and create an intellectual property regime that will put health over profit and patients over patents.

Contextual Background

Recent free trade agreements have extended extremely generous patent rights to multinational pharmaceutical companies, and have limited access to generic equivalent drugs.

In the "DOHA declaration on TRIPS and Public Health" of 2001, states that were members of the World Trade Organization (WTO) guaranteed that when a country is undergoing a public health crisis, it is not bound by its patents commitments. A consensus was reached that the provisions in the WTO having to with patents should be interpreted liberally in favor of the patient, and in favor of granting access to essential medicines. In order to circumvent these commitments, bilateral agreements are being forged by developed countries with lesser developed countries where the requirements for intellectual property law surpass those found in TRIPS.

The TRIPS agreement does contain various safeguard mechanisms to protect public health. The two distinct safeguards are (1) parallel importation, and (2) compulsory licensing. By its silence, the TRIPS allows countries to import drugs from another country that is selling it at a lower price. Countries must make domestic legislation in this regard. The US-Singapore Free Trade Agreement, however, is an example of how the US has engaged in scare tactics to pressure developing countries not to pass a parallel important law. Compulsory licensing, on the other hand, permits the government to grant compulsory licenses to particular companies to create generic versions of

the drug and arrest a public health crisis. It was found that the introduction of generics competition upon expiry of a patent typically leads to a significant price reduction, often by up to 70 percent.

Methods and Conceptual Framework

This dissertation will first examine the provisions of the TRIPS that involve patents and whether these provisions are sufficient in form and substance to protect patients, or skewed in favor of the corporate interests of multinational pharmaceutical companies. After which, the Doha declaration must be given careful scrutiny as well, in particular the " paragraph six problem". By virtue of paragraph six of the said Declaration, poor countries will lose access to cheaper medicines produced in other countries. This is because the TRIPS provisions providing for production of generics under compulsory licensing require that the medicines produced are used predominantly in the domestic market.

Then, a survey of developing countries and their internal legislation with respect to patents will be made, alongside an analysis of how this legislation has impacted on their public health situation.

Fundamentally, the question sought to be answered is this: is a one-size-fits-all intellectual property regime truly the best answer, or is it currently doing more harm than good to developing nations grappling with urgent issues of public health Lastly, the dissertation will propose changes that may be introduced to create a trade environment that protects the rights of patients.

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