

Appendix 4

The growing importance of trade and global issues

Christine Huttin

A representative from the EU trade division was invited to the workshop, and this provided an opportunity to enlarge the policy research questions from health and industrial issues to trade issues. It also shows the need to address health and trade policy questions simultaneously in the context of globalization.

The impact of globalization is very visible inside the European institutions, with substantial enlargement of competencies and powers to different directorates. For instance, in September 2000, the Development directorate and the Trade directorate of the European Commission decided to accelerate a set of actions on major communicable diseases (Malaria, TBC and HIV). So pharmaceutical issues became much more dependent on trade and development negotiations than on balanced arrangements reached by health and industry interests. This also shows the predominance of globalization issues over European interests. For instance, the priorities on the political agenda became access to affordable medicines and allocation of research to broader types of medicines and vaccines rather than developing drugs usually used for treating conditions prevalent in industrialized countries.

On the European political agenda, the two most advanced domains in 2002 concern intellectual property and pricing. The European Union adopted the special declaration at Doha concerning public health. By this, the EU agrees with compulsory licensing rights, rights of parallel importing and some extension of a transition period for an implementation of the TRIPS agreement till 2016. The compulsory licensing issue was especially discussed during the first post Doha TRIPS council (Geneva, March 2002). This issue is crucial for developing countries, but indirectly might affect strategic industrial interests of the USA, Japan and Europe. Countries without manufacturing capacities claim the right to import with a compulsory license from a third country with manufacturing facilities. The main points of current discussion concern territorial limits and types of restrictions on production volume. The USA supports the view that only a very limited percentage of a country's manufacturing capacity should be considered in this type of compulsory licensing. By contrast on this restriction issue the European Union is ready to consider what are called "constructive ambiguities". In particular, wide divergence of views exist on the definition of the "non-predominant part" of a third party country's manufacturing capacity.

The current proposals on trade issues are crucial for a redefinition of stakeholders' interests. In particular, in preparation of the second TRIPS Council of June 2002,

it will be important to follow the modifications of article 31F, with potential withdrawal of restrictions and the proposals for revisions and interpretations of article 30. WTO members countries without production capacities could obtain a compulsory licensing, without prior authorization from the country with the patent. However, an alternative to a modification of compulsory licensing rules could be to negotiate voluntary licensing on an ad hoc basis or for certain categories of countries.