

What to watch out for in FTAs with developed countries

**trade negotiations in India
2009 - 2011**

Trade deals with India on the horizon

European Union (EU) - India-EU free trade and investment agreement
Several round of negotiations completed
Make or break in next few months!!!!!!

European Free Trade Association (EFTA) – Norway, Switzerland, Iceland & Liechtenstein
Several rounds round of negotiations completed

US – India BITS – Follow up to Obama’s visit

Lives before Profits, Oppose FTAs, Aug 2011, India 2

2009 several concerned groups come together

- FDI Watch
- National Fish Workers Federation
- National Hawkers Federation
- Inter-cultural Resources
- Heinrich Boell Foundation
- GRAIN
- New Trade Union Initiative
- Third World Network
- CEC
- LAWYERS COLLECTIVE
- MSF Access Campaign in India

OUTCOME – A FORUM FORMED TO RAISE CONCERNS

- **THAI FTA Watch** provide technical support on Intellectual Property
- **Gus Van Harten** on impact of investment provisions

OUTCOME OF TRADE DEALS – WTO – TRIPS: patented drugs expensive



Patented Hepatitis treatment in India
Pegylated interferon alfa 2a
Rs. 14,700 per injection (180 mcg)

FTAs: Access to medicines at risk

EC/US objective to strengthen the rights of IP holders (pharma companies beyond the minimum requirements of TRIPS)

Countries forced to trading away health and accept restrictive IP provisions that limit production and access to affordable generic drugs

What – *Data exclusivity, patent term extension, patent linkage, criteria of patentability and CL weakened, IP enforcement*

Uruguay Warns Citizens of Tobacco Risks, Philip Morris Sues for millions of US\$\$\$\$\$



Philip Morris, the world's second largest tobacco company, against the second smallest nation in Latin America, Uruguay

Investment provisions

- Normally a treaty is between two countries – so if there is a dispute one country sues the other
- Under BITS “investment chapters” the companies get to sue the government directly in private arbitration – unlike WTO
- Includes intellectual property as investment
- Tobacco case: Phillip Morris v. Uruguay
- Uses trademark infringement as an excuse
- Uses expropriation (direct/indirect) of investment as an excuse
- Pharma starts threatening Australia and New Zealand over medicine pricing as according to them expropriating their profits/investments

Australia and US FTA negotiations

- the US government and pharma companies identified certain health policies which they wanted to remove or change. These included price control of medicines under the Pharmaceutical Benefits Scheme.
- Pharma companies argued that Australia’s system prevents them from enjoying the full benefits of their intellectual property rights.
- And wanted the investor-state dispute mechanism to be included in the FTA’s investment chapter so that they could directly take action against the Australian govt

What to Watch out for: NO TRANSPARENCY

“These bilateral agreements are attracting little public attention, are often highly technical in nature, and are being negotiated in secret, despite repeated requests from civil society to open them to public debate.”

Developed countries consistently refuse to release the draft text of their FTA proposals and simultaneously extract promises of secrecy from their negotiating partners.

No access to draft text - no disclosure to the public or the Indian Parliament. Consultation only through FICCI & CII

This shroud of secrecy limits democratic review and civil society participation in the negotiation process.

Inadequate information for the people and Parliament to study/understand its impact.

Police Arrest during protest May-2010



Police beat People living with HIV with lathis during 2nd Udyog Bhavan protest Oct 2010



Comment posted “I have never seen so many police people with batons and guns.”
<http://www.bbc.co.uk/news/health-11488711>

OUTCOME

TEXT PROVIDED TO HIV+ NETWORK

- Intellectual Property chapter
- Investment chapter

WHAT happened?

First step - Text analysis

Second step - Intense stage of briefing Commerce Ministry, parliament started by groups

**Thousands came to protest in March 2011
Take IP out of EU – India FTA**



Public Announcement

India will not provide data exclusivity: Anand Sharma

Business Standard Reporter / New Delhi March 30, 2011, 0:10 IST

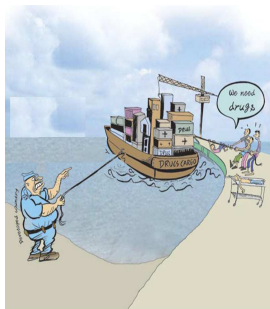
The government on Tuesday took a firm stand on protection of intellectual property rights (IPR) and the aspect of **data exclusivity** for drug manufacturers saying that the country would not extend data exclusivity that would hamper the domestic pharma industry.

This was asserted during a meeting of consultative committee of the Parliament on challenges in Intellectual Property Rights-international and domestic, which was chaired by minister of commerce and industry Anand Sharma.

"India does not provide data exclusivity for pharmaceuticals and agro-chemicals which is in the paramount interest of our generic pharmaceutical industry as grant of data exclusivity would have considerable impact in delaying the entry into the market of cheaper generic drugs," Sharma said in the meeting.

Data exclusivity provides protection to the technical data generated by innovator companies to prove the merit of usefulness of their products. In the case of pharmaceuticals, it means the data generated by drug companies through expensive global clinical trials to prove the efficacy.

IP enforcement measures still not out



- Court orders to stop generic production**
- Customs to stop medicines on their way to other countries**
- Police to collect evidence, freeze bank accounts**

Position on investment negotiations with EU







June 2011 Fact Sheet and recommendations:

- **TAKE IP OUT OF INVESTMENT DEFINITION**
- **TAKE INVESTOR STATE DISPUTE PROVISIONS OUT**
- **DEFINE "INDIRECT EXPROPRIATION" AND "FAIR AND EQUITABLE TREATMENT" PRECISELY TO PROTECT LEGITIMATE GOVERNMENT REGULATIONS IN SUPPORT OF PUBLIC HEALTH FROM CHALLENGE BY FOREIGN INVESTORS;**
- **REVIEW & REFORM BITS**

TPPA NEGOTIATIONS & AUSTRALIAN GOVT: The Australian Trade Minister in 2010 has publicly stated – "...we have serious reservations about the inclusion of investor–state dispute settlement provision in this agreement. Crean S. Letter to the editor. Canberra Times 2010; 17 Mar.

Pharma sue govts all the time over IP (south Africa, Philippines, India) but in domestic courts



The missing links in civil society

Support from groups working on Tobacco Control????

Environment groups silent!

MUST BE STRENGTHENED!

Have we won the battle in EU India negotiations?

- IP (mixed)
- Investment (need tobacco, cancer, environment groups support)
- Agriculture?
- Retail (Maybe)
- Fish workers?
- Government procurement?



Any Questions?