

## MEETING REPORT

### **Strategy Session on the Free Trade Area of the Americas (FTAA), Intellectual Property Rights & Access to Medicines**

Sponsored by Doctors Without Borders/Médecins Sans Frontières (MSF), Essential Action, Health GAP and the National Council of Churches/Church World Service

**October 3, 2002 • Washington, D.C.**

This day-long strategy session, convened by Health GAP, Doctors Without Borders/Médecins Sans Frontières (MSF), Essential Action, and National Council of Churches/Church World Service, brought together people concerned about the impact a Free Trade Area of the Americas (FTAA) would have on public health and access to essential medicines in Latin America and the Caribbean.

FTAA negotiations aim to create the largest free trade area in the world—covering all countries in the Western Hemisphere, excluding Cuba. Human rights, labor rights, environmental activists and others predict dire consequences for the most vulnerable people in the region. However the dangerous affect the FTAA could have on the struggle to obtain affordable medicine for people living with HIV/AIDS and other treatable diseases has not been adequately explored by either public health or anti-FTAA campaigners.

The objectives of the meeting included:

- Defining the current problem: how could the FTAA restrict access to essential medicines? How could the FTAA undermine recent positive developments in the arena of intellectual property and medicines access?
- Creating advocacy work plans for U.S. groups—in Washington, D.C., among grassroots organizations, and in collaboration with organizations in Latin America, the Caribbean and Canada.
- Developing an advocacy strategy targeting the Administration and Congress.
- Creating a road map and time line for actions for the short, medium, and long-term.

Please share this report with your networks. For more information and updates about our ongoing advocacy efforts, contact:

Asia Russell  
Health GAP  
Tel: (215) 474-9329  
Mobile: (267) 475-2645  
e-mail: [asia@critpath.org](mailto:asia@critpath.org)

Robert Weissman  
Essential Action  
Tel: (202) 387-8030  
e-mail: [rob@essential.org](mailto:rob@essential.org)

Rachel M. Cohen  
MSF Campaign for Access to Essential Medicines  
Tel: (212) 655-3762  
Mobile: (917) 331-9077  
e-mail: [rachel.cohen@newyork.msf.org](mailto:rachel.cohen@newyork.msf.org)

Heather Nolen  
Church World Service  
Tel: (202) 544-2350 x23  
e-mail: [hnolen@churchworldservice.org](mailto:hnolen@churchworldservice.org)

## Report Contents

**Overview: Access to Medicines, Intellectual Property Rights and the FTAA**

**Organizing strategies: Focus on the Bush Administration and Congress**

**Organizing strategies: Focus on the Grassroots**

**Next Steps and Action Items**

**Appendices**

1. FTAA Campaigning Calendar
2. Meeting Participants
3. Additional Information

### **1. Overview: Access to Medicines, Intellectual Property Rights (IPRs) and the FTAA**

Rachel Cohen (MSF) and Asia Russell (Health GAP) described the current crisis regarding access to essential medicines in developing countries and the impact of intellectual property protection on public health, and reviewed recent positive developments in this area that are threatened by FTAA negotiations.

Communicable diseases kill over 14 million people each year and are the leading cause of death in developing countries. One-third of the world's population lacks access to essential drugs, diagnostics, and vaccines. The AIDS pandemic illustrates this deadly disparity most vividly: of the 40 million people living with HIV/AIDS (PLWHA) worldwide, 6 million urgently require antiretroviral (ARV) treatment, and just 230,000 have access to it (half of whom live in one country, Brazil). Ninety-six percent of PLWHAs do not have access to ARVs, resulting in immense suffering and millions of premature deaths annually. One of the most significant barriers to access to ARVs is the price of the drugs, which, until recently, was \$10,000-\$15,000 per patient per year. The high price of ARVs is directly linked to the fact that many ARVs are relatively new to the market and are patent protected. Generic competition, coupled with international public pressure, has driven the prices of AIDS drugs down dramatically in the past two years—in some cases to less than \$300 per patient per year. Competition from generic manufacturers is possible due to the lack of pharmaceutical patent protection in key manufacturing countries such as Brazil and India in the mid-1990s.

The World Trade Organization's (WTO) rules on intellectual property protection were set out in TRIPS (the Agreement on Trade-Related Aspects of Intellectual Property Rights) in 1994, the year the WTO was created. TRIPS establishes minimum standards for protection and enforcement of intellectual property rights (IPRs) that must be met by all WTO member states by 2005. TRIPS treats medicines as it does any other commodity; the agreement has presented dramatic, negative consequences for access to medicines. For example, TRIPS obligates countries to provide pharmaceutical patent protection for 20 years, conferring a monopoly on medicines for patent holders. The case of AIDS drug prices illustrates what is to come when all new pharmaceutical products will be patent protected by 2006, after WTO members have implemented TRIPS. For new medicines developed since 1994, generic competition will be stamped out. As a consequence, prices of new medicines will inevitably shoot up, far beyond the means of people in need. The lever that up to now has brought the price of AIDS drugs down will disappear.

Over the past three years, campaigners for access to medicines have worked to lessen the negative impact of TRIPS on access to medicines. In November 2001, at the 4<sup>th</sup> Ministerial meeting of the WTO in Doha, Qatar, campaigners were instrumental in supporting a bloc of developing countries who pushed for the adoption of a Ministerial Declaration on TRIPS and Public Health (the "Doha Declaration"). The Doha Declaration, adopted by all 142 members of the WTO, clearly recognized concerns about the effects of patents on prices, firmly placed public health needs above commercial interests, and offered much needed clarifications about key flexibilities in the TRIPS Agreement as they relate to public health and access to medicines. These flexibilities include compulsory licensing (the production or importation of a generic version of a patented medicine, without the consent of the patent holder), parallel importing ("shopping around" on the global market for cheaper patented medicines). The Doha Declaration was a major breakthrough in the international debate about the impact of TRIPS on access to medicines. Further, political traction on access to medicines was a carrot for developing countries, permitting the launch of the new WTO trade round in Doha.

Efforts to undermine the historic agreement reached in Doha will have deadly consequences for those who desperately need access to medicines, and the US negotiating objectives for FTAA are intended to do just this.

Brazil's internationally lauded program of universal access to free HIV treatment is built around national production of generic versions of HIV medicines that came on the market before Brazil began recognizing patents. Brazil has not used compulsory licensing to produce generic versions of newer, patent protected AIDS drugs, but they have used the threat of compulsory licensing as a powerful negotiating tool to force brand name drug companies to lower their prices. Brazil's status as an economic threat to the US, combined with attention generated by its generic AIDS drug program and its role in multilateral WTO negotiations on TRIPS and public health, makes it an important strategic player in FTAA negotiations regarding IPRs.

Lori Wallach (Public Citizen) described the state of play regarding FTAA negotiations. The FTAA is an expansion of NAFTA to all 34 countries in the Western Hemisphere, except Cuba. The agreement is viewed by many as a clear example of "corporate managed, one-size fits all globalization," without coherent ideological theory linking its provisions. Instead, those writing the FTAA are pushing for rules to benefit corporate interests driving the process.

The US has already said it will not accept any rollbacks on NAFTA in the FTAA—the FTAA is supposed to build on the provisions of NAFTA, while expanding NAFTA's geographic reach. The US seeks completion of FTAA negotiations by January 2005 and is pushing to have the FTAA enter into force December 2005. The FTAA is being negotiated via two parallel tracks: in ministerial meetings, like the upcoming meeting in Quito, and at the Summit of the Americas meetings, most recently held in Quebec City April 2001. There are nine negotiating groups, including on Intellectual Property. Advocates should aim to ensure that IPRs and access to medicines feature prominently on the agendas of both fora.

Advocates should continue pressing for release of the second draft negotiating text, this time in "unscrubbed" form—that is, where draft positions and any parenthetical comments are attributed to countries, rather than left anonymous, as was the case when the draft text was first released in July 2001. IPRs will be one of the most contentious issues as FTAA negotiations proceed, and advocates should seize on this and other areas of conflict such as to ensure the widest possible public and media attention. For public health issues, the FTAA chapter on intellectual property is not the only relevant one in the draft FTAA text. Advocates should also examine the potential impact of the services, investment, and procurement chapters on public health.

Unfavorable aspects of NAFTA's rules on IPRs are made even worse in much of the FTAA draft text. Rob Weissman (Essential Action) described the major aspects of the FTAA draft negotiating text that could limit access to medicines. These are: restrictions on compulsory licensing, extension of the patent term, regulatory issues, and the investment chapter of the FTAA.

Proposals in the FTAA on compulsory licensing set out legal barriers to countries' use of the mechanism and go beyond the standard set out by the WTO in TRIPS. The US is pressing for a limitation of compulsory licenses to public non-commercial use, situations of declared national emergency, other situations of extreme urgency, or declared anti-competitive practices, and for the elimination of the use of compulsory licensing for export. Such restrictions would eliminate the possibility of granting compulsory licenses to remedy patent abuses such as excessive prices or to foster competition in the private sector to increase access to patented essential medicines.

The US is also seeking an extension of the patent term beyond the twenty-year minimum set forth in TRIPS as well as the patenting of all life forms. NAFTA-level enforcement rules for IPRs, which include compensation for patent right violations, punitive compensation, injunctions, and criminal sanctions are also part of the US negotiating package.

Exporting US regulatory standards to all other FTAA countries is another US objective. These include automatic 30-month patent extensions if a rights holder claims there are outstanding patent rights on a product coming off patent (patent "evergreening"). A "TRIPS-plus,"<sup>1</sup> five-year standard for data exclusivity is another US standard that US FTAA negotiators are trying to win, which could obstruct access to affordable generic medicines.

---

<sup>1</sup> According to the World Health Organization " 'TRIPS-plus' is a non-technical term which refers to efforts to: extend patent life beyond the 20-year TRIPS minimum; limit compulsory licensing in ways not required by TRIPS; and limit exceptions which facilitate prompt introduction of generics. Since the public health impact of TRIPS requirements have yet to be fully assessed, WHO recommends that developing countries be cautious about enacting legislation that is more stringent than the TRIPS requirements." (*WHO Policy Perspectives on Medicines*, No. 3, March 2001).

On investment, the current expropriation language may likely have a chilling effect on third parties' willingness to issue compulsory licenses. The language on performance requirements may limit technology transfer. Brazil and Argentina are key countries pushing better proposals to counter the US on the intellectual property chapter.

Although different groups will have different strategies for addressing harmful provisions in the draft text of the FTAA, framing advocacy demands carefully is important. Weissman suggested that if advocates demand FTAA provisions on IPRs copy the rules of TRIPS, and eventually campaigners succeed in changing TRIPS for the better—on the matter of exporting generic copies of medicines, for example—FTAA countries will be locked into a bad deal.

## **2. Organizing strategies: Focus on the Bush Administration and Congress**

M. Fabiana Jorge (MFJ International) provided an analysis of the strategy of the Bush Administration regarding FTAA negotiations, pointing out that there is little daylight between the position of the US pharmaceutical industry lobby (Pharmaceutical Research and Manufacturers of America or PhRMA) and the Bush Administration on the FTAA.

While the FTAA is one regional free trade agreement, the Administration's strategy is to operate on many fronts to expand and solidify worldwide drug company monopoly rights. The White House is pushing bilaterally, with free trade agreements (FTAs) with Chile and other countries, as well as sub-regionally through agreements such as the Central American Free Trade Agreement. These FTAs are designed in part to lock countries into regimes of intellectual property protection now, so the US can more readily duplicate and harmonize these regimes for the entire region in the FTAA. The Administration's efforts bilaterally are also an effort to isolate and neutralize Brazil, the most formidable country threat to the US agenda, by whittling away at other countries one by one.

Educating trade negotiators and others in Latin American countries is a necessary effort: many negotiators—who have very few resources compared with the US—are not well briefed about the impact of either IP provisions in bilateral FTAs or the regional FTAA on access to medicines.

The game plan of the US Trade Representative (USTR) is to wait to push hard on their IP objectives until the eleventh hour. This could be because the White House is very interested in making sure IP goals do not get traded away, or because the Administration expects to be able to sneak its position in without too much protest. Also, the White House has made it clear that it intends to negotiate the US-Chile FTA until it gets what it wants. However, Chilean negotiators now recognize that IP is a powerful bargaining tool; advocates still have a chance to influence the outcome of this important FTA.

Elizabeth Drake (AFL-CIO) described recent developments in Congress on international trade policy and the FTAA. The recent passage of "Fast-Track" Trade Promotion Authority—a key objective for US FTAA negotiators—has set the bar much higher for opposition to free trade agreements, as Members of Congress now have to threaten credibly to vote against an entire agreement in order to get any concession. But access to medicines campaigners did insert an amendment in Congressional legislation renewing Fast Track, stating that US negotiators should adhere to the Doha Declaration. This amendment should be a point of leverage for advocates, but we must use it or lose it, as the overarching negotiating objectives in Fast Track state that "any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States [should] reflect a standard of protection similar to that found in United States law."

The bilateral agreements currently being negotiated are best understood as TRIPS-plus tests by the White House to determine the level of Congressional acceptance for the FTAA. In fact, Congress is not likely to oppose upcoming bilateral agreements—they have very little economic impact on the US. Instead activists should focus on generating pressure on allied Members of Congress to agree to threaten a "no-vote" to the USTR in order to force the White House to give in on key issues like IPRs.

Fast Track created a Congressional Oversight Group (COG), which has no enforcement power, but ostensibly has access to negotiations and to the USTR. COG members need to be targeted for education on IP and access to medicines. Finally, Fast Track also charges the USTR with writing to Congress regarding the state of negotiations on free trade agreements and the USTR's objectives.

Cultivating champions on the COG (and in Congress more generally) is crucial. The text of the floor debate on Fast Track will help show activists which Members are champions or potential champions on access to medicines and IPRs; campaigners should find out if any Members mentioned Sen. Kennedy's amendment on Doha and public health during the debate. Finally, advocates should explore various legislative options to mitigate the impact of Fast Track such as including requirements through the appropriations process that no funds be used by USTR for bilateral or regional agreements that contravene the Doha Declaration or are TRIPS-plus.

### **3. Organizing strategies: Focus on the grassroots**

Success is unlikely without a push from the grassroots. This involves incorporating our message regarding access to medicines and the FTAA into existing organizing efforts, as well as bringing new groups that are invested in these issues into the fray.

Sharonann Lynch (Health GAP) led the group through a brainstorm of additional organizations and networks that should be recruited for activism regarding the FTAA and access to medicines, as well as the tools necessary for successful outreach. A list of organizations generated from the brainstorm, as well as the groups and individuals responsible for follow up, is included in Appendix 3.

Collaboration and solidarity with Latin American, Caribbean, and Canadian groups that are organizing around the FTAA, AIDS activism, and/or access to medicines campaigning is also critical. The Hemispheric Social Alliance represents 50 million people throughout the hemisphere, and includes networks that could be alerted to the impact of the FTAA on access to medicines. MSF has a field presence in many countries in Latin America and the Caribbean and will develop materials that field teams can use both to reach out to AIDS and other public health organizations and to influence trade and health officials in the region.

### **4. Next steps and action items**

Heather Nolen (Church World Service) distilled the next steps for the group. These included:

- Developing outreach materials, such as an organizational sign-on letter to USTR and a non-technical document framing our concerns and demands;
- Setting up a listserv for strategizing and sharing information about IPRs, FTAA and access to medicines;
- Increasing lobbying efforts around US-Chile FTA, while there is an opportunity to change the IPR provisions;
- Writing to members of the Congressional Oversight Group (COG) requesting action on IPRs and access to medicines;
- Obtaining "unscrubbed" draft text;
- Obtaining IPR and other relevant chapters of negotiating texts for bilateral FTAs;
- Doing outreach to members of the Hispanic Caucus of US Congress;
- Planning speaking tours of campuses;
- Developing briefing documents for Latin American and Caribbean governments;
- Developing analysis of TRIPS v. NAFTA, using the lens of public health and access to medicines;
- Incorporating access to medicines demands into existing FTAA meetings and organizing efforts in the community; and
- Developing backgrounders for the media.

## **5. Appendices**

### **Appendix 1. Calendar**

<b>2002</b>	October 31-Nov 1: VII FTAA Ministerial Meeting, Quito
<b>October</b>	October 29-Nov 1: VII Americas Business forum October 27-Nov 1: Ecuador Social Forum IPR terms of US-Chile FTA being negotiated
<b>November</b>	November 5: US Elections

	November 14: Anniversary, Doha Declaration
	November 25: Meeting of Latin American municipal health authorities, Argentina
	November 27: TRIPS Council meeting, Geneva
	US-Chile FTA negotiations continue
<b>December</b>	December 1: World AIDS Day; will include national actions organized by US NGOs
	Deadline: US-Morocco FTA
<b>2003</b>	Bush travels to Africa, will AIDS Initiative
<b>January</b>	CAFTA negotiations begin in US Congress
	Bush State of the Union Address
	Bush sends FY2004 Budget to Congress
	WHO Executive Board meeting
	New DG of WHO elected
	January 14: International Trade Commission comments due on impact of last five big trade agreements
<b>February</b>	New PAHO head takes office
<b>March</b>	
<b>April</b>	Latin American AIDS Conference, Havana
	G 77 Ministers of Health meet
<b>May</b>	World Health Assembly in Geneva
<b>June</b>	
<b>July</b>	
<b>August</b>	
<b>September</b>	September 10-14: WTO Ministerial, Cancun
<b>October</b>	
<b>November</b>	
<b>December</b>	CAFTA negotiations deadline
<b>Unsure of dates</b>	Otto Reich's confirmation hearings
	VIII FTAA Ministerial, Miami 2003

## Appendix 2. Attendees and contact information

<b>Last Name</b>	<b>First Name</b>	<b>Organization</b>	<b>e-mail</b>
Anderson	Sarah	Alliance for Responsible Trade (Institute for Policy Studies)	<a href="mailto:saraha@igc.org">saraha@igc.org</a>
	Anurita	Office of UN Secretary General's Special Envoy on	
Bains	(Anne)	HIV/AIDS in Africa	<a href="mailto:anurita@sympatico.ca">anurita@sympatico.ca</a>
Baker	Brook	Health GAP	<a href="mailto:b.baker@neu.edu">b.baker@neu.edu</a>
Barry	Sean	Student Global AIDS Campaign	<a href="mailto:spbarry@aol.com">spbarry@aol.com</a>
Blanchard	Renee	Oxfam America	<a href="mailto:dctemp1@oxfamamerica.org">dctemp1@oxfamamerica.org</a>
Boneberg	Paul	Global AIDS Action Network	<a href="mailto:globalAIDS@aol.com">globalAIDS@aol.com</a>
Brant	Jennifer	Oxfam America	<a href="mailto:dctemp4@oxfamamerica.org">dctemp4@oxfamamerica.org</a>
Cohen	Rachel	MSF	<a href="mailto:rachel.cohen@newyork.msf.org">rachel.cohen@newyork.msf.org</a>
Cohen	John	Human Rights Watch	<a href="mailto:cohenj@hrw.org">cohenj@hrw.org</a>
Cullen	Dolores	MFJ International, LLC	<a href="mailto:dcullen@mfjint.com">dcullen@mfjint.com</a>
Delaney	Aaron	MSF (Canada)	<a href="mailto:asd@canada.com">asd@canada.com</a>
Dillon	Fred	San Francisco AIDS Foundation	<a href="mailto:fdillon@sfaf.org">fdillon@sfaf.org</a>
Drake	Elizabeth	AFL CIO	<a href="mailto:Edrake@aflcio.org">Edrake@aflcio.org</a>
Dulcan	Emily	Unitarian Universalist Association	<a href="mailto:edulcan@uua.org">edulcan@uua.org</a>
Forner	Patricia	World Vision	<a href="mailto:pforner@worldvision.org">pforner@worldvision.org</a>
Gerson	Timi	Public Citizen's Global Trade Watch	<a href="mailto:tgerson@citizen.org">tgerson@citizen.org</a>
Hansen-Kuhn	Karen	Development GAP/Alliance for Responsible Trade	<a href="mailto:khk@developmentgap.org">khk@developmentgap.org</a>
Jorge	Maria Fabiana	MFJ International, LLC	<a href="mailto:mfjorge@mfjint.com">mfjorge@mfjint.com</a>
Lynch	Sharonann	Health GAP/ACT UP New York	<a href="mailto:salynch@healthgap.org">salynch@healthgap.org</a>
Maldonado	Carlos	Latino Commission on AIDS	<a href="mailto:cmaldonado@latinoaids.org">cmaldonado@latinoaids.org</a>

Maru	Vivek	Human Rights Watch	<a href="mailto:maruv@hrw.org">maruv@hrw.org</a>
McElroy	Danae	Student Global AIDS Campaign	<a href="mailto:danaemcelroy@fightglobalaids.org">danaemcelroy@fightglobalaids.org</a>
McNeely	Kathy	Maryknoll Office for Global Concerns	<a href="mailto:kneels@igc.org">kneels@igc.org</a>
Nolen	Heather	National Council of Churches/Church World Service	<a href="mailto:hnolen@churchworldservice.org">hnolen@churchworldservice.org</a>
Quinto	Gladys	Global Health Council	<a href="mailto:gquinto@globalhealth.org">gquinto@globalhealth.org</a>
Russell	Asia	Health GAP/ACT UP Philadelphia	<a href="mailto:asia@critpath.org">asia@critpath.org</a>
Sabor	Oliver	Elizabeth Glaser Pediatric AIDS Foundation	<a href="mailto:oliver@pedaids.org">oliver@pedaids.org</a>
Smith	Mary Ann	NETWORK, A National Catholic Social Justice Lobby	<a href="mailto:masmith@igc.org">masmith@igc.org</a>
Testa	Lia	Washington Office on Africa	<a href="mailto:woa.mbili@igc.org">woa.mbili@igc.org</a>
Wallach	Lori	Citizens Trade Campaign (Public Citizen)	<a href="mailto:lwallach@citizen.org">lwallach@citizen.org</a>
Weissman	Robert	Essential Action	<a href="mailto:rob@essential.org">rob@essential.org</a>

### Appendix 3. Additional information

**Members of the Congressional Oversight Group (COG):** Rep. Bill Thomas (R-CA), Rep. Phill Crane (R-IL), Rep. E. Clay Shaw Jr. (R-FL), Rep. Charlie Rangel (D-NY) Rep. Sander Levin (D-MI), Rep. Larry Combest (R-TX), Rep. Charles Stenholm (D-TX), Rep. Billy Tauzin (R-LA), Rep. John Dingell (D-MI), Rep. Michael Oxley (R-OH), Rep. John LaFalce (D-NY), Rep. F. James Sensenbrenner Jr. (R-WI), Rep. John Conyers Jr. (D-MI), Rep. David Dreier (R-CA), Rep. Martin Frost (D-TX) Rep. Henry Hyde (R-IL), Rep. Tom Lantos (D-CA), Rep. Dan Burton (R-IN), Rep. Henry Waxman (D-CA), Rep. James Hansen (R-UT), Rep. Nick Rahall II (D-WV)

#### Types of groups to include in organizing efforts:

Latino community, including: LGBT, people with HIV, social justice activists, students, medical and legal professionals	Faith-based organizations
Women's groups	Academics [Rachel]
Fair trade groups	Latin American solidarity groups [Heather, Rob]
Law schools [Brook]	Development organizations/consortia [Rachel]
Medical, scientific, and public health community (including professional associations) [Rachel]	Environmental organizations [Rob]
Student unions [Sean]	Traditional knowledge and anti-biopiracy advocacy groups
Immigrant rights groups [Asia]	People with HIV and AIDS NGOs [Sharonann, Carlos]
Civil rights organizations	Human rights groups [Human Rights Watch]
US generics industry [Fabiana]	Labor groups

#### Specific groups to do outreach to:

Global Exchange [Rob]	Doctors of the World [Rachel]
Business for Affordable Medicines	IATP [Karen, Rob]
Families USA [Fabiana]	Mexican American Legal Defense and Education Fund [Vivek]
AARP [Asia]	Dominicans 2000 [Vivek]
Grey Panthers [Fabiana]	Latino Law Student Association [Vivek, Sharonann]
Human Rights Watch [in addition to HIV/AIDS divisions]	
Canadian HIV/AIDS Legal Network	
NORA (IIWG) [Heather]	
AID for AIDS [Carlos]	
APHA, esp. globalization group [Rob, Rachel, Asia]	
ICCR [Heather, Kathy]	
AMSA [Danae]	
SNMA [Danae]	
Physicians for Human Rights Rachel]	
Partners in Health [Rachel, Asia]	
USAS/STARC [Danae, Asia]	