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Why AIDS Victory Could Spell Trouble for Drug Companies

By Tony Karon

Long before they withdrew their court case against South Africa over AIDS drugs, the giant pharmaceutical corporations had lost the battle in the court of public opinion. And that made it counterproductive to continue the legal fight to stop the impoverished African country most severely affected by the pandemic from importing or manufacturing cheap copies of AIDS treatments. Legal representatives of 39 international pharmaceutical manufacturers acknowledged as much Thursday, when they ran up the white flag in a Pretoria courtroom, withdrawing their suit challenging South African legislation that authorizes the government to begin importing generic AIDS-treatment drugs.

Whatever the merits and demerits of the drug companies' case in terms of trade rules and intellectual property law, in the end it became untenable to argue that any court should put the commercial interests of pharmaceutical corporations above the fate of the more than 4 million South Africans infected with HIV. In the end, those corporations lost the will to stand between South Africa's infected community and access to the cheapest possible treatments — manufacturers in Brazil, India and Thailand, for example, are able to supply generic versions of the drugs at a fraction of the price charged by the Western pharmaceutical corporations that hold the patents.

A painful precedent?

The drug companies may be able to console themselves that — in the eyes of public opinion, at least — they did the right thing by withdrawing the South African case. But they clearly have cause for concern in the precedent they've established, particularly in light of the forthcoming case being brought by the U.S. against Brazil at the World Trade Organization. Brazil may be substantially wealthier than South Africa, but it, too, has millions of people living in poverty, and the supply of locally manufactured generic AIDS drugs has cut deaths from the disease by half over the past four years. The South Africa decision will raise the pressure to back off on Brazil, too, which would reinforce the principle that the intellectual property rights of drug companies can be ignored by governments responding to public health crises in the developing world. That may be exactly what AIDS activists are demanding, but the reason the pharmaceutical corporations

launched the South Africa suit in the first place was the perception that the spread of generics threatens their business interests.

To be sure, governments facing AIDS crises throughout the developing world have followed the South Africa case with interest, and will be encouraged by its outcome. Although sales to Africa, for example, count for some 1 percent of the market of AIDS-drugs manufacturers, the corporations fear that allowing the import of generic versions in those markets could lead to challenges elsewhere: Black market sales in Western markets, for example, or even direct challenges by infected communities in the industrialized world questioning why they're being asked to pay \$15,000 a year for anti-retroviral treatments available elsewhere for \$700 a year.

Not necessarily a victory for the South African government

The outcome of the South Africa case may be a headache for the pharmaceutical giants, but it also poses a dilemma for the government that won the suit. The resistance of the drug companies had given the government of President Thabo Mbeki a ready explanation for its failure to make anti-retrovirals available to South Africa's infected population. But even at the substantially lower prices made possible by importing generic versions, a mass treatment campaign would be a mammoth expense to the cash-strapped government. Simply providing the medical infrastructure to supply the drugs to some 5 million people, many of whom live in conditions of abject poverty that increase their vulnerability to all manner of infection could require billions of dollars of investment. Even now that it has been cleared to import generic drugs, the South African government has not yet indicated whether it will undertake a mass treatment campaign based on generic anti-retrovirals, or confine itself to importing drugs to treat opportunistic infections associated with AIDS. Which means that the anger of South Africa's trade unions and others who have campaigned for mass anti-retroviral treatment may yet be turned squarely against the government they helped elect.

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