Treatment costs: The importance of TRIPS flexibility

May 28, 2021 By Andrew Spieldenner, PhD

We live in a capitalist society. This should not be a surprise to anyone in the US. Everything costs the individual - from education to health care to public utilities. The cost of medication is not something a lot of us think about until we have to pay for it.

I have been working since I was 16, pretty much non-stop. The vast majority of these jobs have had employer-related insurance. My graduate student insurance at UCLA was crap, and I was charged for my bloodwork because HIV was a pre-existing condition (and insurance companies could legally deny healthcare for a pre-existing condition at the time). At the end of my Masters, I owed the school close to $2000 in additional healthcare costs.

When I was at a NYC non-profit, I was diagnosed with Hepatitis C. Luckily a curative therapy had just been approved that year: unluckily my insurance company denied my doctor's prescription. I went for 6 months waiting for them to approve the treatment. They insisted that the $90,000 treatment was not necessary. A dear friend and mentor had died of Hepatitis C in the early 2000s: it was a tense 6 months.

I bring these up from a privileged position - insured, employed and educated - and there were still problems and challenges to getting the proper treatments.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) establishes a minimum amount of protection from each government to protect IP of WTO members. It's understandable, right? Companies want their proprietary technologies protected.

But they produced these technologies within a national context, using people educated there, and marketed using the available resources. Some of these companies even get government underwriting part or most of their research and development through tax breaks and other incentives. In other words, the companies do not produce these items without considerable support from government.

If you were to pay into my company and its products as an investor, I am pretty sure that you would expect some kind of ownership.

I have always wondered why the same body that regulates items like handbags, cars, phones, cars

and jewellery would also be responsible for life-saving medications in HIV, tuberculosis, cancer and COVID-19. Are these the same kinds of technologies?

TRIPS is a key issue in the global HIV response. Where some countries insist that TRIPS flexibility is necessary to get treatment to every single person living with HIV, other countries demand that TRIPS be strident in its protection of all HIV treatment intellectual property. Not surprisingly, many of the wealthier countries - including the US and most of Western Europe - are strict with TRIPS.

Poverty and wealth are not accidental: it is set up by history and economic policies that undermine some places and regions and benefit others.

Without flexibility, poorer countries will remain at a disadvantage in their HIV response.
HIV treatment will remain stuck in past regimens which may not be the most effective, might still have side effects, but are the cheapest.

Recently, the Biden Administration allowed TRIPS waivers for COVID-19 vaccination technology and materials. This was welcome news for most of the world to deal with the vaccine shortage, but some still question if this act will be enough to bring this vaccine to scale globally. There are still no COVID-19 vaccines added to the World Health Organization's COVID Technology Access Pool (C-TAP) as of May 2021.

The fact that the Biden Administration softened its stance is still important. As we move towards the United Nations Political Declaration in the High Level Meeting on HIV, TRIPS flexibility is a key compromise that benefits the world.

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