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Obama Versus Obamacare

Acting at Big Pharma's behest US president hurts India, others and his own legacy

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New York: The US Patient Protection and Affordable Care Act, President Barack Obama's signature 2010 healthcare reform, has succeeded in extending insurance coverage to millions of Americans who would not otherwise have it. But whether Obamacare succeeds in curbing excessively high healthcare costs will depend on the Obama administration's other policies, particularly in an area that might seem unrelated: the US's ongoing discussions with India over intellectual property.

Pharma costs account for an increasingly large component of US healthcare spending. Indeed, outlays for prescription drugs, as a share of GDP, have nearly tripled in [illegible] years. Lowering healthcare costs thus requires greater competition in the pharma industry – and that means allowing the manufacture and distribution of generic drugs.

Instead, the Obama administration is seeking a trade deal with India that would weaken competition from generics, thereby making lifesaving drugs unaffordable for billions of people – in India and elsewhere. This is not an unintended consequence of an otherwise well-intentioned policy; it is the explicit goal of US trade policy.

Major multinational pharma companies have long been working to block competition from generics. But the multilateral approach, using WTO, has proved less effective than they hoped, so now they are attempting to achieve this goal through bilateral and regional agreements. Latest negotiations with India – the leading source of generic drugs for developing countries – are a key part of this strategy.

In the 1970s India abolished pharma patents, creating an advanced and efficient generics industry capable of providing affordable medicines to people throughout the developing world. That changed in 2005, when WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) forced India to allow drug patents.

But, in the view of America's pharma industry, TRIPS did not go far enough. The Indian government's desire to enhance its trade relations with the US thus provides this industry an ideal opportunity to pick up where TRIPS left off, by compelling India to make patents easier to obtain and to reduce the availability of low-cost generics.

So far, the plan seems to be working. Last fall, during his visit to the US, Indian PM Narendra Modi agreed to establish a working group to re-evaluate the country's patent policy. US participants in this group will be led by the Office of the US Trade Representative, which serves the pharma companies' interests, rather than, say, the National Academy of Sciences, the National Science Foundation or the National Institutes of Health.

How might India tighten its patent system? For starters, it could lower its standards for what is considered a 'novel' product, and thus one that merits intellectual-property protection. As it stands, India sets the bar quite high, resulting in its refusal to grant patents for new combinations of existing drugs. India could also stop issuing compulsory licences to allow other companies to produce a patent holder's drug, in exchange for a fee – an arrangement permitted under TRIPS, but anathema to the drug industry.

Generic drugs from India often provide the lowest-cost option in the US market once patent terms have expired

India's current policies allow drugs to be sold at a small fraction of the monopoly prices commanded by patent holders. For example, the Hepatitis-C drug Sovaldi is sold for $84,000 per treatment in the US; Indian manufacturers are able to sell the generic version profitably for less than $1,000 per treatment. This generic price is still a huge expense for people living on a few dollars a day; but, unlike the US price, it is manageable for many governments and aid organisations.

This is hardly an isolated example. Low-cost generics have made it possible to treat tens of millions of HIV/AIDS patients in the developing world.

In fact, the threat of competition from Indian generics is partly responsible for major pharma companies' decision to make some of their drugs available to the world's poor at low prices. If the US compels India to tighten its patent rules substantially, so that they resemble US rules more closely, this outcome could be jeopardised.

Of course, if America's strong patent regime were, as its proponents claim, the best way to foster innovation in the pharma industry, the Obama administration's policy toward India could perhaps be justified. But that is not the case.

Because patents are essentially government-granted monopolies, they lead to the same inefficiencies and rent-seeking behaviour as any other such market distortion. A patent that raises the price of a drug a 100 fold has the same effect on the market as a 10,000% tariff. Furthermore, patent-supported research encourages secrecy as companies disclose only the information needed to acquire patents. Yet openness is crucial for efficient scientific progress.

If the Obama administration succeeds in forcing India to strengthen its patent laws, the change would harm not only India and other developing countries; it would also enshrine a grossly corrupt and inefficient patent system in the US, in which companies increase their profits by driving out the competition – both at home and abroad. After all, generic drugs from India often provide the lowest-cost option in the US market once patent terms have expired.

Obama was right to push for a healthcare reform that would increase this sector's efficiency and accessibility. In its dealings with India, the Obama administration is pursuing a policy that flouts these goals, with consequences not just for India and the US, but for the entire world.

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