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GLAWCAL COMMENT #64

THE CONFLICT BETWEEN PUBLIC HEALTH AND INTELLECTUAL PROPERTY RIGHTS

Based on

Jayashree Watal: "Public Health, Intellectual Property Rights, and Developing Countries' Access to Medicine"

A gLAWcal comment on Jayashree Watal's *"Public Health, Intellectual Property Rights, and Developing Countries' Access to Medicine"* in Paolo Davide Farah and Elena Cima (Eds.) China's Influence on Non-Trade Concerns in International Economic Law

In the chapter "Public Health, Intellectual Property Rights, and Developing Countries´ Access to Medicines" in the book "China´s Influence on Non-Trade Concerns in International Economic Law," Jayashree Watal takes the readers on a journey into the realm of two - at the first glance - conflicting worlds: intellectual property rights and public health. The common presumption is that these two areas are in a state of an inherent conflict. The regime of individual intellectual property rights is designed to remunerate and protect innovative and novel ideas. For this reason, intellectual property rights grant inventors often wide-ranging exclusive rights to make, use, sell, distribute or import patented products. In the case these patented products are represented by medicines – the results of privately funded pharmaceutical research – the question arises whether the system of intellectual property rights might not represent an obstacle for the access to medicines. Vulnerable people in developing countries with few financial resources might only barely afford to buy expensive medicines. As Jayashree Watal illustrates in the chapter, these issues, and fears related therewith are real, but solutions are at hand. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), a constituent part of the WTO framework, includes not only provisions aiming at protecting intellectual property rights, but also certain exceptions and flexibilities that might be used and applied especially in cases concerning public health. As an international agreement, the TRIPs agreement is the result of negotiations between developed and developing countries. The issues concerning public health and access to patented medicines were addressed especially during the famous Doha round, while several concessions could be negotiated especially for the least developed countries (LDCs). It remains to be seen whether traditional flexibilities enshrined in the TRIPs Agreement will be sufficient in the future or whether certain new, innovative, forms of flexibilities should not be introduced to guarantee even more effective access to medicines.

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The gLAWcal comments are insight and short analytical pieces written by the gLAWcal team. The gLAWcal comments are based on, and inspired by, the books and chapters published within one of the gLAWcal book series published by Routledge Publishing (New York/London).

gLAWcal is an independent non-profit research organization (think tank) that aims at providing a new focus on issues related to economic law, globalization and development, namely the relationship between international economy and trade, with special attention to a number of non-trade-related values and concerns.Through research and policy analysis, gLAWcal sheds a new light on issues such as good governance, human rights, right to water, rights to food, social, economic and cultural rights, labour rights, access to knowledge, public health, social welfare, consumer interests and animal welfare, climate change, energy, environmental protection and sustainable development, product safety, food safety and security.

OUR MISSION

To collaborate with Government, Civil society and business community to balance the excess of globalization with Non Trade Concerns.

OUR GOALS

To influence policymakers, to raise awareness over Non Trade Concerns, to encourage stakeholder participation, and to disseminate gLAWcal's publication results.

gLAWcal
Global Law Initiatives for Sustainable Development

Email: research@glawcal.org.uk
Website: glawcal.org.uk
Facebook: gLAWcal - Global Law Initiatives for Sustainable Development
Twitter: @gLAWcal
LinkedIn: gLAWcal