

Health groups welcome exclusion of data exclusivity from India-EU free trade pact

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The NGOs working in the health sector have welcomed India's formal announcement that it will not accept data exclusivity as part of a Free Trade Agreement (FTA) currently being negotiated with the European Union (EU).

The announcement by India at the recently concluded UN High Level Meeting on HIV and AIDS means both the EU and India have officially confirmed data exclusivity, a provision harmful to access to affordable medicines, will not be part of the FTA text.

By delaying the registration of generic versions of a medicine by up to 10 years, data exclusivity would effectively have given a backdoor monopoly status to companies, even for drugs that do not deserve a patent under India's law. The clause, which was criticised by global health actors including the Global Fund, WHO, UNAIDS, and UNITAID, threatened to further limit price-busting generic competition in India, thanks to which the price of HIV medicines has fallen by 99 per cent over the last 10 years, said the international medical humanitarian organisation Médecins Sans Frontières (MSF).

"MSF and other treatment providers depend on a sustainable flow of affordable generics from India to treat people across the developing world. Saying 'no' to data exclusivity will reach far beyond India's borders in terms of ensuring access to affordable medicines in developing countries," said Dr Tido von Schoen-Angerer, executive director of MSF's Campaign for Access to Essential Medicines.

However, the MSF said that although this is an important victory for the global mobilisation against the potential negative impact of the FTA on access to medicines, further harmful measures remain on the negotiating table. It is now calling on Europe to remove other harmful clauses from the EU-India FTA negotiations. "Europe is still pushing provisions on the enforcement of intellectual property that are of great concern for procurers and suppliers of medicines, like MSF, as they put us at risk of litigation or court orders that prevent us from delivering medicines to patients," said Michelle Childs, director of Policy/Advocacy of MSF's Access Campaign.

By allowing patent holders to target all persons involved in the production, manufacture and delivery of medicines suspected of infringing an intellectual property right, these provisions could draw in treatment providers like MSF into legal proceedings and

increase the risk of medicines being seized at Indian borders.

A second area of concern is the investment chapter of the FTA which includes measures to protect the commercial interests of foreign companies investing in India.

Pharmaceutical companies would have the right to bypass Indian courts and sue the Indian government in secret international arbitration panels that do not balance public health against private profit. This could lead to the Indian government facing long legal battles over millions of dollars in damages if, for example, a drug company sees its patent or trademarks (its 'investment') threatened by the actions of the government – even if those actions are lawful means to protect public health.