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**XVII International AIDS Conference
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ELLEN T'HOEN: -for putting this very important issue on the agenda, for organizing this and for inviting me and my co-chair Jamie Love to guide you through this session this afternoon.

I am very excited to chair this all-woman panel on free trade agreements and access to medicines. We have a number of very experienced and very well-informed speakers on this subject. They are going to try to keep to time so that we will have enough time left for questions and answers and for discussion with you.

Now, a few words on why it is important for the AIDS community to be concerned about what is happening in the negotiations on so-called free trade agreements. I actually usually do not use the word free because those trade agreements are not all that free.

But, it goes back a little bit to 2001 when the WTO Ministerial Conference adopted the Doha declaration on TRIPS and public health which clearly, partly in response to the enormous access to medicine's crisis that was in particularly seen with regards to AIDS.

Of course when the global rules on patenting were negotiated during the Uruguay round, running up to the establishment of the World Trade Organization, the AIDS pandemic did not exist. I think if the AIDS pandemic had existed, we would not have the global patent rules we have

today and in a way, the Doha declaration was a bit of a recognition of that and the Doha declaration in 2001 says therefore that these agreements need to be implemented in such a way that the countries retain their right to protect public health and in particular that they can promote access to medicines for all.

This agreement also outlined a number of mechanisms that can be used in patent law by authorities to remedy problems that pharmaceutical patenting causes. For example, the agreement talks about the use of compulsory licensing that is a mechanism to basically set patents aside to allow generic competition to take place. It created a new rule for the least developed countries that do not have to grant or enforce pharmaceutical product patents until 2016 and it clarified a number of other things.

That is very good news. That is definitely very good news and we see that some countries begin to use it. But, there is also a backlash and that is what this session is going to be about. Because what we have seen since 2001, is a number of trade agreements in particular with United States, bilateral or regional trade agreements that have intellectual property chapters that very severely restrict the space that was created through the Doha declaration on TRIPS and public health.

I will just give you a few examples and the speakers will go into it in further detail. But, these trade agreements, for example, introduce new exclusive rights such as

data exclusivity. It often turns the Drug Regulatory Agency into a kind of patent policing, mechanisms so that the Drug Regulatory Agency cannot register drugs when they are patented, they cannot register the generic versions of them.

As in some of the agreements, the patent's term is extended to beyond the so-called minimum term called for in the WTO rules. Countries are forced to provide patents for new users of known compounds, something the TRIPS agreement, for example, does not demand and in many of those agreements, we see restrictions introduced on the use compulsory licensing. Now, these are all reasons for all of us to be quite worried about what is happening.

An additional problem with these agreements are that they are often negotiated in secrecy, that the drafts are often not available and that we do not find out what is exactly in it and what the consequences are until after the deal is done.

So, without further ado, I would like to invite Gabriela Chaves from Brazil to talk to us about what she knows about in particular regional trade agreements, NAFTA, CAFTA and the effects that may have on access to medicines. Gabriela.

GABRIELA CHAVES: Thank you and good afternoon. I would also like to thank [inaudible] for this important session. It seems the free trade agreements and TRIPS plus provision are strongly affecting the sustainability of access to medicine's policy for the future and also now.

First, I would like to say that where are we after TRIPS? We have gained several of experience after this 13 years of enforcement of TRIPS. The first one is that competition is the best way to get price reduction and consequently to improve access to medicine. Also, that the patent medicines in their monopoly situation and high price has affected the access to medicine's policies in developing countries.

And there was, during this year, a big effort to implement some TRIPS flexibility such as Ellen said, which is the case of compulsory license. After more than 10 years, Thailand implemented and Brazil implemented, but it is an ongoing effort for the future medicines and we did not have so much innovation suitable for developing country's needs. So, this graph from [inaudible] is just an example of how competition was crucial to get price reduction.

I would also like to highlight which experience civil society has gained during these years. The first one was the support of the use of TRIPS flexibility, the use of pre-grantal positions to avoid the granting of improper patents. This case is very special because it promotes a stronger share of experience between civil society of developing country. We learned a lot from India and Thailand and I think this will be one of the issues that we will need to explore for the future. We need to avoid the improper patents.

Also, we had a very strong international support from developing countries to local initiatives and the need to find solution inside the current patent system which is a very strong discussion in the international level and now, UNAIDS is considering the patent pool as an alternative inside the system and this is some of this experience we have gained during this year.

Just an example, the compulsory license of Thailand was a very important, not only for Thailand, but for developing countries. This is an example of how the price got down after price negotiations and also after the compulsory license and then this had an impact also on other developing countries. Since [inaudible] announced the reduction for middle income countries such as the case of Brazil.

So, now we are in the scenario where we will not have the easy source of generic versions coming from India. We need to think in another way. So, what do we need to do now to keep using the public health TRIPS flexibility. So, keep avoiding the granting of improper patents, to think about the importance of stimulate local production of a social health technologist and to avoid more than ever TRIPS plus provision.

Also, to find ways to stimulate innovations for developing countries' needs. So, getting to the TRIPS plus provision focus, these are the public health TRIPS flexibilities we have now. First of all, we need them in our legislation but this will be the way to promote competition

with generics but if we have the TRIPS plus provision included such as the restriction of compulsory license, this will affect the use of this public health flexibilities.

If we got the linkage between drug markets approval and patent status, this will affect the baller [misspelled?] exception which is a public health flexibility that allows the generic to present the status to get to the registration before the patent expires. So, if we include the linkage, we are deleting the baller exception.

Also, there are the extensions of patent term beyond 20 years, the exclusivity of that will be still needed for registration, that that is a protection. The two other examples that is already being proposed in other FTAs, a red sign is is the limitation of using oppositions which has been shown to be very effective and also to propose drug criteria for pharmaceutical patents examination such as Ellen said to, when patents for second use or polymorphs and et cetera. So, we need to avoid that, otherwise, we will not have ways to promote competition.

So, going to the specific cases of FTAs between U.S. and American, just to highlight this, we have also [inaudible] that we will live to [inaudible] that we would explain go further on details. And that is why this is very important to discuss because we have already two bilateral agreements between U.S. and Columbia and Panama, pending congressional approval, we have also NAFTA that was before TRIPS so it was

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already an announcement of the future scenario. Also, there is Chile and U.S. in the Peru and U.S. pending implementation.

Just a very brief overview, these agreements are already proposing the restriction for compulsory license, the linkage between drug markets approval and patent status and the data protection and extension beyond 20 years. But TRIPS plus provision are not only proposed in FTAs. Countries that are not signing FTAs with IP chapters should be aware in the same effort.

The example of Brazil is very important because in the legislative, we have a bill from 2006 proposing the inclusion of linkage between patents and medicine registration. So, although we have the baller provision in our law since 1996, this bill is putting this flexibility on the risk. So, civil society should be aware of what is being proposed also in the legislative level.

Another example in Brazil, is the revision of the guideline for pharmaceutical patents examination. The Brazilian patents ops is proposing a revision which excludes the participation of civil society and they are proposing to grant patents for second use and polymorphs allowing the evergreening patent protection. So, this is another way to include evergreen and to include the TRIPS plus provisions in our countries.

I will not discuss this one so I will finish my presentation with more questions than answers. How to

prioritize our efforts to guarantee long-term access to essential medicines? To promote the use of flexibilities, to avoid the granting of improper patents, to avoid the inclusion of TRIPS plus provision, to monitor FTAs, monitor bill in the congress, monitor favorable decision in the courts favorable to pharmaceutical companies. So, I think this is a big challenge for civil society and government in developing countries. Thank you. [Applause]

ELLEN T'HOEN: Thank you Gabriela for this very useful overview and you are putting out quite an agenda for civil society there so that I am sure, will help with the discussion. I would like to invite the second speaker, Sanya Reid Smith from TWN, Third World Network. She is based in Australia and she will talk about the nature of free trade agreements, their role in the global economy and the proposed U.S. Malaysia free trade agreement. Sanya.

SANYA REID SMITH: Thank you Ellen. I am actually based in Malaysia but never mind. [Laughter] As you know, a patent is a monopoly on the medicine and it means that only one company can sell the medicine. So, that means that they can charge as a high a price as they like.

And what we are talking about here is not just the TRIPS level of protection because 153 countries are members of the World Trade Organization, and that sets the minimum levels of patent protection and in an agreement called TRIPS. So,

this session is about how the intellectual property rules are being made to go even stronger and we call that TRIPS plus.

So, as Gabriela said, some of your laws may already be TRIPS plus, even if you have not signed a free trade agreement and this might be through bilateral pressure. For example with the U.S. Special 301 where they go around to your countries and say we will do things to your trade and tax on your exports unless you agree to stronger intellectual property protection. But, this is also an empty threat and maybe Jamie can talk more about this.

Then there are free trade agreements with these countries in particular which lead to TRIPS plus provisions. I will talk about the European Union ones a bit later. But, the European Free Trade Association with Iceland, Liechtenstein, Norway, and Switzerland, can also bring in these TRIPS plus provisions. So, who are they signing with?

They have already signed free trade agreements with Chile, Egypt, Jordan, Lebanon, Mexico, Morocco, Singapore, the Southern African Customs Union, South Africa, Namibia, Lisutu, Swaziland, Botswana, South Korea, Tunisia and Turkey.

They are still negotiating with Algeria, India, Indonesia, Russia, Thailand, Columbia, Peru and the Gulf Corporation Council Bahrain, Kuwait, Oman, Qatar, Saudi and United Arab Emirates.

What do these free trade agreements? Well, they vary a bit and it looks like if you resist, they will drop some of

their TRIPS plus demands. But, they do have the statutory exclusivity that Ellen talked about which is a monopoly even when there is no patent. So, even when there is no patent, you cannot get the generic medicine for at least five years. They also have longer patents so the monopoly does not just go for 20 years, it may go for 25 years. These are patent term extensions.

Of course the U.S. free trade agreements have the most TRIPS plus provisions and that is what Gabriela or Lidice will be talking about so I will not focus on those. For Japan, this is an interesting one, they have already signed with Brunei, Indonesia and Malaysia, Philippines, Singapore, Thailand, Chile and Mexico.

They are also negotiated with South Korea and India. And the Japanese free trade agreements often have a very strong investment chapter which can cause you problems with access in generic medicines which I will talk about more later.

Okay. Here is the loveliest of countries negotiating with the E.U. It is alphabetical by column and I am sorry the country names are in English so it is English order. And if there is a question mark it means that the negotiations may be stalled like Murkoso [misspelled?] or it is not clear if the country will be included like the least developed countries in Azian [misspelled?] or the negotiations may not have yet started like Russia.

So, can you see your country on this slide or this one? It keeps going; there is about 120 countries so most developing countries in the world are negotiating with the European Union. How about this slide?

So, is there anybody in this room who is not negotiating a free trade agreement with the European Union? It is a lot of countries. So, the European Union again, has a variety of TRIPS plus provisions. And again, if your government resists, it looks like the European Union will drop some of the demands.

But, they ask your country to join two treaties which can mean that you get more patent applications so you get more patents on medicines. In countries like Vietnam, they had 15 times as many patents on medicines as before they joined these three treaties.

So, there could also be longer patents like in the U.S. free trade agreements beyond the 20 years. They could also have this data exclusivity monopoly even when there is no patent which could be for 10 years which is they asked South Korea for. South Korea said no so the European Union dropped it. So, if you can persuade your government, and we will talk later about how PLHIV have managed to do that, then it looks like they will drop some of the demands.

They also have this linkage that Ellen mentioned which is where your Ministry of Health has to become the patent police and this affectively stops compulsory licensing. So,

some of you were at the session last night where you heard about the new compulsory licenses and this means that even if a medicine is patented, your government can allow the generic version to be imported or made and they just have to pay a small royalty like 0.5-percent so the medicine becomes very affordable. This is not possible if you agree to this linkage provision.

They also try to undermine parallel importation where your country can import the cheaper patented medicine from another country. In addition, the European Union has some special TRIPS plus provisions that we do not normally see in U.S. free trade agreements. These are new tricks. One, is they ask you to agree to regional patents, this is quite unusual. Usually you have to apply for a patent in every country in order to get a patented national.

So, if you are from a country with a small population like a pacific island with 10,000 people of which maybe five people have HIV, Big Pharma, the pharmaceutical companies are not going to come to your country to apply for a patent on the medicine, translate the application into the local language, hire local lawyers, pay the fee every year, because the market is too small, it is only five people. So, you will find in countries with small populations, you do not have many patents on medicines comparatively.

But, what happens, is if you join into this regional patent system, then suddenly a group of ten of you, have a much

bigger population so they just apply once and they get a patent in all ten countries. So, in the Pacific, if they have a regional patent system with Fiji and Papua New Guinea, suddenly it is a market of 5 million people and it is worth applying for patents and you would expect many more medicines to be patented in the Pacific Islands.

The second trick we have seen the European Union try to do, is they try to get your countries to agree to harmonize your laws with the European Unions. The European Union gives 11 years of doctor exclusivity even if there is no patent. That is a monopoly of 11 years when you cannot get a generic medicine.

They allow patents on all kinds of things that should not probably get a patent. So, if you have to harmonize your law to theirs, suddenly you give the strong level of intellectual property protection that the European gives and it is much harder for you to access generic medicines.

The other trick they try to do is about enforcement of patents and this is where they seize things that they think are infringing at the border and at the WTO, this only has to be for fake Rolex watches and fake copyright things like DVDs and CDs.

But, the European Union wants to extend this to patented products but how does your poor Customs Official know when they look at a medicine, it is a white tablet, the patented version is a white tablet, the generic version is a

white tablet, how do they know that the generic is infringing the patent or not? So, they just seize all the generics.

Now, eventually they release them but you probably have to pay a big bond and it is probably too much for the generic companies to afford and it also catches things that are transited through free warehouses.

So, I understand like MSF might ship things to Burundi through South Africa because South Africa is an airport hub. South Africa may have a patent on the medicine but you just transit through a warehouse in South Africa so you are not really infringing the patent in South Africa and you can get it to Burundi which the least developed country and does not have to have patents.

But, this European Union bond would catch even those things and it also applies to even the least developed countries. They just get a bit longer to implement it. The other way is for the 40 or so countries that are not yet members of the World Trade Organization like most Pacific Islands, you do not have to patents on anything.

But, in the process of joining the World Trade Organization, you may be forced to accept these TRIPS plus provisions because the WTO is a club and all of the existing 153 countries including the U.S., the European Union, Switzerland, have to agree to let you in and they can impose any conditions they like on you to get in. So, they can ask

you for TRIPS plus patents of 30 years and you have to give it if you want to get in.

Regional patent [inaudible] I have explained the problem and bilateral investment treaties we will talk about now. So, a bilateral investment treaty is not a free trade agreement. It is a stand-alone agreement on investment. But, you can also get the same provisions in the investment chapter of a free trade agreement.

Why are we talking about this? Well, because they have this broad definition of investment. It includes patents, it includes the data that is used to approve a medicine and it includes basically everything usually, even market share, profit, expected profit, expected market share.

Then if it also has this expropriation provision, it means that if your government does anything that reduces the value of this broad definition of investment, your government can be sued of an international tribunal by the company and if it loses, it has to pay full compensation including interest.

So, what does this mean? Data exclusivity means you cannot approve a generic on the basis of the pharmaceutical company, the originated companies, clinical trial data. So, if you ever do approve a generic, you have reduced the market share of the originated company, you have reduced their profit; you have expropriated their investment possibly.

So, your government has to pay them full compensation for every box of medicine they would have sold if there were no

generics being sold in your country, including interest. So, that means your government would never allow a generic to be sold and this is called infinite data exclusivity.

Similarly, how would you ever issue a compulsory license? Because if you do, you reduce the value of the patent, you reduce their market share, you reduce their profit, you have expropriated their investment, you have to pay them the full price of every box of medicine they would have sold plus interest.

And the investor state dispute settlement is how the company sues your government. The difference is that in a free trade agreement, so in a bilateral investment treaty, the company sues your government at the international tribunal for expropriating their patent, your government loses, they are supposed to pay \$30 million, they do not pay, nothing happens.

But, if these same provisions are included in the free trade agreement, then your government is sued by the company at the international tribunal, your government loses, they are supposed to pay \$30 million, they cannot afford it because they are Ethiopia, so they do not pay.

In a free trade agreement, that would allow the developed country, the home of the pharmaceutical company, to put export taxes on all the exports from Ethiopia until the money has been made up. So, it really has teeth. And this is particularly the case in Japanese free trade agreements because it has all of this and there are no exceptions for health.

Okay, finishing up. What can PLHIV do about all this? I am not from Thailand but Thai people of HIV as you know, have been very inspiring in what they have done but to fight these TRIPS plus provisions and also to use compulsory licensing and there is actually a book here, that is in the global village in stall 104 and 408 which talks about how Thai people of HIV did all this.

And at the start, there is a chapter that explains what is a compulsory license, what is a patent, what is TRIPS plus provisions, you can also get this from apnplus.org because it is by the Asia Pacific that works with people living with HIV/AIDS.

And there is also a poster that goes with it which explains, I do not like to be complicated, it explains whether how to find out if there is a patent on a medicine in your country, whether you are a WTO member, whether you need a compulsory license and you kind of follow your way through the jungle and it is supposed to make your life a bit easier in this area.

And of course, in Malaysia, the people living with HIV/AIDS have been leaders in writing letters to the editor, in demonstrations, you can see here they made a coffin; they left it outside the Minister of Trade and said you are killing us in these negotiations with the U.S. They had t-shirts saying FTA kills and in Thailand, PLHIV were also a key in bringing the

negotiations with the U.S. to a halt. Thank you very much.

[Applause]

ELLEN T'HOEN: Thank you. Thank you Sanya for this presentation which on the one hand, raises a lot of concerns but on the other hand, is also very encouraging in the sense that it does show and in many countries we have seen that resistance works and that all of this can be prevented if you get organized to make that happen.

I would like to introduce our last panelist, Lidice Lopez. I do not dare to say anymore where she is from but I believe she is from Peru, living in Guatemala, but if I am wrong again, please do correct me. And she is going to talk to us about trade agreements in Latin America and access to medicines.

LIDICE LOPEZ TOCON: Good afternoon everyone. I am very pleased to be in here to talk about some issues we are facing in Latin America. Okay. Due to this free trade agreement, we are negotiating or we already have in this region.

But, first I want to highlight some issues from the HIV epidemic in Latin America. We have almost 2 million with HIV in region. The figure says that we have already 73-percent of those in need of treatment already receiving it, but Brazil and the South countries has a strongly influenced in this presentation.

And of course, in the small and poorest countries that are in Central America like Guatemala, Honduras [inaudible] less than 50-percent of those in need actually are getting ARV. And of course, this is not only because FTAs.

We have other barriers to access ARV, lack of access and to testing and low rates of literacy, poverty, centralization of health facilities, medical attention or direct fees that we have to pay, transportation, accommodation, the cost, limited access to laboratory test, stigma, discrimination and on top of everything, we have intellectual property rules that we have to follow.

So, how are this IP, intellectual property provision included in the FTAs? And I am going to talk briefly about NAFTA and CAFTA. I do not know if you can see it but the NAFTA and CAFTA included compensations for delays to grant a patent and this compensations are granted because unreasonable delays and the same situation was, in the second row we can see it, are supposed to be granted if the sanitary registration is delayed too.

An unreasonable delayed depends on the country. In the case of Nicaragua and Honduras and El Salvador, they legislated and said that an unreasonable delay is more than five years. But, in Guatemala, that you are going to see a little bit later, with a strong influence of pharmaceuticals, they actually said that more than three months is an unreasonable delay.

And another issue included in the FTAs NAFTA and CAFTA is the linkage between the sanitary registration authority and the patent that limit a generic drugs to enter the market in a third country. Ellen and Gabriella and Sanya already mentioned this, that our protection and exclusivity that are included in FTAs. So, even when a pharmaceutical is not patented, as Sanya mentioned, they got a monopoly for five years in Mexico and all Central America and Dominican Republic.

So, what if it could be the potential impact of these FTAs and we have already seen it? And we have extension of patents from 20 years to 25 years at least, if we have these unreasonable delays. We have, due to that protection or linkage; we have this new restrictions to introduce generic drugs. And of course, we have limited access to ARV treatment especially for new drugs that are widely promoted here.

So, I am going to present some examples of what is happening in Latin America. Chile, from 1991, they allow patents and until 2004, 5,500 pharmaceutical patents were filed and as you can see the figures, only 692 were granted, another bunch of them were rejected and 3,082 are still on analysis. So, if Chile had had this FTA sooner, those pharmaceuticals could be granted an extension. So, from 20 to 25 years.

And in Costa Rica, we have some data from 2006 and it has been the same, so from 595 patent applications, only 7 were evaluated so they could have had this extension. In Guatemala, they are currently recollecting some data to analyze what is

going on with the stature protection that— Guatemala has a very curious scenario.

But, Guatemala has that protection from 2000 and then the law will change it five times and because of that, some generics are not entering the market right now. So, they have made analysis and the cost has increased from 249-percent to 846-percent, none that have protected drug. Of course, linkage is being used to delay entry into the market by generic companies for particular products and these delays could last for years.

And of course, rich countries and pharmaceutical enterprises keep pushing forward or backward depending on how we sit and we have these many changes in Guatemala legislation in 2004, data protected was included in the legislation for 15 years. So, Kaletra and other 21 drugs have this data protection for 15 years, it is around until 2020 or around that time.

So, even though these drugs are not patented, they have the monopoly so they can put the price they want and this pharmaceutical pressure and this rich country pressure in is also happened in South America and for example, Peru, filed an amendment to the MBN [misspelled?] community to change the industrial application criteria to grant a patent for the criteria of utility. Well, it was not accepted but it proved pharmaceuticals are still pushing.

And in Columbia, they have the linkage, even though it is not legal yet because the FTA has not been approved yet. So, what to do or what are we doing in Latin America? We are and we should keep monitoring changes on legislation to prevent FTI plus which Sanya explained and we have some organization working on that. And we have to be aware of what European Union and FTA are proposing for this new FTA we are negotiating.

And of course, we have to closely follow the impact of FTA on prices of medicine in order to assure access to drugs and prevent any harm to public health in other countries. Thank you very much.

ELLEN T'HOEN: Thank you Lidice for this overview and for also giving us some examples of the practical consequences of these new rules that are indeed quite worrisome. I am not going to hand over to my co-chair, Jamie Love who is going to make a few introductory remarks to pick up the question and answer discussion session. You want to-

JAMES LOVE: Is there a storm or something in this room? It is really- it is rain? Okay. I am glad I am inside then. Well, I thought all of the three presentations were even better than I have ever heard them before. They were really great and I am guessing for some people in the audience, it must be kind of a range of backgrounds.

There is probably some people in the audience that know a lot about patent law or other types of parts of intellectual

property laws or know a lot about trade and there is probably other people out here that do not know very much about that or find kind of confusing the whole trade idea.

So, I would also like to echo the comment that it was really great that Annon Gorber [misspelled?] set up this panel because he has identified a really important thing for people living with AIDS and other illnesses which is, are these agreements that were described by the panelists, are they going to frustrate all these other things that are going on at this meeting? Are they going to make it harder for people to get access to generic drugs at lower prices?

And the details are complicated but the effects are very practical and they are very real. It is hard for a lot of people I think here because the agreements are negotiated as part of a much bigger part of the government's policy. They may be focusing on trade in bananas or textiles or investments in telecommunications equipment or things like that.

So, the range of considerations in a country are so complicated that sometimes the people in the Health Ministries are almost not consulted or do not know much about the agreements and that is unfortunate.

So, we will have a discussion and people should ask questions. I would say that there is quite a few people in the NGO community and in the UN community who have the capacity to provide information about these things. I know that Annon's group is really one that really does a fabulous job.

There is a lot of the southern NGO's here, the Thai group that was referred to, the South Africa group, there is a lot of groups that work in the field. There is big organizations like Oxfam and MSF and then groups like mine or Health GAP, [inaudible] that work on these issues.

I think building ties between North and South, I think that is kind of important because often the pressure is often coming from the European Commission, Japan, or the United States. So, it is not a bad idea to develop some strategy to communicate so that you can work here but I think right now, people were very good about their time, I will try and be good about my time.

I think we will go right now into a question and answer and people should be free to come up to the microphone. What we probably do is probably take about a half dozen questions first and then ask the panelist to respond to those half dozen questions. So, anyone who wants to if you could start off by maybe identifying yourself and then go ahead and speak.

INGA COMEN: Good evening. Inga Comen [misspelled?] is my name. I am a trade investment lawyer specializing on access to medicine. I also teach international trade and access to medicine in a couple of universities in South Africa.

First and foremost, I would like to say that it is unfortunate that nobody from Africa is presented on the panel, irrespective of the fact that we know the impact that this

happening in Africa as well as the potential impact of FTAs that African countries are at a verge of signing.

I would like to make two comments which will go Sanya. The first is that the U.S. and Sakut have some agreement but it collapsed. And these agreements have [inaudible] TRIPS plus provisions. But, fortunately it collapsed so whether or not it will be resurrected is another question.

And secondly, you made mention of the EU. The EU has what is called an economic partnership agreement with African countries and from my understanding of that is that, at the moment, intellectual property issues have been put aside. Whether or not if we go in the full eight years is another issue that policy holders are not able to tell us at this time. That was just a comment.

The last comment is a question that goes to Lopez. I read some literature by Carlos Corea [misspelled?] who said that a study was being conducted before the U.S. went into the FTAs with the Indian community and this study shows that the proposed FTA of the time will have negative implications on the Indian community.

So, what do you think pushed these countries into entering the FTAs with the U.S.? Do you think it was pressure? Do you think it was as a result of some of trade-offs or economic benefit? So, I would just like to have an idea on that. Thank you very much.

JAMES LOVE: Thank you very much. Hello? Potential panelist obviously.

MARK MILANO: Hi. I am Mark Milano [misspelled?] with Health GAP. I want to echo what Jamie said about the importance between communication between North and South. This already began when U.S. attempted to stop South Africa from making generic drugs and we won that battle by activists in the U.S., hitting the U.S. government hard and activists in South Africa, working hard in South Africa and we won.

And I think in any of these situations, it has to be activists in America want to hit our government and if activists in the other country are hitting their government, I think that is the way we work. The problem is, is that I did not know about these extra things of going into the legislature to get the extra 15 year data, all those little things. So many of them are happening that we are not aware of them.

I want to ask the panelists, is there a way we could set up a clearing house where we could all know what is going on everywhere so we in America, know when to pressure our government so Act Up-Paris knows when to pressure the E.U. so we can all be doing this at the same time because that is the way we are going to win, if we are hitting it from both fronts. Do people see that a clearing house could work and would be useful so we can all be on the same page?

JAMES LOVE: Thanks. Also, for people that, I do not know if people know this, but Mark played a critical, a really

huge role in 1999 in terms of changing the foreign policy in the United States when President Clinton was President and Vice-President Gore was the Chairman of the South Africa-U.S. National Commission and because of the efforts of Mark and a number of his colleagues, the Clinton Administration changed a lot of its policies in the last year of its office so I would just like to hope people recognize what an important role he played.

But, do the panelists think that is a useful approach? How would you propose we go about doing that so we can work together on this? Any ideas from the panelists? I was just wondering if we were going through and collect a few more questions but since we do not see anybody else at the microphone, well, maybe we do. I was first going to collect six comments and then go to the panel and come back to this question of the clearing house.

ROBIN CALDER: Hi. I am Robin Calder [misspelled?] with ELMA Philanthropies and my question, first of all, I think the clearing house idea is a great idea, it could be even a website that is regularly updated with a blog possibly. So, I think that is a great idea.

My question is what are the possibilities of using international human rights law and international human rights precedence to combat these patent laws including patents of life-saving medicines in the free trade agreements? If any of the panelists could speak about efforts to use international

law, human rights law to fight this, that would be great.

Thanks.

JAMES LOVE: Is there another person coming? Yes?

LAUREL SPRAGUE: Hi. My name is Laurel Sprague. I am from the U.S. and among other things; I am a student in political science. My question is that I have heard it claimed many times that these IP protections are necessary in order to maintain in sense for ongoing AIDS research. And I am wondering if you have any idea or any way to tell us how true this claim is and if you have any strategies for how we can respond to those claims when they are put to us. Thank you.

MALE SPEAKER: Sorry. I do not speak English. Maybe sir, could you please translate from Spanish to English my commentary and my question? Yes? [Speaking in a foreign language]

LIDICE LOPEZ TOCON: He is from Columbia and he mentioned that Columbia has already signed an FTA and it has been approved by the Congress and all the senses, it needs to be approved and he wonders to make some comments about this in terms of years of life. How could the impact of FTA could be measured for people living with HIV. He highlighted if Pharma has already made this measure and because the government will keep the same amount of money to buy patented drugs. So, he would like us to get a number of years of life lost because of FTAs, right?

JAMES LOVE: Thank you for that very helpful translation. Sir?

DAVID CALGI: My name is David Calgi [misspelled?], currently living in California. At the opening session of the conference, Felipe Calderón indicated that he was going to be lifting restrictions on five medications that would be coming into Mexico. In light of today's conversation, how would we analyze that, is that a good thing or should we as activists around aids issues be concerned about what that might mean for the economy and availability of those drugs here in Mexico?

JAMES LOVE: Which drugs?

DAVID CALGI: I do not think they were named but there were five drugs that he said that restrictions were going to be lifted. I believe they were second and third line drugs. They are not currently available in Mexico but they were going to be lifted. It was a promise he made at the opening of the conference.

JAMES LOVE: Okay. Thank you all. So, we have had—yes, one more and then we will go to the panel.

MALE SPEAKER: Perhaps I could clarify that. I think what you referred to was, this was passed this last Tuesday I think. They have eliminated the, it was called [foreign language], it was a plant requisite. In order to sell a generic drug in Mexico, you needed to have a plant in Mexico which necessarily made generic drugs prices higher because there would be an intermediate channel of distribution.

I think that is what he was referring to and it was already eliminated as of yesterday. There is no need in order to import any retroviral drugs; there is no need to have a plant here in Mexico. I think that is what he was talking about.

JAMES LOVE: Okay, that is very helpful. So, if we could go to the panel. I would like to start at my far end with Miss Lopez and then move this way. If you could try and sort of keep your— I know that was a lot of questions, if you could try and maybe initially sort of focus within about three minutes, it would be good.

LIDICE LOPEZ TOCON: Okay. First of all, I would like to answer the first question about why we sign these FTAs and it is a tricky question but I think that the thing is that people from our countries who sign those FTAs are actually those who are getting some benefits from it. Let us say some asparagus exporters in Peru or roses exported in Columbia or coffee exports in Costa Rica.

So, that is the problem. And we have this information before the FTA in Peru were signed from Carlos Carrera. He was part of the negotiating team. But, from some efforts at the beginning, the Ministry of Health just said okay, if you say that we are getting all these benefits, okay, we will probably have this enough money to pay for this drug. And they just stop pressuring our government.

About the situation here in Mexico, it is not a thing about intellectual property actually. It is about the criteria about market here in Mexico and I am sorry, personally, I do not have any number for this Columbian friend, we have no information about that.

SANYA REID SMITH: Thank you for the questions. I agree with you that the Southern African Customs Union did stop negotiating the U.S. free trade agreement and I understand it was partly because of these TRIPS plus demands by the U.S. in addition to the affect of South Africa's affirmative action policy.

Sorry, when I was talking about free trade agreements, I included the European Union Economic Partnership Agreements or association agreements or whatever the different name is and with Africa, of course, they are not complete yet but with the Caribbean, the Cariforum countries which is Caricom plus Dominican Republic.

They have initialed a full economic partnership agreement which does include an intellectual property chapter and does require the Caribbean countries to join the Patent Corporation Treaty which was responsible for 15 times as many patent applications on medicines in Vietnam as before they joined. So, especially because Caribbean countries are a small market, I would expect that to result in a sudden rise in the number of medicines that are patented into the Caribbean.

The African countries, with respect to the European Union of course, some of them have only gone as far as interim and some have not even initialed interim agreements and I have not read all of the interim agreements, but some of them are not even legally enforceable the requirement to negotiate an intellectual property chapter. It is listed there but there is no dispute settlement mechanism if you fail to have an intellectual property chapter.

So, for those African countries, they can go ahead and have a no intellectual property chapter, no TRIPS plus FTA. To add to the question about why are our countries signing these things, in some countries like I understand the Indian countries and Central America, before the free trade agreements, their exports were going to the U.S. with no tariffs or low tariffs most of their exports under a unilateral sort of gift from the U.S. They thought that they would lose this and they thought they had to sign the free trade agreement in order to lock this in. But, this was not actually the case.

The U.S. would never have cut this off but they believed it and of course, the countries that have signed U.S. free trade agreements, all of them their trade balances have worsened unless they were in some situation like Mexico where you had a peso depreciation or Chile where your copper price went up or Jordan where your textile exports increased, which is not possible anymore.

As Jamie said, there are a number of organizations that can help you with this including the World Health Organization and the United Nations Development Program. They have been giving very good advice on this area for developing countries. And one thing you can do and that developing country negotiators often do not seem to know.

For example, is that the European Parliament has passed a resolution, telling the commission that they should not negotiate TRIPS plus provisions in free trade agreements with developing countries.

So, if your negotiators knew this they could hold it off in the negotiations and say look, what are you doing, what are you asking us for. Of course, it does not have a lot of legal force but it is a good political tool. And similarly the U.S. is, I am sure Jamie can say, has recently with the Democrats in power in the Congress, the Parliament has watered down their free trade agreement demands on TRIPS plus under this new trade policy but a lot of developing countries again do not know that they can ask for this and have a right to it. So, then they just agree to the old system.

But, the U.S. has slowed down recently because they have lost their fast track and maybe that will be gone for a few years. So, there may not be a lot of new U.S. free trade agreements, but of course, as we heard, the existing ones are already causing problems.

With respect to Columbia, sorry, I am not speaking in Spanish. The World Health Organization had a model which you can use in your own countries to see the impact of agreeing to these TRIPS plus provisions on medicine prices in your country.

And so, for example, for Columbia, before the new trade policy, they said that it would require an extra \$1.5 billion U.S. to be spent on medicine every year and if this is not spent, Columbians will have to reduce the amount of medicines they consume by 44-percent. So, which half of your medicines are you going to not afford to buy and that is not just for HIV medicines.

So, this model is available to any country that wants to use it before you decide to agree to this either in a free trade agreement or due to bilateral pressure. It is a simple Excel spreadsheet, you put in 10 numbers, you click the button, and it graphs for you the impact on prices and consumption and you can get that from your WHO local office.

The human rights question, it is a good tool. Some countries are more susceptible to it than others so for example, Malaysia recently was called before the committee on the rights of the child because that convention includes the right to health and they were asked, what are you going to do about your U.S. free trade agreement and the impact it will have on affordability of medicines and the children's right to the health.

So, the Attorney General himself had to say I promise we will not introduce TRIPS plus provisions. Now whether that promise is kept is another question but he had to say it and we understand that some European countries are particularly susceptible to accusations that they are violating human rights. So, you can complain to these committees and you can do anonymously or not anonymously.

And if these committees, which they have found over and over again, say that these TRIPS plus provisions are bad for the right to health, then it causes some European countries to go into paralysis. And the free trade agreement negotiations stop for two years while they try to figure out, no we are violating our human rights obligations. I do not think the U.S. at the moment in the past cares so much about violating their human rights obligations but who knows, new President, might change.

So, then the question about TRIPS plus and research and development, Jamie can probably answer this better than me because I think his organization did a lot of the studies but basically this is premised on the claim that number one, pharmaceutical companies spend a lot on research and development. This is not true for a number of reasons, the tax rebates they get, the funding from the government, the overstating of the costs.

Number two, that if you increase intellectual property protection, you will get more innovation. This is also not

true for a number of reasons because the things you need to do the innovation, are patented and then you cannot do it. So, even Big Pharma has been caught by upstream patents on jeans and things.

And of course, you get innovation without intellectual property protection like clinics and Open Soft software and when you ask the pharmaceutical companies themselves, for example, why are you not doing R&D in Malaysia, they say it is not the lack of intellectual property protection, it is you do not have enough scientists. Malaysia does not have enough pharmacists to stalk the pharmacies, let alone to do research and development for the pharmaceutical companies.

And of course, there is also the question about well, if you increase it empirically, have you got more innovation? And when they did initially in 1978, they increased the level of intellectual property protection. They got no more inventions. So, this link has not been clearly proven and I can give you more information if you want about that.

And lastly, the Mexican question as I understand from the explanation, it is not an intellectual property issue, it is an industrial development question that you had to locally manufacture which presumably meant that Mexico could not import the cheap generic versions from India for example and Indian generics are very cheap because they have large economies of scale and labor is cheap. But, India is having problems because since 2005, it has had to have patents on medicines. Before

that they did not so they could make generic everything, Kaletra, anything.

Now it has to have patents on medicines so it is no longer going to be able to supply so easily the rest of us with the generics we need. A and the lawyers collective has been doing a great job in India of opposing these patent applications, one by one in pre-grant opposition to try and insure that generic medicines can continue to flow from India to the rest of us who need it. And that is also in this book. Thank you very much. [Applause]

JAMES LOVE: Thank you very much Sanya. Gabriela?

GABRIELA CHAVES: I would just say very quickly, I think Sanya was very clear and Lidice as well, so just in the case of the clearing house for monitoring the specific problems we have in the local level is a very important idea and I completely agree.

And the question of human rights, I just would like to compliment that we have in the case of America, we have the Inter-American Human Rights courts and this is a place where we are considering for the future to bring our cases on violations of health regarding patent protection so I think this is a potential way.

The question about IP and innovation, I think we have the report from World Health Organization, the CIPIH reports with a lot of evidence showing that this is not true for the pharmaceutical field so that is it.

JAMES LOVE: Well, I am going to also ask Ellen T'Hoen, my co-chair if she could just offer any comments either on the presentations or on the questions that were asked.

ELLEN T'HOEN: Thank you Jamie. I just want to take the opportunity to make two brief comments. First of all, the question of whether we are ambitious enough with just saying to, for example, the European commission, you should not negotiate TRIPS plus in the European partnership agreements with African countries.

For example, it is not true that European Commission has said when we raised concerns with them, no, we will not TRIPS plus with Africa but we would actually like to ask them to do more because the European Commission always publicly declares to be a great friend and a great defender of the Doha declaration on TRIPS and public health and just not doing TRIPS plus to us does not seem to be enough.

They could also, in those agreements and in those negotiations, make it very, very clear to countries that they would support them if they implemented Doha declaration and that they would support them if they would make use of the flexibilities that exist in those agreements. So, I think we can perhaps, in our strategy, also be a bit more ambitious and I think particularly with European Commission we should do that.

I want to quickly say something about financing of research and development because of course, money for research

and development is absolutely crucial but if your only way to finance research and development is through asking high prices which you can do because of patent monopolies, two things are happening. First of all, the R&D agenda, the priorities of the R&D agenda, are dictated by there where the market opportunities are which has consequences for which drugs will be developed or which products will be developed and which products will not be developed.

There is no denying that there is an enormous amount of research and development going on in AIDS for example, but there is almost nothing going on in the commercial sector that is specifically targeted to address the needs in say Sub-Saharan Africa and that is for very obvious reasons as a market that is considered not interesting enough.

We have had a number of discussions with pharmaceutical companies for example, about the need for the development of certain pediatric formulations and they are quite open with us in saying well, actually, from a market perspective, that is not so very interesting for us even though we see that the need is there.

The second consequence of course, is if you finance your research and development through high drug prices that you end up with products that are very, very expensive and that leads to inclusion of large numbers of people and that is why I think it is also important when we talk about intellectual property.

We need to talk also about the question how do you finance research and development and what are perhaps better ways of doing that so that we move away from basically using rationing as a way to finance research and development. And some of the speakers already mentioned the WHO's work on this, the Commission on Flexible Property Public Health and Innovation.

And the WHO recently adopted a global strategy and plan of action that will now look at alternative financing mechanisms, alternatives to the patent system for paying of the R&D and research and development that will be much more geared to its needs rather than to where the market opportunities are and I think that is a process that many of us should engage with and that we should be following very closely.

JAMES LOVE: Well, thank you. I am going to go back to questions again from the audience in about one second. First of all, Mark Milano asked what people thought about this idea of a clearing house and I do not think any of the panel members made reference to it.

My own impression was that there is as abundance of information on the internet about things that are going on and all their negotiations and I think Sanya pointed to bilaterals.org as one of the very good site, several groups have in their websites, tons of information. It is almost a full-time job though to try and track these things and they are so complicated. I think it is kind of difficult.

But, I think Mark's point is a lot of people have said that despite the abundance of information, in essence sort of user friendly to people that are affected. Despite, I think the great efforts by all the panel members by the way and the co-chair and trying to make it so and so I think that is sort of good feedback.

On this issue of R&D, I would like to echo and endorse what Ellen T'Hoen just said from MSF, but just add a couple things. One is that we have just done a study of research and development of who pays for clinical trials that are reported in clinicaltrials.gov and in terms of the trials that are currently reported in this registry of clinical trials.

If you look at say phase 1 through phase 3 trials, which are the trials associated with the development and registration of new drugs, 70-percent of the trials, as weighted by the number of patients in the clinical trials, are on trials that are paid for by the United States government.

If you look at the number of trials that are done only by industry, that is to say industry is listed as the only funder of the trial, the number is 15-percent in the clinicaltrials.gov database and 22-percent if you look at partial sponsorship by the industry. And if you look at not industry and not the United States government, which is a lot of foreign governments, that is about 12-percent and I think that raises kind of an important issue.

I think R&D is an important and I think there has to be a system of rewards and incentives for people that develop drugs. One is that, does it make sense as Ellen said, to look at farm workers in Guatemala and poor people all over the world or people in Africa to be the primary source of the R&D revenue through the price of the drugs that they pay, is that the kind of system that you want which is what these roles are designed to do? Or do you want to come up with a different set of rewards that separates and delinks the R&D incentive from the price of the drug?

So, the agreement that Ellen talked about, the WHO agreement in May, this new global strategy, they said that people have to start delinking R&D incentives from the prices of drugs. What that is a demand for is to have cheap medicine and a separate system of rewards for people to develop drugs and what is good is that at this AIDS meeting today, that at least two companies, Tebo Tech and Gilead have expressed some interest in the idea of experimenting with these kind of reward systems that sort of separate the two markets more and I think that is really quite important.

Politically, Bolivia and Barbados have made a proposal that relates to AIDS to the WHO in this process to create a fund, an R&D fund for priority medicines including AIDS treatment so that the whole world can share in the cost of research on AIDS and you can think about how you share the burden between say Germany, Japan, United States, countries

that have a lot of money, Norway, as well as poor countries, what is the appropriate way to think about doing it?

And in the context of WHO sort of referred to as the R&D treaty process which is also part of the agreement and they are going to be discussing that and some people think that the R&D treaty approach is a competing paradigm or an alternative idea to these stories that these panelists talked about, about the FTAs.

It is the idea, can you get the trade people to focus on an agreement about research and development instead of just really very tough IPR standard for everything and so that is something else. But sorry for the long comment, if we could go back to the floor, it would be good. Brooke Baker [misspelled?]

BROOKE BAKER: My name is Brooke Baker, I am also from Health GAP and from Northeastern University School of Law. Many developing countries have not adopted their legislation to take a day in each TRIPS and Doha compliant flexibilities. Many countries, when they have adopted legislation pursuant of free trade agreements, have adopted FTA plus provisions.

And I think one of the questions to the panelists, but its also a comment or claim is that a lot of work can still be done in developing countries to go to their legislatures, to mobilize civil society, to make demands within countries, that all the flexibilities of the TRIPS agreement and deal with declaration, be enacted into legislation and that they be used.

And secondly, even the countries that improvidently entered into free trade agreements with the U.S. can now go backwards and retrofit those in response to the new trade policy in the U.S.

So, if Guatemala went overboard on FTA plus provisions, civil society could go back to the parliament and say listen, you did not have to do that. Congress has now clearly indicated that there are more flexibilities particularly even on data exclusivity and let us go back and revise our legislation. Mobilizing civil society to make those demands within country for domestic legislative change is hard but it is critically important.

I guess one other thing I would like to say that in that context and maybe a little bit in the presentations, the drug industry is the puppet masters of the U.S. trade representative and of the European Commission and it is very useful when people combine campaigns against drug companies at the same times that they have campaigns against FTAs because all of the many of the very successful social movements that have won against both trade pressure and drug companies have been simultaneous.

So, in South Africa, there is a campaign not only against U.S. trade pressure, but also against the lawsuit by 39 drug companies. And in India was not only the defense, the Indian Patent Act, but also the defense against Novartis' attack on it. And in Thailand, it was an attack particularly

on the FTA and defensive compulsory licenses but then against [inaudible] extraordinary human rights violation retaliation by withdrawing Kaletra and other medicines from the market.

So, again I would urge us in when we are thinking about our campaigns, to put the corporate puppet masters in the picture because those are targets that people can identify with very easily. Thank you. Next speaker?

MALE SPEAKER: Sorry. I am from Mexico City. Are you listening to me? Yes? Okay. I am Mexico City so welcome to Mexico for all of you. I want to speak in Spanish so [speaking in a foreign language].

LIDICE LOPEZ TOCON: His question is, why do we not socialize the health model in our countries to access to health for everyone like Cuba, that they have a universal access to health.

MALE SPEAKER: Okay. I actually set up this session and even when the issue of setting up this session came up and I said FTAs in the context of HIV, all the committee members said that is not an issue with HIV. So, I am really happy that we got the speakers and we got the audience.

But, I have to apologize to my South African friend and I am telling you very frankly that I asked my friend Mark Hayward and people from TAC [misspelled?] and they could not give me the names from Africa, we were restricted. So, next time, definitely Africa will be on the thing, one.

Secondly, I think the person from Health GAP asked and rightly because that is the purpose of this session. What are we going to do about it and I think one of the things that we must do is to make this issue very simple and just simplicity and convey the information to activists is very, very important.

Now, a clearing house, in terms of bilateral data is all available. But information is not being made in the simple manner available to activists and if activists know that this is going on then they can do something about it unlike a case I did in South Africa or India, which was high profile, these are done secretly behind closed doors and that is what Ellen said so it is very difficult to pin yourself down. But, I think we need to simply find and tell people this is what is going on and try to make hot spots whenever there is an FTA being organized by either the European Union or the U.S.

The last point I want to make is that when people say that why is this happening? I look back into history and you know if you read about the TRIPS agreement, the U.S. Pharmaceutical Manufacturers Association, and Brooke is very right, the U.S. they are just as a puppet of that organization. They are just to see the two websites and you know that they are echoing each [inaudible] fortunately now the Democrats have cooled down and hopefully if you have a President in the U.S. who is slightly more amendable then you can do better things.

But, they had an agenda right from the beginning of harmonization of international property laws and TRIPS was just an interim measure and they want to complete their agenda and that is why they tax exclusivity, that is why data [inaudible] et cetera et cetera. And we need to bring that to the health movement and health movement is very active. The HIV groups are very active. They do not know about this information.

Final point I want to make is, the lady in the right who said what about human rights issues? The right to health is the most important. And I happen to be the specialist there from 1st of August and one of the things that I want to take up is FTAs.

So I think we should make that as an issue and make sure that teams are taken up because according to them, it is very important that FTAs which actually impede the right to health must be stopped and I am very happy to know that you also agree with me, that the Europeans are very sensitive to the right for criticism that they are impeding the right to health.

But, for that purpose, I have told people that I am going to convene consultations in different parts of the region on team or country-wide or region issues. So, I need your help on that. Thank you. [Applause]

JAMES LOVE: Thank you very much. And thank you for organizing this session.

EMMY MCLAIN: I have two brief questions. I am Emmy McLain from the United States. I am grateful to hear about the defensive actions you were talking about but I would just invite you to speak a little bit more about some of the more ambitious offensive actions that I know people have been engaged in looking beyond just responding out of necessity to the free trade agreements that are in the works.

And also I was pleased to hear Jamie mention some of the developments within the pharmaceutical industry of a couple companies who are willing to look at different strategies and I would just be interested in hearing a little bit more about positive changes that you might be seeing within the pharmaceutical companies either as a whole or individual companies. Thank you.

JAMES LOVE: Well, I have got to the panel right now and then we had several speakers, we had the gentleman from Mexico, we had Brooke, we had Adam, we had the most recent speaker from the United States. Well, I think we will go in the same order. We will start as always with Miss Lopez.

LIDICE LOPEZ TOCON: Well I think I only have to say to Brooke that I totally agree with him and that we need and we should keep moving and going to the Congress and having this conversation with our Congressmen and Congresswomen and yes, we have to move those legislations backwards because they are restricting access to health and to ARV.

And to this friend from Mexico, the same thing, I just totally agree with him that health is not a mercancy [misspelled?] it is a human right, Annon mentioned it and the access to health is a human right and we should move forward to that.

SANYA REID SMITH: Thank you. I also agree with Brooke. Even if your country is not signing a free trade agreement, I think almost country's patent law of the world can do with some improvements to add the safe guard-like compulsory licensing and make it easier and make it cheaper, parallel importation but of course, if there is a free trade agreement on the horizon and the negotiations are starting, then of course you can campaign and lobby to try and stop it or make it not TRIPS plus.

And if your country has signed a free trade agreement, as Brooke pointed out, it is not the end of the world. I mean it is bad, but you can make the implementation less worse. Instead of the Guatemala example where I think there was four pages of implementing laws that the USDR checked and said this is not far enough, you must go even further than the FTA, your parliament could take a robust role because there is always room to interpret these treaties.

You can take a pro-health interpretation or you can take a pro-intellectual property interpretation. So, there is always a fight you can have even at the implementing stage to make it less worse and go for the pro-health interpretation.

First to talk about that it is possible to do these things so it may seem complicated but the example I always like even though I am not from Thailand is the Thai people of HIV have done amazing things so even Thai villages from the far north of Thailand can tell you that the Thai patent law, section 52, compulsory licensing provision is not good enough because it takes too long to issue.

These are people with no university education, maybe even no primary or secondary education but they know. Why do they know? Because it is life and death for them. It is about their medicines. So, I think in Thailand the way it worked was, because of resource constraints, the village critics could only give our antiretrovirals once a month on the same day. So, all people with HIV would go the clinic on the same day to collect their medicines.

Since they were all there together, they had peer support groups on that day. First they talked about what is the medicine, what is treatment, what is adherence and then gradually, month after month, they said what is a patent? Why is it important to you? How it makes your medicines more expensive. Then they said what is a compulsory license and they can do these with pictures, even lawyers collective also does it in India.

Then they went through what is the free trade agreement with the U.S. How does it affect you? Why is it important?

So, then the first time the U.S. came to negotiate intellectual

property in their free trade agreement, I think they had 10,000 people on the streets of Chiang Mai, in the far North of Thailand, most of people are people of HIV, sleeping on the streets for five days, and they were so effective, they stopped the negotiators from even getting into the venue.

They had to move the negotiations 20 kilometers down the road to a golf course and at the end, the Thai chief negotiator came out and he thanked the demonstrators. He said thanks to you, I could resist the U.S. in the negotiating room because I point outside to the demonstrations and say look, I cannot give you what you want on patents because these people, there will be riots, there will be civil war, there will be demonstrations, I am sorry. So, it actually strengthened his hand.

And the South Korean negotiators said the same thing about the beef aspects of their free trade agreement. Just in the last month or two, you would have seen they went to negotiate with the U.S., they took photos of the demonstrators and when the U.S. pressed them, they said look, a million people on the streets, what do you want me to do? My whole cabinet has had to resign. I am sorry, I just cannot give in. So, you can see that it does reinforce the position of your governments to try and withstand these pressures.

And in Thailand, the people of HIV succeeded. They campaigned over years and they got patents withdrawn, they got compulsory licenses issues, some of the best compulsory

licensing in the world, all through people of HIV basically. People in the villages, who few years ago did not even know what a patent was. So, it is definitely possible.

I also agree with the previous questioners who said that the influence of the pharmaceutical industry is very strong. They took out an advertisement in *The Economist*, Asian edition. The CEO of FISA who said, "I wrote the TRIPS agreement. I am the one who got the world to go from no patents to medicines to 20 years of monopoly on medicines, thanks to me." And basically, they on the U.S. trade departments advisory committees. So, they write what goes into the trade agreements and they put what they want.

I just thought I should also add that to the debate about IP innovation, I forgot to say that the whole of the developing country market like how much pharmaceutical they buy a year is less than 1-percent or 6-percent or something in the world market. So, whether or not they have 50 year patents or 20 year patents, will not make much difference to the profitability of a multinational pharmaceutical company.

I should also point out that even the European study that they commissioned on the free trade agreements or economic partnership agreements that do not have intellectual property provisions. Just looking at lowering the taxes on goods, on products, would already be bad for poverty, bad for hunger, bad for education and bad for health. Why is this?

Because in some developing countries, well in all developing countries, taxes on exports and imports, are the easiest way for the government to collect money. It is very difficult for them to do a corporate tax system or an income tax system. So, in some developing countries, 80-percent of the government's money comes from taxes on imports.

A free trade agreement with the European Union requires you to reduce to zero, taxes on 80-percent of the Europeans' products. For a U.S. free trade agreement, it is taxes on 100-percent of their products except maybe one line if you are lucky. So, your government budget, where are you getting your money from? So, then the government budget goes down. How do they pay for doctors, nurses, hospitals, medicines?

Unemployment goes up because your local farmers and workers cannot compete. So, even as our Mexican friend said, if you have a Universal access to health system like Thailand, like Malaysia where the government basically gives medicines for free, including antiretrovirals, the government cannot afford it anymore if they sign one of these free trade agreements. Number one, because their revenue goes down and number two, because their intellectual property means the prices go up.

So, even if your medicines come from a funder like the Global Fund, if you have to have patents on your medicines, their money also goes less fast [interposing].

JAMES LOVE: We have a great panel and they are incredibly well informed and we have two minutes before our allotted time is over so, I just wanted to give Gabriela a chance to comment and—

GABRIELA CHAVES: I will be very quickly just saying to Annon that the implementation of Universal access to medicines is a crucial confidence of the AIDS response in the different context and to avoid TRIPS plus provision as well as new monopoly strategies that we are finding our context is part of this fight so we are happy that we will be fight in this as the special [inaudible] for health.

ELLEN T'HOEN: A final comment, I think Annon is quite right, that there is a very deliberate strategy to ratchet up IP protection globally, to ever higher levels and time has really come, actually, it is well overdue to say stop. We have had enough.

There needs to be a pushback and I think that global debate that is at the same time, taking place today, about different ways of financing the research and development, move away from monopolies is a way to doing that, to different kinds of incentive mechanisms can really help to do that.

Because we will always be confronted with the question, if there are not patents or if there is not more IP, how are we going to have more research and development that it will really help if we can see well, here are a few examples of how you can do that differently.

So, I think we need to combine these fights and with the aim to stop that push to have ever higher levels of IP protection with all the negative consequences that come with it.

JAMES LOVE: Well, I am going to just make one comment and close the session. Thank all the people that, the organizers and all the panel members and the audience which has been contribute a lot of the excellent questions we have had, so many people have been working on these issues.

I would like to say as a personal thing, picking up on the point that Ellen made is that, it is my hope and it is my dream, personally, that the social movement that you are a part of and that we are a part of can transform the entire trade agenda into this new paradigm where you no longer expect high drug prices to be the primary go-to measure to finance new drug development.

As long as that is the deal, you cannot be shocked when there is all these things coming at you to raise drug prices because that is just by design. The initial position we have is a bad idea. High drug prices is where you go to get money for R&D.

So, what is really great, what is really amazing right now is in 2008, the world health assembly, by consensus including the European Union and the United States government and Japan agreed to consider the delinking of R&D with a price of the product to consider a biomedical R&D treaty, to consider

the idea of things like price as an incentive for the development of new drugs as opposed to the granting of monopolies.

And there is concrete proposals, there is things that are taking place but it is something that because it is new, it does not really have— there is not enough information about it, there is not enough knowledge in patient groups and things because there is still basically focus on the legacy issues of the free trade agreements and dealing with the things, which is important because that is reality where we are right now and if you do not do that, then people are going to die so that comes first.

But, there is I think, some hope for optimism and but also some very, very tough fights that have to be fought as outlined by the panel members and thank everyone for coming here. Thank you. [Applause]

[END RECORDING]