ADDITIONAL DEVELOPMENTS—FOREIGN AND INTERNATIONAL LAW

TRIPs RESOLUTION ON PUBLIC HEALTH

At the November 2001 World Trade Organization ("WTO") meeting in Doha, Qatar, member nations resolved that the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs") should be "interpreted and implemented in a manner supportive of WTO Members' right to protect public health."

Pharmaceutical companies filed lawsuits and threatened trade-sanctions against South Africa and Brazil for allegedly violating TRIPs by refusing to enforce patents for an AIDS drug. Thirty-nine of the world's largest pharmaceutical companies sued the South African government to prevent it from importing and producing less expensive generic AIDS drugs. After harsh international criticism, the pharmaceutical companies withdrew their charges. In Brazil, United States pharmaceutical companies threatened to sue Brazil for violating TRIPS by failing to enforce patents for AIDS drugs. Brazil countered by launching a worldwide media campaign that created so much negative publicity for the U.S. pharmaceutical companies that they did not pursue the case. Brazil subsequently announced its intentions to violate a patent for an AIDS drug when negotiations between the government and pharmaceutical companies break down. This announcement triggered the discussion and ensuing resolution regarding the enforceability of pharmaceutical patents at the recent WTO Summit.

The Doha declaration affirms the rights to grant compulsory licenses (overriding patents), and to determine the grounds upon which such licenses are granted. The declaration also acknowledges that each country has the right to determine what constitutes a national emergency. For example, public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency. Individual countries are permitted to determine whether to engage in parallel import trade and licensing agreements. The member states recommended further studies to address the issue of nations that do not have the manufacturing capacity in the pharmaceutical sector and might face difficulties issuing compulsory licenses.

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