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The current session runs June 6 to Aug 12.

U.S. delegation to Brazil will discuss proposal to end drug patents

By [Nadezhda Pitulova](#)

Scripps Howard Foundation Wire

WASHINGTON – A U.S. delegation headed to Brazil Monday to discuss a proposed law that would outlaw pharmaceutical imports to treat AIDS.

On June 1 a member of the lower house of the Brazilian legislature proposed a bill that would recognize drugs to prevent or treat AIDS as “not patentable.” Brazil would give itself permission to ignore patents on drugs and make its own copies, and it would stop sales of such drugs coming into Brazil from other countries.

Having exported licensed pharmaceutical medicine to Brazil for many years to help fight AIDS, U.S. companies may find themselves being chased away by the Brazilian government.

“In the negotiations, we try to come up with the lowest price. That’s where the threat to break the patent comes into place,” said Flavio Marega, Brazil’s counselor for trade policy, in an interview at the embassy here.

However the Institute for Trade, Standard, and Sustainable Development says prices of AIDS drugs exported to Brazil have already been reduced by up to 76 percent. Moreover, the institute says that the U.S. government recently offered \$40 million of assistance to the Brazilian AIDS program. Brazil, however, turned this aid proposal down.

Brazil, which is recognized as a world leader in the fight against patented drugs, spends 63 percent of its \$409 million antiretroviral drug budget to buy four patented drugs. Consequently, if the bill becomes a law, losses to American businesses could reach \$257 million per year.

“We believe that this is a beginning of a major crisis,” said former Ambassador Slavi Pachovski, the institute’s president and a member of the delegation, at the National Press Club Thursday. Pachovski is a founder of the non-profit group that supports sustainable development.

Brazil has been exporting generic AIDS drugs to sub-Saharan African countries since 2002. In 2003 and 2004, President Luiz Inacio Lula signed generic AIDS drug cooperation agreements with Mozambique and Namibia. Moreover, Lula promised to help build plants to manufacture generic AIDS drugs in Africa.

“They are talking not only about supplying the Brazilian market but also supplying Africa and Asia,” Pachovski said.

The agreements aren't an attempt to conquer the market, Marega said, "It is, probably, cooperation in the AIDS combating."

Pachovski said the Brazilian bill "directly affects the American society," particularly drug manufacturers. "Some of the companies may be destroyed, smaller of them that invested in the single drug, and it's stolen away, will face bankruptcy."

Marega, however, said that if the Brazilian government decides to break the patent with the HIV pharmaceutical businesses "then you can interpret the patent to be stolen."

"But this is only a bill. It hasn't been approved by the lower house, and if it is approved, it will have to go to senate, which is always more conservative in terms of approving these kind of matters," Marega added.

"Unless you have a very good research and development, you wouldn't have new drugs coming to market, and no new drugs will be entering the Brazilian market. It's not a very clever law," Marega said.

Merck & Co, the U.S. pharmaceutical company that has worked with the Brazilian government to fight HIV and AIDS, believes that "any move to limit patentability arbitrarily is unfortunate," Christopher Loder, a Merck spokesman, said in an interview.

"More importantly, we do not believe that it will do anything to expand access for those with HIV or AIDS," Loder said. "We have and continue to supply Stocrin in Brazil at a price 90 percent lower than the price of the medicine in the United States."

Stocrin, also known as Sustiva and efavirenz, is used with other drugs to treat AIDS.

According to the trade-related aspects of the intellectual properties agreement (TRIPS) of the World Trade Organization, members may waive patent rights "in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use."

Nancie G. Marzulla, president of the Defenders of Property Rights Foundation, which fights to protect property rights by opposing over-regulation, said, "Brazil has been on the U.S. Trade Representative's watch list for international property rights violations since 2001."

Marega said that the Brazilian Ministry of Foreign Affairs has already alerted the ministry of Health and the Congress of Brazil.

"If they approve that law, it might go against the principals of the TRIPS agreement. One thing is to have a product patented in a country and therefore for public emergency you might break the patent. Another thing is to say, 'I am not going to respect or to recognize your patent,'" Marega said.

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Scripps Howard Foundation Wire 

1090 Vermont Ave. N.W. - Suite 1000

Washington, D.C. 20005

phone: 202-408-2748

fax: 202-682-2143