

## SARS & the WTO

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The WTO (World Trade Organization) seen above is not a misprint of the WHO (World Health Organization). The WTO is going to hold its biannual Ministerial Conference next month in Cancun, Mexico. The task of the Ministerial Conference is a midterm review of the progress of the WTO negotiations since the start of the Doha Development Round in November 2001. The negotiations for this round are supposed to be finished by the end of next year. The midterm review this year is crucially important for the successful conclusion of the round. One of the most difficult issues in the negotiations is how to ensure that developing countries secure a share of the growth of world trade commensurate with the needs of their economic development. One of the concerns of developing countries is that pharmaceutical companies, especially in developed countries, might take advantage of their patents on medicines through the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the WTO so that they can benefit from the lucrative prices of those medicines which are badly needed by patients in developing countries. To address this issue, the WTO Ministerial Conference held in Doha, Qatar in November 2001 adopted a special independent statement titled the "Declaration on the TRIPS Agreement and Public Health." According to the Declaration, the Ministers recognized the "gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics." They also agreed that the TRIPS Agreement should not prevent Members from taking measures to protect public health. They affirmed that the Agreement should be interpreted and implemented in a manner supportive of the WTO Members' right to promote access to medicines for all. In this context they recognized that each

Member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted. In other words, the governments of developing countries which are suffering from the rampant epidemic of HIV/AIDS, for example, can give a license for producing the AIDS vaccine to a company which wants to produce it even when the patent holder normally in the other countries does not authorize the use of that patent. In this case the company trying to obtain a license from the government, especially of a developing country, should generally make efforts to obtain authorization from the patent holder on reasonable commercial terms and conditions. However, according to the TRIPS rule of the WTO, the government in question may waive this requirement in the case of a national emergency or other circumstances of extreme urgency. The Declaration I mentioned above stipulates as follows: "Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency." Severe acute respiratory syndrome (SARS) is not stipulated here explicitly, although it might be included in the category of "other epidemics" mentioned above.

The WHO declared on July 5 that SARS had been contained in Taiwan, which was the last being declared so. Although it was reported that close to 200 people are still in hospital for this disease worldwide, the peak of the SARS epidemic seems to be over. This might be partly explained by the fact that it is now summer in the Northern Hemisphere. Until the winter comes when influenza usually wields its malicious power, we cannot know for sure whether or not we have succeeded in containing SARS. In this context it is imperative for the

leaders or the health authorities all over the world to try hard to prevent SARS from spreading in the Southern Hemisphere, where it is now winter.

A SARS vaccine has not been invented yet. There is an opinion that it would take at least one year or so to develop one. However, let's assume that a company succeeds in inventing such a vaccine. Should we allow this company to enjoy lucrative profits from the exclusive patent for the vaccine? I don't think so. As has been the case with the vaccine for HIV/AIDS, the patent for the SARS vaccine should be put under the appropriate control of the TRIPS rule of WTO so that this serious public health problem, especially in developing countries such as China, can be solved quickly. In this regard I am looking forward to a decision of the Ministerial Conference in Cancun in September this year, stipulating that a public health crisis, including SARS, constitutes a national emergency or other circumstances of extreme urgency. Then, as I have explained above, it would become clear that each Member of the WTO has the right to grant compulsory licenses to a company in the Member country willing to produce the SARS vaccine but not necessarily with the consent of the inventor. There might be opposition to this idea, contending that it would discourage the motivation for the invention by reducing the profits from the invention. However, man doth not live by bread only. This saying should also be applied to companies.

### COMING UP

The next issue of *JTI* will examine Japan's role in the international community after the Iraq war. We will analyze the relationship between Japan and Islamic society, and discuss issues related to civilizations, and the links between Japan's energy problems and the Middle East.