

**For Immediate Release
August 6, 2007**

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INDIAN RULING AGAINST NOVARTIS A VICTORY FOR PUBLIC HEALTH

Today's verdict by an Indian court against the Swiss pharmaceutical company Novartis is an important victory for global public health, according to international aid agency Oxfam and the Interfaith Center on Corporate Responsibility, an institutional investor organization.

In a direct attack against India's right to protect public health, Novartis had challenged an Indian law that allows the country to refuse a patent for an existing medicine when it is not truly innovative. But today's decision will protect India's special role as the world's leading provider of affordable medicines to people who depend on inexpensive medicines as their only means of treatment.

"This ruling is a vindication for India and a victory for public health," said Celine Charveriat, head of Oxfam's Make Trade Fair campaign. "Developing countries should not be bullied by pharmaceutical companies and forced to defend themselves in court for correctly using the safeguards legally available to them to protect public health. Novartis should respect this ruling."

With this ruling, Novartis and the pharmaceutical industry have been given a clear message to respect developing countries' legal right to use the World Trade Organization TRIPS (trade-related intellectual property) safeguards in order to strike a fair balance between protecting public health and intellectual property, noted Oxfam and ICCR.

India – known as the 'pharmacy of the developing world' due to its massive generic drug production industry – supplies most of the world's affordable generics to developing countries where patented medicines are priced out of most people's reach. More than two-thirds of the generic medicines produced in India are exported to developing countries at a fraction of the cost of patented brand medicines. Multilateral and bilateral aid programs, such as the US AIDS treatment program (PEPFAR), UNICEF and Doctors without Borders, rely heavily on Indian generics.

"One can only hope that this ruling will send a message to Novartis and the rest of the pharmaceutical industry that safeguarding public health and guaranteeing access to medicines for the marginalized and poor needs to be included in any patent protection framework that hopes to be universally credible and acceptable" said Rev Séamus Finn OMI, representing the Missionary Oblates of Mary Immaculate, Novartis shareholders and members of the ICCR AIDS working group.

Novartis' legal challenge posed an enormous threat in developing countries to millions of people suffering from cancer, HIV and AIDS, diabetes and other diseases who are too poor to pay for expensive patented medicines. Novartis' attempt to intimidate India into exceeding its obligations under the TRIPS Agreement not only jeopardized public health across the developing world, but also severely damaged the company's reputation in developed and developing countries. Nearly 500,000 people around the world have lent their support to petitions calling on Novartis to pull the case. Furthermore, Novartis has also been questioned by numerous high-level political actors in India, across Europe and in the United States. Novartis' actions, and the resulting backlash against the company, raise fears among investors of a regulatory backlash and a further erosion of the pharmaceutical industry's reputation, which is already questioned in key emerging markets such as India.

Oxfam and ICCR now call on Novartis to take positive steps to recognize the importance of ensuring access to medicines in developing countries, especially by taking new, positive steps to improve access to medicines. The organizations note that this could include promoting research and development for neglected diseases while also striking an appropriate balance between protecting public health safeguards in developing countries and intellectual property rights.

Ends/NOTES follow

NOTES:

- The provision in the Indian law – “section 3d” – states that patent monopolies will be awarded only for truly innovative medicines, rather than for minor modifications of existing medicines. Because monopolies will not be granted on medicines other than truly innovative ones, affordable generic versions will remain available. This will help protect India’s role as the main supplier of affordable generics to other developing countries where patented medicines are priced out of reach of most people.
- This ruling comes at a time when patentability criteria are under examination in other countries as well, for instance the United States. Recognizing that patentability criteria which lead to the granting of frivolous patents can hinder innovation and access to new products rather than promote it, the US Supreme Court has recently ruled in favor of stricter criteria.
- The provision in Indian law under challenge by Novartis constitutes an important public health safeguard in TRIPS. Developing countries should be commended for using this and other safeguards to promote access to affordable medicines for their populations. Oxfam supports use of public health safeguards – recent examples include the issuance of compulsory licenses by Brazil and Thailand, and the introduction of a new, pro-health intellectual property law in the Philippines.
- The right of all WTO members to use the flexibilities and safeguards in the TRIPS Agreement to promote “access to medicines for all” was confirmed in 2001 (the Doha Declaration). Since then, however, rich countries and big pharmaceutical companies have sought to prevent or limit their use by developing countries, endangering the well-being of poor patients everywhere.