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French Solidarity Tax: Providing Access to Medicine Without Compromising IP Rights

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The lack of access to essential drugs in developing countries has gained significant attention from the international community in recent years. Preventable and treatable diseases such as malaria and tuberculosis continue to pose major public health challenges and claim millions of lives per year in certain parts of the world. The magnitude of this global crisis is shocking. A third of the world's population has no access to drugs. Studies have suggested, astonishingly, that a child dies every 30 seconds in Africa due to the lack of medicine. Although the problem is apparent to all, there has not been a consensus on a solution. How to extend access to essential drugs in developing countries remains a hotly disputed issue because it often presents a conflict between promoting public health and protecting intellectual property rights to encourage research and development. To effectuate the increasingly popular idea of using money from innovative sources to provide medical access to the poorest citizens of developing countries without compromising the rights of patent holders, France recently imposed a pioneering solidarity tax on airline tickets to fund a drug purchase facility.

Even though some have questioned the effectiveness of the French solidarity tax initiative, the tax has not faced heavy criticism from the French public.

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French Solidarity Tax on Airline Tickets

The French government first proposed the idea of implementing an airline tax to help fund the fight against AIDS, tuberculosis and malaria to the international community last year at the World Economic Forum in Davos, Switzerland.[1] Airline tickets were chosen as the taxed subject because the airline industry is among those that benefit most from globalization. Furthermore, airlines traditionally pay low tax rates, and airline passengers are rarely among the poorest citizens of the world. While the initiative continued to be discussed at the international level, the French government quickly passed a law imposing an airline tax last December. Effective on July 1, 2006, passengers boarding aircrafts in France now have to pay a surcharge of 1 euro per economy class ticket and 10 euros per business class ticket if their destination is in the European Union. For flights out of Europe, the surcharge is 4 euros for economy class and 40 euros for business class. France expects its airline tax to generate upward of 200 million euros for UNITAID annually.

Even though some have questioned the effectiveness of the French solidarity tax initiative,[2] the tax has not faced heavy criticism from the French public. However, the airline industry claims that the airline tax will hurt tourism, which is a significant source of revenue in many developing countries. The International Air Transport Association says that by increasing the cost of air transport, the airline tax limits access to world markets and thereby adversely affect economic development of nations. The French government disagrees, predicting that the small surcharges will not deter people from flying and therefore will not affect air transport or the tourist industry.

UNITAID

At a three-day AIDS conference in June 2006, France and thirteen other nations introduced the concept of UNITAID, an international drug purchase facility that buys bulk medicines at low prices, to be funded by the airline tax initiative and other innovative financing sources.[3] The thirteen countries that have expressed their intention to follow France in implementing a levy on air tickets to help fund UNITAID are Brazil, Chile, Cyprus, Congo, Gabon, Ivory Coast, Jordan, Luxembourg, Madagascar, Mauritius, Nicaragua, Norway and Britain. Another 25 countries opted not to impose the tax but promised to contribute to the fund, while the United States, Italy and Greece opposed the proposal. According to French officials, an international levy on airline tickets would generate up to $12 billion annually to help provide medical access by funding UNITAID, whose function will be to buy medicines in bulk for countries that cannot afford the drugs.

Becoming operational by the end of this year, UNITAID will use the money to negotiate and purchase malaria, tuberculosis and AIDS medicines[4] in bulk from pharmaceutical companies, both proprietary and generic, and then subsidize or redistribute the drugs to poor nations and their affected people. The idea behind UNITAID as a central purchasing agency is that the volume of sales would give UNITAID leverage to negotiate with pharmaceutical companies for lower prices. UNITAID's bulk purchase will also contribute to generating a steady demand for drugs, thereby encouraging production and inviting more manufacturers to the market. Price reduction, entry of new manufacturers and increased competition are expected to prompt greater access to drugs for affected people in developing countries, particularly in Africa. In addition, UNITAID will give incentives to drug companies to produce more antiretroviral drugs for children, which are more expensive and less in demand than adult formulations.

Enhancing Access Without Compromising IP Protection

UNITAID and its innovative financing strategies supplement efforts by the World Health Organization and other international organizations to address the lack of access to essential drugs in the poorest countries. However, one major difference is that many other more controversial approaches encourage softening patent protection in developing countries to promote production of needed drugs, whereas the concept of a drug purchase facility does not raise the concern of a possible breakdown of the patent system. An example of promoting access at the expense of IP protection is compulsory licensing.

To balance the interest of the patent holder with that of the public, some countries have used compulsory licensing to grant a drug license to a domestic company or a governmental agency with or without the consent of the patent holder. Compulsory licensing enhances access to essential drugs by mitigating the adverse effects of patents on price, competition and availability. Although compulsory licensing or otherwise softening patent protection are seen by many as an effective method to increase availability of drugs in developing countries, it faces formidable opposition from the pharmaceutical industry and wealthy countries who view strong patent protection as essential for foreign investment and free market. On one end of the debate, organizations such as the World Health Organization and the Panos Institute suggest that enforcing patent rights or implementing patent protection in the poorest nations would result in the average price of drugs rising from 12% to 200%, thereby restricting access to medicines. On the opposite end, the pharmaceutical industry points to poverty, weak political leadership and lack of trained personnel and infrastructures as the barriers to enhancing medical access. Whether softening patent protection to enhance the availability of drugs is less effective than protecting intellectual property to encourage research and development remains a dispute that the international community likely will not agree on in the near future. Those suffering from the lack of medicines, however, may not have the patience or the luxury to wait for a resolution to the debate.

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UNITAID finds itself outside of the intellectual property protection debate that often stalwarts efforts to provide immediate access to people in need of essential drugs in the poorest regions of the world. It does not aim to replace other public health initiatives carried out by organizations such as WHO, UNICEF and UNAIDS. Instead, focusing on purchasing and redistributing medicines, UNITAID complements the efforts of existing international institutions to enhance access to drugs against AIDS, malaria and tuberculosis in developing countries.

Conclusion

The French airline tax is a positive step on a long and difficult road toward improving the lives of the poorest citizens of the world by enabling the subsidize and distribution of medicines for preventable diseases. One advantage of the initiative is that it provides significant resources to address a poverty problem, while removing itself from the more controversial debate over the role of intellectual property right protection in fixing poverty and public health crisis. With other countries promising to join France's airline solidarity tax initiative, UNITAID might soon have over a billion dollars per year to spend on medicines. In addition, UNITAID may in the near future receive funding from other innovative financing sources. There have been suggestions of a levy on international financial transactions, a tax on capital flows among countries that practice banking secrecy, and a surcharge on fuel used by air and maritime transport. These types of taxes may be criticized as being anticompetitive and harmful to open markets. However, with 2 million deaths a year caused by malaria and 2000 children a day infected with AIDS in Africa, it is not unreasonable to look to certain industries that benefit more from globalization and demand that they lend a hand to solve a global crisis. ❏

[1] See http://www.thebody.com/kaiser/2005/sep1_05/airline_tax_hiv.html

[2] See "Airline Tax: A Bad Idea for the Poor" by Guy Sebban, published in the International Herald Tribune on February 28, 2006.

[3] http://www.unitaid.eu/EN-Mode-de-financement-innovant.html

[4] UNITAID only focuses on the three major diseases that are the primary causes of deaths in developing countries. Statistics on malaria, tuberculosis and AIDS can be found on http://www.unitaid.eu/EN-Un-etat-d-urgence-mondial.html.