

Rachel's Environment & Health News

#677 - Corporate Rights vs. Human Need

November 17, 1999

[Note: Rachel's will not be published the week of November 22.]

For many years, the potential market for baby foods and infant formula in the "developed" countries has been shrinking because birth rates have declined. Therefore, to create new demand for their products, baby food corporations have aggressively sought to "open new markets" in the Third World.

A key vehicle for "opening new markets" is advertising intended to convince women that breast-feeding their babies isn't "modern" and bottle feeding is healthier. Of course the premise of such advertising is medically false -- breast-feeding provides superior benefits compared to all synthetic substitutes. (Breast-feeding provides an infant with significant immunity against disease; it creates a strong emotional bond between mother and child; it helps prevent breast cancer in the mother, and more.) Nevertheless, many women are taken in by the false advertising; as a result, according to the United Nations Children's Fund (UNICEF), only 44% of infants in the Third World are breast-fed. (The proportion is even smaller in "developed" countries.)

Chiefly because of this false advertising, according to UNICEF, 1.5 million infants die each year because their mothers unwittingly prepare infant formula with contaminated water, causing fatal diarrhea.

During the 1970s, a world-wide grass-roots campaign focused attention on this problem, boycotting products made by Nestle, a major manufacturer of infant formula.

Partly because of the Nestle boycott, the World Health Organization (WHO) developed and published a Code on Marketing of Breast-Milk Substitutes. The WHO code prohibits words like "humanized breastmilk" and "equivalent to breastmilk." Furthermore, to protect illiterate women from being duped, the WHO code prohibits pictures on labels "that idealize the use of bottle feeding."

In 1983, Guatemala passed a law and regulations incorporating the WHO code. The goal of the Guatemalan government was to encourage new mothers (1) to breast-feed their infants and (2) to fully understand the threats to their babies of using infant formula as a substitute for breast milk. The Guatemalan law prohibited the use of labels that associated infant formula with a healthy, chubby baby; specifically, the law prohibited pictures of idealized babies on packages of baby food intended for children younger than 2 years. Furthermore, the Guatemalan law required labels to carry a statement that breast-feeding is nutritionally superior.

The law also prohibited baby food manufacturers from providing free samples of their products (if a baby starts taking free samples the mother stops lactating, thus converting mother and infant into full-time, paying customers). And finally the law prohibited baby food manufacturers from directly marketing their products to young mothers in the hospital.

The regulations went into effect in 1988 and all domestic and foreign manufacturers of baby foods -- with one notable exception -- came into compliance. Infant deaths attributable to bottle feeding declined, and UNICEF began highlighting Guatemala as a model for what works.

However, the U.S. baby food manufacturer, Gerber (motto: "Babies Are Our Business"), objected to Guatemala's new law. Although the Guatemalan Ministry of Health made numerous attempts to negotiate with Gerber, the company reportedly continued to market its infant formula directly to mothers in the hospital, and continued to give free samples to doctors and day care centers.

Most importantly Gerber refused to remove its trademark picture of a chubby, smiling baby from its product labels, and it refused to add a phrase saying breast milk was superior. In sum, Gerber thumbed

its nose at Guatemalan health authorities, who were trying to protect their most vulnerable citizens, infants, against harm.

In November, 1993 -- ten years after Guatemala passed its law, and five years after its regulations went into effect -- Gerber lost its final appeal. A Guatemalan Administrative Tribunal ruled in favor of the Ministry of Health and it looked as though even Gerber would have to comply with the Guatemalan law.

But Gerber opened a new line of attack on Guatemala, arguing that the Guatemalan law was illegal under international statutes because the law was really an "expropriation of Gerber's trademark." This tactic bought Gerber some time while the World Trade Organization was being created. Then in 1995, when the WTO came into being, Gerber dropped its claim about illegal expropriation of its trademark and began threatening to challenge Guatemala before a WTO tribunal.

Within a short time, Guatemala realized it was now up against immense power and the Guatemalan government changed its law to allow Gerber to have its way. Gerber won without ever having to formally request that the U.S. take its case to the WTO. Just a few letters containing the WTO threat were sufficient.

This example illustrates another marvelous feature of the WTO -- the ease with which small, poor countries can be intimidated by transnational corporations into "opening their markets." Under WTO rules, countries must open their markets to foreign corporations and governments cannot establish, as a precondition of doing business, that their domestic laws will be respected. In effect, the WTO has given corporations a powerful new way to challenge the laws of any government (federal, state or municipal).

Many poor countries, including Guatemala, cannot afford to support a full-time delegation to monitor the WTO in Geneva, Switzerland. Nor can they maintain in-house legal expertise on fast-changing WTO rules. They could legally hire outside counsel and experts to defend themselves against a WTO challenge but the cost of such a defense would be several million dollars. Countries that know the ropes in Switzerland and have money to burn can use procedural ploys that make the WTO a very expensive arena in which to litigate. For example, one country can challenge the credentials of another country's delegation, thus prolonging the proceedings indefinitely. As Ralph Nader's organization, Public Citizen, has written, "The WTO practice of allowing rich adversaries to object to the delegations of poor countries undermines poor countries' meaningful participation in the WTO -- and makes threats of WTO challenges enormously powerful tools to forestall the adoption of public health safeguards by poor countries that need them the most." [1.pg.117]

The pharmaceutical corporations in the U.S. and Europe evidently learned an important lesson from Gerber's victory over Guatemala. The drug corporations have launched a campaign of threats against countries that are trying to make medicines more affordable and accessible to their citizens. South Africa, Thailand and India are examples.

In 1997, under the leadership of Nelson Mandela, South Africa passed a Medicines Law which has not yet taken full effect. When all the provisions of the law are implemented, it will encourage the use of low-cost generic drugs, and it will prohibit drug companies from paying bounties to doctors for prescribing particular drugs. The Medicines Law has two additional provisions that the pharmaceutical corporations find particularly distasteful:

(1) the law requires drug companies to license their products to other companies who must then pay a royalty fee to the drug's developer. Such a law encourages competition in the manufacture of new drugs, thus making modern drugs available at reduced cost.

(2) The second provision is called "parallel importing" and it allows

a pharmaceutical product to be imported from several different countries simultaneously, thus taking advantage of the lowest prices available. For example the antibiotic Amoxicillin costs 50 cents per tablet in South Africa, 30 cents in New York and only 4 cents in Zimbabwe.[1,pg.114] South Africa's new law would make Amoxicillin cheaper and thus more widely available to the people of South Africa, many of whom are poor.

Transnational pharmaceutical corporations, with assistance from the Clinton/Gore administration, are now using threats of WTO action to force South Africa to repeal its Medicines Law. When AIDS activists protested the Clinton/Gore administration's role in trying to overturn South Africa's Medicines Law, a "senior Gore advisor" issued a statement defending Mr. Gore: "Obviously the Vice President's got to stick up for the commercial interests of U.S. companies." [1,pg.121] Mr. Gore is doing more than merely sticking up for U.S. corporations. U.S. State Department memos describe a "full court press," led by Mr. Gore, to force South Africa to "repeal, suspend, or terminate" its Medicines Law. As the U.S. sees it, there is simply no choice -- under WTO rules, the intellectual property rights of corporations have higher priority than human health; this is, in fact, a correct interpretation of WTO rules. However, Mr. Gore seems to recognize that his campaign against medical care for the poor in South Africa might come back to bite him. When pressed by the group ACT-UP in June 1999, Mr. Gore issued a statement denying that he was pressuring South Africa.[1,pg.123].

The South Africa case is not unique. In 1992, Thailand established a Pharmaceutical Review Board which established compulsory licensing for medicines. A firm with an exclusive patent on a critical medicine was required to license other companies to manufacture it, with royalties paid to the patent-holder. This created competition and drove down the price of critical medicines for the people of Thailand, such as Pfizer's Flucanazole, used to treat meningitis. After compulsory licensing, the cost of treatment with Flucanazole dropped from \$14 per day to \$1 per day in Thailand. However, the U.S. pressured Thailand relentlessly for 7 years until the Thai Pharmaceutical Review Board was formally abolished. The U.S. argued successfully that such a Board is illegal under WTO rules.[1,pg.113] Under WTO rules, corporate intellectual property rights have higher priority than human health.

For many years, India had a law making it illegal to patent a substance "intended for use, or capable of being used, as a food or as [a] medicine or drug." [1,pg.105] A WTO tribunal ruled in 1997 that India's law is illegal. Using the WTO as a battering ram, the U.S. successfully pressured India to abandon its prohibition against patenting food and pharmaceuticals.

Now W.R. Grace has filed for a U.S. patent on a pesticidal byproduct made from the Neem tree, which grows only in India. Neem has been used for centuries in India to make medicines and bio-pesticides. Indeed, the Neem tree is nicknamed "the village pharmacy." W.R. Grace claims that it has a new method of producing the pesticides that indigenous people have produced for hundreds of years. Grace now says it deserves the exclusive right to sell the products that were developed by indigenous communities -- and Grace argues that under WTO rules the government of India has an obligation to enforce Grace's patent rights.[1,pg.110]

It appears that the WTO is a nearly-perfect vehicle for extending corporate dominance into every corner of the world. But the corporations are not yet satisfied. The purpose of the WTO meeting in Seattle November 29-Dec. 3 is to consolidate and extend the WTO's power even further. To get involved, phone toll-free 1-877-STOPWTO.

--Peter Montague (National Writers Union, UAW Local 1981/AFL-CIO)

=====

[1] Lori Wallach and Michelle Sforza, WHOSE TRADE ORGANIZATION?: CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY (Washington, D.C.: Public Citizen, Inc., 1999). ISBN 1582310017; telephone (202) 588-1000.

Descriptor terms: corporations; wto; world trade organization; south africa; thailand; guatemala; free trade;