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Row over seizure of low-cost drugs

A global controversy has arisen over the seizure of low-cost generic medicine in European ports in transit from India to other developing countries.

A NEW threat to the health of people in developing countries is being caused by European Customs authorities seizing legitimate low-cost generic medicine being shipped from India and China to other developing countries.

This has deprived patients from having access to medicine that treat many ailments including AIDS, heart ailments, Alzheimer's disease, psychological problems and high blood pressure.

The medicine was being shipped mainly from India, where they were produced by generic drug producers, to Latin American and African countries. En route to their final destinations, the drugs were seized in airports in the Netherlands and Germany, when the planes were in transit, on the grounds that they could be "counterfeit" products.

Often, the Customs' actions were instigated by complaints from big European companies alleging that the medicine may be counterfeit and violate their intellectual property.

However, it turned out that the medicine was not counterfeit product nor in violation of patent laws, but was legitimately produced by Indian companies and being imported by Brazil, Peru, Colombia, Mexico, Nigeria and other developing countries at prices much lower than the branded drugs.

The seizure has caused outrage among the governments exporting and importing the drugs and health groups. They are concerned that sick people are being deprived of low-cost medicine, and that some European governments are blocking legitimate trade between developing countries in order to unfairly promote the commercial interests of their big drug companies.

According to the *Wall Street Journal* of Aug 6, there have been more than 20 cases since late last year when Customs officials in the Netherlands and Germany held up the Indian medicine, saying they violated European patent laws, even though the drugs were not intended for sale there.

India is preparing to lodge a formal complaint at the World Trade Organisation (WTO)

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aimed at stopping the European actions. The complaint is expected to claim that the EU has allowed its giant drug companies to misuse Customs regulations on counterfeit drugs in order to stop the trade in legitimate generic medicine.

The European countries are said to be especially misusing the European Commission's Regulation 1383/2003, which allows the seizure of medical shipments if they are suspected of containing counterfeits or infringing intellectual property laws.

Last week, Indian Commerce Minister Anand Sharma said his government had protested to the European Union that its action was "absolutely wrong".

The Federation of Indian Chambers of Commerce and Industry said the country's pharmaceutical companies had been "severely hit". The Indian companies are incurring extra costs by making use of transit hubs outside of Europe and to hire lawyers to defend them against the European actions.

A group of 16 non-governmental organisations have also protested against the Dutch and German actions.

The *Wall Street Journal* report details some of the seizure which are at the centre of the uproar:

> In October 2008, Dutch Customs at Amsterdam airport seized a shipment of a generic blood-thinning drug, clopidrogel, which was en route to Colombia.

The drug was produced by the Indian firm Ind-Swift, and the seizure was made on behalf of the European company Sanofi, which consented to the release of the drugs only in May this year. Ind-Swift has re-routed all its shipments through Malaysia and Singapore at double the cost.

> In November 2008, Dutch officials seized two shipments en route to Peru (of the Alzheimer's disease medicine rivastigmine and the antipsychotic medicine olanzapine) from Indian company Cipla.

The rivastigmine medicine, seized on behalf of Novartis company, was detained for five months before being allowed to proceed to Peru. The olanzapine medicine, seized on behalf of Lilly, is still held in the Netherlands.

> In December 2008, Dutch Customs seized blood pressure drug Losartan which was en route to Brazil, and held it for 36 days before returning it to India.

> In February 2009, the AIDS medicine abacavir which was bound for Nigeria was seized in Amsterdam and was released after a complaint by the UN, which was the recipient.

> In May 2009, the generic drug amoxicillin

(used in treating many bacterial infections) was seized in Frankfurt airport en route from India to Vanuatu in transit.

It was released after GSK, the company holding the patent, informed the Customs that there was no trademark infringement.

At a WTO meeting on June 8, India and Brazil criticised the European Union for the actions, which was confusing legitimate generic medicine with counterfeit fakes, and which were undermining poor countries' ability to obtain cheaper generic medicine.

Brazil said that trade in generic medicine is perfectly legal and generics must not be mistaken for counterfeit or pirated products. The European Customs' actions have hampered the access of the developing world to affordable life-saving generic medicine.

India complained that seizure has continued to take place at European ports, despite its protests at the WTO months ago. It has an adverse systemic impact on legitimate trade of generic medicines, South-South commerce, and universal access to medicine.

China, Cuba, Colombia, Ecuador, Egypt, Argentina, Venezuela and South Africa also spoke against the European actions.

The European Commission responded that it is fully committed to ensuring access to medicine, but it must continue to allow its Customs authorities to act against counterfeit products. It claimed its Customs regulation was in line with WTO rules.

