

OPEN LETTER

The free trade agreement between MOROCCO and the USA (FTA)

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The free trade agreement between MOROCCO and the USA (FTA) has been widely condemned by Moroccan society, mainly because of the threat it presents to the access to drugs.

Given the profound respect I have for MOROCCO, it is not AUDACE's intention to criticise the government authorities for ratifying this agreement.

But, responding to the request for PACK Info on the one hand and, second, as the multinationals' ability to dictate laws in accordance with their interests does not just apply to MOROCCO, I have agreed to present AUDACE's views in brief on the question of the excessive level of industrial protection imposed under the FTA, which goes beyond the protection conferred by patents, and on the impact of that agreement on Moroccan agriculture in general and plant protection in particular.

Over-protecting industrial and intellectual property kills innovation

The protection the FTA provides for data produced under the approval or registration procedures to establish whether a product is safe and effective in use is an approach that can be used to extend a patent's life indefinitely.

So all a company needs is to have new data when the old protection runs out to retain its monopoly.

As AUDACE sees it, such an approach to protection is completely incompatible with the existence of generic products, the economic need for which is no longer in doubt.

This incompatibility is all the more marked in that the cost of obtaining this data is high. We can bet that it will be: because, to escape any competition, no expense will be spared when looking for new developments the competent authorities themselves would not have thought of.

Taken at first sight, this approach might seem justified in that it encourages innovation, and because innovating industry has to be rewarded for its work in showing that its products are harmless and effective.

So protecting public health is not an ethical obligation, or even an absolute one, but is about rewarding those who do not harm it.

We think overprotection kills innovation just as much as over-eating kills the greedy.

If they can be confident of retaining sole commercial rights to old products, companies will be even less inclined to innovate or increase their research and development budgets, already upset by the mergers and acquisitions they are constantly involved in.

Over-protection is a brake on product development

So, while patents confer exclusive rights on their holders while disclosing the information they contain, protecting data helps keep it confidential.

This prevents the generic industry from improving product components or formulae through knowing exactly what those products do. The generic industry is actually in a better position to provide this progress in that, unlike patent holders, it has no interest in keeping the industrial installations specific to the original products profitable.

Protecting data like this is not based on any international agreement

The GATT (now WTO) agreements signed at Marrakech (ADPIC agreements) do not provide this level of protection, which only appears in bilateral or regional treaties.

The WTO also feels threatened by this practice, which the United States is very fond of, trumpeting its effects as President BUSH did on the US-MOROCCO FTA:

« This agreement protects intellectual property to an extent never before achieved in any free trade agreement with a developing country » (!!!...)

The FTA's impact on Moroccan agriculture may look favourable, but is ultimately uncertain

Removing customs duties on certain agricultural products entering the USA from Morocco is undoubtedly a good move, even if MOROCCO has agreed to lift such duties on imports of US products in return.

But the question is then whether those Moroccan products could compete with subsidised products from across the Atlantic.

And just as much, perhaps even more so, there is another question: could production conditions in MOROCCO be used ultimately to justify setting up artificial barriers on insecticide residues considered unacceptable to US consumers, for example?.

The FTA affects insecticide products more than drugs

Article 15-10-1 of the agreement confers data protection on pharmaceuticals for five years, but extends the term of protection to ten years for agrochemicals.

This means the Moroccan plant protection market is in the grip of US agrochemical companies, like the European market, which protects data lodged by companies, including European ones, under Directive 91/414/CE.

Once again, the plant protection industry is using a free trade agreement to impose its interests.

Farmers will therefore have to pay for high-priced imports from the USA without any competition whatsoever.

In conclusion The US-MOROCCAN agreement shows, once again, that, when it comes to world trade policy, the interests of business are never far away, as is shown by the clear interest the seed industry has in the decision of the US Provisional Authority to introduce the law on protecting plant varieties in 2004, which opened the way wide to using GMO in IRAQ.

Agricultural exemption to globalisation of trade under WTO or bilateral treaties should indeed come into being to oppose this idea and these practices.

And, as this other exemption is about public health and pharmaceuticals, it is clear that AUDACE must support the point of view of professional associations and elements of Moroccan society in full.