

contested given: (a) the acknowledged lack of attention given by the world-wide pharmaceuticals industry to tropical diseases; (b) the highly publicized and apparently effective approaches that appeared to infringe the TRIPS regime taken in recent years by several WTO members to address the spread of HIV-AIDS; and (c) the resort on an urgent basis in late 2001 by some wealthy nations to compulsory licensing of anthrax drugs in the wake of the series of terrorist incidents involving this bacterium. Accordingly, the only question facing ministers at Doha was *how* to move.

In the end, it was not entirely clear whether the question was answered or not. The ministerial declaration on TRIPS and Public Health was characterized as “political” in nature (as opposed to, for example, being described as having “legal” standing). But perhaps this did not matter; if in the course of a dispute the political declaration could be cited as grounds for invoking the flexibility in the TRIPS agreement, as developing countries stated upon emerging from the ministerial discussions, the distinction was moot. Moreover, there was the declared intent of the parties not to use the WTO’s dispute settlement mechanism to deal with cases involving public health. This made the whole issue even less consequential. Accordingly, the “clarification” that the TRIPS agreement *already* provided flexibility to deal with public health emergencies might be interpreted as euphemistic language to describe a real retreat.

At the same time, some parties emerged from the meetings contending that, indeed, nothing really had changed. To the outside observer attempting to discern whether the latter position was face-saving bravado or hard-edged *realpolitik* judgement remained, despite the clarifications, clear as mud.

Anti-dumping

While the show of flexibility on TRIPS got the ball rolling at Doha, a significant boost to the momentum of the process was also provided when United States Trade Representative Robert Zoellick accepted anti-dumping and other elements of trade remedy law being put on the table—notwithstanding strong