

International Exhaustion: Access to Medicine under TRIPS

Cynthia M. Ho
Loyola University of Chicago

My Presentation

International Exhaustion

(1) Pre-TRIPS

(2) TRIPS

(3) Post TRIPS

- South Africa
- India

International Exhaustion

- What is it?
- Global Rule = ?

Assessing Int'l Exhaustion

Figure 5: International Exhaustion:
Look to Importing Country (B's) Law

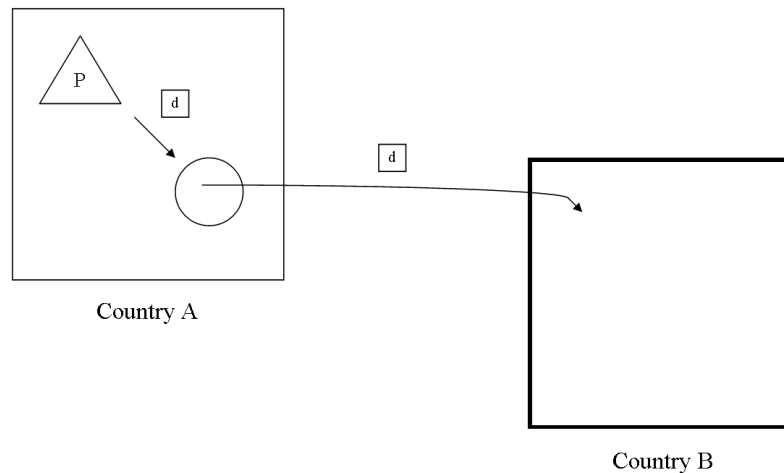
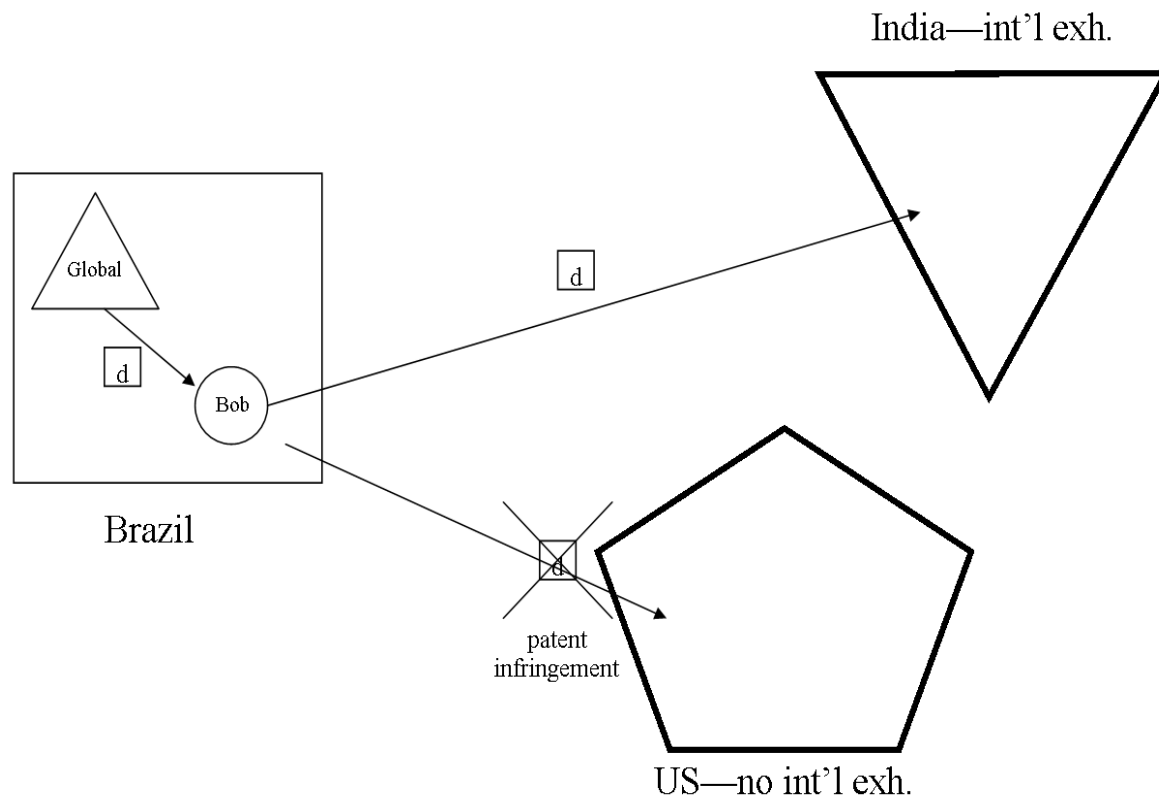


Figure 6: “Global” Example



Pre-TRIPS

- Three Primary Positions
 - US
 - EU
 - Developing Countries

TRIPS article 6 - Exhaustion

- For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 (*national treatment*) and 4 (*MFN*) nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

South Africa (1997)

- Context
 - HIV crisis
 - First democratic elections; new Constitution
- Enacts new law
 - (1) compulsory licenses
 - (2) parallel imports

S. Africa – Parallel imports

- “The minister may ... (b) prescribe the conditions on which any medicine which is identical in composition, meets the same quality standard and is intended to have the same proprietary name as that of another medicine already registered in the Republic, but which is imported by a person other than the person who is the holder of the registration certificate of the medicine already registered and which originates from any site of manufacture of the original manufacturer as approved by the council in the prescribed manner, may be imported. “

Indian Law – 107A(b) (2005)

- “**importation** of patented products by any person from a person who is duly authorized under the law to produce and sell or distribute the product, **shall not be considered as a infringement** of patent rights.”

Conclusion = ??

The end
(of my presentation)

Thanks for your attention!
Cynthia Ho, Loyola University of Chicago
cynthiamho@gmail.com