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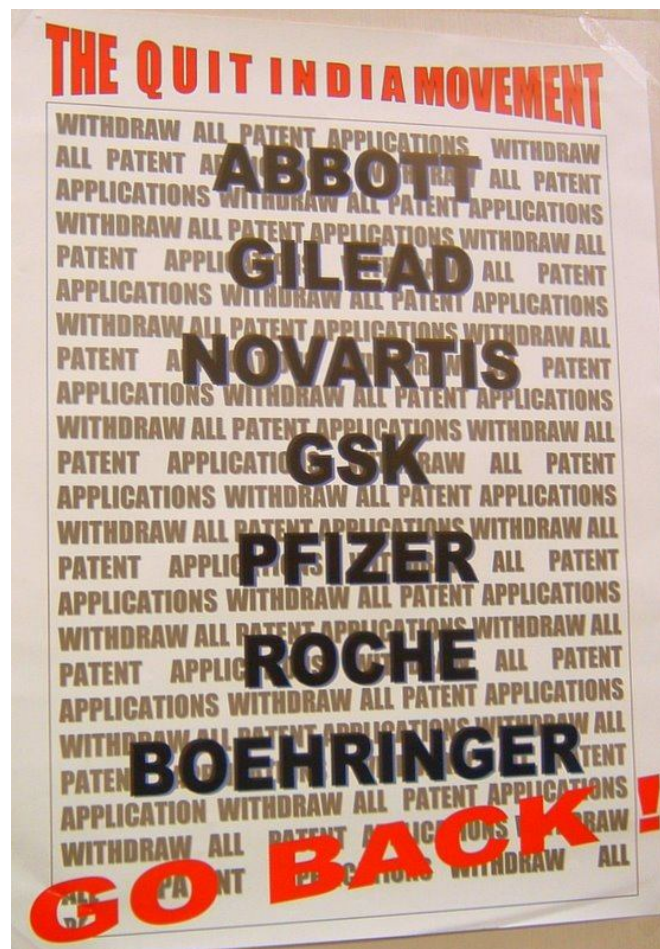
What is "Global Corporate Citizenship"?

A View from the Indian Pharmaceuticals Market

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Introduction

For the final panel of the conference, Catherine Alexander and her colleagues ask us what kinds of "alternative economics" might be possible. Putting ethics at the centre of the discussion, they raise the question if what companies do in the name of "Corporate Social Responsibility" might be the realization of an alternative to global capitalism.

Ten years ago, Pierre Bourdieu (1998) looked at the spread of neoliberal capitalism around the world as "a programme for destroying collective structures which may impede pure market logic." For Bourdieu, neoliberal reforms try to cut out "social realities" in order to give business free reign across the globe. Driven by a brutal logic of "social Darwinism" that rewards winners and casts away losers, neoliberal capitalism aimed at fracturing social collectivities that valued consensus decisions for the common good.

A tumultuous decade has passed since Bourdieu's critique. The "Battle of Seattle" at the WTO Ministerial Conference of 1999 gave critics of free-market capitalism unprecedented media attention. The agenda of the G8 summit at Gleneagles in 2005 was dominated by campaigns for African debt relief and environmental sustainability. These items are also placed prominently on the agenda for the next G8 summit in Hokkaido. If the leading economic powers now put so much emphasis on addressing social inequalities and environmental issues, does this not mean that "alternative economics" have already been placed at the centre of global capitalism?

Social concerns are not only high up on the agenda of governments, but also of corporations. For example, many of the world's largest corporations have signed the United Nations Global Compact, a network of governmental and non-governmental organizations that endorses key principles for human rights, fair labour relations, environmental sustainability, and anti-corruption measures. Ban Ki-moon, Secretary-General of the UN, declared that corporations must "reach to the values and principles that connect cultures and people everywhere"¹. Almost every large corporation now has some form of programme related to being a "good citizen" in a globalizing world.

¹ <http://www.unglobalcompact.org/> (last accessed 10/12/2007)

If both governments and companies have joined hands in working for the greater good, does this not mean that neoliberal capitalism has already come to a dialectical realization of its own mistakes and has embraced an alternative to neoliberal capitalism?

Indeed, it seems that mainstream thinking about ethics and economics has gone where Marcel Mauss (1997) wanted it to go. *The Gift*, published in 1925 and perhaps the most influential text ever written in economic anthropology, does not only discuss *potlatch*, *kula* and *hau*, but also lays out Mauss's vision of an equitable future for industrial societies. The whole purpose of Mauss's analysis of so-called archaic forms of exchange is to show that they hold a lesson for industrial capitalism: that social solidarity is far more important than individual profit maximization. Instead of separating clearly between a domain of pure commodities and pure gifts, Mauss advocates that hybrid forms of morally embedded exchanges should be preferred.

One of Mauss's conclusions is that archaic, pre-capitalist forms of exchange should be seen in parallel with reformed capitalism. In *The Gift*, Mauss asks us to reflect on an archaic past in order to rediscover the future of industrial societies. What Mauss calls "corporate solidarity" (*solidarité corporative*) had already been made reality by some businessmen. Corporate solidarity, honour, and unselfishness were the leading principles by which the whole economy will be constantly improved and "humanized":

"Thus, we can and we must return to the archaic, to the elements; we will rediscover the motives of life and of action that are still known to numerous societies and classes: [e.g.] the joy of giving in public [...]. It is even possible to conceive what a society would be like where parallel principles prevailed. To a certain degree, a morality and economy of this type already works among the free professions of our great nations. Honour, unselfishness, [and] corporate solidarity are no vain words, nor are they against the needs of labour. Let us humanize other professional groups as well, and let us constantly improve them. That will be a great progress made, as Durkheim has often advocated." (Mauss 1996 [1925]: 263, my translation²)

² Given that the existing English translations of Mauss are not without problems (Parry 1986; Fuller 1992), here is the French original: "Ainsi, on peut et on doit revenir à de l'archaïque, à des éléments; on retrouvera des motifs de vie et d'action que connaissent encore des sociétés et des classes nombreuses:

In this sense, it is possible to read Mauss's *The Gift* as an early manifesto in support of "corporate solidarity." The "joy of giving in public" that reform-minded capitalists are celebrating puts them – more or less – on a par with the North-Western chiefs who organized potlatches for the benefit of all.

Since Mauss's interpretation of corporate solidarity is more of a moral-philosophical proposition than a statement about reality, it is futile to discuss it on the level of empirical facts. But Mauss can be taken up on his claim that it is *ethically* wrong to separate between self-interested exchanges and non-interested gift-giving. What I want to argue in the following is that attempts to clearly separate between pure commodities and pure gifts is probably more ethical than to advocate hybrid gift-commodities— especially if seemingly pure gifts in one market distract from big profits made elsewhere. The example I want to discuss here is that of Novartis' taking the Indian government to court over the patent of its anti-cancer drug Glivec. Let me start by a brief summary of the legal case.

Novartis *versus* The Government of India

In January 2006, Novartis was denied an Indian patent for Glivec (or Gleevec), a drug that is used to treat Chronic Myeloid Leukaemia (CML) and Gastrointestinal Stromal Tumours (GIST). In August 2006, the company took legal action against this decision, arguing that Glivec is an exceptionally efficacious drug and that it has already been patented in 35 countries. Novartis held that, if India denies a patent, its laws must be incompatible with agreements under the World Trade Organization (WTO) and must be changed.

Novartis first patented Glivec's active ingredient, imatinib mesylate, in 1993.³ At that time, India did not grant such patents on drug molecules. In 1972, the Indian government adopted a patent regime that only protected the *process* of drug

la joie à donner en public [...]. Il est même possible de concevoir ce que serait une société où régnerait de pareils principes. Dans les professions libérales des nos grandes nations fonctionnent déjà à quelque degré une morale et une économie de ce genre. L'honneur, le désintéressement, la solidarité corporative n'y sont pas un vain mot, ni ne sont contraires aux nécessités du travail. Humanisons de même les autres groupes professionnels et perfectionnons encore ceux-là. Ce sera un grand progrès fait, que Durkheim a souvent préconisé."

³ Novartis. 2007. History of Glivec in India (<http://www.novartis.com/downloads/about-novartis/glivec-history-india.pdf>, downloaded 23/07/07). The US Patent for imatinib mesylate is valid until 2013.

manufacturing, but not active ingredients. In practice, this meant that any drug molecule, even if patented in other countries, could be reverse-engineered and generically produced in India. Over the past decades, this patent regime allowed the Indian pharmaceutical industry to become the world's leading producer of generic medications. By protecting different production processes, the old patent regime led to a situation where thousands of companies could compete with each other with virtually identical products. A side effect of this intense competition is that drug prices in India are generally much lower than in other countries, including most countries in the developing world.⁴

All of this is currently changing. India joined the World Trade Organization in 1995, which now forces the country's drug industry to comply with the patent rules outlined in the agreement on Trade-Related Intellectual Property Rights (TRIPS). Before signing this agreement in 1995, India negotiated a 10-year transition period, which is now expired. Since 2005, the Indian Patents (Amendment) Act is being enforced.

In 1997, Novartis started to apply for patents for a second version of the drug, the so-called beta crystalline form of imatinib mesylate. In India, the patent application was received under "mailbox" provisions. During the 10-year transition period, Indian patent offices accepted applications to be fully reviewed after 2005. In 2003, Novartis was awarded a preliminary five-year period of Exclusive Marketing Rights for Glivec. Before that, nine Indian pharmaceutical companies (among them Cipla, Natco, Hetero and Ranbaxy) sold imatinib mesylate at around Rs. 96,000 (ca. £1,125) per patient per year, which was around 90% cheaper than the Novartis brand.⁵
[SLIDE: Natco's Veenat]

Novartis moved the Chennai (Madras) High Court to pass an interim restraining order on six Indian generic companies. Even after the 2003 ruling, three Indian companies

⁴ S.K. Tripathi, D. Dey & A. Hazra. 2005. *Medicine prices and affordability in the state of West Bengal, India: Report of a survey supported by World Health Organization and Health Action International* (http://www.haiweb.org/medicineprices/surveys/200412IW/survey_report.pdf, downloaded 23/07/07).

⁵ Berne Declaration. 2006. *Novartis challenges the Indian Patent Law* (<http://www.evb.ch/en/p25011414.html>, downloaded 23/07/07).

were allowed to produce and sell the drug in India, as well as to export it to other countries.⁶

The legal conflict revolved around the undecided question "whether secondary patents obtained after 1995 for a new chemical entity patented before 1995 can be used to prevent generic companies from producing the drug" (Chaudhuri 2005: 69). The Chennai Patent Office rejected Novartis' application for the beta form of imatinib mesylate primarily under Section 3(d) of the Indian Patents (Amendment) Act of 2005.⁷ This section states that variations of known molecules will be treated as "the same substance, unless they differ significantly in properties with regard to efficacy." This clause, which is not explicitly part of WTO agreements,⁸ is meant to prevent companies from "ever-greening" expiring patents and from getting new patents on molecules that are just minor variations of already existing drugs. In the case of Glivec, the Patent Office found that it was neither new nor significantly more effective than what was already patented pre-1995.

Following this ruling, Novartis took the case to the High Court in Chennai in August 2006. Novartis' case rests on two claims. The first is that the beta version of Glivec is significantly better than the previous version (e.g., that it has much better bioavailability). The second is more fundamental: Novartis argues that Section 3(d) is "unconstitutional and in breach of India's obligation under TRIPS".⁹ Lawyers for Novartis invoked Article 14 of the Indian constitution, which guarantees equal protection of all citizens by the laws of the country. They argued that the dismissal of its patent application violated Novartis' fundamental citizen rights.

In a press release dated 15 February 2007,¹⁰ Novartis backed its claims with the recommendations of a report commissioned by the Ministry of Commerce on India's compliance with TRIPS. This report was prepared under the chairmanship of Dr R.A. Mashelkar, a former Director-General of the Council of Scientific and

⁶ Novartis. 2007. History of Glivec in India (<http://www.novartis.com/downloads/about-novartis/glivec-history-india.pdf>, downloaded 13/12/07).

⁷ Government of India, Ministry of Law and Justice. 2005. The Patents (Amendment) Act (http://www.patentoffice.nic.in/ipr/patent/patent_2005.pdf, downloaded 23/07/07).

⁸ Even if Section 3(d) is not part of the TRIPS agreement, that does not mean that it contravenes it. Much of the Chennai court case is about the question if Section 3(d) is at odds with TRIPS or not, and the jury is still out on it.

⁹ The full statement of Novartis case is contained in Chennai High Court Writ Petition No. 24754 of 2006; for a short version, see Novartis. 2006. History of Glivec in India (<http://www.novartis.com/downloads/about-novartis/glivec-history-india.pdf>, downloaded 23/07/07).

¹⁰ Novartis. 2006. Novartis Seeking Clarity in Indian Patent Laws, a Critical Incentive for Long-Term R&D Investments into Better Medicines for Patients (<http://www.businesswireindia.com/PressRelease.asp?b2mid=12008>, downloaded 23/07/07)

Industrial Research (CSIR) and one of the country's most prominent scientists. Mashelkar's report advised that it is incompatible with TRIPS to limit the grant of new patents to New Chemical Entities (NCEs) or New Medical Entities (NMEs). If the patent offices wanted to turn down "ever-greening" patent applications, this could be done through a proper application of existing rules and did not require Section 3(d).

Novartis filed this case against various governmental bodies: the Union of India, the Controller General of Patents and Designs, and the Chennai Assistant Controller of Patents and Design. But the company also attacked a Mumbai-based NGO called the Cancer Patient Aid Association (CPAA), which had been fighting several legal disputes over Glivec already.¹¹ A number of Indian pharmaceutical companies, such as Ranbaxy and Cipla, have also entered the court case alongside the CPAA and the governmental offices.

In April 2007, part of the legal battle shifted to a new arena. The Indian government, sensing that the Glivec case is only the beginning of a deluge of similar cases, established the Intellectual Property Appellate Board (IPAB) to deal with contested patent applications. The Glivec patent application is the first case to be heard by this board from September 2007. However, the more fundamental question whether Section 3(d) is TRIPS-compliant remained in the Chennai High Court.¹²

In August 2007, the Madras High Court dismissed Novartis' challenge. The courts' decision had several layers. Firstly, the court decided that it was not entitled to rule on WTO compliance issues. Instead, only the WTO's own Dispute Settlement Body should have jurisdiction in this matter. The Court, therefore, did not make a decision about intellectual property rights at all. It only ruled that Section 3(d) of the Indian Patent Act was not in violation of Article 14 of the Indian Constitution, as Novartis had claimed. Turning the tables on Novartis' invocation of constitutional rights, the court rejected the petition with reference to "the constitutional obligation of providing good health care to its citizens."

¹¹ Pharmabiz. 2004. SC admits cancer patients' petition against granting EMR for Gleevec (<http://www.pharmabiz.com/article/detnews.asp?articleid=23237§ionid=44>, downloaded 23/07/07).

¹² Pharmabiz. 2007. PAB postpones hearing of Novartis Glivec case to July 2 (<http://www.pharmabiz.com/article/detnews.asp?articleid=39348§ionid=44>, downloaded 23/07/07).

Citizens *versus* Novartis

The dismissal of Novartis' case in the Chennai court was celebrated by health activists from around the world. Novartis' legal attack on the Indian government had caused furore not only because of the implications for cancer patients. Opponents of Novartis argued that the company was destroying essential provisions in the Indian laws that try to keep drugs affordable even after the country joining the WTO. Even worse, Novartis' challenge would have far-reaching consequences for global drug prices, because healthcare in the developing world was relying on India's exports of cheap generics. If the law suit had succeeded and Section 3(d) had been eliminated, many more "old" drugs could have gotten patents. Under a strict patent regime, generic competition is restricted and a patent-holding company can exploit its monopoly to charge high prices. High prices mean, in turn, that poorer people cannot afford drugs and are doomed to go without treatment. The activists' shortcut analysis for this scenario is "patents kill", and that, without Section 3(d), patents will kill even more. The "life and death" argument is particularly relevant to HIV/AIDS drugs. Since India is one of the world's main suppliers of cheap antiretroviral medications, any tightening of patent laws might dramatically increase their availability and affordability. Instead of giving lifesaving drugs to those who needed them, Novartis was taking them away for no other reason than capitalist profit maximization.

Novartis' legal challenge to the Indian patent laws triggered the formation of a large alliance of international action groups against the company. By March 2007, more than 70 NGOs from around the world were lobbying Novartis to withdraw the case. For example, the UK-based aid organization Oxfam started an e-mail campaign against Novartis, personally addressed at its CEO, Daniel Vasella.¹³ At Novartis' annual general meeting on 6 March 2007, Berne Declaration, a Swiss NGO, appealed to withdraw the case. They stated that more than 350,000 people from across the globe had written to Novartis to back down.¹⁴ Berne Declaration also staged a demonstration outside Novartis' Basel headquarters. A (black) woman lay in a bed holding a poster that urged Novartis to drop its case in India. A (white) member of the

¹³ Oxfam. 2007. Email pharmaceutical giant Novartis (http://www.oxfam.org.uk/what_you_can_do/campaign/mtf/actions/novartis.htm, downloaded 23/07/07).

¹⁴ Berne Declaration. 2007. Statement of the Berne Declaration at Novartis' AGM (<http://www.evb.ch/en/p25012134.html>, downloaded 23/07/07).

NGO was standing beside her with a mock packet of "ProfitPills" which promised: "Guaranteed: out of reach for poor people." [SLIDE: outside Novartis HQ]

Médecins Sans Frontières (MSF) has been one of the most vocal organizations to protest against Novartis. In its campaign, MSF argued that "the lives of millions are at stake!!" not just in India but across the world.¹⁵ As a leading producer of generic medications, India had become the "pharmacy of the world," and especially non-governmental aid programmes crucially relied on cheap generic versions of life-saving drugs. MSF's worried that the availability of generic HIV/AIDS medications is threatened if patents hinder Indian companies from producing them. According to MSF, if Novartis wins the case, "millions of people across the globe could have their sources of affordable medicines dry up." In a video clip produced by MSF, a dark-skinned person is just about to take a pill before two hands in rubber laboratory gloves snatch away first the single pill, then the whole pack. A voice from the off urges the viewer to "call on Novartis to drop the case!" [CLIP: MSF vs. Novartis¹⁶]. Notice in this clip the persuasive depiction of the exchange relation between the corporation and patients: instead of saying that the company *gives* drugs to patients, it argues that it *takes* drugs away from patients who already hold them in their hands. Novartis' position as the rightful owner of drug patents is subverted in favour of patients being rightful owners of drugs who are being stolen from. What Novartis seems to do is neither about commodity exchange nor about gift giving: it is theft.

On 7 February 2007, my colleague Soumita Basu and I had the opportunity to attend an NGO stakeholder meeting on TRIPS and the Novartis case in Kolkata. The meeting was organized by a Kolkata-based journalist who mentioned in his introduction that he had first come across the problem of patent laws while working on a documentary on pharmaceutical companies. During the filming, he had seen "how imperialism is working." He had organized this meeting in Kolkata because "in Kolkata we have a tradition of protesting," so the city would be an ideal place to start a national protest movement against WTO, TRIPS, and global drug companies. He held that it was completely obvious that TRIPS is causing huge price rises for drugs. The only question was how to organize a protest movement.

¹⁵ Médecins Sans Frontières. 2007. People before patents: the lives of millions are at stake!! (http://www.msf.org/petition_india/international.html, downloaded 23/07/07).

¹⁶ Médecins Sans Frontières. 2007. People before patents: the lives of millions are at stake!! (http://www.msf.org/petition_india/international.html, downloaded 23/07/07).

Invited to the meeting were about 30 representatives of several health-related NGOs, activist lawyers, academic researchers, as well as party members of the CPI-M (the Communist party which celebrated 30 years of uninterrupted rule in the state of West Bengal in 2007) and of CITU (Centre of Indian Trade Unions, closely aligned with the CPI-M). The walls of the meeting room were decorated with posters that equated the fight against Novartis with the fight against the British colonial government, especially with the "Quit India Movement" of 1942. Just like the British were asked to withdraw from India, so global pharmaceutical companies were asked to "WITHDRAW ALL PATENT APPLICATIONS" [SLIDE: Quit India].

Among numerous passionate speeches, one given by a representative of MSF India described how intense competition between Indian generic producers and multinationals had driven down drug prices. In the field of HIV/AIDS medications, generic competition from India, "the pharmacy of the world," was able to push down prices by up to 99% from what they cost when they were first launched in patented form. She also pointed out that the aid efforts of international NGOs such as MSF crucially rely on the availability of cheap Indian generics. On the Glivec case, she said that it was the Cancer Patients Aid Association, a group of *citizens*, who first opposed Novartis through pre-grant opposition: "They challenged Novartis in the Chennai patent office, proving that it was an old drug. That shook up Novartis! They didn't expect this."

The meeting lasted from morning till late afternoon and ended in a plan for action which included a march to Parliament, a write-in campaign to the Indian Prime Minister, mass e-mailing, and gathering support from all the left-wing parties. A CITU representative urged the audience to "join in the great fight, going on around the world, led by left parties: fight against globalization, liberalization, privatization, against a unipolar world!"

At one point, someone in the audience stood up and said that a recent Mashelkar Report had shown that Section 3(d) contravened the TRIPS agreement. He argued that India had to honour its contractual commitments, and that Section 3(d) should be dropped. The reply to this came quick and sharp from one of the activists: "Mr. Mashelkar has sold out to multinational companies."

In a remarkable turn of events, Mashelkar made headlines again a few days later on 19 February 2007, when he announced the official withdrawal of the report by the Technical Expert Group on Patent Law. The trigger for this unprecedented step

was that the report had come under allegations of plagiarism. As Mashelkar stated in a letter, "certain technical inaccuracies in the Report...have inadvertently crept in."¹⁷ These "inaccuracies" consisted in the verbatim lifting of passages from an academic paper published in 2005 by Shammad Basheer, an intellectual property lawyer based in Oxford and Washington DC.¹⁸ Basheer published a blog on the Mashelkar Report on 28 January 2007, where he argued that the key conclusions were plagiarised from his earlier paper.¹⁹

This announcement was swiftly used by activists to make an even more serious allegation: that the integrity of the whole Mashelkar committee was compromised by multinational pharmaceutical interests. An open editorial in the *Times of India* alleged that Basheer's 2005 paper was funded by Interpat, a lobby group of major multinational pharma companies – Novartis being one of them.²⁰ (In fairness, Basheer argued in his blog that Mashelkar may have plagiarized him, but that he had nonetheless come to different overall conclusions.) The editorial was written by Chan Park and Achala Prabha, both of whom are affiliated with the Lawyers' Collective, an NGO which gives legal counsel to CPAA in the Chennai court case.²¹ Hence the Lawyers' Collective is aligned with the Indian pharmaceutical companies who are working with CPAA in the case. To be sure, this alliance between activist lawyers and Indian companies is not straightforward and remains fragile. But both groups share an interest in Novartis losing the case.

It is evident that Mashelkar's withdrawal of the Report had happened even *before* the public letter of 19 February, and just in time for the court hearings on 15 February. Mr Lakshmikumaran, the counsel for two of the major Indian companies, Ranbaxy and Hetero, stated in court that the Mashelkar Report was now withdrawn and that there was no reason to consider its recommendations any further. It seems

¹⁷ Srinivas, A. 2007. 'Certain inaccuracies have crept in': A contrite but defiant Mashelkar withdraws his patent report. *Outlook Magazine*, 5 March 2007 (<http://www.outlookindia.com/fullprint.asp?choice=2&fodname=20070305&fname=Mashelkar+%28F%29&sid=1>, downloaded 23/07/07).

¹⁸ Basheer, S. 2006. Protection of regulatory data under Article 39.3 of TRIPs: the Indian context. London: Intellectual Property Institute. (<http://www.ip-institute.org.uk/pub.html>, downloaded 23/07/07).

¹⁹ Basheer, S. 2007. The Mashelkar Committee Report on patents: Placing it in context OR reading the lines and not 'between' them (http://spicyipindia.blogspot.com/2007/01/mashelkar-committee-report-on-patents_28.html, downloaded 23/07/07).

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#http://timesofindia.indiatimes.com/OPINION/Editorial/LEADER_ARTICLE_Patent_Wrong/articleshow/1593525.cms

²¹ http://www.lawyerscollective.org/%5Eamtc/Mashelkar_Committee/news_&_updates/news1.asp

that on that day, the anti-Novartis alliance knew more about the compromised status of the Report than Novartis, who had published its press release referencing Mashelkar on the same day.²²

From February onwards, Indian Left Front parties mobilized a national campaign against Mashelkar and argued that it was not enough to withdraw the Report, but that the whole committee had to be disbanded.²³ On 15 March 2007 it was announced that the Central Government had allowed Mashelkar's Technical Expert Group on Patent Law issues to resubmit a revised version of its report.²⁴ Just days later, Mashelkar announced his resignation as chairman of the committee.²⁵

By the time that the Chennai High Court dismissed Novartis' legal challenge, the company seemed to have lost the battle for public opinion as well. After the court ruling in August, there clearly was a legal possibility that Novartis could take the case to the WTO in Geneva. However, company representatives soon declared that this would not happen. According to S. Srinivasan, a long-term activist for affordable drugs, Novartis was hesitant to move the case on to Geneva "because of the bad publicity it will create" (Srinivasan 2007: 3687). Moving the case to Geneva and risking even more bad publicity was not an option.

Up to this point, the Glivec story might be seen as a spectacular success of anti-corporate citizens. It was a citizens' group that opposed Novartis' patent application in the Chennai Patent Office. It was civil society organizations such as MSF that gathered global support against the corporation. It was an assemblage of lawyers, journalists, and political activists which forced the withdrawal of the Mashelkar Report and shamed one of India's most eminent scientists into stepping down. It was activists who delivered a blow to Novartis' public image long before the legal case was decided. In might seem, therefore, that Novartis' claim of being a good citizen has crashed into the mountain. But this would be too quick a conclusion.

Citizens *pro* Novartis

²² http://www.lawyerscollective.org/%5Eamt/%5EPatent_Oppositions/gleevec/gleevec-15-2-07.asp

²³ http://pd.cpim.org/2007/0311/03112007_snd.htm

²⁴ <http://www.pharmabiz.com/article/detnews.asp?articleid=37997§ionid=19>

²⁵ <http://www.pharmabiz.com/article/detnews.asp?articleid=38046§ionid=17>

Novartis works hard to position itself as one of the world's most ethical and respectable companies. In 2006, Novartis was named "Super Sector Leader" for healthcare in the Dow Jones Sustainability Index (DJSI) and was ranked as the world's second most respected pharmaceutical company by Barron's, an American business magazine.²⁶ Being successful and being ethical are not seen as conflicting goals: the company's motto is "Caring and Curing".²⁷

The Novartis website contains extensive material on the company's Global Corporate Citizenship programmes. Novartis states that its ethics of "caring and curing" rest on four "pillars": first, to provide patients with high quality drugs; second, to conduct business in an ethical way; third, to be a "good neighbour" among people and communities; and fourth, to protect the environment.²⁸ Central to Novartis' GCC agenda are its access-to-medicine programmes. In 2006, these programmes gave away medicines with a market value of US\$755 million and reached 33.6 million patients across the world [SLIDE: access-to-medicine programmes]. The provision of free Glivec to patients who could otherwise not afford it is flagged up in the company's GCC Review of 2006. It tells the story of Shawn Watts, a South African patient who could not afford to pay for Glivec out of his own pocket. Through the Glivec International Patient Assistance Program (GIPAP), Novartis "made it possible for the young South African to have a continual supply of the drug that has saved his life."²⁹ The GCC brochure further points out that GIPAP has helped more than 20,000 patients in 80 countries. In 2006, the company provided drugs with a market value of US\$362 million, which is nearly half of the budget for all its access-to-medicine programmes. Besides drugs, GIPAP also fosters leukaemia support groups and supplies disease and treatment information. The conditions for getting access to GIPAP India are that the cancer diagnosis is confirmed by a doctor and that a patient can prove his or her inability to pay for Glivec. The criteria for this are that a patient earns less than Rs. 336,000 (GB£ 4,000) per month and is not reimbursed by his employer, by health insurance, or by other sources.³⁰

There has been a massive rise in access programmes like GIPAP in recent years. According to a publication by the US lobby group PhRMA (Pharmaceutical

²⁶ http://www.novartis.com/about-novartis/corporate-citizenship/news/2007-01-07_influential_sustainability.shtml

²⁷ http://www.novartis.com/downloads/about-novartis/CCR_English.pdf

²⁸ http://www.novartis.com/downloads/about-novartis/CCR_English.pdf

²⁹ http://www.novartis.com/downloads/about-novartis/CCR_English.pdf, p.5

³⁰ Novartis vs. Union of India, Writ Petition No. 24754 of 2006

Research and Manufacturers of America), pharmaceutical companies are by far the biggest charitable donors among major corporations. In 2001, drug companies contributed nearly 34% of all donations by major US companies. The banking business came in at a far second place at nearly 9% of all donations. The report also points out that, between 1998 and 2002, the number of US patients receiving medicines through corporate access programmes has increased from 1.5 million to 5.5 million.³¹ Access-to-medicine schemes are likely to grow further in the future and can be expected to become an important factor in the healthcare markets of developing countries as well.

In a video clip available from the Novartis website,³² Ranjit Shahani, the head of Novartis India, juxtaposes "two Indias." [CLIP: Shahani] One of the Indias was "sprinting," while the other was "crawling." While India's economy was booming and people's standards of living were increasing, there were many people who could not afford to pay for drugs. Novartis access-to-medicine programmes were filling this gap. In India, Novartis' GIPAP programme was administered through an international NGO called The Max Foundation (TMF), which was founded in 2004. Through TMF, Novartis was giving Glivec to "99%" of all patients diagnosed with CML or GIST (around 6,700 Indian patients were enrolled in GIPAP in December 2006³³). Shahani claims that, without GIPAP, there was "no hope," and "most of these patients would not be there" anymore. The statement ends with an appeal to protect drug patents. Without patents, there was no incentive to invest in innovative drugs, and without innovative drugs, the future of "our children and our children's children" was threatened.

Almost all of Shahani's claims have been disputed at some point or another. Shahani himself, in response to criticisms by the CPAA, once mentioned the first serious limitation of the programme: "it is access to specialist healthcare facilities in our country which is more of an issue insofar as CML and its diagnosis is concerned."³⁴ In other words, "99%" of all patients include only those who are diagnosed by a sufficiently competent doctor. In Shahani's estimate, only 4,000 of about 15,000 cases in India are diagnosed and referred to GIPAP in this way. Another

³¹ <http://www.phrma.org/files/2004-01-20.884.pdf>

³² Novartis. 2007. Untitled video clip (http://www.novartis.com/downloads/about-novartis/Ranjit_Shahani.mpg), downloaded 23/07/07)

³³ <http://www.novartis.com/downloads/about-novartis/glivec-history-india.pdf>

³⁴ <http://www.pharmabiz.com/article/detnews.asp?articleid=27114§ionid=44>

point of controversy is the condition that many patients might be disqualified from GIPAP because they are, in principle, covered by schemes such as the Employee State Insurance Scheme (ESIS). Although this is a form of health insurance, this state fund would never pay for an expensive treatment like Glivec.³⁵

However far the reach of GIPAP in India really is, Novartis enrolls more than 33 million patients worldwide in its access-to-medicine programmes. By doing so, it is building up a large constituency of pro-corporate citizens who can hardly fail to feel somewhat indebted to the company. In a video clip on the Novartis website, Viji Venkatesh, the head of The Max Foundation in India describes patients' reactions to Novartis generosity [CLIP³⁶]. It does not come as a surprise, then, that only days after the left-wing stakeholder meeting in Kolkata, there was another civil society meeting on Glivec, this time in favour of Novartis [SLIDE: TMF in Kolkata]. A volunteer training workshop organized by TMF in Kolkata on 10-11 February 2007 was turned into a "Gratitude Meeting" and provided a forum to criticize anti-Novartis activists. A banner on the speaker's podium read "Novartis saved our lives" and patients spoke about how the free access to the anti-cancer drug has been their only chance of survival. Similar events were staged in other major Indian cities. For example, on 13 February 2007, GIPAP recipients presented a map of India scribbled full of signatures at the Novartis offices in Mumbai. On 9 February 2007, TMF started to organize a global signature petition which asks patients and their relatives to sign the following statement: "I am alive and living with dignity thanks to Novartis and its Glivec International Patient Assistance Program, GIPAP."³⁷

With around 5,300 signatures by March 2007³⁸ and hardly any resonance in the news media, this campaign seemed to pale in significance to the anti-Novartis action organized by NGOs, which attracted a great media response and hundreds of thousands of supporters. But the pro-patient, pro-Novartis activism of this cancer patient group serves a crucial role in the case in the Chennai High Court.

Y.K. Sapru, founder and chairman of the Cancer Patients Aid Association (CPAA), asserted in court that Novartis violates the "fundamental right to life and health" of its citizens guaranteed by the Indian Constitution. He argued that "the non-availability and non-affordability of any form of Imanitib Mesylate to CML patients is

³⁵ <http://www.pharmabiz.com/article/detnews.asp?articleid=27192§ionid=47>

³⁶ <http://www.youtube.com/watch?v=3w8ldf3KwI>

³⁷ <https://www.maxaid.org/Default.aspx?trgt=newsstories&choice=70>

³⁸ <http://www.novartis.com/downloads/about-novartis/glivec-history-india.pdf>

violative of rights of the CML patients under Articles 14 and 21 of the Constitution." The National Sample Survey 1999-2000 had shown that Indian households have extremely high out-of-pocket expenses for healthcare, and that about 75% of these expenses go for drugs. Many people lived in poverty, there was hardly any insurance scheme available, and the government did not spend much on healthcare. In this situation,

"it is important that patents are not granted for frivolous drugs, as it would increase the cost of medication and make it out of reach of the majority of people in the country, thereby violating their right to life and health as guaranteed under the Constitution of India. Section 3(d) of the Patents (Amendment) Act, 2005 does prevent frivolous patents from being granted." ³⁹

Novartis was able to counter this argument through GIPAP and its Global Corporate Citizenship efforts. In a Writ Petition (No. 24754), Novartis underlined that it is running GIPAP, "one of the most generous and far reaching Patient Assistance Programmes ever developed." The Petition goes on to state that Novartis "gives 99% of Glivec free of cost" and that only 1% of it are sold.⁴⁰ GIPAP made it difficult, if not impossible, for the anti-Novartis alliance to argue that cancer patients are dying purely because of corporate greed. Even the transnational NGO campaign could not mention touching stories of dying cancer patients. Activism by MSF and other organizations revolves entirely around the wider fall-out of a change to the Indian patent law, not on what happens to Glivec patients.

It is also crucial to understand why Novartis emphasizes the role of The Max Foundation. This NGO gives invaluable support to Novartis' claims to be a good corporate citizen. Firstly, TMF administers GIPAP in India, allowing Novartis to appear as a distant benefactor which does not directly take influence on patients. It also protects Novartis from being blamed if anything goes wrong with the programme. Secondly, events like the "Gratitude Meeting" and signature campaigns could never be organized directly by Novartis. The pro-corporate support from suffering citizens lends a level of ethical credibility to Novartis' insistence on patent rights that no pronouncement from their own PR office could match. Already in April 2005, CPAA alleged that GIPAP did not work well and was nothing but a "Trojan

³⁹ Affidavit in response to Novartis, Writ Petition No. 24759, 9 September 2006

⁴⁰ http://www.lawyerscollective.org/%5Eamtc/%5EPatent_Oppositions/gleevec/gleevec-29-1-07.asp

Horse to weaken possible challenges to its market exclusivity in India."⁴¹ However, the moral high ground about whether GIPAP covered all patients in need or not was won by Novartis.

To maintain a *difference* between the company and the NGO is critical. The whole exercise would fail if the NGO activities appeared as tainted by corporate interests. At the same time, it would be utterly wrong to think that Novartis simply "bribes" citizens into supporting its corporate interests. There is no reason to doubt that all the cancer patients who support Novartis are "authentic." What happens instead is that Novartis GIPAP programme creates a set of external incentives to which patients in need of drug treatment respond. For them, there is a strong incentive to be thankful for medicines which they could never buy themselves.

It is not without irony that, in the run-up to the Chennai case, Novartis' CEO himself seems to have suggested that the CPAA was a *pro*-corporate group of citizens sponsored by Indian generic manufacturers: "Vasella said that generic companies are often behind patient groups in India, and said he would not be surprised if they gave money to the groups."⁴² The CPAA has vehemently denied this charge and even sent a defamation notice against Vasella, demanding US\$ 500,000 in damages.⁴³

I think it is fair to say, however, that NGOs like CPAA foster *pro*-corporate forms of citizenship. Clearly, the Glivec case is *not* about for-profit corporations battling not-for-profit civil society organizations. Instead, it is a battle between an alliance of players who believe that product patents should be strictly protected, and an alliance who believes that patents should not, or only minimally, be upheld. On the one side, Novartis is allied to the patient group TMF and was, for a while, aligned with Mashelkar's Expert Group on patent laws. On the other side, NGOs are aligning themselves with large *Indian* pharmaceutical corporations who have been producing generic imatinib at a fraction of Novartis' price. The anti-Novartis alliance is not anti-corporate; it is only battling against the monopolies ensured by patents.

To be precise, the anti-Novartis lobby is not even against patents as such, but only against high drug prices charged by patent-holding corporations. If Novartis had marketed Glivec at affordable prices from the beginning, the whole Chennai court case would have never happened. If transnational health activists praise India as the

⁴¹ <http://www.pharmabiz.com/article/detnews.asp?articleid=27222§ionid=44>

⁴² http://www.ip-watch.org/weblog/index.php?p=430&res=1280_ff&print=0

⁴³ <http://www.cpaaindia.org/aboutus/PublicEyeAwards.htm>

"pharmacy of the world," this is not because the Indian state is *producing* affordable generics, but because the Indian state allows a huge number of *privately owned, for-profit* companies to compete with each other with generic products.

Behind all the high-minded ethical and legal debates in the Glivec case also lies an essential economic question: why does Novartis prefer to give away Glivec *for free* in India if it could have at least charged as much as its generic competitors from the drug? Since when does it make economic sense to make *no* profits rather than, at least, *some* profits?

All Citizens Are Equal, But Some Pay More Than Others

Novartis is the world's third-largest pharmaceuticals company and, with its Sandoz division, the world's second largest manufacturer of generics. In 2006, Novartis reported a net sales rise of 15% to reach US\$ 37 billion and a rise of net income by 17% to reach US\$ 7.2 billion.⁴⁴ Sales of Glivec are a major contributor to the company's profits: the drug generated sales of more than US\$ 2.5 billion in 2006 and was the second highest-selling brands among all Novartis products [SLIDE: first half 2006 sales]. Net sales of the drug were US\$ 630 million in the US and just under US\$ 2 billion in the rest of the world.⁴⁵ The drug is also expected to be a blockbuster over the coming years. The company plans to file for a new patent for imatinib in the treatment of Glioblastoma Multiforme in 2008 [SLIDE: planned patent filings]. According to a book written by Vasella,⁴⁶ Glivec is a "magic bullet" against cancer that is rewriting medical history [SLIDE: book cover]. Even if it may not rewrite medical history, it surely rewrites Novartis annual sales statistics.

As with practically all drugs, the only markets that really make a difference are in developed countries, especially in the United States and in the European Union [SLIDE: sales by region]. Glivec is no exception to this. Given the high price of the drug, it would be an exaggeration to say that the Indian market for Glivec is "small" – rather, it is virtually inexistent. Not even the generic versions of imatinib by Indian

⁴⁴ http://cws.huginonline.com/N/134323/PR/200701/1098754_5.html

⁴⁵ Novartis, Annual Report 2006, p. 6

http://www.novartis.com/downloads/investors/reports/AR06_E_web.pdf

⁴⁶ Vasella, D. & Slater, N. 2003. *Magic Cancer Bullet: How a Little Orange Pill May Rewrite Medical History*. HarperCollins.

companies were priced at an affordable level. Even according to MSF, CPAA and other opponents of Novartis, the retail price of the generics was around Rs. 96,000 (ca. £1,125) per patient per year. Compare this sum to Rs. 25,825, the annual per capita income of Indians in 2005-2006,⁴⁷ and it will be immediately clear that generics were just as unaffordable for out-of-pocket payers as the Novartis brand. It also needs to be remembered that the drug does not give a permanent cure from cancer, but only manages to stall its progress. That means that the drug needs to be taken *lifelong*. A middle-class family might be able to scrape together the money needed for a year's worth of treatment, but could afford it for a lifetime.

It is likely that CPAA and other not-for-profit healthcare providers were able to procure imatinib at an even lower price through striking direct deals with generic manufacturers. There are many examples of NGOs, such as the Kolkata-based CDMU (Community Development Medicinal Unit), which can negotiate discounts on generics at 90% below the retail price if they cut out all distributors and go directly to producers (Ecks 2007). Similar schemes might have brought the cost of treatment with imatinib down to around Rs. 30 per day per patient, which would be sustainable at least for middle-class patients. But NGO activities such as these could hardly cover the whole country and would make barely a difference to the overall scenario. In this sense, the charge by health NGOs that drug prices will *become* unaffordable because of patents is only partly true: most of the costly drugs, including anti-cancer drugs, are *already* unaffordable to most individual patients, but will *also* become unaffordable to NGOs.

Be this as it may, the question remains why Novartis does not sell Glivec at a price that is affordable for Indian patients, but rather provides it at no cost. A partial answer to this question comes from Novartis' Annual Report 2006, which states that GIPAP is part of the company's efforts to extend its share in Public-Private Partnerships (PPPs) with a "dynamic" pricing structure. In GIPAP and similar access-to-medicines programmes, estimates are made on how much, if anything, can be charged for a drug in a local market. On the bottom of the scale are countries like India, where GIPAP works like a traditional donation scheme that gives away drugs free of cost. Countries which can afford to pay more are only offered "shared contribution" models, where Novartis supplies Glivec at a lower price if local payors,

⁴⁷ Bhandari, L. & Kale, S. 2007. *West Bengal: Performance, Facts and Figures (Indian States at a Glance 2006-07)*. Delhi: Pearson.

such as state hospitals, private health insurers or NGOs, pick up at least part of the bill. Such schemes are said to be changeable at any moment according to circumstances: "access programs are able to adapt to changing healthcare policies" (p. 65). In the long run, Novartis plans to charge the same (high) price in all countries: "these initiatives are evolving as a result of recognition by payors of the value of a therapy, as well as countries' rising ability to pay" (ibid). In short, India is still too poor to be charged even a share of the price, but this will change if the economy continues to grow.

Another reason to give Glivec away for free, instead of going for at least a share of the costs, could be that Novartis wanted to eliminate competing Indian versions. If GIPAP is as comprehensive as is claimed by the company, it would mean that there would be no one left who would buy the pills from the Indian producers. It must also be underlined that generic imatinib cannot be exported to European or US markets like, for example, generic Prozac. Even before patents were enforced in 2005, Indian companies could only legally export to markets where patents were already expired. In all of the 35 countries where Novartis holds a patent for Glivec, generic versions cannot be sold. If there is no Indian market, if there is only a small export market, and if there is an ongoing legal insecurity about the status of the patent, it is obvious that Indian companies are losing interest in producing Glivec altogether. Indeed, this seems indeed to have happened over the past two years. The 2006 editions of CIMS (*Current Index of Medical Specialities*), an index of drugs available in the Indian market, did not mention a single generic producer of imatinib mesylate.

Another reason to hand out Glivec to Indian patients for free is to build up a constituency of vocal citizens in favour of Novartis' Indian patent claims. Novartis' global GIPAP exists since 2001. The Max Foundation took up its work in India only in 2004. It is hardly a coincidence that the access programme was started right after Novartis first won the Exclusive Marketing Rights for Glivec and when generic competitors were restricted. That GIPAP aimed to avoid a public relations disaster for Novartis if thousands of cancer patients were to die because they could not afford Glivec is hardly far-fetched. In this sense, CPAA's charge that GIPAP is a "Trojan Horse" to weaken attacks on Novartis' market exclusivity is entirely plausible. If these same patients also raise their voices and start a signature campaign in favour of Novartis' court case, that is all the better for shareholder value.

But it is not, as CPAA holds, the market *in India* which is really at stake for Novartis. A drug as expensive as Glivec was probably never meant to make any profits in India. With Glivec, Novartis found itself in a situation where almost no consumer could afford its product and where a number of competitors were offering the same substance at a much lower price. Perhaps the very best the company could do was to give away the drug in India for nothing to win two battles *elsewhere*: first, to maintain its image of a "good citizen" among *Euro-American* citizens and governments; second, to maintain the high price level in *Euro-American* markets.

According to the Kolkata-based economist Sudip Chaudhuri (2005: 323), multinational companies do not offer drugs at lower prices in India because they fear two kinds of leakage. On the one hand, they fear a "physical leakage" of drugs from this low-price markets to high-price markets. On the other, "they may actually be more worried about the information spillovers – the knowledge about lower prices in developing countries generating demand for lower prices in developed ones" (ibid).

Patent-holding drug companies argue that high drug prices are necessary to recuperate the high costs of research and development of new medicines. At the same time, the marginal costs of producing pills are extremely low. Unlike cars or other commodities that are expensive to make, giving away a few million pills for free is not very costly. Because of the low marginal costs, the price of a pill does not reflect the cost of manufacturing, but the cost of discovering, testing and marketing it. For Novartis, the high *value* of Glivec needs to be represented in its high price, and this needs to be done consistently across global markets. If Glivec was sold at a fraction of its Euro-American price in India or elsewhere, the two kinds of leakage mentioned by Chaudhuri (2005) would be inevitable. Even if the physical spillover could be restrained, the information spillover could not. Whoever would buy Glivec in Euro-American countries at the high price set by Novartis would feel cheated. And whoever feels cheated might start some kind of European or American citizens' group against corporate greed and drug patents.

I would argue, then, that Global Corporate Citizenship is not an ethical brake on the wheels of global capitalism, but a spike in it, extending and accelerating it by new means. Different from what Bourdieu might have predicted, GCC is not "a programme for destroying collective structures which may impede pure market logic," but a programme aimed at *fostering collective structures* that enhance profitability, such as pro-corporate patient activism. It does not cut out "social realities" to give free

reign to capitalism in all spheres of life, but it creates specific social realities to *distract* from less obvious market mechanisms. It does not spread a kind of "Darwinism" that rewards winners and discards losers, but it rewards some of the poor in order to reap even bigger rewards from the rich.

In this sense, I think it would be far *more* ethical by corporations to tone down the claim of being a "good citizen" and to state in simple capitalist terms why they are doing what they are doing. If medications such as Glivec are not "free gifts" but part of a global pricing strategy, this should not be disguised through a rhetoric of good citizenship. It would save us all a lot of time – and maybe a bit of money, too – if companies would call a spade a spade. Failing that, I would propose that global health activists should start yet another signature campaign among Euro-American citizens which should read: "We pledge to pay sky-high drug prices even if we know that these same drugs are cheaply available in developing countries." In the (unlikely) case that such a campaign would succeed in getting a few millions of signatures, the future of cheap generics in the developing world might truly be secured. This might be a form of global solidarity that Marcel Mauss would have liked as well, even if it distinguishes clearly between gifts and commodities.