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POLITICS AND POLICY

Drug Patents Draw Scrutiny As Bush Makes African Visit

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WASHINGTON -- In a five-nation African tour this week, President Bush is trumpeting his \$15 billion program to fight the continent's AIDS epidemic. But that program's gains could be undercut by a separate U.S. effort to impose strict drug-patent protections that make AIDS drugs more expensive and harder to obtain.

The Commerce Department is helping shape patent laws in developing countries such as Nigeria - where Mr. Bush will visit Saturday -- that go beyond global standards in protecting drug makers. The U.S. Trade Representative's office is seeking similarly strict protections in developing nations world-wide.

While President Bush is flaunting his program to help pay for drugs to treat AIDS in the near term in Africa, "there are many ways that the Bush administration has contravened the letter and spirit" of other global efforts to give needy countries better drug access, says Asia Russell, international policy coordinator at the Health Global Access Project, a nongovernmental activist group.

The issue shows the difficult balance Mr. Bush is trying to strike as he tries to please two very different groups: the African nations that badly need American help, and the large pharmaceuticals companies that play a major role in the U.S. economy. The drug companies also are major bankrollers of his re-election effort and his party's crusade to strengthen its control of Congress.

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U.S. officials say the goals of fighting epidemics and defending U.S. patents aren't at odds. Richard Mills, spokesman for the trade representative, says the U.S. has taken measures to assure developing countries can take advantage of special rules allowing use of generics to treat serious epidemics, such as AIDS, malaria and tuberculosis. But in Nigeria, U.S. officials involved in

helping to craft strict intellectual property laws have been generating controversy with rules that opponents say go too far in favor of drug companies.

In 2000, the U.S. Agency for International Development started funding a \$1.2 million technical-assistance program administered by the Commerce Department. It was aimed at helping Nigeria improve oversight of publicly financed projects, rework its regulatory functions -- and rewrite patent laws.

The U.S. said it was helping a nation update its decades-old law governing intellectual-property rights to keep up with new international standards to curb the sale of counterfeit goods, from medicine to music compact discs.

As part of the program, the Commerce Department sponsored some Nigerian officials and lawyers to attend two patent-law writing conferences in April and November 2002. Commerce Department letters and reports indicate 100 government officials and trade-group representatives were invited, with the U.S. picking up the airfare tab and total expenses of \$940 each for about 20 attendees -- the equivalent of three times Nigeria's annual per capita income.

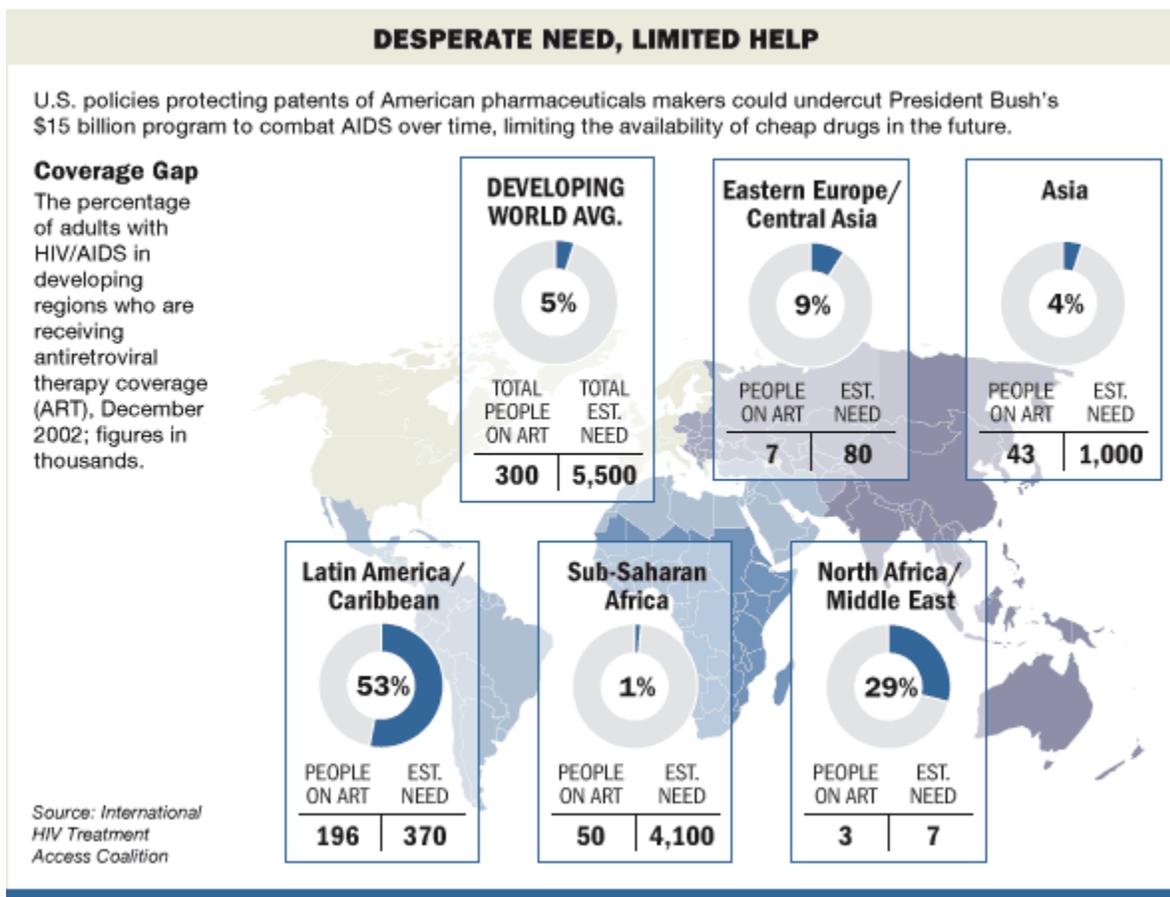
Nongovernment public-health representatives weren't invited, though after protests, they were allowed to attend. Olayide Akanni, a representative of the Treatment Action Group, an activist umbrella organization, presented an analysis of draft legislation saying its intellectual-property protections exceeded those required by the World Trade Organization. Her points: The bill mandates a complex Nigerian court process to license cheaper generic-drug copies to treat serious diseases, instead of the simpler government administrative procedure allowed by global rules. It adds a four-year waiting period for issuing drug licenses, when WTO rules in general have no waiting period. The bill would block nongovernment civil health organizations from applying for licenses and would punish violators with criminal sanctions, instead of the more common civil sanctions.

Nnamdi Ezera, the Commerce Department's commercial-development-program manager for Africa, says his group "did not influence the process," and Nigerian officials and intellectual protection lawyers made the decisions about writing the legislation.

Activists disagree, and question whether the U.S. can provide neutral technical assistance when powerful U.S. companies have a stake in the outcome. "Technical assistance on this matter from the U.S. will always be a case of the fox guarding the hen house," said Ms. Russell of the Health Global Access Project.

Suspicious about American motives in Nigeria have been heightened by its stance in international patent protection negotiations during the past two years. WTO trade ministers agreed in late 2001 in Doha, Qatar, that poor countries should be able to override patent protections and use cheaper generic copies of drugs to attack mass health problems.

But the U.S. drug industry expressed concerns that relaxing patents beyond those for a limited list of epidemics would set a precedent leading to much broader erosion of intellectual-property rights. The industry fears that could spark an open season on lucrative drugs of little relevance to African public-health crises, citing **Pfizer** Inc.'s impotence remedy, Viagra, and products designed to prevent baldness.



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