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**Losing the media battle, waging the policy war:
The pharmaceutical industry's response to the access to medicines
crisis in the Global South**

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2
3 **Abstract**
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5 *This article sheds new light on the pharmaceutical industry's response to the PR*
6 *crisis generated by the global civil society campaign for access to HIV/AIDS*
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8 *medicines since the early 2000s - one of the most contentious policy areas of global*
9 *trade and health governance. Drawing on interviews with industry insiders, the*
10 *article explores the industry's communicative agency in both the media sphere and*
11 *key sites of power, with a focus on the EU policy sphere. The analysis shows that the*
12 *industry has focused primarily on maintaining access to policy-makers and sustaining*
13 *elite consensus around the existing global intellectual property rights regime through*
14 *political communication activities that largely bypass mediated public arenas – from*
15 *strategically promoting its CSR programmes, mobilising third-party endorsement, to*
16 *direct lobbying. The article concludes by reflecting on the implications of the findings*
17 *for critical investigations of the interplay between media and political power in*
18 *relation to global economic governance.*
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36 **Keywords:** communicative agency, pharmaceutical industry, public relations,
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38 corporate social responsibility
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3 **Introduction**
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5 For almost two decades, access to essential medicines in the Global South has been
6 one of the most contentious issues in international trade and development politics. At
7
8 the turn of the millennium, the access to medicines (A2M) transnational advocacy
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10 network played a critical role in exposing how patent rules enshrined in the World
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12 Trade Organisation (WTO) Trade-Related Intellectual Property Rights (TRIPS)
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14 Agreement and ‘Big Pharma’ pricing policies are implicated in the denial of life-
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16 saving treatment to millions of people living with HIV/AIDS (Smith & Siplon, 2006;
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18 Timmermann & van den Belt, 2013). When, in January 2014, the South African
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20 Health Minister accused the pharmaceutical industry of an attempt at ‘genocide’ -
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22 following leaked emails detailing its plan to undermine the government’s patent
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24 legislation reform (de Wet, 2014) - it was a matter of *déjà vu* for many observers,
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28 recalling a seminal moment in the global struggle for AIDS treatment more than a
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30 decade earlier.
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34 In 1998, a group of 39 pharmaceutical corporations filed a lawsuit against the
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36 South African government for its alleged violation of WTO TRIPS rules. The lawsuit,
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38 in a country that was facing the world’s biggest HIV/AIDS crisis, triggered a global
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40 campaign led by international non-governmental organisations (NGOs), including
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42 Médecins Sans Frontières (MSF), Oxfam, Health Action International (HAI), South
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44 Africa’s grassroots Treatment Action Campaign (TAC), in coalition with numerous
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46 AIDS activist groups and public health advocates. With protests, petitions, and
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49 negative publicity around the world, the industry was ultimately forced to drop the
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51 case in April 2001 and settle out of court. ‘South Africa’, wrote the *Financial Times*
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53 (FT) (19 April 2001) at the time, ‘is to the global pharmaceutical industry what
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55 Vietnam was to the US military. Nothing will be quite the same again’, though it
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3 tempered the hyperbole with a revealing caveat: ‘That at least is the view of Oxfam’.
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5 The South African court case was ‘a key event delegitimising pharmaceutical
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7 corporations’ (Morin, 2011: 233) and, together with subsequent similar controversies
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9 in Brazil, Thailand, Kenya, and at the WTO, ‘presented a genuine public relations
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11 disaster for the pharmaceutical companies’ (Sell, 2003: 157) which continues to haunt
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13 the industry to this day.
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16 The aim of this article is to shed new light on the industry’s response to the
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18 fallout from the A2M campaign since the early 2000s, drawing primarily on
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20 interviews with industry insiders and PR practitioners. More specifically, it examines
21
22 the main *political communication* strategies deployed in response to the ensuing
23
24 legitimacy crisis of the TRIPS regime, focusing on both the industry’s engagement
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26 with the news media as well as a number of less visible, though arguably more
27
28 effectual, promotional activities. The findings indicate that the industry has primarily
29
30 used communicative channels that bypass the ‘circuit of mass communication’ (Miller
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32 et al., 1998), targeting key policy elites through the strategic promotion of corporate
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34 social responsibility (CSR) schemes, enlisting third-party support, and direct
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36 lobbying, with the aim of securing elite consensus around TRIPS. These findings, I
37
38 argue by way of conclusion, challenge the persistent ‘media-centrism’ (Schlesinger,
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40 1990) characteristic of much contemporary theorisation about communication and
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42 power.
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50 **Media in the global A2M campaign**

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52 The relationship between poor countries’ access to HIV/AIDS and other essential
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54 medicines and TRIPS has generated a large body of literature from various
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56 disciplinary perspectives (Matthews, 2012; Morin, 2011; Olesen, 2006; Roemer-

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3 Mahler, 2013; Sell, 2003, 2011; Sell & Prakash, 2004; Smith & Siplon, 2006), a
4 comprehensive review of which is far beyond the scope of this article. Instead, the
5 point to emphasise is that what clearly emerges from these studies is that the news
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Mahler, 2013; Sell, 2003, 2011; Sell & Prakash, 2004; Smith & Siplon, 2006), a comprehensive review of which is far beyond the scope of this article. Instead, the point to emphasise is that what clearly emerges from these studies is that the news media became an important arena in which the political struggle over TRIPS and AIDS treatment access unfolded at the turn of the millennium. Through highly effective campaigning and ‘information politics’, the A2M ‘transnational advocacy network’ (Keck & Sikkink, 2007) was able to re-frame TRIPS from an opaque trade policy matter to a highly politically charged public health (that is, life or death) issue in both media and policy discourse (Sell & Prakash, 2004). Furthermore, it did so in morally compelling terms, scripting a media-savvy narrative of ‘a brave band of activists coming together for a pitched struggle against a callous, profit-driven pharmaceutical industry being aided by a complicit government in the quest to keep affordable medications out of the hands of dying people’ (Smith & Siplon, 2006: 160).

As with other transnational civil society campaigns (Cottle & Lester, 2011), the A2M network’s ability to generate *media visibility* is widely seen as ‘key to influencing pharmaceutical company behaviour’ (Trullen & Stevenson, 2006: 205) and challenging the very legitimacy of the TRIPS regime, the global expansion of which has been a cornerstone of US and European trade agendas since the mid-1980s (Pugatch, 2004). Or, more precisely, ‘[l]egitimacy was not a major issue until after the [WTO] agreement was signed’ in 1994 and not until AIDS activists radically altered the political salience of TRIPS in the late 1990s (Sell, 2003: 183). The latter effectively drew the struggle over TRIPS from the confines of elite communicative spaces at the WTO, the World Health Organisation (WHO) and other policy fora into the mediated public arena such that ‘for the first time, mass publics in the West learnt

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2
3 that their governments had...participated in trade negotiations that globally
4 strengthened patent monopolies' (Drahos and Braithwaite, 2002: 8). Subjected to a
5 transnationally constituted 'court of public opinion' (Olesen, 2006), the industry and
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10 western governments were duly named and shamed, and compelled to make
11 important, if limited, concessions with regard to poor countries' TRIPS obligations at
12 the 2001 WTO Ministerial conference in Doha.¹
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16 While intuitively sound, most claims about the role of the media in the global
17 struggle for access to medicines are either made in passing or based only on anecdotal
18 evidence. One reason for this is that media and communication scholars have
19 contributed little to the voluminous literature on the global politics of TRIPS, access
20 to medicines, or HIV/AIDS more broadly in recent years (Swain, 2005).² Secondly,
21 most studies approach the matter from the normative perspective of civil society,
22 assessing the relative success of the A2M campaign in reforming the TRIPS regime
23 and expanding treatment access. While not problematic *per se*, arguably, one
24 consequence of this positionality is that relatively little is known about how the
25 campaign has been perceived *within* the industry or the rationales behind its
26 communications response.
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41 Thirdly, claims about the industry's *framing* strategies in particular tend to be
42 derived largely from media content, as in Owen's (2013) otherwise insightful
43 discourse analysis of UK, US, and South African press coverage of the contestation
44 between civil society, 'Big Pharma', and governments over the legitimacy of using
45 generic medicines in addressing the AIDS treatment gap in poor countries. Similarly,
46 Trullen and Stevenson (2006) base their analysis of seven major pharmaceutical
47 companies' reaction to the A2M campaign solely on press coverage and NGO press
48 releases, an approach that carries important methodological limitations (see below).
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3 Furthermore, Owen's analysis is restricted to the period 1997-2003, a highly
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5 mediated moment of the campaign, which, as the author acknowledges, represents
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7 'an anomaly' in terms of the media's historical treatment of the issue (2013: 272).
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11 Indeed, as Morin argues in his sophisticated analysis of the 'life-cycle' of the
12
13 A2M controversy, there is a tendency to treat the 'death of issues...as an academic
14
15 afterthought' (2011: 230). Morin's critique is directed at the field of international
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17 public policy studies but it also applies to the study of media and political
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19 communication which often tends to abandon issues once their mass-mediated life has
20
21 expired. Though it has largely dropped off the media radar since the mid-2000s
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23 (Morin, 2011), TRIPS remains a highly divisive issue in international policy fora such
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25 as the WTO and WHO (Koivusalo, 2010; Sell, 2011). Naturally, all relevant policy
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27 actors – public health NGOs, industry associations, governments, international
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29 organisations – continue to engage in a range of promotional activities to shape policy
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31 discourse and outcomes at various levels of global health and trade governance. And
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33 while these may not target mainstream news media, that, however, does not mean
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35 they do not exist or render them irrelevant for the study of 'strategic political
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37 communication' (Aronczyk, 2015: 2009).
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42 Subsequently, it is important to avoid the 'bias of *media studies* towards *mass*
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44 communication' whereby 'the study of elite communications networks have been
45
46 badly neglected' (Parsons, 1989: 3). Parsons is referring specifically to news media
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48 consumed by political and economic elites such as the *FT* but the observation
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50 generalises to other, less visible, forms of inter-elite communication. Here it may be
51
52 useful to introduce the conceptual distinction commonly made in literature on interest
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54 groups between 'inside' and 'outside' lobbying (Tresch & Fischer, 2015). Inside
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56 lobbying, or what Beyers (2004: 213) calls 'access' strategies, refers to direct

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3 interaction with policy-makers in ‘venues where political bargaining takes place’
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5 which are ‘invisible or only partially visible to a large audience’. Outside lobbying, or
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7 ‘voice’ strategies, are directed at wider publics and ‘tak[e] place in various public
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9 spheres, an arena where the communication among societal interests, policy-makers
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11 and citizens becomes visible to a broader audience’ through the mass media (ibid.).
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14 This distinction is a particularly useful heuristic device for critical
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16 investigations of corporate PR practices. As Davis’ ethnographic studies of City of
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18 London elites have shown, these are ‘not particularly focused on the “masses” or
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20 mainstream news at all’ (2002: 57). In fact, considerable efforts are expended by PR
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22 practitioners to keep clients and issues *outside* the media spotlight (see also Davis,
23
24 2007). Consequently, Freedman urges communication scholars to pay more attention
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26 to the “hidden channels” - for example, the lobbying activities - in which influence is
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28 applied and interests promoted’ (2010: 355-356; Miller, 2010), while Philo et al.
29
30 (2015: 450) argue that under conditions of neoliberalism the significance of ‘private
31
32 communication channels’ between corporate lobbyists and policy-makers has only
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34 grown. This suggests that an inordinate empirical focus on the mediated public sphere
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36 may be to miss the locus of the pharmaceutical industry’s promotional efforts. Indeed,
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38 a Canadian study (Esmail et al., 2010) found that civil society was the ‘dominant
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40 voice’ in the national press during a high-profile legislative debate over Canada’s
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42 implementation of WTO rules on the use of compulsory licensing for the export of
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44 medicines to developing countries. However, given the final policy outcome, the
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46 authors suggest that the ‘lack of the brand industry’s presence in the media is by no
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48 means an indicator of their interest in the legislation’ but rather that it ‘did not have to
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50 rely on the news media to have its views incorporated into the legislative process’
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52 (ibid: 13).
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3 To what extent, then, is the capacity to short-circuit the public sphere
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5 characteristic of the industry's response to the A2M crisis more generally? And what
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7 are some of the alternative communicative channels and promotional activities
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9 through which the industry has sought to influence policy-making processes? These
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11 questions that underpin this study seek to problematise the notion that the mass media
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13 constitute the *primary* arena for political struggles, the 'space where power
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15 relationships are decided between competing political and social actors', as Castells
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17 (2009: 194) argues in his influential account. From this media-centric perspective, one
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19 would expect pharmaceutical companies to throw their full weight behind a media
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21 campaign to counter the messages and frames circulated by the A2M advocacy
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23 network. Yet, the findings presented below suggest that the industry has, in fact,
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25 invested relatively few resources in outside lobbying and although it has repeatedly
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27 lost the 'media battle' in relation to access to medicines, its capacity to shape policy
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29 through various access strategies and inter-elite channels of communication has not
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31 significantly diminished.
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41 **Methods**

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43 The following analysis draws on 51 semi-structured interviews that took place
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45 between 2010-12 with key policy actors involved in the struggle over TRIPS and
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47 access to medicines. The core focus is on the empirical material generated from
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49 interviews with 11 industry insiders, including major pharmaceutical companies and
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51 the industry's main lobbying organisations in Brussels and Geneva - the European
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53 Federation of Pharmaceutical Industries and Associations (EFPIA) and the
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55 International Federation of Pharmaceutical Manufacturers and Associations (IFPMA)
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3 - but all interviews have helped to contextualise and narrate the findings presented
4 below. Interviewees were identified through targeted and snowball sampling. Given
5 the sensitivity of the issue, many respondents requested anonymity and most quotes
6 therefore remain unattributed (see Appendix A for partial list of interviewees).
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11 Elite interviewing poses a number of methodological challenges (Richards,
12 1996), including gaining access and the ‘risk’ of merely ‘analysing impression
13 management claims’ of industry lobbyists (2006: 183). Nonetheless, it is often the
14 only route to ‘provide insights into...the activities that take place out of the public or
15 media gaze, behind closed doors’ (Lilleker, 2003: 208), to investigate policy elites’
16 ‘perceptions, beliefs and ideologies’ (Richards, 1996: 199), and thereby generate
17 findings that are impossible to infer from ‘text-only’ communication research
18 methods (Philo, 2007).
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31 Elite interviewing is at the core of Davis’ (2007) ‘inverted political economy’
32 model – an analytical framework which shifts the empirical focus from *elite-mass* to
33 *inter-elite* modes of political communication at specific ‘sites of power’. Many of the
34 interviewees in this study are located in Brussels - a key site of power given the EU’s
35 position as the world’s biggest trade bloc and development aid donor. Consequently,
36 the institutional complex in Brussels attracts intensive lobbying from all relevant
37 policy actors operating at the intersection of global health and trade. The *Euroquartier*
38 can be productively conceptualised as a transnational ‘communicative space’
39 (Schlesinger, 1999; Corcoran & Fahy, 2009), composed of overlapping, more or less
40 insular elite networks and channels of communication, and inhabited by a relatively
41 small range of ‘strong publics’ (Fraser, 1997: 90).
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54 Rather than reconstructing or measuring the policy influence of the
55 pharmaceutical lobby as such, the aim was, first, to probe how insiders perceive the
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3 industry's relationship with the media in relation to the A2M campaign, and, second,
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5 to identify the industry's key messages, the audiences at whom these are targeted, and
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7 via what communicative channels. In other words, the focus was the industry's
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9 'communicative agency', defined by Miller and Harkins as attempts by interest
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11 groups to 'dominate the information environment' in multiple arenas of policy debate
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13 'so they can significantly affect decision making' but which do not necessarily seek to
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15 influence mass public opinion or the media (2010: 566).
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21 **Rupturing the bounds of elite consensus**

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23 The industry's legal challenge to South Africa's 1997 Medicines Act initially
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25 gathered high-level political support in the US and Europe (Drahos & Braithwaite,
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27 2002: 7). SmithKline Beecham's³ former chief lobbyist in Brussels recalls that this
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29 was 'standard operating procedures under [then EU Trade Commissioner] Leon
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31 Brittain, which was to defend the commercial interests of big European and American
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33 drug companies'. By mid-1999, the political climate began to change as MSF **started**
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35 to push the public health dimension of TRIPS onto the agenda of Pascal Lamy, the
36
37 new Trade Commissioner. Furthermore, the news media were beginning to pick up
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39 the story too (Owen, 2013), as the AIDS pandemic in sub-Saharan Africa had reached
40
41 truly harrowing proportions, with millions dying for lack of affordable treatment.
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45 More than a decade on, the court case is still perceived by industry insiders as
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47 an unprecedented PR disaster. One interviewee put it thus:

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52 Thirty-nine pharma companies versus Nelson Mandela...From PR terms this
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54 is a complete gift...If anyone with an ounce of political intelligence had seen
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3 the front page of this court case, they would've immediately said: what the
4
5 fuck is this? You do not sue Nelson Mandela!⁴
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10 Catapulted into the world's news headlines, Big Pharma was slipping towards 'pariah'
11 status, with GSK, for example, re-branded by AIDS activists as 'Global Serial
12 Killer'.⁵ Business press commentators urged companies to alter their conduct in the
13 Global South and adopt the newly fashionable concept of CSR because they 'will find
14 that, in the long run, they are not going to do themselves good by being complicit in
15 what is beyond doubt another holocaust, even if not one caused by murderous intent'
16 (FT, 12 March 2001) – a damning depiction of the industry in a newspaper closely
17 monitored by policy-makers, corporate elites, and investors. The chief concern of the
18 latter was that demands for cheaper medicines and weaker patent rules would spill
19 over to markets in the Global North and endanger 'the industry's monopoly status -
20 the foundation of its fabulous wealth' (FT, 17 February 2001).
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33 The industry 'got its fingers burnt' and, with its 'reputation severely
34 damaged', it even became ostracised from its traditional corporate allies. According to
35 a report in the *European Voice* (27 September 2001):
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43 music industry representatives turned down suggestions of a joint campaign
44 when approached by...EFPIA at a recent Geneva meeting. 'We don't want to
45 work with them, with all the bad press they've been getting...South Africa
46 shouldn't have happened to start with.'
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53 Directed squarely at the industry's monopoly pricing privileges - the 'life-blood of our
54 business model' - the A2M campaign was generating 'a lot of paranoia' and 'a
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3 domino mindset' in corporate boardrooms, one interviewee noted. Furthermore,
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5 according to an EFPIA lobbyist, the industry's intransigence was 'clearly...casting a
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7 shadow' on its relations with the European Commission and the European Parliament.
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11 At the WTO, TRIPS had become one of the most contentious North-South issues in
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13 the fledgling new round of trade talks and the EU, under Lamy's leadership, began to
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15 endorse developing countries' right to use legal flexibilities contained in the TRIPS
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17 agreement - *compulsory licensing* and *parallel importation* - to tackle public health
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19 crises such as HIV/AIDS (Hannah, 2011). Amplified by widespread media publicity,
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21 the A2M campaign thus succeeded in (temporarily) rupturing elite consensus
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23 regarding the existing TRIPS regime. 'Leading to the Doha ministerial declaration of
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25 2001,' one industry interviewee noted,
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31 the media played a significant role in highlighting access to medicines where
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33 intellectual property was perceived as one of the main problems...It almost went
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35 from one extreme to the other...from pure ambivalence to IP being front and
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37 centre.
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41 **The media front: A lost battle?**

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43 As the political crisis around access to AIDS medicines escalated following the South
44
45 African court case, company executives found themselves in the unusual position of
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47 having to repeatedly defend their position on the front of pages of the world's press.
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51 GSK's CEO Jean Paul Garnier recalled 'it was hard to avoid seeing your name
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53 plastered all over the papers' and insisted that 'we should have been even more
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55 aggressive before the events in educating the media' (FT, 22 July 2005). So how *did*
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the industry engage with the news media?

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3 The central aim of the industry's media strategy has been to direct attention
4 away from TRIPS and dilute the question of pricing and patents by emphasising
5 Africa's poverty and underdevelopment. As EFPIA's former communications director
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8 explained:
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13 My job was...to explain...that it's not simply a matter of...parachuting drugs
14 in Mozambique or Burkina Faso because there are no airports, there are no
15 roads, there is no water, there is no hospital, there is no doctor, there is no
16 nurse, there is nothing...When they [journalists] start to realise that...they start
17 to understand: 'Yes, OK, you're not always the villains.'
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27 In particular, the transnational elite press (e.g. *FT*, *The Economist*, *European Voice*)
28 and leading agenda-setting newspapers (e.g. *Le Monde*, *Frankfurter Allgemeine*
29 *Zeitung*) were identified by all interviewees as important communicative platforms
30 through which the industry (and rival interest groups) have sought to shape the policy
31 debate. Pfizer, for example, regularly bought advertisement space in *The Economist*
32 between 2000 and 2003. The *Pfizer Forum* featured several articles from various pro-
33 TRIPS academics, lawyers, and think-tanks such as the Fraser Institute repeating the
34 message that 'Poverty, Not Patents, is the Problem in Africa' (Lippert, 2002). Other
35 companies like Boehringer Ingelheim (BI) have organised media tours for this
36 purpose – 'a very helpful tool [to convey] the complexities of medicines access. But',
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38 BI's Head of Media and PR notes, there are obvious limits to this approach: 'you
39 cannot set up a travel agency and bring journalists to Africa twice per year'.
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54 The pharmaceutical industry has also benefitted from close institutional ties
55 with Brussels-based news organisations. The *EV*, for instance, organises *Health*
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3 *Check Briefings*, regular seminars sponsored by EFPIA and attended by relevant
4 policy stakeholders. Similarly, *The Parliament Magazine*, another EU affairs
5 publication, organised a lunch debate in 2012 with the German drugs manufacturer
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8 Bayer entitled ‘Access to medicines: are patents the real barrier?’⁶ Moreover, the
9
10 Brussels media sphere is characterised by intimate journalist-source relations
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12 (Corcoran & Fahy, 2009) and a political economy that acts as a structural barrier to
13
14 investigative reporting. At times, this has even led to overt editorial intervention. One
15
16 former *European Voice* correspondent recalls the ‘not so subtle’ editorial pressure put
17
18 on reporters to be more ‘neutral’ and ‘balanced’ in their coverage of the access to
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20 medicines story, following threats from a pharmaceutical company to withdraw its
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22 advertising. In another incident, a lobbyist ‘called me up to demand that the paper
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24 cover a new initiative of GSK. She even demanded that our story appear in the main
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26 news section of the paper, rather than on the business pages’. GSK’s price reduction
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28 of the HIV drug *Combivir* for developing countries was announced a few days ‘prior
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30 to a roundtable meeting on access to medicines hosted by European Commissioners
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32 Pascal Lamy and Philippe Busquin’, addressed by Commission president Romano
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34 Prodi, and attended by senior industry executives and other high-profile stakeholders
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36 (GSK, 2003). Crucially, the event took place at the height of WTO negotiations
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38 regarding developing countries’ right to import generic medicines, when A2M
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40 campaigners were arguing that voluntary discounts, though welcome, are not a
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42 sustainable solution to the lack of affordable HIV/AIDS drugs (Oxfam et al., 2002).
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50 The pressure paid off. The story appeared under the title ‘AIDS drug price slashed’
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52 (EV, 1 May 2003). These examples show how the industry has strategically mobilised
53
54 its privileged access to elite news publications not only to shape the information
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56 environment during key moments of the A2M policy cycle but, more routinely, to

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3 maintain direct access to EU policy-makers, blurring the distinction between 'inside'
4 and 'outside' lobbying.
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7 However, all industry interviewees agreed that in relation to the A2M crisis
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10 companies have never invested significant resources in the latter, when conceived as
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12 attempts to influence policy-makers 'indirectly through the mobilisation of public
13
14 opinion' (Tresch & Fisher, 2015: 356). By and large, the industry's media strategy has
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16 been *reactive*; it has not sought 'to fight this out in the media', which do not constitute
17
18 the main communicative channel through which the industry has sought to 'shift
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20 perceptions', be it of mass publics or policy stakeholders. As one company director
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22 put it:
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27 The industry has never tried to reach out to the media on this issue in a
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30 significant way. Never. At best, some companies may have had some
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32 communication activities around some of their access initiatives. But it's
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34 always been *de minimis*.
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38 Partly this has to do with restrictions on direct-to-consumer advertising in Europe.
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41 But, in line with Morin's findings (2011), a more significant factor is the widely
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43 shared belief that access to medicines is 'an agenda which you cannot win' because,
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45 ultimately, 'all you need to show is a picture of a dying baby and you've lost the
46
47 moral argument'. According to a former PR manager responsible for his company's
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50 relations with A2M NGOs:
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54 We never actively sought to play this out and make it a media
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56 issue... Whoever the opponent is, let's say it's Oxfam, it's very, very easy for

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3 them to make this very emotive, you know, big, rich evil company is keeping
4 medicines away from poor people... For a company to then...try and explain
5 their position using technicality, legality, and regulation...just makes
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10 companies sound like a capitalist machine.⁷

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14 The lack of pro-active media engagement is further compounded by the perception
15 that the mainstream news media are populated by ‘activist huggers’ who ‘will take
16 anything that is provided by global civil society as valid and true and unbiased’. In
17 fact, virtually the entire media sphere - the ‘populist’, ‘left-wing’, ‘mainstream press’
18 and ‘tabloids’ – is deemed a ‘lost battle’; the business press and conservative
19 broadsheets are the only spectrum of the media landscape deemed worth engaging.
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21 This is where ‘the argument gets through’ and, according to a senior IFPMA director,
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32 where they...realise that...businesses need to function, there are shareholders
33 that you need to keep happy...They always ask for our opinions and we get
34 more input into what they might say, whereas a *Guardian* article will quote
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38 MSF or Oxfam but perhaps won’t even attempt to get a quote from industry.
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43 Formally, this perception is not entirely unfounded. In a reversal of conventional
44 media-source relations marked by journalists’ proximity to power (Berry, 2013;
45 Herman & Chomsky, 1994), existing studies show that more space is accorded to civil
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48 society voices in coverage of A2M controversies (Esmail et al. 2010; Owen, 2013).
49
50 Across much of the media landscape, TRIPS proponents have thus found themselves
51 reacting to a simple, even simplistic, yet powerful ‘David versus Goliath’ (Boseley,
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56 personal communication) narrative skilfully promoted by the A2M advocacy network.

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3 That said, no firm conclusions should be drawn from this about the *efficacy* of the
4 industry’s communication strategy as far as policy outcomes are concerned for, as
5 Davis stresses, it is important not to conflate the “public sphere” with the “policy
6 sphere” (2007: 99). Instead, we need to move beyond the industry’s media response
7 and explore other facets of its communicative agency. One such area is corporate
8 social responsibility.
9

18 **CSR: Shifting elite perceptions, maintaining access**

20
21 Since the early 2000s, all HIV drugs manufacturers have established extensive access
22 programmes in the field of HIV/AIDS (and other diseases that mainly afflict the
23 Global South).⁸ These consist of donation programmes, tiered pricing models,
24 voluntary licensing schemes, patent waivers, and public-private research and
25 development partnerships, covering varying combinations of African, least-
26 developed, and middle-income countries. All major pharmaceutical companies are
27 also members of CSR initiatives such as the UN Global Compact, the Global Business
28 Coalition on HIV/AIDS, or the Access to Medicine Index.⁹
29

30
31 The first major CSR programme focusing on HIV/AIDS treatment was the
32 *Accelerating Access Initiative* (AAI). Launched in May 2000 by six companies -
33 Abbott, BI, Bristol-Myers Squibb, GSK, Hoffmann-La Roche, and Merck - in
34 partnership with the UN, it aimed to improve access to HIV drugs in developing
35 countries through voluntary price cuts. As revealed by a *Washington Post*
36 investigation, AAI was a product of months of secretive lobbying by corporate
37 executives at UNAIDS and the WHO, the AAI’s intergovernmental sponsors
38 (Gellman, 2000). Shortly after the AAI was launched, Glaxo’s Chairman
39 acknowledged during a private lunch with then UK Secretary for International
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3 Development that ‘little of practical value would emerge from the UN-industry
4 announcement’¹⁰. Indeed, by early 2002 AAI was providing treatment to only a few
5 thousand patients and was denounced by activists as little more than an elaborate PR
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10 scheme to deflect attention from the structural problem of TRIPS (ACT UP, 2002).
11
12 But the initiative had served its purpose of giving the industry a much-needed break
13 from increasing flak. On its front page, the *Guardian* (12 May 2000) described it as
14 the ‘first glimmers of hope for a solution to the Aids epidemic ravaging the poorest
15 countries in Africa’, while BBC Evening News (11 May 2000) hailed it as ‘a
16
17 revolution in the worldwide treatment of HIV/AIDS [which] could transform the lives
18 of literally millions of people’. On one level then, the AAI was a carefully orchestrated
19 PR coup. But that is only part of the story.
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27 Debates about whether CSR constitutes mere ‘spin’ or a genuine shift towards
28
29 a more ethical, socially responsible form of capitalism therefore largely miss the point
30 (Givel, 2013: 173). At the level of *public relations* - image, branding, reputation -
31 CSR is, as the CEO of Burson-Marsteller in Brussels, one of the world’s leading
32 public affairs agencies, readily acknowledged, ‘greenwash and always will be
33 greenwash’. Nonetheless, when lobbying is viewed as ‘essentially a communication
34
35 process’ where ‘the task of the lobbyist to figure out how he can handle
36
37 communications most effectively in order to get through to decision makers’
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39 (Milbrath, 1960: 35), then CSR emerges as an important tool in companies’ lobbying
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arsenal. As the case of the tobacco industry attests, a key function of CSR is precisely
to help ‘secure access to policymakers and, thereby, increase the company’s chances
of influencing policy decisions...even in ostensibly unreceptive political contexts’
(Fooks et al., 2011: 1). As one insider put it, without CSR, pharmaceutical companies
‘wouldn’t have...many places to hide’ and ‘the very fact that [company X] could say:

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3 “Hey, hang on a minute, look at all the things that we do for people in developing
4 countries”” has proved instrumental in rebutting critics and normalising relations with
5 policy-makers. Sklair and Miller therefore argue that ‘[w]hile it is correct to see CSR
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10 as a matter of corporate spin and image and brand management, it is also clear that it
11
12 performs a valuable service in managing government and policy debate (as opposed to
13
14 popular debate and public opinion)’ (2010: 487).

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Even if industry practices fall far short of their public commitments to
facilitating access to medicines to the global poor (Givel, 2013), CSR programmes
exist in a very real sense. Firstly, they are not mere spin conjured up by PR
departments – ‘we are not just doing it for our reputation, it is not just greenwashing’
- and have evidently benefited hundreds of thousands of patients in the Global South.
Secondly, and more importantly in the context of this discussion, they form *an*
integral, material component of the industry’s communicative agency since the South
African fiasco. What is more, it is understood as such by industry leaders and
investors. As the CEO of Abbott Laboratories, a company repeatedly targeted by
AIDS activists, explained in a moment of candour:

Why spend money on corporate citizenship? Frankly, because it is required. If
I don’t provide our products in Africa, governments will license our
intellectual property to others who can. Governments will intervene. Make no
mistake, they will do that. (*FT*, 14 July 2004)

Similarly, when questioned by a shareholder about Pfizer’s fluconazole¹¹ donation
programme in South Africa - initiated after MSF and TAC protested against Pfizer’s
exorbitant prices in 2000 - the company’s Chairman defended the scheme on the

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3 grounds that ‘giveaway programs are best for protecting patents. “In the whole nature
4 of philanthropy, we feel this increases shareholder value [and] helps us dramatically
5 with our regulators and with our legislators”’ (Gellman, 2000).
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10 Many access programmes have come as a direct response to NGO campaigns
11 and the often associated threat of compulsory licensing **by developing countries’**
12 **governments** (Trullen & Stevenson, 2006). Keck and Sikkink refer to this as the
13
14 ‘mobilisation of shame’ (2007: 537) - the ability of civil society campaigns to
15 influence companies’ behaviour through (the threat of) reputational damage.
16
17 According to a PR consultant for several major companies: ‘The industry is very
18 scared of arguing over this because of the experience in South Africa’ and most
19 companies tend to ‘respond immediately, even a bit irrationally...to whoever shouts
20 the loudest’. But the South African court case was exceptional - unique in fact in the
21 history of the AIDS pandemic - in terms of the amount of negative publicity it
22 generated (Morin, 2011; Owen, 2013). When PR practitioners were probed about the
23 industry’s *actually existing* political communication efforts it clearly emerged that
24 mass publics are virtually excluded from everyday consideration.
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41 Obviously, a company’s reputation is important to it. But...the general public
42 is way down there at the bottom. In terms of the publics we’re interested in,
43 it’s the prescriber, the doctor, it’s the patient who’s taking our drugs, it’s the
44 regulatory and health care policy-making bodies, it’s the politicians, and it’s
45 the shareholder. And that’s where the vast majority of our PR efforts are
46 directed.
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3 By and large, then, media visibility of CSR programmes, while certainly welcomed
4 by companies' PR departments, is not paramount. Here it is important to recall that
5
6 pharmaceutical companies' business is first and foremost with state-run health
7
8 systems not individual consumers. The industry's main objective concerning global
9
10 policy, according to another senior lobbyist, is therefore 'to be well-perceived by the
11
12 public health people and the limited number that you may interact with in Geneva or
13
14 in New York' rather than extolling the industry's virtuous conduct in poor countries
15
16 to mass audiences. As the A2M crisis escalated in the early 2000s, the industry
17
18 worked primarily *outside* the media sphere, communicating its CSR activities and
19
20 charitable donations **directly to decision makers**. To mention but one example, 'on the
21
22 eve of the [June 2002] G8 Summit in Kananaskis, the [IFPMA] sent a letter to the
23
24 heads of government, detailing its members' 50-plus partnerships with international
25
26 organisations and aid bodies around the world' (Cowlett, 2002).
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32 In sum, the strategic communication of CSR constitutes an important element
33
34 of the industry's political communication strategy geared towards restoring elite
35
36 consensus around the existing TRIPS-based medical innovation model by portraying
37
38 major pharmaceutical corporations as capable of meeting the health needs of the
39
40 global poor without undue state intervention (such as compulsory licensing).
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44 45 **Lobbying and manufacturing support**

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47 In parallel to CSR, the industry has also engaged in extensive **inside lobbying**
48
49 activities in order to limit the political and regulatory repercussions from the A2M
50
51 campaign and established links with civil society organisations in various sites of
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53 power. Both EFPIA and IFPMA hired APCO, a leading public affairs agency,
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55 following the 'bruising legal battle in South Africa' (APCO, n.d.), while the
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2
3 Association of the British Pharmaceutical Industry hired a subsidiary of Weber
4 Shandwick, another giant of the global PR industry, to conduct its EU public affairs
5 work on access to medicines in developing countries (Allen, 2003). APCO presents its
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10 work for the IFPMA as one of its ‘client success’ stories, touting its ‘ability to work at
11 senior levels of the international policy community and influence policy outcomes
12 [which] led to a successful defense’ of the TRIPS agreement at the Doha conference
13 (APCO, n.d.). APCO implemented a multipronged strategy: ‘Anticipating the
14 strategies of the key players in the debate...Marshalling a set of compelling
15 arguments which...would make revision of the agreement unnecessary, or even
16 undesirable’ and then, in line with the abovementioned media strategy, ‘Identifying
17 the most influential policy-makers [and] a broader audience of key opinion-leaders
18 who would help shape the debate on HIV/AIDS, poverty and development’, while
19
20
21 communicating its clients’ willingness ‘to help address the healthcare challenge
22 facing developing countries’. The exact details of APCO’s campaign remain
23 unknown, given the tendency of such promotional actors to work behind a veil of
24 confidentiality (Aronczyk, 2015). And while APCO arguably inflates its influence on
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30 policy outcomes, its approach is indicative of the industry’s emphasis on targeting
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‘priority audiences’ rather than mass publics in its attempt to avoid the ‘disastrous
prospect’ of a weakening of WTO TRIPS rules (APCO, n.d.).

Similarly, at the EU level, EFPIA’s main objective was to restore an image of
‘a respectable and respected and responsible industry’ vis-à-vis policy-makers. It has
done so, in part, through direct lobbying and organising various events to which
‘people from the Commission and some MEPs were invited.’ Even though

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3 the media were not always reporting on it...through these conferences we
4 were able to show good will and good faith...These moments of direct
5 confrontation, one-on-one meetings or conferences were...helpful to project
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10 an image of an industry which...is not like the tobacco industry, which is
11
12 really an evil per se.
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16 Another important promotional strategy to defuse regulatory threats and maintain
17 access to policy-makers has been to establish partnerships with civil society
18 organisations - a common *legitimizing strategy* used by corporations (Aronczyk,
19 2015) - in line with *PR Week* magazine's advice to 'look to...the likes of Shell, and
20 embrace the support of NGOs and other third parties. The image of the big, bad
21 pharma giants would then seem all too far fetched' (Cowlett, 2002). Some companies
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24 have championed direct engagement with A2M groups, partly in an attempt to pre-
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More commonly, companies have established links with other NGOs and patient groups in particular (Ecks, 2008; Koivusalo & Mackintosh, 2011). An industry-NGO alliance 'gives you', one lobbyist noted, 'a badge of credibility' in policy-making circles. The latter also became a core part of EFPIA's communications strategy, which 'moved more from a PR activity, bombarding with press releases' in the early 2000s 'to an engaging strategy with third parties, with patients in the middle'. The practice of enlisting third-party support to legitimate industry demands has a long history at the EU level (CEO, 1998) and, according to one Member of the

1
2
3 European Parliament (MEP), ‘for a long time it appeared like a genuine grassroots
4 patients movement. Of course, it turned out that pharmaceutical companies were
5 financing it. Not a big shock, but they hid it very well’. And although major patient
6
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10 organisations in Brussels have not directly lobbied on the issues of medicines access
11
12 in the Global South, as another MEP pointed out: ‘If you establish links with
13
14 politicians via patients organisations, those links are still there when you debate other
15
16 things’.

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19 Finally, the industry’s political communication efforts need to be situated in
20
21 the context of the highly uneven distribution of ‘communication power’ (Castells,
22
23 2009) in the EU policy sphere between different interest groups involved in the A2M
24
25 debate (Dür & de Bièvre, 2007). The pharmaceutical industry spends a declared €40
26
27 million per year on lobbying in Brussels, some fifteen times more than public health
28
29
30 NGOs (Corporate Europe Observatory, 2015), ‘with EFPIA making itself
31
32 indispensable to the Commission through three or four experts on pharmaceutical
33
34 regulation’ (Adamini et al., 2009: 994). At the EU level, the A2M controversy thus
35
36 unfolds against the background of what a seasoned EFPIA lobbyist calls an
37
38 ‘underlying recognition’ in the EU policy sphere that a strong intellectual property
39
40 rights regime is essential for maintaining the EU’s global competitiveness: ‘at that
41
42 level there is alignment but that goes beyond’ medicines, ranging from ‘software’ to
43
44 ‘Parma ham’.

45
46
47 This alignment is not a given nor did it arise spontaneously. It is, at least in
48
49 part, the product of the concerted communicative agency of the pharmaceutical lobby
50
51 (and its strategic allies in the software, chemical, and media industries) in Brussels
52
53 and other sites of power that is being continuously adapted to shifting political and
54
55 economic circumstances, including opposition from civil society (Drahos &
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3 Braithwaite, 2002; Pugatch, 2004; Roemer-Mahler, 2013). Crucially, the media have
4 only played a subsidiary role in the corporate campaign to sustain this alignment in
5 response to the A2M controversy.¹² Other, less visible communicative platforms that
6
7 only rarely attract attention from mainstream news media play a far more important
8 role in mediating relations between policy elites, setting the bounds of policy debate,
9 and cementing elite consensus around TRIPS. Consider, for instance, the theme of a
10
11 2011 conference organised by the European Centre For International Political
12
13 Economy, an influential Brussels-based think-tank, attended by industry lobbyists,
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15 senior Commission officials and European trade ministers: *Trade and Intellectual*
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17 *Property Rights: A Narrative and Agenda for Europe*.¹³
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28 **Conclusion: The limits of media power**

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30 The global campaign for access to AIDS medicines confronted the world's largest
31 pharmaceutical corporations with a public relations crisis with potentially far-reaching
32 political and economic implications. In an attempt to shed new light on the industry's
33 response, the analysis has shown that while it has occasionally demonstrated a
34 capacity to mobilise influential news publications to target elite audiences, the
35 industry has focused its resources on communicative channels and activities that
36 largely circumvent mediated public arenas – from strategically communicating its
37 CSR activities, enlisting support from civil society organisations, to direct lobbying.
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48 The case study reviewed here raises a number of theoretical issues concerning
49 the relationship between media, communication and political power. Firstly, the
50 findings challenge the prevalent view that 'the same interest groups that dominate the
51 inside game of politics can often be expected to be predominant in the outsider arena
52 of the media' (Bernhagen & Trani 2012: 51). For whereas the industry effectively lost
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3 the 'media battle' in the aftermath of the South African court case, in the EU policy
4 sphere power relations are reversed: the A2M advocacy network finds itself
5 continuously *reacting* to a trade agenda in which the right to health of the global poor,
6
7 though acknowledged, is subsidiary to the commercial interests of the pharmaceutical
8 industry (Dür & de Bièvre, 2007). Of course, this does not mean that the industry
9
10 always gets its way. Nonetheless, expanding the existing TRIPS regime remains a
11 central trade objective of the EU (as well as the US), both of which have in recent
12 years pursued various 'TRIPS-plus' agreements with emerging economies that extend
13 the market exclusivity (and thereby the price) of patented medicines (Sell, 2011).
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23 Secondly, the findings indicate that there are important limits to the
24 assumption that 'politics is essentially played out in the media' (Castells, 2009: 194)
25 and, subsequently, that the capacity of competing interest groups to generate media
26 visibility is paramount for affecting policy change. This certainly holds for many
27 areas of public policy but, as the industry's response to the A2M campaign shows,
28 'power is exercised not just through the mass media but outside and sometimes
29 despite the media' (Miller, 2010: 121). Indeed, 'strategic communication is equally
30 about strategic *absences* of communication' (Aronczyk, 2015: 2020) as some interest
31 groups may have little to gain from generating media attention for their respective
32 policy positions or agendas. This may seem obvious to some observers - as it was to
33 many interviewees - and especially political scientists. For example, in their study of
34 lobbying strategies by European interest groups, Tresch and Fisher (2015: 358) note
35 that business associations tend to 'benefit from privileged access to policymakers',
36 have a 'general preference for inside lobbying', and thus do not seek out media
37 exposure to exercise power. Similarly, De Bruycker and Beyers (2015: 458) highlight
38 that 'too much public visibility may backfire' and, when defending the policy status
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3 quo, 'especially the powerful avoid media coverage' (De Bruycker & Beyers, 2015:
4 458). But this point is often lost on media and communication scholars, particularly in
5
6 contemporary debates about the 'mediatisation of politics' (Strömbäck & Esser,
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8 2014), when the media arena is seen as the primary locus of political struggles
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10 between competing social actors.

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Critical communication scholars should thus pay close attention to messages
which are, intentionally or not, *not* mass-mediated, the 'policy silences' (Freedman,
2010), and the ideological and communicative processes whereby alternative policy
paradigms are foreclosed, despite the obvious methodological challenges this
approach may pose. Particularly regarding processes of transnational governance, this
indicates the importance of interdisciplinary research which combines analysis of how
political struggles play out in the media sphere with investigations of the ensemble of
inside lobbying techniques and private communication channels whereby powerful
social actors seek to influence outcomes in concrete policy areas (Beyers, 2004; Philo
et al., 2015). The focus here has been mainly on the industry's CSR activities; the
strategic mobilisation of think-tanks, for example, is another area that requires much
careful empirical scrutiny. In this context, attention should turn to Aronczyk's (2015:
2012) 'transnational promotional class' – the 'lobbyists, consultants, public relations
practitioners, and marketers' - who occupy an increasingly central position in
contemporary political communication generally and in advancing corporate interests
more specifically (Miller & Dinan, 2008).

To conclude, a move beyond a media-centric conception of political
communication seems all the more pertinent in the realm of global health and trade
governance given that policy actors inhabiting key sites of power operate almost
wholly outside mass-mediated public spheres. Mainstream news media signally fail to

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report about the content, and often the very existence, of policies adopted by institutions such as the WHO and the WTO that have far-reaching social and economic consequences. Barring occasional leaks, international trade negotiations are typically conducted in secret. This creates a communicative milieu that allows powerful actors like the pharmaceutical industry to entrench the terms of public policy that, as the campaign for access to affordable HIV drugs has shown, are subsequently extremely difficult to undo even when they are brought into the media spotlight.

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3 **Appendix A - List of interviewees**
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5 Boris Azais - Director of European Government Affairs, Merck Sharpe & Dohme,
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7 February 2011.
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10 Brendan Barnes - Director of Multilateral Issues and Health Policy, European
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12 Federation of Pharmaceutical Industries and Associations, December 2010.
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14 Sarah Boseley - Health Editor of the *Guardian*, December 2010.
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16 David Cronin - former correspondent for *European Voice*, November 2010.
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18 Christophe de Callatay - former Communications Director, European Federation of
19
20 Pharmaceutical Industries and Associations (2000-2008), May 2012.
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22 David Earnshaw - Chief Executive Officer at Burson Marsteller Bruxelles; former
23
24 Head of Office at Oxfam International Brussels (2001-2002); former Director of
25
26 European Government Affairs and Public Policy at SmithKline Beecham (1996-
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28 2001), April 2011.
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30 Judith von Gordon - Head of Media and PR at Boehringer Ingelheim, February 2011.
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32 Patrice Grand - Head of International Public Affairs, Bristol-Myers Squibb, 20 July
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34 2010.
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37 Andrew Jenner - Director Innovation, Intellectual Property and Trade at International
38
39 Federation of Pharmaceutical Manufacturers & Associations; former Head of Trade
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41 and Development at UK Intellectual Property Office, September 2011.
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44 David Martin – Member of European Parliament, April 2011.
45

46 Jon Pender - Vice-President, Government Affairs, Global Access, IP and HIV/AIDS
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48 Issues, GlaxoSmithKline, December 2010.
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50 Michael Rabbow - HIV Policy and Public Affairs, Boehringer Ingelheim, April 2011.
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52 Carl Schlyter – Member of European Parliament, November 2010.
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¹ The 2001 WTO Doha Declaration on Public Health, although not legally binding, affirmed the right
56 of WTO members to override patents through compulsory licensing on public health grounds.

57 ² For exceptions, see Owen (2013) and Esmail et al. (2010).

58 ³ The company merged with Glaxo Wellcome in 2000 to form GlaxoSmithKline (GSK).

⁴ The initial notice of motion listed Nelson Mandela as the first respondent.

⁵ The slogan was recalled by GSK's Vice President more than ten years after activists had "stormed GSK's investor-relations offices in New York, hurling 'blood money' and empty pill bottles, chanting, 'GlaxoSmithKline! Global serial killer!'" (Power, 2001).

⁶ For details see: <https://www.theparliamentmagazine.eu/event/access-medicines-are-patents-real-barrier> [Accessed May, 2016].

⁷ Incidentally, this view is shared by US trade officials. A 2010 diplomatic cable detailing US involvement in Guatemala's TRIPS legislation notes: "The core argument against IPR for drugs pits transnationals' profits against the poor and infirm. It is simple and effective, and we found no magic bullets for refuting it." See: <http://wikileaks.org/cable/2005/03/05GUATEMALA659.html> [Accessed May, 2016].

⁸ For examples of CSR programmes see: <http://partnerships.ifpma.org/about> [Accessed May, 2016].

⁹ The index ranks companies according to their performance in facilitating drugs access in poor countries. The rationale is that transparency and peer pressure will compel companies to integrate access programmes into their core business objectives. The GBC was founded in 2001 and now counts more than 200 corporate members. The Global Compact was established in 2000 to promote socially responsible and environmentally sustainable business practices on a voluntary basis.

¹⁰ Minutes of meeting of Secretary of State for International Development Clare Short with Sir Richard Sykes, Glaxo Wellcome Chairman, May 17, 2000. Obtained through a Freedom of Information Act request from the UK Department for International Development. On file with author.

¹¹ The drug is used to treat cryptococcal meningitis, a common HIV opportunistic infection. Without treatment, life expectancy is about a month. Pfizer was charging almost US\$3000 for a yearly dose in South Africa. In Thailand, the generic equivalent cost \$104 (Perez-Casas et al., 2000).

¹² A NEXIS search of all articles in the *FT* – one of the most influential news publications in Brussels (Corcoran & Fahy, 2009) – mentioning "AIDS" and "Africa" between 1987-2008 included but a single reference to EFPIA: "GSK forced to evaluate Aids drugs licensing" (16 April 2003, p. 24).

¹³ For details see: <http://www.ecipe.org/events/ecipe-conference-trade-and-intellectual-property-rights-a-narrative-and-agenda-for-europe/> [Accessed May, 2016].