essential to pharmaceutical production.[1100] The use of the competition system, as done in the US and the EU, is a TRIPS-conform and a TRIPS-advocated process; it is not a procedure that stems from the Public Health Declaration.

The spread of intellectual property protection that has occurred with the expiry of the transitional periods under the TRIPS Agreement has reduced the number of states not required to enforce or implement pharmaceutical patents. This has prompted leading Indian generic pharmaceutical producers to consider shifting their operations to Bangladesh where they would be able to take advantage of its status as a LDC and continue to produce generic versions of pharmaceuticals patented in non-LDC countries.[1101]

G. Conclusion

In addition to Switzerland a number of other countries have briefly mentioned that they are considering implementing the Article 31*bis* system into domestic law.[1102] None of these countries have identical systems; whereas some are similar others differ considerably. This mixture of rules and procedures will make comparisons between the manufacturers seated in the various countries extremely difficult. The lack of universal transparency and the 'hidden' potential to subvert or delay the process further hinders the systems use. The lack of an active demand for the pharmaceuticals from the needy country will not encourage manufacturers to actively enter the market, thus preventing competition and knowledge of how the systems will function. The national implementation of the Article 31*bis* system has thus further complicated an already formalistic system and has as a result further distanced itself from the original goals of providing an expeditious solution to the problems caused by insufficient domestic pharmaceutical production capacities.

Although the systems are themselves a hurdle to solving the paragraph 6 dilemma and will most likely deter their use, the success of the system can only truly be determined once it is used. The unwillingness to use the system infers that either the current public health problems are not sufficiently serious or the existing avenues for acquiring assistance are adequate for the needy countries situations. [1103]

1100 *Baker,* Process and Issues for Improving Access to Medicines: Willingness and Ability to use TRIPS Flexibilities in Non-Procuring Countries (Fretwells London 2004) p. 45-46.

1101 *Matthews*, 7 JIEL 1 (2004) p. 106.

1102 For example China, France, Indonesia and Korea.

1103 Roche has licensed the sanquinavir patents and know-how to 3 African generic pharmaceutical producers. This measure is part of Roche's policy of not filing or enforcing its patents in LDCs or sub-Saharan Africa. Cf. -- 'Roche gibt Know-how für Aids-Generika frei' *NZZ* (23.09.2006).