

Joint Statement by NGOS on TRIPS and Public Health

WTO members should reject bad deal on medicines

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The WTO General Council is considering proposals to amend the TRIPS Agreement in order to permit the exportation of generic medicines produced under compulsory license to supply countries with insufficient or no manufacturing capacity.

According to health, in particular AIDS activists, the proposals are flawed, and poor countries should not accept a permanent amendment that has not been shown to work in practice.

In 2001, the WTO signed the Doha Declaration on TRIPS and Public Health (the Doha Declaration), which affirms the right of countries to prioritize access to medicines and public health over intellectual property rights. However, the Doha Declaration left unfinished the issue of how countries with insufficient or no manufacturing capacity can make use of these rights. Indeed, most poor countries are not adequately equipped to do efficient domestic production of medicines, while those which have capacity require the economies of scale of a large, global market in order to reach prices that the poor can afford. However, under the TRIPS Agreement, there are significant limitations on exports of generic medicines made under compulsory license.

On 30 August 2003, the Members of the WTO finally agreed on a mechanism with many procedures for allowing trade in compulsory-licensed medicines. The procedures have been criticized by generic industry experts and activists alike for being too burdensome and unworkable in practice. However, the US and the EU are pressuring developing countries to accept that flawed August 30 agreement be locked in as a permanent amendment to the TRIPS Agreement - despite the fact that the mechanism has not been used since its introduction more than 2 years ago and its workability is uncertain.

Following the August Decision, the Africa Group submitted a formal proposal that removes many of the procedural requirements and this proposal received wide support from civil society as well as developing countries as a basis to rethink the mechanism that was agreed to on 30 August 2003. This proposal is also in accordance with the African Health Ministers' recent call in the Gaborone Declaration on "the Ministers of Trade to seek a more appropriate permanent solution at the WTO that revises the TRIPS agreement and removes all constraints, including procedural requirements, relating to the export and import of generic medicines".

Unfortunately although the Africa proposal enjoyed much support, in the current negotiations, this proposal does not seem to be discussed at all. Instead, developing countries are presently being pressured to agree quickly to an amendment that includes the entire August Decision and a re-reading of the Chairman's statement, (a solution differing significantly from the original Africa Group proposal) just so that WTO members have something to harvest at Hong Kong after four years of negotiations.

In addition, while the discussion in the TRIPS Council and the General Council have mainly been

around the legal status of the Chairman's Statement, we feel that a more in-depth focus has also to be shown on finding a mechanism that works to facilitate access to medicines. It must be borne in mind that the lives of millions of people depend on finding a mechanism that works in facilitating access to medicines.

Thus the current 30 August 2003 mechanism needs to be tested and shown to work, before it is turned into a permanent feature of the TRIPS agreement. If the mechanism proves ineffective in achieving its stated goal - enhanced access to affordable medicines for countries with insufficient or no domestic manufacturing capacity - then WTO members should return to the drawing board and agree to a mechanism that is more effective.

For now the 30 August 2003 mechanism is a waiver that according to paragraph 11 only terminates "on the date on which an amendment to the TRIPS Agreement replacing its provisions takes effect for that Member", thus effectively it is a permanent waiver for Members to use.

This issue is too important for countries to quickly agree to an amendment just to be able to claim that the WTO system still works and can deliver for development. The developed countries, in particular the US and EU are desperate to deflect attention from their lack of movement in agriculture and their anti-development proposals in NAMA and Services. If the price of making that claim is the lives of people living with treatable but deadly diseases, then developing countries should not pay it.

Signatories

Oxfam International

Christian Aid

Consumer Project of Technology (CPTech)

Ecumenical Advocacy Alliance (EAA)

Health Action International-Asia Pacific

Health-GAP

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Institute for Agricultural Trade Policy (IATP)

Essential Inventions

Third World Network (TWN)

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Health Action International Africa

Asia Project (Washington)

Global Exchange

World Young Women's Christian Association (World YWCA)

Egyptian Initiative for Personal Rights-Health and Human Rights Program

Medical Aid for the Third World (MATW/intal)

Positive Malaysian Treatment Access & Advocacy Group (MTAAG+)

Soropositivity, Communication and Gender (GESTOS)

Canadian HIV/AIDS Legal Network

Africa Action Progressive

Intellectual Property Law Association (Cleveland Ohio)

Centre National de Coopération au Développement (CNCD)

Gays and Lesbians of Zimbabwe (GALZ)

Global Network of People Living with HIV/AIDS (GNP+)

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