

# WORLD TRADE ORGANIZATION

IP/C/W/401  
28 May 2003

(03-2876)

**Council for Trade-Related Aspects  
of Intellectual Property Rights**

Original: English

## **PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH**

### Communication from the African, Caribbean and Pacific Group of States (ACP)

The following letter, dated 23 May 2003 and addressed to the Chairman of the Council, has been received from the Deputy Prime Minister of Vanuatu writing in his capacity as the President in Office of the African, Caribbean and Pacific Group of States (ACP) Council of Ministers, with a request that it be circulated to Members.

## **WTO NEGOTIATIONS ON TRIPS AND PUBLIC HEALTH**

I write this letter in my capacity as the President in office of the African, Caribbean and Pacific Group of States (ACP) Council of Ministers to express on behalf of the ACP its grave concern at the impasse reached in the World Trade Organization (WTO) negotiations on the implementation of paragraph 6 of the Declaration on TRIPS and Public Health agreed at the Fourth WTO Ministerial Conference at Doha in November 2001.

The Declaration as a whole was an important step forward in the global campaign for affordable medicines. It was expected to give developing countries greater confidence to use the public health safeguards in the TRIPS Agreement in order to improve their access to affordable medicines. This in turn could help bring about real benefits in the health of the majority of the poor people in developing countries, most of which are ACP States.

The Declaration also gives the least-developed countries more time before they are required to implement pharmaceutical patenting, thereby signalling that Ministers acknowledged a fundamental imbalance within the TRIPS Agreement. By setting a deadline of December 2002, they committed themselves to finding an expeditious solution. This raised the hopes and expectations of the world's poor, in that the implementation of the TRIPS Agreement would not adversely affect the supply of affordable medicines that are so vital to deal with the many diseases that continue to afflict them.

However, the developments in the WTO in dealing with this question are disheartening. While the ACP commends the efforts of Ambassador Pérez Motta, the immediate past Chairman of the Council for TRIPS, for working relentlessly to come up with a consensual text submitted on 16 December 2002 containing key elements which would constitute the legal means to enable a

decision by the WTO General Council to fulfil the Doha mandate as stated in paragraph 6, the Group is disappointed by the failure of the full membership of the WTO to agree to his text.

The ACP believes that Ambassador Pérez Motta's draft included all the key elements such as scope and coverage of diseases and products; eligible importing countries; assessment of manufacturing capacity; eligible supplying Members; safeguards against diversion; issues of notification and transparency; legal mechanism of amendment or waiver needed to implement a system adopted pursuant to paragraph 6 of Doha; meaning of domestic market in Article 31(f) of TRIPS; and how to address transfer of technology/capacity-building (including that stipulated in Article 66.2 of TRIPS), and a monitoring modality by the TRIPS Council.

The ACP recalls that although all other WTO Members were willing to accept the 16 December 2002 draft on TRIPS as a compromise text, the United States, at midnight on 20 December 2002 was not able to join the emerging consensus. This effectively meant that the set deadline of December 2002 could not be met. The ACP interprets the US action and position as an attempt to effectively redefine and limit the scope of public health problems reflected in the Doha Declaration. The ACP had valued the Doha Declaration as a significant achievement, and would therefore not accept any attempts to roll-back the commitments made in the interest of public health by all the Ministers at Doha.

The ACP has however noted the assurance made by the United States of its willingness "to work with other WTO Members to try to find a solution within WTO", as expressed in a letter circulated in January 2003. The Group further notes the US offer to initiate a "unilateral moratorium" on the TRIPS and Public Health issues, including the undertaking not to seek to enforce Article 31(f) of the TRIPS Agreement through the WTO dispute settlement procedure against a WTO Member under certain conditions.

The Group has also noted that in an attempt to reach a solution, the European Union (EU) had suggested in a letter, dated 7 January 2003 and circulated to WTO Trade Ministers, that Members wishing to import medicines to meet any public health concern not explicitly covered in an initial list of diseases be encouraged to seek WHO advice. This suggestion was made on the grounds that, with its public expertise, involving the WHO, which is renowned for its public health competence, would provide a mechanism to ensure the Doha Declaration can be applied in good faith.

While welcoming the EU efforts to break the deadlock in negotiations, the ACP could not endorse the EU proposal. The ACP position then was and still is that any text that restricts the agreement to a set list of diseases, even involving the WHO in assessing public health concerns, would constitute an unacceptable attempt to restrict ACP's use of compulsory licensing. The scope of diseases was already extensively discussed in Doha, and the consensus text included in the Doha Declaration rejected any limitations.

The ACP further rejected the attempts to confine the application of the agreement to national emergencies and other circumstances of extreme urgency, one of the suggestions made as a way out of the impasse. Limiting the agreement to national emergencies and other circumstances of extreme urgency would also be deviating from the content and understanding of the Doha Declaration.

In view of the above and with the outbreak of new diseases such as SARS, the ACP believes that a solution needs to be found now as a matter of urgency. Such a solution should be straightforward and easy to implement and should not be made so cumbersome as to be effectively unworkable.

With regard to other aspects of the Declaration, most governments of the ACP States need assistance and support in integrating the TRIPS public interest safeguards into their legislation. Least-

developed countries need to be provided with advice on how to take advantage of the extended deadlines for pharmaceutical patenting, since many have already implemented, or are in the process of implementing, TRIPS-compliant rules. In so doing, some of the LDCs have failed, due to lack of capacity, to take advantage of the extended transition period agreed at Doha. To this end, the ACP calls upon organizations such as the World Intellectual Property Organization (WIPO) and World Health Organization (WHO) as well as the WTO to ensure that all the aspects of the Doha Declaration are fully integrated within their technical assistance programmes.

The ACP further calls on the pharmaceutical companies to ensure that their patent policies, practices and lobbying activities are compatible with the Doha Declaration.

The ACP urges developed country Members of the WTO to adapt their intellectual property enforcement policies according to the Doha Declaration. This means respecting the rights of governments to use the TRIPS public health safeguards.

In conclusion, the ACP requests that the issue of TRIPS and Public Health be addressed satisfactorily before the Fifth WTO Ministerial Conference to be held in Cancún and that all WTO stakeholders be mobilized to ensure urgent and adequate resolution of the issue. I am, therefore, by a copy of this letter requesting the Director-General of the WTO to circulate this letter to all WTO Member States.

---