

DOHA DECLARATION ON THE TRIPS AGREEMENT AND
PUBLIC HEALTH AND
THE PARAGRAPH 6 SYSTEM OF SPECIAL EXPORT LICENSE
FOR MEDICINES UNDER TRIPS

***WTO-ESCAP-IIUM Regional Workshop on
IP and Public Health and Environment Policy for Asian and
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- Doha Declaration on the TRIPS Agreement and Public Health
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Background on Doha Declaration on TRIPS and Public Health

- Ministerial Conference
 - Highest decision-making body of the WTO
 - Meets once every 2 years
 - 6 ministerial meetings so far, 4th at Doha (11/2001)
 - In intervals between ministerial meetings, General Council takes on these functions
- Results of the Doha ministerial meeting:
 - Declaration on the TRIPS Agreement and Public Health
 - Ministerial Declaration
 - Decision on Implementation-Related Issues and Concerns

Why the Doha Declaration ?

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- Widespread concerns that strengthened IPR protection would lead to reduced access to essential medicines
 - The purpose of the Declaration was to respond to the concerns that had been expressed about the possible implications of the TRIPS Agreement for access to drugs.
 - Concerns raised:
 - different views about the nature and scope of the flexibility in the TRIPS Agreement, for example in regard to compulsory licensing and parallel imports;
 - whether this flexibility would be interpreted by the WTO and its Members in a broad, pro-public health way;
 - The extent to which governments would feel free to use to the full this flexibility without the fear of coming under pressure from trading partners or industry.

The Declaration: General Statements

Ministers:

- Recognize the gravity of the public health problems..., especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics
 - Recognize that intellectual property protection is important for the development of new medicines and recognize concerns about its effects on prices
 - Agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health.
 - Reaffirm commitments made in the TRIPS Agreement and affirm that TRIPS can and should be interpreted and implemented in a manner supportive of Members' right to protect public health and, in particular, to promote access to medicines for all
- *Note: these important declarations signal an acceptance by all WTO Members that they will not seek to prevent other Members from using these provisions.*

The Declaration: Guidance for Disputes

Ministers:

- Reaffirm Members' right to use, to the full, the TRIPS provisions which provide flexibility for this purpose and in this context:
 - Recognize that each provision shall be read in the light of the **object and purpose of the Agreement as expressed, in particular, in its objectives and principles**

- *Note: provides important guidance to both individual Members and, in the event of disputes, to WTO dispute settlement bodies.*

The Declaration: Clarification on Compulsory Licences

Ministers:

- Recognize that Members have the **right to grant compulsory licences and freedom to determine the grounds** for compulsory licences.

- *Note: a useful corrective to the views often expressed in some quarters implying that some form of emergency is a pre-condition for compulsory licensing.*

Declaration: Clarification on Emergency

Recognize that Members have the **right to determine what constitutes a national emergency** or other circumstances of public health urgency (public health crises including those relating to HIV/AIDS, TB, malaria and other epidemics can be an example).

...but such clarification as such use cannot be easily challenged and that it is not a national emergency etc.

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