

THE BANGKOK DECLARATION ON FREE TRADE AGREEMENTS & ACCESS TO MEDICINES MAY 2011

We the undersigned, declare our opposition to the increasingly rapid spread of Free Trade Agreements (FTAs) that put the profits of multinational pharmaceutical companies ahead of people's right to health around the world. These agreements are threatening to fundamentally & permanently undermine access to affordable medicines for millions of people. New HIV, AIDS & TB medicines, Hepatitis C treatments, cancer medicines, essential medicines, life saving medicines for many chronic diseases are all under threat. Millions of people across the Global South already lack access to life saving medicines & new trade barriers will further limit their access to affordable medicines.

In 2001, World Trade Organization (WTO) members agreed to the Doha Declaration which affirmed that the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement "can & should be interpreted & implemented in a manner supportive of WTO member's right to protect public health &, in particular, to promote access to medicines for all." Yet throughout the world, on a country-by-country basis, nations are being pushed to trade away their right to do just this.

Negotiating governments are falsely promising that these agreements will not impact our health – yet we know this is NOT true. The implementation of the TRIPS Agreement is already restricting access to newer medicines in the Global South; FTA negotiations are threatening to make an already bad situation, worse. Evidence from existing FTAs shows that they are undermining the rights of countries to implement domestic policies aimed at fulfilling the right to health. Studies show that FTAs with US resulted in 79% of 103 off-patent medicines not having any generic equivalent in Jordan & in price differences of up to 845,000% in the same therapeutic segment in Guatemala.

In the European Free Trade Agreements, the United States Trans Pacific Partnership Agreement, & a wide variety of bilateral negotiations we know that intellectual property & investment chapters have been tabled that would force sweeping changes in national laws making medicines unaffordable & unavailable in the future. The ability of India & other countries with domestic manufacturing capacity to make low-cost medicines dictates who can & cannot access life-saving medicines. Restricting generic production costs lives.

We stand in opposition to any & all proposals that negatively impact access to medicines in these FTAs including:

DATA EXCLUSIVITY that prevents governments from relying on clinical trial data to register generic versions of medicines even if they are off-patent, their patents have expired or are revoked & complicates the issuance of compulsory licences.

PATENT TERM EXTENTIONS that extend patent life beyond 20 years.

INCREASING PATENT SCOPE that significantly increases the number of medicines under patent by forcing governments to give 20-year monopolies on new uses & new forms of old medicines thus allowing the extension of monopolies on these medicines by a decade or more through minor changes in drug formulation or process.

PATENT LINKAGE that prevents the registration of generic versions of patented medicines and undermines the early working & research exceptions thus delaying generic entry even when a compulsory licence is issued, the patent expires or is revoked.

RESTRICTIONS ON COMPULSORY LICENCES that seek to limit the right of all countries to use compulsory licences to ensure access to medicines for all even though this right has been repeatedly affirmed by international treaties and declarations.

RESTRICTIONS ON PARALLEL IMPORTS that prevent the import of the cheapest priced patented medicines from anywhere in the world.

INVESTMENT RULES that allow foreign companies to sue governments in private international arbitration over domestic health policies like compulsory licences, health safeguards in patent laws, price reduction measures & may prevent governments from promoting local production.

BORDER MEASURES that will deny medicines to patients in other developing countries with custom officials seizing generic medicines being imported, in transit or that are being exported.

INJUNCTIONS that undermine the independence of the judiciary in developing countries to place the right to health of patients over profits of multinational companies.

OTHER IP ENFORCEMENT MEASURES that put third parties like treatment providers at risk of police actions & court cases and draws the whole manufacturing, distribution & supply chain for generic medicines into litigation.

We also stand in opposition to all other bullying tactics employed by developed countries & multinational companies to pressure developing countries to adopt such harmful laws & policies including through the US Special 301 report, training of judges & government officials, continuous litigation & other forms of lobbying & pressure.

We call on:

The GOVERNMENTS OF THE UNITED STATES, EUROPEAN UNION, SWITZERLAND, NORWAY, ICELAND, LIECHTENSTEIN, JAPAN & all other developed countries to immediately withdraw any and all TRIPS-plus provisions in intellectual property and investment chapters in FTA negotiations, to immediately cease all other forms of pressure & lobbying with developing & least developed countries and to scrap ACTA.

NATIONAL GOVERNMENTS IN THE GLOBAL SOUTH to band together & refuse to accept any further restrictions on production, registration, supply, import or export of generic medicines; to launch South-South collaboration on an urgent basis to put in place a sustainable, affordable pipeline of generic medicines for future generations; call for an immediate review of TRIPS & its impact on access to medicines in developing & least developed countries.

GOVERNMENTS IN THE GLOBAL SOUTH THAT HAVE ALREADY SIGNED FTAs which restrict access to affordable medicines, to immediately review & reverse all such provisions in their FTAs and rollback harmful laws and policies that are preventing access to affordable medicines.

ALL GOVERNMENTS to immediately end secrecy around FTA negotiations, make negotiating texts available for public scrutiny & to support through open, transparent & public consultations assessments of the impact of such negotiations on the right to health & other rights.

ALL PARLIAMENTS & CONSTITUTIONAL BODIES to immediately request FTA negotiating texts; review their impact on the right to health & access to medicines; refuse to endorse or ratify any FTAs that have been signed with provisions that undermine their people's right to access affordable treatment; and review all local laws including patent and medicine regulatory laws and policies to ensure all aspects and elements of the Doha Declaration are in these laws.

UNAIDS & THE UN SYSTEM to go beyond issuing a statement & craft a proactive strategy to support the right to health in this context; make this issue a key topic at all up-coming events & High Level meetings, ensure full representation of community representatives & health groups at these events, analyse the effects of potential trade agreements on access to medicines, share this analysis publicly & provide technical assistance to governments & civil society to ensure that FTAs do not undermine human rights. Specifically, UNAIDS must unequivocally condemn and urgently work to prevent the signing of FTAs that include any TRIPS-plus measures if they truly want to scale-up access to treatment, prevent 1 million new infections annually and if Treatment 2.0 is to actually succeed.

The GLOBAL FUND BOARD to call attention to & condemn FTA negotiations that include TRIPS-plus measures, to direct the Global Fund secretariat to assess the financial impact of potential trade agreements, share this analysis publicly, & ensure the adoption of procurement systems that make optimal use of TRIPS flexibilities including encouraging countries to use compulsory licences to ensure the GFATM does not pay excessive premiums for patented medicines.

The WORLD HEALTH ORGANIZATION to stop retreating from its policy work on intellectual property & access to medicines, to ensure that the WHO does not become a proponent of TRIPS-plus measures & to actively support & encourage countries in using their rights in TRIPS to protect health & promote access to medicines for all.

CIVIL SOCIETY GROUPS, PEOPLE LIVING WITH HIV, ALL COMMUNITIES FACING COMMUNICABLE, CHRONIC &/OR NON-COMMUNICABLE DISEASES in the North & the South to join forces to halt any & all trade agreements that restrict access to generic medicines.

We stand in solidarity with all other peoples & movements whose rights to life, health, livelihood, equality, equity, food, environment, knowledge, traditional systems of life & livelihood will also be negatively impacted by these free trade agreements that threaten to widen the gap between the rich & the poor not only between countries but within countries as well.

SIGNATORIES

Act-Up Paris

AIDS ACCESS Foundation, Thailand

All Ukrainian Network of Positive People

Allan Maleche – Kenya Legal and Ethical Issues Network on HIV/AIDS, Kenya

Amelia Vilkeya Motsepe – OSISA, South Africa

Aminata Soumaoro Kante Reseau des Femmes Infectee, Guinea

Argentinean Network of Women Living with HIV/AIDS

Asfaha Hadera – African Services Committee, Ethiopia

Asia Pacific Network of People living with HIV/AIDS (APN+)

Asia Pacific Network of Sex Workers (APNSW)

Asian Network of People who Use Drugs (ANPUD)

Association of People Living with HIV, Pakistan

Assumpta Reginald – Womankind, Nigeria

Bangladesh Network of Positive People

Boniswa Seti – Aids and rights alliance for Southern Africa – South Africa

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Cambodian Community of Women living with HIV (CCW)

Cambodian People living with HIV/AIDS Network (CPN+)

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Coalition of Asia Pacific Regional Network on HIV/AIDS (7 sisters)

Delhi Network of Positive People (DNP+), India

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International Treatment Preparedness Coalition (ITPC) – China, India, Thailand, USA

Japan AIDS & Society Association, Japan

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Thai AIDS Treatment Action Group (TTAG), Thailand

Thai Network of People living with HIV/AIDS (TNP+)

Vietnam Network of Positive People (VNP+)