



MSF Open Letter to the Members of the WTO

Paris, 6 June 2003

Dear Sir, Madam,

MSF does not support the text of December 16th (the “Motta” text) as an effective solution to the problem posed by paragraph 6 of the Doha Declaration on TRIPS and Public Health but there is now yet another threat to cripple even that deeply flawed text.

Attempts to cripple the flawed Motta text

Since December 16th there have been a number of concerted efforts to limit the already flawed Motta text further.

One attempt has been through a restriction on disease scope. The note from Chairman Motta prefacing his text makes clear that although some Members proposed a very limited disease scope, others called for a scope of equal width to the Doha Declaration i.e. simply public health problems. An analysis done by MSF demonstrates that the “approved” disease list proposed by the US and the EU makes no public health sense¹. The list overwhelmingly includes diseases for which there is no relevant patented medicine or even no medicine at all, while excluding diseases which are common in the West and which can be treated by patented medicines. The proposed limitation of disease scope served the interests of the pharmaceutical industry in making sure their patents weren’t threatened rather than patients interests.

Another attempt was to restrict the application of the Motta text in effect to emergency situations. MSF sent an Open Letter warning of our deep and urgent concerns on this limitation to all WTO Members on the 8th February 2003.²

Most WTO Members are clear in their rejection of any such limitations but it is also clear that Members most close to the pharmaceutical industry will seek to capitalize as best they can on ambiguities in the Motta text to try to secure further limitations.

Another attempt to cripple the flawed Motta text

There is now in progress another attempt to cripple even the flawed solution presented by the Motta text.

The Government of the Phillipines has been told by the USTR that they would not be regarded by the US as eligible to take part in the Motta text system. Even though the Annex to the Motta text appears to leave the determination of whether or not a Member has sufficient pharmaceutical manufacturing capacity for its needs to each Member, MSF fears that pressure from third countries such as the US could cause this determination to be made on political rather than public health grounds.

1. Reneging on Doha: An MSF analysis of recent attempts to restrict developing countries’ use of compulsory licensing to a set list of diseases 13 May, 2003. Available at:
<http://www.accessmed-msf.org/prod/publications.asp?scentid=13520031546543&contenttype=PARA&>

2. Available at:
<http://www.accessmed-msf.org/prod/publications.asp?scentid=10220031132323&contenttype=PARA&>

If the Phillipines were in effect to be excluded from the system this would not just be a cause for concern for the Phillipines. Presumably the USTR would take the same view of other developing countries like the Phillipines. The USTR wants only Least Developed Countries (LDCs) and the poorest, low income, developing Members to be able to take part in any paragraph 6 solution. Remember though that the paragraph 6 solution will rely on private sector generic pharmaceutical companies (or state sector equivalents) to be supplying the necessary medicines. In much the same way as Big Pharma they will not be interested in doing this unless it is a commercially sensible proposition. If the only market available to them were LDCs and the poorest developing Members they will very likely take the view that this is not enough of a market to bother with. The more wealthy developing Members must be able to take part in any paragraph 6 solution if generic producers are to be expected to take part as well.

In the case of a Member which perhaps thinks it can do without being able to import under the system but nevertheless wants its industry to be able to export, where will you export to if a country like yourself is excluded?

WTO Members - developed, developing and least developed alike - must be clear that if a solution is adopted to the paragraph 6 problem which is not economically viable it is no solution at all. An agreement on a solution, even if unworkable, will be presented as a major public relations triumph for the WTO process. MSF underlines that this issue is far too important to be treated in such a way.

MSF strongly calls on WTO Members to reject any attempts to limit importing country eligibility in any paragraph 6 solution to LDCs and the poorest developing countries. The Doha Declaration makes no such distinction and neither should the solution to paragraph 6.

A better solution than the Motta text

MSF advocates adopting a TRIPS Art 30 exception to patent rights to permit the necessary public health related production for export. The World Health Organisation has called for exactly the same in its intervention at the TRIPS Council of 17th September 2002.

The Communication from the European Communities to the TRIPS Council of June 4th and 5th 2003 contains two very relevant points to support this case.

In the first place the EC Communication acknowledges that “full advantage [must be taken] of the available expertise on health matters, in particular in the World Health Organisation” (paragraph 8) in matters relating to the implementing the Doha Declaration. The WHO has already given its expert view on the best solution to the paragraph 6 problem: an Art 30 exception. Confirming this approach, the EC Communication makes clear that “...it should be borne in mind that the principles of the Doha Declaration can also be carried through to issues other than compulsory licensing or parallel imports, such as EXCEPTIONS TO EXCLUSIVE RIGHTS or other policy options” (footnote 3, capitals added).

Carrying through the principles of the Doha Declaration, paragraph 4 of which states that “we affirm that the Agreement can and should be interpreted and implemented...to promote access to medicines for all”, leads directly and unequivocally to a TRIPS Article 30 exception as the solution to the paragraph 6 problem.

MSF strongly calls on WTO Members not to settle for the Motta text. It is not the best solution, it is a flawed approach and brings the possibility that it will not work at all, having been under constant threat of crippling limitations. MSF calls again for the Members to consider a better approach, aiming at best fulfilling public health objectives, utilising an Article 30 exception.

Members must not be pressured by new and artificial negotiating deadlines into agreeing on an unworkable solution. Instead the necessary time must be taken to find a solution that is going to work.

Sincerely yours,

Ellen 't Hoen
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