

WTO NEWS: 2003 NEWS ITEMS

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INTELLECTUAL PROPERTY

The General Council Chairperson's statement

The General Council has been presented with a draft Decision contained in document IP/C/W/405 to implement paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. This Decision is part of the wider national and international action to address problems as recognized in paragraph 1 of the Declaration. Before adopting this Decision, I would like to place on the record this Statement which represents several key shared understandings of Members regarding the Decision to be taken and the way in which it will be interpreted and implemented. I would like to emphasize that this Statement is limited in its implications to paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.

First, Members recognize that the system that will be established by the Decision should be used in good faith to protect public health and, without prejudice to paragraph 6 of the Decision, not be an instrument to pursue industrial or commercial policy objectives.

Second, Members recognize that the purpose of the Decision would be defeated if products supplied under this Decision are diverted from the markets for which they are intended. Therefore, all reasonable measures should be taken to prevent such diversion in accordance with the relevant paragraphs of the Decision. In this regard, the provisions of paragraph 2(b)(ii) apply not only to formulated pharmaceuticals produced and supplied under the system but also to active ingredients produced and supplied under the system and to finished products produced using such active ingredients. It is the understanding of Members that in general special packaging and/or special colouring or shaping should not have a significant impact on the price of pharmaceuticals.

In the past, companies have developed procedures to prevent diversion of products that are, for example, provided through donor programmes. "Best practices" guidelines that draw upon the experiences of companies are attached to this statement for illustrative purposes. Members and producers are encouraged to draw from and use these practices, and to share information on their experiences in preventing diversion.

Third, it is important that Members seek to resolve any issues arising from the use and implementation of the Decision expeditiously and amicably:

- To promote transparency and avoid controversy, notifications under paragraph 2(a)(ii) of the Decision would include information on how the Member in question had established, in accordance with the Annex, that it has insufficient or no manufacturing capacities in the pharmaceutical sector.
- In accordance with the normal practice of the TRIPS Council, notifications made under the system shall be brought to the attention of its next meeting.
- Any Member may bring any matter related to the interpretation or implementation of the Decision, including issues related to diversion, to the TRIPS Council for expeditious review, with a view to taking appropriate action.
- If any Member has concerns that the terms of the Decision have not been fully complied with, the Member may also utilise the good offices of the Director General or Chair of the TRIPS Council, with a view to finding a mutually acceptable solution.

Fourth, all information gathered on the implementation of the Decision shall be brought to the attention of the TRIPS Council in its annual review as set out in paragraph 8 of the Decision.

In addition, as stated in footnote 3 to paragraph 1(b) of the Decision, the following Members have agreed to opt out of using the system as importers: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and United States of America. Until their accession to the European Union, Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia agree that they would only use the system as importers in situations of national emergency or other circumstances of extreme urgency. These countries further agree that upon their accession to the European Union, they will opt out of using the system as importers.

As we have heard today, and as the Secretariat has been informed in certain communications, some other Members have agreed that they would only use the system as importers in situations of national emergency or other circumstances of extreme urgency: Hong Kong China, Israel, Korea, Kuwait, Macao China, Mexico, Qatar, Singapore, Chinese Taipei, Turkey, United Arab Emirates.

Companies have often used special labelling, colouring, shaping, sizing, etc. to differentiate products supplied through donor or discounted pricing programmes from products supplied to other markets. Examples of such measures include the following:

- Bristol Myers Squibb used different markings/imprints on capsules supplied to sub Saharan Africa.
- Novartis has used different trademark names, one (Riamet®) for an anti-malarial drug provided to developed countries, the other (Coartem®) for the same products supplied to developing countries. Novartis further differentiated the products through distinctive packaging.
- GlaxoSmithKline (GSK) used different outer packaging for its HIV/AIDS medications Combivir, Eпивir and Trizivir supplied to developing countries. GSK further differentiated the products by embossing the tablets with a different number than tablets supplied to developed countries, and plans to further differentiate the products by using different colours.
- Merck differentiated its HIV/AIDS antiretroviral medicine CRIXIVAN through special packaging and labelling, i.e., gold-ink printing on the capsule, dark green bottle cap and a bottle label with a light-green background.
- Pfizer used different colouring and shaping for Diflucan pills supplied to South Africa.

Producers have further minimized diversion by entering into contractual arrangements with importers/distributors to ensure delivery of products to the intended markets.

To help ensure use of the most effective anti-diversion measures, Members may share their experiences and practices in preventing diversion either informally or through the TRIPS Council. It would be beneficial for Members and industry to work together to further refine anti-diversion practices and enhance the sharing of information related to identifying, remedying or preventing specific occurrences of diversion.