

PREPARATIONS FOR THE FOURTH SESSION OF THE MINISTERIAL CONFERENCE

Comments on the Draft Ministerial Declaration on Intellectual Property
and Public Health (Job(01)/155)

Communication from Cuba

The following communication, dated 1 November 2001, has been received from the Permanent Mission of Cuba.

Proposed alternative formulation for paragraph 1 (inclusions indicated in bold): We recognize the gravity of the public health crises afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS and other ~~pandemics~~ **endemics**.

Include the next paragraph – “We affirm that the protection and promotion of public health and nutrition is a fundamental obligation and prerogative of the State and that Members retain their sovereign power in this regard”

Include the next paragraph – “We recognize that in implementing domestic health policies, especially as regards the availability and affordability of medicines and other health care products, both the research based and generics pharmaceutical industries have important and complementary roles to perform, particularly in developing and least-developed countries”

Proposed alternative formulation for paragraph 4:

Nothing in the TRIPS Agreement shall prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement shall be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to ensure access to medicines for all.

In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement which provide flexibility for this purpose.

Proposed alternative formulation for paragraph 5:

~~In applying the customary rules of interpretation of public international law, e~~Each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.

Include the next paragraph – “ We recognize that the issues of the disclosing or using information where it is so required for reasons of public interest, including when is necessary to implement

effectively any compulsory licensees or other measures adopted by public authorities in the public interest could face some difficulties. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.”

Proposed alternative formulation for paragraph 9:

Each Member retains the rights to establish its own policy and rules regarding the exhaustion of intellectual property rights.

Proposed alternative formulation for paragraph 10:

In view of the special needs and requirements of developing and least developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, the transition periods provided for their benefit under Articles 65.4 and 66.1 of the TRIPS Agreement shall be extended for another period of 10 years from the expiration of the transition period provided there under, particularly in respect of the obligation to render available patent protection on products or processes relating to public health, without prejudice to further extensions.

Proposed alternative formulation for paragraph 11:

Members shall exercise utmost restraint in initiating and pursuing dispute settlement proceedings relating to measures adopted or implemented, particularly by developing and least developed country, to protect and promote public health.
