

**General Council**

**Preparations for the Fourth Session of the Ministerial Conference**

**Draft Declaration on Intellectual Property and [Access to Medicines] [Public Health]**

Attached is a draft Ministerial Declaration on this subject that has been prepared by the Chairman of the General Council, in cooperation with the Director-General, for transmission to the Fourth Session of the Ministerial Conference. This does not purport to be an agreed text.

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## General Council

### Preparations for the Fourth Session of the Ministerial Conference

#### Draft Declaration on Intellectual Property and [Access to Medicines] [Public Health]

1. 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.
2. We stress the need for the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems.
3. We recognize that intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices.

4. *Option 1*

[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.]

*Option 2*

[We affirm a Member's ability to use, to the full, the provisions in the TRIPS Agreement which provide flexibility to address public health crises such as HIV/AIDS and other pandemics, and to that end, that a Member is able to take measures necessary to address these public health crises, in particular to secure affordable access to medicines. Further, we agree that this Declaration does not add to or diminish the rights and obligations of Members provided in the TRIPS Agreement. With a view to facilitating the use of this flexibility by providing greater certainty, we agree on the following clarifications.]

5. In applying the customary rules of interpretation of public international law, 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.
6. Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.
7. Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
8. We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. 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.

9. The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each Member free to establish its own regime for such exhaustion, subject to the MFN and national treatment provisions of Articles 3 and 4.

10. We agree that least-developed country Members will not be obliged to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections with respect to pharmaceutical products until 1 January 2016. We instruct the Council for TRIPS to take the necessary action to give this effect pursuant to Article 66.1 of the TRIPS Agreement.

11. We agree that, for a period of five years from the date of this Declaration, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes and as incorporated in Article 64 of the TRIPS Agreement shall not be exercised with respect to any non-discriminatory intellectual property law, regulation or other measure of a developing country Member in sub-Saharan Africa that improves the access of affected populations in sub-Saharan Africa to patented pharmaceutical products used in the treatment of HIV/AIDS and other pandemics.

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