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# MOTION FOR A RESOLUTION

further to Questions for Oral Answer B6-0130/2007 and B6-0131/2007

pursuant to Rule 108(5) of the Rules of Procedure

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on behalf of the GUE/NGL Group

on the TRIPS Agreement and access to medicines

**B6-0276/2007**

**European Parliament resolution on the TRIPS Agreement and access to medicines**

*The European Parliament*,

– having regard to its resolutions of 20 June 2007 on the Millennium Development Goals – the midway point [1], of 23 May 2007 on Economic Partnership Agreements[2], of 6 July 2006 on HIV/AIDS: Time to Deliver[3], and of 30 November 2006 on AIDS[4],

– having regard to Rule 108(5) of its Rules of Procedure,

A. whereas more than 25 million people have died from AIDS since the first identified case of the disease 25 years ago; whereas there were 4.3 million new cases of infection in 2006, 2.8 million (65%) of which were in Sub-Saharan Africa alone, according to the UNAIDS' update report published on 21 November 2006,

B. whereas over 95% of the 39.5 million people in the world suffering from HIV/AIDS live in developing countries, mostly in Africa; whereas there are an estimated 15 million HIV/AIDS orphans globally, 12.3 million of them living in Sub-Saharan Africa,

D. whereas this is a permanent massive human rights violation comparable to a planned permanent genocide,

E. whereas, five years after the Doha Declaration, which stated that 'each member state of the WTO has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted', the WHO is warning that 74% of AIDS medicines are still under monopoly and 77% of Africans still have no access to AIDS treatment,

F. whereas the application of the mechanism designed to give access to medicines after the adoption of the Doha Declaration has been a complete failure, as the WTO has so far received no notification from any exporting or importing country of compulsory medicines,

G. whereas the procedural and substantive requirements that govern the issuance of compulsory licences by importing (where applicable) and exporting countries, as well as the conditions and notifications connected with that licensing, the political cost and the lack of incentive measures to accompany the use of the foreseen mechanism, constitute the principal potential obstacles to effective use of the WTO Decision,

H. whereas meanwhile the pharmaceutical industry's shareholders and management are enjoying their highest profits; whereas most patents which the industry defends have been established through public funded research; whereas most registered patents that are

[1] Texts Adopted, P6_TA(2007)0274.
[2] Texts Adopted, P6_TA(2007)0204.
[3] Texts Adopted, P6_TA(2006)0321.
[4] Texts Adopted, P6_TA(2006)0526.

necessary to fight major epidemics in the south have been largely reimbursed by their commercialisation in the industrialised countries;

I. whereas the WTO Decision's implementing Regulation pays scant attention to issues of technology transfer and capacity-building, merely paraphrasing at recital 13 some general language of the WTO Decision,

J. whereas through the EPA negotiations and other bilateral or regional FTAs, the European Union is seeking to include new intellectual property WTO+ obligations on ACP and other poor developing countries and LDCs that could affect their public health programmes,

K. whereas, in its proposed Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific (ACP) countries, the EU is negotiating for adherence to or acceptance of the obligations of the Patent Cooperation Treaty (PCT) and the Patent Law Treaty (PLT), and for the incorporation of the terms of Directive 2004/48/EC on the enforcement of intellectual property rights; whereas the EU also sets conditions to the way that parties can determine their exhaustion regime, which will harm parallel importations although they are a flexibility allowed by the TRIPS Agreement,

L. whereas the WHO decided to set up an Intergovernmental Working Group on Public Health, Innovation and Intellectual property (IGWG) in which the EU Member States and the Commission are actively participating, in order to draw, by May 2008, a strategy and global action plan on access to medicines and TRIPS issues,

1. Expresses its deepest concern at the spread of HIV/AIDS and other epidemics among the poorest peoples in the world and at the lack of focus on the prevention of HIV/AIDS, the inaccessibility of key medicines, the insufficiency of funding and the continuing need for more research into the major epidemics;

2. Strongly welcomes the decisions taken by Brazil and Thailand to grant compulsory licences for the production of medicines, using the flexibilities existing in Article 31 of the TRIPS Agreement; asks the Commission and the Council to also publicly support the use of this mechanism by those countries, and to encourage other developing countries to take similar steps;

3. Considers that to simply make this provisional mechanism permanent on 30 August 2003 (Article 31A) will not help to resolve the problem of access to medicines, as no notification has been sent to the WTO so far;

4. Calls on the Commission to take an initiative at the WTO in order to reduce the complexity of the mechanism, reduce the political costs of its use with clear political statements, and create economical incentive programmes in order to encourage its use;

5. Believes that the EU policy should aim at maximising the availability of pharmaceutical products at affordable prices in the developing world; calls on the Commission to consider the possibility of buying some patents of essential medicines, and to put them in the public sector;

6. Calls on the Commission to publicly support the immediate use of Article 30 of the

TRIPS Agreement by all countries facing major epidemics and that experience difficulties in gaining access to the necessary medicines; calls on the Council to adopt a Joint Policy Statement with Parliament to the effect that EU Member States remain free to use the Article 30 exception provision of the TRIPS Agreement under their domestic patent laws to authorise production and export 'with a view to addressing public health needs in importing Members' and asks the Council to mandate the Commission to refrain from taking action to interfere with these proceedings;

7. Calls on the Council to make it clear that the Commission has no mandate to negotiate pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, of bilateral and regional agreements with developing countries;

8. Calls on the Council to mandate the Commission to refrain from requesting adherence to or acceptance of the obligations of the Patent Cooperation treaty and the Patent Law Treaty, to refrain from incorporating the terms of Directive 2004/48/EC, not to introduce in the EPAs rules such as no original database protection, and not to include conditions which, by limiting ACP countries' choice of exhaustion regime, can reduce the scope of parallel imports;

9. Considers that the EU should instead proactively use all bilateral and regional agreements to require further specific provisions creating the framework for an effective implementation of the August 2003 Decision and for the use of the full flexibilities for public health under the TRIPS Agreement in compliance with the Doha Declaration;

10. Stresses that strong public health services, including research facilities, are essential in order to fight the epidemic, and opposes the situation of conditionality leading to their liberalisation;

11. Calls for support for the development of regional and national generic pharmaceutical-producing industries in affected areas with a view to facilitating access to affordable drugs;

12. Calls on the Council to recognise that the European Union must take additional measures as a matter of urgency with a view to encouraging the transfer of technology, research, capacity strengthening, regional supply systems and help with registration, in order to facilitate and increase the production of pharmaceutical products by the developing countries themselves;

13. Asks the Council to commit to a specified level of funding to upgrade or construct pharmaceutical production facilities owned by local persons in developing countries and increase the EU aggregate funding to public research and development of medicines of special relevance to developing countries, and to guarantee that the patents resulting of such research remain public;

14. Asks the Commission to grant funding for R&D on poverty-related, tropical and neglected diseases across a broad spectrum of venues, to support research institutes willing to cooperate with public health initiatives dedicated to these efforts, and to guarantee that findings resulting of research on new medicines financed by public founding's will not be patented but will remain public;

15. Asks the Commission to support disclosure by patent applicants of the source and origin of inventions deriving from biological resources and associated traditional knowledge found in developing countries with a view to promoting the equitable sharing of benefits and technology derived from those resources by supplying countries;

16. Calls on the Commission to support 'pool procurement strategies' under Article 31(b) and other strategies which could be used by countries or groups of countries to provide greater buying power and economies of scale in the production of generic medicines at affordable prices and stimulate direct investment in local production facilities within a region;

17. Asks the Council to mandate the Commission to proactively support the work of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property (IGWG) at the WHO such as proposals that re-examine the link between pricing and the cost of R&D with a view to devising workable new models, and to report regularly to Parliament on its work; also asks the Council to envisage the possibility of having Parliament officially represented at the IGWG by some of its Members;

18. Encourages pharmaceutical companies to pursue pricing alternatives involving a high-volume, low-margin approach, which could enhance access to medicines;

19. Recalls that counterfeiting of medicines is not a patent issue as such;

20. Instructs its President to forward this resolution to the Council, the Commission, the governments of the EU Member States and ACP countries, the WTO and the heads of UNAIDS, UNDP and UNFPA.