

Fix the Patent Laws is a joint coalition of the Treatment Action Campaign (TAC), Doctors Without Borders (MSF), SECTION27, the South African Non-Communicable Diseases Alliance (SANCD Alliance), DiabetesSA, EpilepsySA, Marie Stopes South Africa, the Stop Stock Outs Project (SSP), the South African Depression and Anxiety Group (SADAG), Cape Mental Health (CMH), the South African Federation of Mental Health (SAFMH), the Schizophrenia and Bipolar Disorders Alliance (SABDA), as well as the Cancer Alliance, including alliance members: the Cancer Association of South Africa (CANSAs), People Living With Cancer (PLWC), CanSurvive, CHOC Childhood Cancer Foundation South Africa and Advocates for Breast Cancer.

www.fixthepatentlaws.org

@FixPatentLaw



Attention: Honourable Minister Rob Davies

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Dear Honourable Minister Davies

Thank you for the prompt response to our letter dated 29 October 2015 and confirmation of your availability to meet with representatives of the Fix the Patent Laws Coalition.

We would like to request to meet jointly with yourself, as well as other senior officials at the DTI and the CIPC that are involved with the IP policy process and implementation of a substantive search and examination system. We request your office recommends a suitable date for this meeting between 16 and 27 November 2015.

We welcome your confirmation that the DTI remains committed to full implementation of the flexibilities allowed under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to protect health. The adoption of these flexibilities is a critical step towards expanding access to affordable health technologies in the country.

However, we are deeply concerned by your indication that the finalisation of the IP Policy and related law reform is subject to a future process of ratifying the Decision on the Interpretation of Paragraph 6 by Cabinet. The ratification of this paragraph has been under discussion for over a decade.¹ The fact that the Decision on the Interpretation of Paragraph 6 has not been ratified, does not and should not prevent South Africa from finalising the IP Policy and undertaking legislative reform to fully adopt TRIPS flexibilities. This process will only serve to delay the finalisation of the IP Policy further and indeed, the Paragraph 6 Decision is essentially irrelevant to the key concerns

¹ See SECTION27 and TAC statement: <http://section27.org.za/2011/05/tac-and-section27-urge-parliament-not-to-ratify-wto-decision-on-paragraph-6-of-the-doha-declaration-on-trips-and-public-health/>.

facing South Africa as it relates to intellectual property for pharmaceuticals (see more on the Paragraph 6 Decision in Annexure 1.)

The 2001 Doha Declaration affirmed the right of WTO members under the TRIPS Agreement, including South Africa, to fully adopt flexibilities into its national law to protect public health. South Africa is a party to the Doha Declaration, and has previously committed to adopting the TRIPS flexibilities to protect health in a 2005 African Union Declaration², a 2011 Beijing Declaration by BRICS Health Ministers³ and in a 2011 Declaration with India and Brazil signed by President Jacob Zuma.⁴

While we commend our government's numerous declarations of support for the use of TRIPS flexibilities to protect public health in South Africa and elsewhere, we reiterate the need for urgent action by government to fully adopt the TRIPS flexibilities into national legislation and practice to ensure that government's commitments translate into access to life-saving medicines.

We look forward to hearing from your office regarding a suitable date for a meeting between DTI, CIPC and the Fix the Patent Laws Coalition. Please cc catherine.tomlinson@joburg.msf.org and lotti.rutter@tac.org.za in communications with the FTPL coalition.

Regards,

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² <http://www1.chr.up.ac.za/undp/regional/docs/audeclaration7.pdf>

³ <http://www.brics5.co.za/about-brics/sectorial-declaration/health-ministers-meeting/beijing-declaration/>

⁴ <http://www.thepresidency.gov.za/pebble.asp?relid=5053>

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Annexure 1. Overview of Paragraph 6 discussions and ratification

The wording of Paragraph 6 of the Doha Declaration, which acknowledges the difficulties by certain World Trade Organisation (WTO) members in effectively making use of compulsory licensing, assists in understanding the background to and effect of the December 2005 Decision. Paragraph 6 states:

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.

The 2002 deadline referred to in Paragraph 6 above was not met. In August 2003, however, an interim solution was concluded on the implementation of Paragraph 6. Essentially, the interim solution provided a waiver from the ordinary rules of compulsory licensing. Subsequently, the Decision of December 2005 was adopted to give final effect to the interim solution of August 2003.

The global process of ratification of the Decision of December 2005 has been ongoing for over a decade and is unlikely to be finalised in the short term. This is because the Decision of December 2005 can only come into effect if two-thirds of WTO members (approximately 100 countries) ratify it. At present, only 60 countries have ratified the decision.⁵ The remaining countries have until 31 December 2015 to ratify. The August 2003 interim solution therefore still remains in force. The ratification of the December 2005 Decision will only serve to unnecessarily delay the finalisation of the IP Policy further.

⁵ https://www.wto.org/english/tratop_e/trips_e/amendment_e.htm