

MINISTRY OF HEALTH

SUBMISSION TO THE MINISTRY OF ECONOMIC DEVELOPMENT

**ACCEPTANCE OF THE PROTOCOL AMENDING THE TRIPS
AGREEMENT TO IMPLEMENT THE DOHA DECLARATION ON TRIPS
AND PUBLIC HEALTH**

JANUARY 2008

Background

The Ministry of Health agrees that New Zealand should accept the Protocol amending the TRIPS Agreement amending the Doha Declaration adopted in November 2001, and that the patents legislation should be amended to enable New Zealand to become an exporting Member.

As to the specific Questions for Consideration, the Ministry of Health submits as follows (as applicable):

Question 1

Yes, New Zealand should accept the Protocol.

Question 3

The Protocol should be accepted with legislative amendment to enable New Zealand to become an Exporting Member.

Question 5

No, any amendment to the Patents legislation should not be prescriptive and specifically list the public health problems for which licences can be granted under the Protocol.

Question 7

The Ministry of Health agrees that a relatively simple and flexible regime is most appropriate for New Zealand. The approach supported by the Ministry of Health is that an amendment similar to that adopted by Norway (para 48 of the Discussion Paper) should be adopted. An amendment permitting export licences to be issued to ensure access to medicines needed to address not only public health problems that currently exist in less developed countries, but also public health issues that may arise in the future would best achieve the public health purposes of the Declaration.

Question 8

No. The Ministry of Health considers that a definition along the lines of that suggested for Switzerland (para 52 of the Discussion Paper) would be a more appropriate approach for New Zealand, and would be more consistent with New Zealand's potential obligations to Pacific nations and other less developed countries in the event of a pandemic or other public health emergency.

Question 10

Yes, for the reasons advanced in the Discussion Paper, and including non-WTO members as eligible countries of importation is consistent with the purposes for which the Declaration was agreed.

Question 12

No, the countries, such as New Zealand, that have indicated that they will not use the Protocol as importing Members should not be excluded as eligible countries of importation. Excluding New Zealand as an importing Member would not allow for the possibility that New Zealand may need to use the system to import in the case of a national emergency or other public health crisis, or in cases of public non-commercial use.

In any event, such an exclusion is not required by the Protocol and it seems sensible and pragmatic that New Zealand should not assume any obligations or restrictions beyond those required by the Protocol.

Question 14

Yes, the present legislative threshold for applicants for compulsory licences to take “all reasonable steps” to obtain a voluntary license imposes a higher test than is required by Article 31(b) of the TRIPS Agreement.

Any queries or further information about this submission may be directed to:

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