



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission of the
N Z Council of Trade Unions
Te Kauae Kaimahi
to the

Ministry of Economic Development

on the

Acceptance of the Protocol Amending the TRIPS
Agreement to Implement the Doha Declaration on
TRIPS and Public Health

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1. Introduction

- 1.1 This submission is made on behalf of the unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) representing more than 360,000 unionised workers throughout New Zealand.
- 1.2 The CTU has a vital interest in WTO deliberations and we make numerous submissions and representations on a range of trade negotiation issues.
- 1.3 This submission is a brief comment on the discussion paper concerning Acceptance of the Protocol Amending the TRIPS Agreement to Implement the Doha Declaration on TRIPS and Public Health.

2. Submission

- 2.1 The CTU recognises that the intention of the Protocol is to make it easier for countries with insufficient or no manufacturing capacity for pharmaceuticals to be able to better access essential pharmaceuticals at an affordable price.
- 2.2 At the 6th WTO Ministerial Conference the position advocated by the International Trade Union Congress was that the Conference should amend the Trade-Related Intellectual Property Rights (TRIPS) Agreement, or adopt a clarifying statement, to ensure that all developing countries can achieve access to low-cost medicines in case of health need such as HIV/AIDS treatment, as originally envisaged in the statement on TRIPS adopted in Doha. The statement, the ITUC said, should support compulsory licenses with fair royalties, to ensure the affordability of generic medicines. In the longer term, changes are needed to the TRIPS Agreement to eliminate the requirement for WTO members to amend their patents laws in a way that constitutes a threat to affordable generic medicines. WTO member states must further ensure that bilateral and regional trade agreements do not undermine affordability and so access to generic medicines.
- 2.3 Our concern at this stage is that we believe that many countries that would in principle be able to benefit from imports of generics that are manufactured under compulsory licensing have had difficulties in amending their legislation and in practice have not been able to benefit from this amendment.

- 2.4 The amendment appears to set up compliance barriers which will severely undermine its effectiveness.
- 2.5 On this basis we are suggesting that the Protocol should not be incorporated as an amendment until the ongoing waiver for these activities has been adequately tested in practice. We therefore propose that New Zealand does not formally accept the protocol in order to allow such analysis of the waiver.
- 2.6 In the event that New Zealand does accept the Protocol, we submit that any implementation should be as broad as possible, pushing the boundaries of constraints. For example, regarding the definition of "pharmaceutical product", it should include products with medical use which might normally be regarded as foods, nutritional or hygiene aids (such as fluids provided in the treatment of Cholera).