

**COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
33rd SESSION**

**Denmark and Italy
Trade-related intellectual property rights, access to medicines
and human rights**

Oral Statement by 3D -> Trade - Human Rights – Equitable Economy

Monday 8 November 2004

Madam Chair,
Distinguished members of the Committee,
Ladies and Gentlemen,

Access to affordable medicines for the poor and most vulnerable in developing countries is an issue which all State parties to the Covenant must address, including industrialized countries like Denmark and Italy.

3D -> Trade-Human Rights-Equitable Economy is concerned that trade rules could limit Denmark and Italy's ability to fulfil their international human rights obligations, especially obligations under the right to health.

The realization of the right to health under article 12(1), as interpreted by General Comment No. 14 (2000), includes the obligation to ensure access to affordable medicines for all, without discrimination.

In order to respect, protect and fulfil this right, Denmark and Italy are required to take steps "individually or through international assistance and cooperation" towards its full realization.

Most importantly, Denmark and Italy, individually and as members of the European Union (EU), have an international obligation to respect the enjoyment of the right to health in developing countries.

These international obligations also include: facilitating access to essential medicines in developing countries; preventing third parties from violating the right to health in developing countries; and ensuring that Denmark and Italy's decisions, as members of international organizations, take due account of the right to health.

The realization of the right to health, especially access to affordable medicines for the poor, is increasingly being affected by intellectual property rules in trade agreements.

Denmark and Italy, individually and as members of the EU, have taken steps to ensure that trade-related intellectual property rules do not undermine the right to health. One step was the adoption, as members of the World Trade Organization (WTO), of the Doha Declaration on TRIPS and Public Health that reaffirms developing countries' ability to use all the flexibilities in the WTO TRIPS Agreement to reduce the cost of medicines.

A further step was the adoption of the WTO General Council Decision of 30 August 2003 (General Council Decision), which creates a mechanism to export generic drugs to developing countries that cannot manufacture the drugs themselves.

Most recently, on 29 October 2004, the European Commission published a draft regulation for the implementation of this WTO General Council Decision in the European Union. 3D welcomes the main framework of the draft regulation and the fact that generic medicines for export will be exempt from the EU's eleven year data and marketing exclusivity rules.

We encourage Denmark, Italy and other EU members to ensure the final regulation does not contain any restrictions or conditions that are not in the original WTO General Council Decision. We also encourage Denmark, Italy and other EU members to implement the final regulation into national law and use the mechanism as soon as possible to export generic medicines to developing and least developed countries.

Madam Chair,

Despite these steps, Denmark and Italy are at risk of undermining their international obligations by supporting trade rules that could violate the right to health in developing countries.

Denmark and Italy, as members of the EU, are negotiating a number of bilateral and regional trade agreements. Although the European Commission has stated that it will not pursue a policy of strict intellectual property rules in these agreements, there are fears that data exclusivity rules and intellectual property enforcement strategies could limit access to medicines in developing countries, especially in Africa.

Also, Denmark and Italy provide intellectual property technical assistance to developing countries as members of the EU and international organizations such as the WTO and World Intellectual Property Organization (WIPO). There are fears that this technical assistance is not fully promoting the flexibilities reaffirmed by the WTO Doha Declaration on TRIPS and Public Health.

We therefore urge Denmark and Italy to take into account their international obligations under the right to health in all aspects of their trade policy making, whether bilateral, regional or multilateral, especially as members of the EU and of international organizations such as the WTO and WIPO.

We also recommend that Denmark and Italy take all appropriate measures to adopt and implement the EC regulation on the WTO General Council Decision of 30 August 2003 without any additional limitations and ensure the export of generic drugs to developing countries as soon as possible.

On a related matter, we would like to say that we welcome the Committee's initiative of drafting a General Comment on the Covenant's Article 15(1) (c), on the protection of moral and material interests. It is important that the Committee carefully consider the content of the draft General Comment No. 18 to ensure that it effectively protects human rights, particularly related rights such as the right to health, food, education and the right of indigenous peoples, from being undermined by intellectual property rules. For this reason, we hope the Committee will consult widely with people working in this area before adopting the General Comment.

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