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Jakarta, 13 December 2017

1. **Mr. Joko Widodo, President of the Republic of Indonesia**
2. **Mr. Jusuf Kalla, Vice President of the Republic of Indonesia**
3. **Mr. Enggartiasto Lukita, Trade Minister of the Republic of Indonesia**
4. **Mrs. Sondang Anggraini, Ambassador of Indonesia for WTO**
5. **Mr. Iman Pambago, Director General of International Trade Cooperation, Ministry of Trade, Republic of Indonesia**
6. **Mr. Jully Paruhum Tambunan, Director of Multilateral Cooperation, Ministry of Trade, Republic of Indonesia**
7. **Mr. Tri Purnajaya, Director of Commodity Trading and Intellectual Property, Directorate-General of Multilateral Cooperation, Ministry of General Affairs, Republic of Indonesia**

**Call for Moratorium for Non-Violation and Situation Complaints
Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

Dear Sir/Madam,

We, Indonesia for Global Justice (IGJ), call to the Government of Indonesia and its negotiators to ensure that the World Trade Organization (WTO) Ministerial Conference occurring in Buenos Aires until 13 December 2017 decides that the moratorium for non-violation and situation complaints under the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS)[1] be made permanent as proposed in IP/C/W/607[2] or at the very least be extended until a permanent solution is found.

In doing so, we further call on your delegation to ensure that no new concessions are given, for example in the context of e-commerce, in return for this TRIPS non-violation moratorium.

We are extremely concerned that the introduction of non-violation complaints under TRIPS could enable legal challenges to regulatory and public policy measures that may be consistent with the obligations under TRIPS. For example, public health measures such as the issuance of compulsory licenses to import or manufacture cheaper generic medicines, compulsory licenses as a remedy for anti-competitive conduct, parallel importation of cheaper consumer products or medicines, education exceptions to copyright, not allowing patents on plants, animals or surgical methods etc could all be challenged if the moratorium on TRIPS NVC is not renewed at this WTO Ministerial Conference.

All the countries listed in the World Intellectual Property Organization's extensive comparison of TRIPS flexibilities, including the USA and Switzerland, have exceptions and limitations to intellectual property in their laws, as permitted by TRIPS, which could be subject to a dispute at the WTO. This can be seen for example in the TRIPS flexibilities in the patent laws of various countries

[3] and for other areas of intellectual property (IP) eg copyright etc[4]. Comparisons in English are available for certain patent topics: novelty, inventive step, prior art, grace period, exclusions from patentability, exceptions to patents[5] and are also available in French and Spanish[6]. Some examples of exceptions to patent rights in developed and developing countries have also been published in http://unctad.org/en/Docs/iteipc200612_en.pdf.

Some examples of uses of these TRIPS flexibilities in compulsory licensing include:

- By the USA recently[7]
- By Canada and the USA historically[8],
- By the European Union[9]
- For medicines by developed and developing countries:[10]

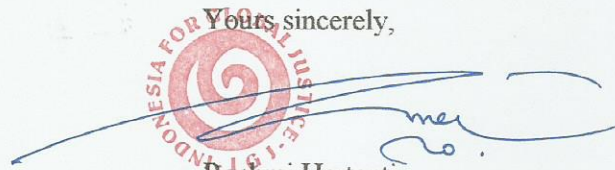
At the time of conclusion of the TRIPS Agreement, there was no agreement on whether to allow such complaints under the Agreement. As the negotiations on this issue remained inconclusive at the end of the Uruguay Round, a five year moratorium on non-violation complaints was provided under Article 64.2 of TRIPS. Accordingly, the TRIPS Council was requested to examine the scope and modalities of non-violation complaints under TRIPS during this period and submit recommendations to the Ministerial Conference.

However, discussions on the application of non-violation and situation complaints to disputes arising under the TRIPS Agreement have remained inconclusive despite discussions in the TRIPS Council for almost two decades.

In the past six WTO Ministerial Conferences, the moratorium has been extended for two years, in exchange for a renewal of the moratorium on tariffs on e-transmissions for the same period. While a similar trade-off may be pursued at this Ministerial Conference, it is of utmost importance that no additional concessions are given, including a longer moratorium on tariffs on e-transmissions than the moratorium on TRIPS NVC, or other e-commerce concessions.

Since all WTO Members need this TRIPS NVC moratorium to protect their existing laws implementing the exceptions and flexibilities allowed by TRIPS, this means that the moratorium on TRIPS NVC should not be vulnerable to again being held hostage. This is why it is vital that the moratorium on TRIPS NVC is made permanent. For the same reasons, if a permanent TRIPS NVC moratorium is not possible, there should be a temporary moratorium on TRIPS NVC which lasts until a permanent solution is found.

Yours sincerely,



Rachmi Hertanti

Executive Director

Indonesia for Global Justice