

To:

Ms Cecilia Malmström, Commissioner, Trade, European Commission

CC:

Director-General of Trade, Jean-Luc Demarty

Deputy Director General, Maria Helena Konig

Deputy Director General, Sandra Gallina

Dear Commissioner Malmström,

Indonesia for Global Justice and Indonesia AIDS Coalition are non-governments organization which has concerns on access to medicines. We are writing to express our position on the negotiations Comprehensive Economic Partnership Agreement (CEPA) between Indonesia and the European Union (EU). We aware that both parties have agreed to negotiate free trade agreement (FTA), including the chapter on intellectual property (IP) provisions.

We are concerned about a number of proposals¹ being made by the European Union (EU) in its free trade agreement (FTA) negotiations with Indonesia. These proposals include stronger intellectual property protection on medicines than the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (known as TRIPS+).

These TRIPS+ proposals made by the EU in the FTA negotiations with Indonesia include:

- Patent term extensions for medicines for delays in marketing approval with a second patent term extension if paediatric studies have been carried out.²
- Data and market exclusivity on medicines with an additional exclusivity period for new uses of an old medicine which are considered of significant clinical benefit in comparison with existing therapies.³

These longer/additional monopolies on medicines proposed by the EU would keep medicines unaffordable for longer in Indonesia. This is because patented medicines are much more expensive than their generic equivalents. For example, the patented version of medicines to treat AIDS cost US\$15,000 per patient per year, but the generic version only costs US\$67 per patient per year.⁴

Indonesia's GNI per capita is US\$3,540 compared to the EU's US\$32,778⁵ (nine times greater than Indonesia's). Even at purchasing power parity rates, 62% of Indonesia's population lives on less than US\$5.50 per day,⁶ so they have trouble affording medicines even with the TRIPS level of intellectual property protection (20 year patents and no data/market exclusivity on medicines). Eg at US\$15,000 per patient per year for patented HIV/AIDS medicines, it would take 62% of Indonesians at least 7 years to pay for one year of medicines, if they spent all their money on medicines. If Indonesia is forced to agree to the EU's TRIPS+ proposals above, more Indonesians and people living with HIV will die from of treatable diseases because medicines are too expensive.

The EU has made these TRIPS+ proposals above even though:

- a) the United Nations Special Rapporteur on the Right to Health explicitly stated that: 'Developed countries should not encourage developing countries and LDCs to enter into TRIPS-plus FTAs' and 'Developing countries and LDCs should not introduce TRIPS-plus standards in their national laws.'⁷ EU countries and Indonesia have ratified human rights treaties which include the right to health⁸ which are violated by these EU TRIPS+ proposals.
- b) The United Nations Sustainable Development Goals (SDGs) which were unanimously adopted by the 193 Member States of the United Nations⁹ includes Goal 3 on health which includes access to affordable essential medicines and vaccines.¹⁰
- c) The European Parliament has repeatedly passed resolutions against TRIPS+ in FTAs eg:
 - a. 12 July 2007: 'Calls on the Council to meet its commitments to the Doha Declaration and to restrict the Commission's mandate so as to prevent it from negotiating pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, such as data exclusivity, patent extensions and limitation of grounds of compulsory licences, within the framework of the

EPA negotiations with the ACP countries and other future bilateral and regional agreements with developing countries;¹¹

- b. 2008 re an EU FTA with the Association of Southeast Asian Nations (ASEAN) countries which includes Indonesia¹²:
 - i. 'nothing in the agreement should create legal or practical obstacles to the maximum use of flexibilities set out in the Declaration amending the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS agreement) and access to medicines and calls on the Commission negotiators to take full account of the points set out in its above mentioned resolution of 12 July 2007 on this topic;
 - ii. 14. Recalls the EU commitment to support the Doha Declaration and the use of TRIPS flexibilities in favour of public health and of access to medicines in developing countries; therefore calls on the Commission to do nothing that could undermine the Thai government's efforts to ensure access to medicines for all its residents;¹³
- c. 2008: 'asks industrialised countries to refrain from including in bilateral agreements any provision that restricts access to medicines';¹⁴

We therefore demand that the EU removes any TRIPS+ proposals to Indonesia in its FTA negotiations and does not make any new TRIPS+ proposals in the Indonesia EU FTA negotiations.

Best Regards



Aditya Wardhana

Executive Director of Indonesia AIDS Coalition



Rachmi Hertanti

Executive Director of Indonesia for Global Justice

¹<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1620>

² Art X.41

³ Art X.44.2

⁴http://www.doctorswithoutborders.org/publications/reports/2011/MSF_Access_Report_13th_edition.pdf and http://www.msf.org/msfinternational/invoke.cfm?objectid=63C0C1F1-E018-0C72-093AB3D906C4C469&component=toolkit.article&method=full_html.

⁵<https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>

⁶<https://data.worldbank.org/indicator/SI.POV.UMIC?view=chart>

⁷ www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.12_en.pdf

⁸ Eg see Parties to the Convention on the Rights of the Child, <http://indicators.ohchr.org/> which includes the right to health in Article 24, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁹<http://jo.one.un.org/en/press-releases/historic-new-sustainable-development-agenda-unanimously-adopted-by-193-un-members/7>

¹⁰ <http://www.who.int/topics/sustainable-development-goals/targets/en/>

¹¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0353+0+DOC+XML+V0//EN&language=EN>

¹² <http://asean.org/asean/asean-member-states/>

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-0195>

¹⁴ http://www.europarl.europa.eu/intcoop/eurolat/assembly/plenary_sessions/lima_2008_hm/adopted_docs/doha_round/719348en.pdf