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**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest
attainable standard of physical and mental health**

REFERENCE: AL Health (2002-7)
VNM 4/2011

19 July 2011

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/22.

In this connection, I would like to draw the attention of your Government to information received concerning **the negotiations on the Trans Pacific Partnership agreements and the effect of the intellectual property provisions on the enjoyment of the highest attainable standard of health.**

According to the information received:

Since March 2010 several rounds of negotiations on the Trans Pacific Partnership (TPP) agreements have been held among the Governments of Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States and Vietnam. Intellectual property rights, including provisions for patents and the protection of regulatory test data on medical inventions, are reportedly on the agenda of the TPP negotiations.

It is alleged that the TPP negotiations have been conducted behind closed doors, without providing opportunities for individuals, potentially affected by the TPP, to actively participate and influence the outcome of the negotiations. However, it appears that numerous entities from the private sector were allegedly provided with access to relevant information and could participate in the negotiations.

Despite the alleged secrecy of the TPP negotiations, some information about the content of those negotiations was reportedly leaked. It is alleged that key parties to the negotiations proposed to eliminate 'pre-grant opposition' procedures. Those procedures are considered to be an important tool to prevent patent applicants from gaining patent monopolies based on weak or erroneous information, improve

the quality and efficiency of patent office examinations, safeguard access to medicines and allow broad participation from civil society and other groups. It is alleged that alternative proposals discussed at the negotiations may not ensure the above-mentioned requirements and may limit the ability of developing countries to set patentability standards.

It is alleged that, according to the negotiated TPP agreements, parties would be required to provide *ex officio* border measures with respect to in-transit goods that are suspected of using 'confusingly similar' trademarks (a separate category from counterfeit products). In that context, it is alleged that differences in national policies on the standards for trademarks infringement involving medicines and geographically diverse trademark registrations would cause difficulties for legitimate generic manufacturers.

It is also alleged that some of the TPP's intellectual property provisions would strengthen monopolies for life-saving medicines and create barriers for access to medicines. It is further alleged that new intellectual property standards would not only result in high prices for medicines but could also have negative impact on the ability of developing countries to take positive steps towards ensuring the enjoyment of the right to health.

Concern is also expressed that the proposed TPP agreements could have negative impact on public health and would unduly limit access to medicines for the most vulnerable populations in the countries affected by the TPP agreements.

While I do not wish to prejudge the accuracy of these allegations, I would appreciate information from your Excellency's Government on the steps taken with a view to ensuring the right to the highest attainable standard of health in the context mentioned above. This right is reflected, *inter alia*, in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (acceded on 24 September 1982), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on part of all States parties to ensure that health facilities, goods, and services are accessible, acceptable, of good quality and available to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

General Comment No. 14 of the Committee on Economic, Social and Cultural Rights holds that access to essential medicines is a core obligation of the right to health and States must comply immediately with this non-derogable obligation regardless of resource constraints. The Committee stated that State Parties should ensure that the right to health is given due attention in international agreements and, in relation to the conclusion of other international agreements, State Parties should take steps to ensure that these instruments do not adversely impact upon the enjoyment of the right to health.

Furthermore, the Committee stipulates that community participation and consultation in policymaking is central to the right to health. In order to develop sound

policies, the relevant and affected communities and groups must have input into the policymaking process and allowed access to negotiations and meetings related to these policies. Moreover, the rights to information and to participation in the conduct of public affairs are essential dimensions of the right to health, as well as self-standing rights. The formulation of policies that affect the enjoyment of the right to health should be transparent in order to allow individuals to determine what, if any, impact such policies will have on their right to health. This means that relevant documents should be made available, and opportunity to contribute to the meetings during which policies are discussed be ensured.

Finally, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) created specific permissible flexibilities on the implementation of international patent rights in recognition of the developmental concerns of developing countries, particularly with respect to health. The 2001 Doha Declaration on TRIPS and Public Health by WTO reaffirms these flexibilities, by stating that “the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility [to promote access to medicines for all].” As a signatory to the Doha Declaration and member of the WTO, your Excellency’s Government should be guided by the Declaration’s affirmation that “the [TRIPS] agreement can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all.”

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the right to health in compliance with the above international instruments.

It is my responsibility under the mandate provided by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Has the Government kept the TPP agreement negotiations secret? If so, why?
3. Please provide details of any actions taken to ensure that the public and other relevant stakeholders have had access to draft texts and other documents related to the TPP.
4. Please provide details of any actions taken to ensure consultations with civil society and other relevant stakeholders with regard to the TPP.
5. Please provide details of any actions taken to ensure the enjoyment of the right to the highest attainable standard of health in Viet Nam.

I undertake to ensure that the response of the Commission to each of these questions is accurately reflected in the reports that will be submitted to the Human Rights Council for its consideration.

Please accept, Excellency, the assurance of my highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health