



Persatuan Pengguna Pulau Pinang
Consumers Association of Penang

檳城消費人協會 பினாங்கு பயனீட்டாளர் சங்கம்

10 Jalan Masjid Negeri, 11600 Pulau Pinang, Malaysia

Tel: 604-8299511 Fax: 604-8298109

email: consumerofpenang@gmail.com

Websites

Bahasa:

www.pengguna.org.my

English:

www.consumer.org.my

Chinese:

www.cap.org.my

Our Ref: CAP/WTO/2021/CYL

4 February 2021

YAB Tan Sri Muhyiddin bin Hj Mohd Yassin
Prime Minister of Malaysia
Pejabat Perdana Menteri,
Aras 5, Blok Utama,
Bangunan Perdana Putra,
62502 PUTRAJAYA.

By fax/email/courier

Yang Amat Berhormat Tan Sri

Urgent Call for Malaysia to unequivocally support the adoption of the TRIPS Waiver Proposal at the World Trade Organization (WTO)

I am pleased to convey to you a letter that has been endorsed by 28 organisations as well as 3 community activists in an Urgent Call for Malaysia to unequivocally support the adoption of the TRIPS Waiver Proposal at the World Trade Organization (WTO).

We had sent a similar letter to you on 11 November which is also attached here, emphasising the importance of collective action by the international community to remove the barriers caused by intellectual property rights that put private profits over global health especially in a pandemic. Since then the promise of vaccines for COVID-19 has become a reality but the vaccine nationalism shown by rich countries coupled with insufficient production is raising alarm across the developing world. When medicines are discovered that can treat COVID-19 we can expect a similar scramble with poorer countries falling behind again, not to mention the range of products for testing and diagnosing as well as personal protective equipment that have intellectual property claims made on them.

We therefore strongly call on the Malaysian government to unequivocally, and without hesitation, support the TRIPS Waiver Proposal and join other nations to ensure that a global approach is firmly put in place for equitable access to all the medical products desperately needed to contain, treat and manage COVID-19.

We thank you for your attention and action.

Yours sincerely

Mohideen Abdul Kader

President

Consumers' Association of Penang

Marketing Section: 10 Jalan Padang Tembak, 11400 Air Itam, Pulau Pinang, Malaysia

Tel: 604-8283511 Fax: 604-8268106

cc:

1. YB Datuk Seri Mohamed Azmin Ali
Minister of International Trade and Industry
Kementerian Perdagangan Antarabangsa dan Industri,
Aras 30, Menara MITI, No.7,
Jalan Sultan Haji Ahmad Shah,
50480 KUALA LUMPUR.

2. YB Datuk Alexander Nanta Linggi
Minister of Domestic Trade and Consumer Affairs
Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna,
Aras 13, (Menara) No. 13, Persiaran Perdana,
Presint 2,
62623 PUTRAJAYA.

3. YB Khairy Jamaluddin
Minister of Science, Technology and Innovation
Kementerian Perdagangan Antarabangsa dan Industri,
Aras 30, Menara MITI, No.7, Jalan Sultan Haji Ahmad Shah,
50480 KUALA LUMPUR.

4. YB Datuk Seri Dr Adham Baba
Minister of Health
Kementerian Kesihatan,
Aras 13, Blok E7, Kompleks E,
Pusat Pentadbiran Kerajaan Persekutuan,
62590 PUTRAJAYA.

YAB Tan Sri Muhyiddin bin Hj Mohd Yassin
Prime Minister

4 February 2021

YAB Tan Sri Muhyiddin,

Urgent Call for Malaysia to unequivocally support the adoption of the TRIPS Waiver Proposal at the World Trade Organization (WTO)

Following from our letter to YAB dated 11 November 2020, and attached here again, we the undersigned organisations note the statements made by Malaysia's representative at the recent meetings of the WTO Trade-related Intellectual Property Rights (TRIPS) Council relating to the TRIPS Waiver Proposal.

The adoption of the Waiver Proposal will temporarily suspend implementation, application and enforcement of the relevant provisions of the TRIPS Agreement for a defined period, opening the door to more research and development as well as production of needed COVID-19 medical products – diagnostic kits, medicines for treatment, vaccines and also personal protective gear.

Since it was first tabled by India and South Africa on 2 October, the Waiver Proposal has gained the support of almost 100 WTO Members, international organizations including the World Health Organization, eminent individuals and civil society organisations across the world.

We are therefore very concerned that it appears that the Government is still in a “consideration” mode and reportedly conducting consultations with stakeholders, even as the urgency grows for timely supplies of vaccines to battle COVID-19 that is now in its alarming third wave across the world, including in our country. **As key stakeholders we reiterate our strong conviction that the Government must support the Waiver Proposal without hesitation.**

We are alarmed at the worsening vaccine nationalism in rich countries, which has escalated into a vaccine war among themselves as seen from the on-going European Union conflict with the United Kingdom due to shortage of supply of the AstraZeneca/Oxford vaccine. Companies like Pfizer and AstraZeneca are already unable to supply in sufficient amounts and on time to the first buyers including the United States and EU, yet have signed a large number of advance purchase agreements including with Malaysia. It is clear that these companies have over-committed massively while keeping a stranglehold on production expansion through their intellectual property ownership over the vaccines and production technologies.

It is also now revealed that the EU agreement with AstraZeneca is on a “best reasonable efforts” basis **with no security of supply** of the contracted number of doses nor the schedule of delivery

while guaranteeing the company all its intellectual property protection and liability indemnity for its product.¹

According to Bloomberg's "Covid-19 Deals Tracker" that is monitoring 117 agreements there are an estimated 8.57 billion doses that have already been reserved with most taken up by rich countries so that **"some countries may have to wait until 2022 or later before supplies are widely available."**² It is now exposed that not all those 8.57 billion doses are actually not available as promised to the countries that have made their initial payments. The scramble is just starting as seen from the 30 January announcement of export restrictions by the EU³ of vaccines manufactured in European territory.

We welcome the speedy meeting between MOSTI Minister YB Khairy Jamaluddin and the European Commission's Ambassador on 2 February. However, the EU's formal press statement⁴ on this matter does not change the fact that Malaysia is not in the list of countries exempted from requiring prior authorization before a shipment under direct purchase from manufacturers can leave the EU. The EU's only assurance is that **"exports to third countries, including Malaysia, under existing Advance Purchase Agreements (APAs) will be safeguarded to the largest extent feasible"**, and that the EU **"will endeavour to ensure that Malaysia's expectations to obtain its deliveries will be met"**. This means that Malaysia is not getting any special consideration.

Therefore our national vaccination plan is vulnerable to supply shortages and delays from the manufacturers, as well as government export restrictions caused by global shortages. While the current EU restriction is to last until end of March 2021, it is a reminder that such moves can happen again and also for other medical products needed for COVID-19.

Meanwhile, the Biden Administration (as did the Trump Administration) has invoked the US Defense Production Act 1950 that was originally passed during the Korean War. It authorizes the US president to require businesses to accept and prioritize contracts for materials deemed necessary for national defense, regardless of a loss incurred on business. According to the US national COVID-19 strategy released on 21 January:

"As new vaccines, testing protocols, and treatments are developed, they will also need to be manufactured in sufficient supply ...

"The President has directed relevant agencies to exercise all appropriate authorities, including the [Defense Production Act], to accelerate manufacturing, delivery, and administration to meet shortfalls in these twelve categories of critical supplies, including taking action to increase the

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_302

² <https://www.bloomberg.com/graphics/covid-vaccine-tracker-global-distribution/contracts-purchasing-agreements.html>

³ A fight between the Eu and UK reveals the ugly truth about vaccine nationalism:

<https://www.cnn.com/2021/01/30/europe/uk-eu-astrazeneca-vaccine-nationalism-gbr-intl/index.html>

⁴ https://eeas.europa.eu/delegations/malaysia/92441/press-statement-eu-vaccine-export-authorisation_en

availability of supplies like N95 masks, isolation gowns, nitrile gloves, polymerase chain reaction (PCR) sample collection swabs, test reagents, pipette tips, laboratory analysis machines for PCR tests, high-absorbency foam swabs, nitrocellulose material for rapid antigen tests, rapid test kits, low dead-space needles and syringes, and all the necessary equipment and material to accelerate the manufacture, delivery, and administration of COVID-19 vaccine.”

With the third wave we are also concerned that PPE will be in shortage again as happened last year at the start of the pandemic, and this concern is underscored by the US response mentioned above.

At the same time, the search continues for medicines that can treat COVID-19, with some existing medicines showing promise for COVID-19 treatment as well. However, intellectual property barriers are already in place for some of them in many countries.⁵

Malaysia has already granted patents on an anti-inflammatory medicine baricitinib (expiry 10 March 2029); as well as two monoclonal antibody therapies, tocilizumab (3 patents with the last expiry on 26 December 2028) and sarilumab (3 patents with the last expiry on 7 January 2031). Three patent applications have been filed on another anti-viral medicine called AT-527, and if granted the last expiry date will be 31 January 2038!

Opponents to the Waiver Proposal at the WTO argue that the existing flexibilities in the TRIPS Agreement are sufficient. This is not true. For example, the option of a compulsory license offers a “product by product” and “country by country” approach with variations in national laws, whereas the pandemic requires collective global action to tackle intellectual property barriers and facilitate technology transfer.

Malaysia has used compulsory licensing for Government Use twice, to import certain medicines for HIV treatment in 2003 and for hepatitis C treatment in 2017. Our own experiences show that a case-by-case approach is not enough for a pandemic situation; moreover each time we did what is legal and within our rights there was intense pressure from the multinational pharmaceutical industry and the US Government as well.

All the above and especially the developments over the past week regarding the EU export restrictions urgently reaffirm the vital importance of the TRIPS Waiver Proposal to make way for a global approach to tackle the pandemic. The sooner a global approach is adopted at the WTO to free up COVID-19 vaccines, therapeutics and other medical products, the sooner production can be ramped up to save lives and the faltering economies of especially developing and poorest countries.

The opposition from developed country members of the WTO has delayed the process long enough, largely at the behest of the multinational pharmaceutical industry. The hypocrisy of

⁵ Examples of IP Issues and Barriers in COVID-19 Pandemic (IP/C/W/670): Communication from South Africa to the WTO TRIPS Council dated 20 November 2020.

the EU as shown by their move to restrict vaccine exports, and similarly of the US that is using its Defense Production Act in recognition of domestic shortages of 12 categories of PPE, cannot be allowed to stand in the way of the Waiver.

Fortunately, public opinion in those countries is growing louder in support of the Waiver Proposal. The desperation of the situation is voiced by the WHO Director-General who on 18 January warned that the world is on the verge of a “catastrophic moral failure” due to the denial of COVID-19 vaccines to developing and poorest countries.

We therefore strongly call on YAB to ensure that Malaysia makes an unequivocal statement to support the adoption of the Waiver decision text when the TRIPS Council meets informally on 4 February and to work with all the other developing countries for a truly global approach.

We also request for a meeting with MITI that is the focal point for WTO if stakeholder consultations are being conducted.

Yours sincerely,

1. Agora Society Malaysia
2. Citizens' Health Initiative
3. Consumers' Association of Penang (CAP)
4. Crisis Home
5. Health Equity Initiatives
6. IDRIS Association
7. Jaringan Ekologi dan Iklim (JEDI)
8. Jaringan Rakyat Tertindas/PSM
9. Majlis Tindakan Ekonomi Melayu (MTEM)
10. Malaysia AIDS Council
11. Malaysia Consumers Movement
12. Malaysian Consultative Council of Islamic Organizations
13. Malaysian Women's Action for Tobacco Control and Health (MyWATCH)
14. Monitoring Sustainability of Globalisation (MSN)
15. Padi Rescue
16. Penang Forum
17. Persatuan Insaf Murni Malaysia
18. Persatuan Persaudaraan Muslim Malaysia
19. Positive Malaysian Treatment Access & Advocacy Group
20. Prostate Cancer Society Malaysia (PCSM)
21. Sahabat Alam Malaysia
22. Sekretariat Gagasan Darul Aman
23. Sekretariate Transformasi Qaryah Malaysia
24. Tanjung Bunga Residents Association, Penang

25. Teras Pengupayaan Melayu
26. Third World Network
27. Together Against Cancer
28. UNGGAS Malaysia

Individual advocates and activists:

1. Isaac Tan
2. Jeremy Kwan
3. Manis Chen