



22/F, Pacific Plaza,
410 Des Voeux Road West,
HONG KONG.
香港德輔道西410號
太平洋廣場22樓
TEL: (852) 2959 4229
FAX: (852) 2337 5442
E-mail: office@msf.org.hk
Web Site: <http://www.msf.org.hk>

Hon. Sin Chung-kai, JP (Chairman)
Bills Committee on Patents (Amendment) Bill 2007
Legislative Council
Hong Kong Special Administrative Region of the People's Republic of China

25 May 2007

Dear Hon. C.K. Sin,

Re: Bills Committee on Patents (Amendment) Bill 2007
(Your reference: CB1/BC/2/06)

Thank you for inviting Médecins Sans Frontières Hong Kong to give opinion on the Patents (Amendment) Bill 2007.

Our views towards the aforesaid bill remain the same as listed in our letter to the Director of Intellectual Property of the Hong Kong Government on 4 December 2006, which we have attached herewith.

We hope you find the comments useful.

With best regards,

Yours sincerely,



Dick van der Tak

Executive Director

Médecins Sans Frontières Hong Kong



MEDECINS SANS FRONTIERES
無國界醫生

22/A, Pacific Plaza,
410 Des Voeux Road West,
HONG KONG.
香港德輔道西 410 號
太平洋廣場 22 樓
TEL: (852) 2959 4229
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E-mail: office@msf.org.hk
Web Site: <http://www.msf.org.hk>

Mr Stephen Selby
Director of Intellectual Property
Intellectual Property Department
The Government of the Hong Kong Special Administrative Region

4 December 2006

Dear Mr Selby,

Re: Protocol Amending the TRIPS Agreement and Amendments to the Patents Ordinance (Your ref. IPD/1009/7/1 V)

Thank you for inviting Médecins Sans Frontières Hong Kong to comment on the Government's proposal to amend the Patents Ordinance which is to implement the World Trade Organisation (WTO) Protocol Amending the TRIPS Agreement.

We think it is generally a good proposal in that it does not seem to add any restriction to the WTO decision and it is quite straightforward.

Three points stand out as the most important positive aspects of the proposed Ordinance:

- 1) It is the Director of Health who will be making the decision to import a generic version of a patented medicine under a compulsory license, although this will only happen after the CE-in-Council has declared a period of extreme urgency.
- 2) In cases where prior negotiations are required between the patent holder and an interested Hong Kong generic manufacturer, the proposed Ordinance considers 28 days as a reasonable negotiation period. It is a positive move of the Government to specify this negotiation period, so that it does not last forever and delay the whole process.
- 3) According to the proposed Ordinance, the royalty to be paid by Hong Kong generic manufacturers to the patent holder, in case of exports under a compulsory license, should not exceed 4% of the total price paid by the Importing Member for the product. Although the proposed Ordinance states that the royalty will be determined on a case-by-case basis, it is positive that a maximum cap for the royalty is fixed to avoid abuses.

However it is a pity that the proposed Ordinance does not make it possible to amend the quantities "with a simplified and accelerated procedure" as the European Union (EU) did in its implementation of the WTO decision (Article 16, Paragraph 4 of EU

regulation). Although the WTO system does not require it, we see this EU initiative as very useful, as it may be very difficult to estimate exact quantities of a product needed. In addition, needs in the importing country may change quickly depending on the public health problem at hand.

We hope you find the above comments useful.

Yours sincerely,

For and on behalf of the Executive Director,
Medecins Sans Frontieres Hong Kong

A handwritten signature in black ink, appearing to read "Anne Lung". The signature is fluid and cursive, with a long horizontal stroke at the end.

(Anne Lung)