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### **Actions by Switzerland subsequent to the Thai government's issuing of compulsory licences**

Dear Federal Councillors,

The Thai and Swiss health organisations that have signed on to this letter wish to express their utmost concern following the certain actions by Switzerland subsequent to the Thai government's issuing of compulsory licences on medicines produced by Roche and Novartis in January 2008. We strongly disapprove the attempt by Switzerland to dissuade Thailand for exercising its lawful right – one that is in full coherence with international agreements - to resort to such measures to protect public health.

In 2001, Thailand established a system of universal health coverage that attempts to provide free healthcare for its people. As a part of this coverage, the country has pledged to supply universal access to essential medicines, such as antiretroviral drugs to treat HIV/AIDS. Thailand's prevention, care and treatment programme in response to the disease is a model for other countries. The success of these efforts have allowed one of the countries hardest hit by the pandemic, with over 600,000 people infected, to bring the spread of the disease under control, as well as provide treatment to an ever increasing number of those that need it.

Thailand's response to the problem of high drug prices, and the impact of patented medicines on the public health budget, has been to examine the price of patented medicines, conduct price negotiations with pharmaceutical companies, and if needs be, issue compulsory licences that authorise, without the patent holder's consent, the production or importation of more affordable generic versions. In November 2006 and January 2007, the Thai government issued compulsory licences for two HIV/AIDS medicines (Merck Sharp & Dohme's efavirenz, and Abbott's lopinavir/ritonavir), and for one cardiovascular disease drug (Sanofi-Aventis's clopidogrel). Such compulsory licences have brought about a considerable reduction in the price of these drugs, freeing up resources for the public health system, and thereby ensuring access to these medicines for patients that until then went without.

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Claiming a yearly toll of over 30,000 lives, cancer is one of the most significant causes of mortality in Thailand. In January 2008, the Thai government issued further compulsory licences on four anti-cancer drugs (Novartis's letrozole and imatinib mesylate, Sanofi-Aventis's docetaxel, and Roche's erlotinib). Following an agreement reached with Novartis, the compulsory licence on imatinib mesylate was not put into effect.

We have come to learn that in February 2008, Switzerland handed Thailand an 'Aide Mémoire'<sup>1</sup>, in which the Swiss government's concerns about Thailand's compulsory licences are expressed, particularly those impacting medicines patented by Novartis and Roche, and in which Switzerland suggests that Thailand revise its policy on this matter.

It is a source of considerable concern that Switzerland should seek to dissuade Thailand from resorting to compulsory licences, and should interpret in such a restrictive way the scope and applicability of such measures. We are shocked to see that Switzerland advocates limiting compulsory licences to "emergencies and other exceptional cases" and to certain "kinds of pharmaceuticals".

Furthermore, the note uncritically celebrates the patent system as an effective way to stimulate medical research and development, ignoring the conclusions of the World Health Organization Commission on Intellectual Property, Innovation and Public Health (WHO CIPIH) that recognised serious shortfalls in the patent system.<sup>2</sup>

Compulsory licences are a flexibility enshrined in the TRIPS Agreement, and reaffirmed by the Doha Declaration on TRIPS and Public Health.<sup>3</sup> Nothing in the TRIPS Agreement restricts the use, the justifications, the circumstances or even the nature of the health problem for which compulsory licences can be granted. The Doha Declaration is unambiguous in stating that "each member [of the World Trade Organization] has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted." In its report, the WHO CIPIH recommended that "developing countries should provide in their legislation for the use of compulsory licensing provisions, consistent with the TRIPS Agreement, as one means to facilitate access to cheaper medicines through import or local production" (Recommendation 4.13).<sup>4</sup>

Switzerland's note insists that Thailand negotiate with the patent holders. This is already happening, as the agreement reached with Novartis over imatinib mesylate clearly shows. Nevertheless, it is worth pointing out that Article 31(b) of the TRIPS Agreement allows Thailand to dispense with prior negotiations, as its compulsory licences are issued for non commercial public use of medicines.

We are writing to ask that Switzerland respect the commitments undertaken when it adopted the Doha Declaration on TRIPS and Public Health in November 2001. We ask the government to abide its own declarations to Parliament.<sup>5</sup> We ask the government take action in concordance with the recommendations of the Commission on Intellectual Property, Innovation and Public Health. Switzerland must support the practical implementation of TRIPS flexibilities by developing countries. In particular, it must respect Thailand's right to use the tools provided by the TRIPS Agreement, and to issue compulsory licences for

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<sup>1</sup> "Compulsory licences in Thailand on pharmaceuticals under patent protection. Aide Mémoire" 25 February 2008.

<sup>2</sup> WHO Commission on Intellectual Property, Innovation and Public Health, Geneva, April 2006; pp. 22 & 85.

<sup>3</sup> "Declaration on the TRIPS Agreement and Public Health", 14 November 2001 (WT/MIN(01)/DEC/2).

<sup>4</sup> WHO Commission on Intellectual Property, Innovation and Public Health, Geneva, April 2006; p. 120.

<sup>5</sup> "As previously expressed on a number of occasions, the Federal Council [Swiss Government] attaches importance to the issue of access to medicines in developing countries, and in the least developed countries in particular. Thus, the Government is satisfied to note that the Doha Declaration on the TRIPS Agreement and Public Health has been adopted, as it shows how the flexibilities that are enshrined in the Agreement are available to developing countries in order to facilitate their access to medicines." Swiss Government response to the question of Member of Parliament Anne-Catherine Menétréy-Savary, 14<sup>th</sup> June 2002 (02.1022).

public health. In sum, Switzerland must stop exercising pressure on Thailand to dissuade it from issuing compulsory licences.

We look forward to hearing from you. Yours sincerely,



Julien Reinhard  
Campaign Director  
Berne Declaration

The following organisations in Switzerland and in Thailand have signed-on to this letter:

Switzerland

- aidsfocus.ch, the Swiss platform “HIV/AIDS and international cooperation”
- Berne Declaration
- Campaign for Access to Essential Medicines - Médecins Sans Frontières International (MSF) in Geneva
- Centrale Sanitaire Suisse Romande (CSSR)
- MIVA Schweiz
- Pharmaciens Sans Frontières Suisse
- SolidarMed
- Swiss League against Cancer

Thailand

- AIDS ACCESS Foundation
- Alternative Agriculture Network
- Foundation for AIDS Rights (FAR)
- Friends of Cancer Patients
- Friends of Renal Failure Patients
- Rural Pharmacist Foundation
- Thai network of people living with HIV/AIDS (TNP+)
- Thai NGOs Coalition on AIDS
- Thai Rural Doctors society
- Foundation for Consumers
- FTA Watch
- Oxfam Great Britain in Thailand

CC : - Ms. Ruth Dreifuss, former Federal Councillor, Chairperson, WHO Commission on Intellectual Property, Innovation and Public Health (2004-06)  
- Mr. Walter Fust, Director, Swiss Development Agency  
- Mr. Gaudenz Silberschmidt, Vice-Director, Swiss Federal Office of Public Health  
- Mr. Felix Addor, Deputy Director General, Swiss Federal Institute of Intellectual Property