



Analysis of the Hong Kong Outcomes of the TRIPS Agreement and Impact  
on Service Delivery in the SADC Region

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Executive Summary

This paper analyses the outcome of the 6<sup>th</sup> Ministerial Conference of the World Trade Organisation (WTO). Specifically the paper ascertains the little progress on finding permanent solutions to problems created by /with the TRIPS agreement on efforts to eradicate poverty in SADC. It is evident that the 6<sup>th</sup> Ministerial Conference failed legitimate expectations of the society that misunderstandings around TRIPS and Public Health would be solved by the conference. The temporary nature of provisions means more cans of worms will be opened in the near future

1. Introduction

In the Ministerial Declaration of the 6MC in Hong Kong, Trade Ministers *“affirmed the Declarations and Decisions adopted at Doha, as well as the Decisions adopted by the General Council on 1 August 2004, and (their) full commitment to give effect to them. (They further) renew(ed) resolve to complete the Doha Work Programme fully and to conclude the negotiations launched at Doha successfully in 2006.”* This is in no way different from the previous three declarations that have seen the WTO make empty promises and affirmations. When the World Trade leaders met in Hong Kong, they missed an opportunity to make a difference in the lives of the poor by failing to conclude on TRIPS and Public Health.

Of course this important item was not any closer to priorities of the conference. The 6MC energies were targeted at agriculture, Non-Agricultural Market Access (NAMA), services, development issues, Trade Facilitation (TF) and rules aspect of negotiations.

Many people anticipated that the 6<sup>th</sup> Ministerial Conference was not going to bring any positive change in the lives of the poor. The Korea farmers made it to Hong Kong and in a speech made at Victoria Park, their representative told of how most of his contingent was made up of small farmers, some of whom had spent their life savings to get on a plane to Hong Kong and defend their lives and livelihood. He said

*“WTO kills not only peasants but all people. Smashing the WTO into rubble is the only path to safeguarding our future and our lives. Korean peasants have been pushed to the brink. Peasants have been driven to the deathbed: in just the month of November, 4 peasants took their own lives or departed this world at the hands of violent police repression. This is the bitter fruit of neo-liberal globalization under the WTO. After the 1994 Uruguay Round, the reality of the Korean agricultural community has been too bleak to express in words.*

Hong Kong  
Trade  
Ministerial  
Conference  
Outcomes:  
Implications  
for Poverty  
Reduction in  
SADC

REGIONAL  
MEETING

6-7 April  
2006

Burgers Park  
Hotel,  
Pretoria  
South Africa

*The ranks of peasants shrunk from 10 million to 3.5 million and farm debt exceeds 27 million won (about US\$ 27,00) per farming household. Since 2004, under the pressure of the transnational grain corporations and the USA government, Korea has had to participate in negotiations over the opening of the domestic rice market despite the enormous damage this would cause to the agricultural sector. The resulting sentiment of crisis around the opening of the domestic rice market to imports and the failure of the government rice policy led to plummeting rice prices for rural communities harvesting this year's crop and set off a rice crisis."*

The conference was to brace itself to prove its salt.

## 2. Context and Trends

### SADC In International Trade

Sub-Saharan Africa's share of global trade continues to be on a free-fall. The market share of these countries has declined from about 5% in the 1970s to less than 2% today. This is mainly attributed to the fact that Africa's participation in global trade remains confined to being a net exporters of raw materials and a largest importer of finished commodities. As a result of low international demand, prices of commodities have plummeted drastically during the past five years, threatening the livelihoods of several millions of people on the continent. As revenues continue to decline, demands for the SADC countries to meet their social and economic obligations for their citizenry also continue to rise. Poverty, unemployment, crime, inequality and HIV/AIDS are rife. There is still more than 50% of the population in SADC living below US\$ 1 a day.

Merchandise exports of Sub-Saharan Africa and LDCs in 2004 stood at \$146 billion and \$57.8 billion, while that of the globe was \$8.9 trillion. Only 1.6% of global merchandise exports comes from Sub-Saharan Africa, while sadly all SADC members but South Africa LDCs combined represented only 0.64%. Sub-Saharan Africa and LDCs' share in the world commercial services exports also declined from 1.35% in 1990 to 1.1% in 2004 and from 0.49% in 1990 to 0.44% in 2004 respectively.

The Doha negotiations have been taking place on general background of increasing perceived role of trade in economic growth and development and increased participation of poor nations in the world trade. The global trade-to-GDP ration increased from 40% in 1990 to 60% in 2003. The value of merchandise exports amounted to \$8.9 trillion in 2004, and commercial services expanded by 16% to reach a total value of 2.1 trillion. However developing countries, Sub-Saharan Africa, in particular, remained and heightened vulnerability to external shocks, including policy reforms, natural disasters and diseases. When Trade Ministers met and agreed on the Doha Development Agenda in November 2001, it gave hope to Sub-Saharan Africa. Our leaders stressed the importance of implementation and interpretation of TRIPS agreement "*in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines and, in connection (adopted) a separate declaration.*"<sup>1</sup> The battle was on how to get the commitment done. To date Ministerial Conferences have continued "*to agree to intensify these negotiations in order to complete them within the overall time-frame for conclusion of the negotiations that were foreseen in the Doha Ministerial Declaration*"<sup>2</sup>

### SADC and HIV/AIDS

Southern Africa is described as the worst affected sub-region in the world with HIV/AIDS<sup>3</sup> with over 2% of the world's population (i.e. 204 million). The region has more than 70% of all people living with HIV. Data collected from selected antenatal clinics in the urban areas show that HIV

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<sup>1</sup> Par 17 of Doha Declaration

<sup>2</sup> Par 29, 6<sup>th</sup> Ministerial Declaration

<sup>3</sup> Aids Epidemic Update, Joint United Nations Programme on HIV/AIDS, December 2004

prevalence exceeding 25%, having risen sharply from around 5% in 1990.<sup>4</sup>

People aged between 15 and 49 make up 46% of the region's population. Among this group, HIV/AIDS infection ranges from the negligible in Seychelles and Mauritius to 4.9% in the DRC and 40% in Botswana and Swaziland. At certain localities (especially those linked to trading routes), prevalence rates may be as high as 70%. Life expectancy varies from a high of 72.7 years in Seychelles to a low of 33.4 years in Zambia.

As HIV/AIDS continues to claim more lives, more children will be orphaned. Seven countries in the region (Zimbabwe, Botswana, Lesotho, Swaziland, Mozambique, Malawi and Zambia) have an estimated rate of about 20 percent of children being orphans. While women are at greater risk of infection, the epidemic is imposing further burdens on them. Southern Africa has the highest average proportion of female-headed households in Africa. It is estimated that 34% of household with children in the region are headed by female compared with 18% in West Africa and Central Africa, and 21% in East Africa.<sup>5</sup> There are more children to be raised - often by grandmothers. Community-based responses are based on women who must invest more time in care and support. Young children are being turned into family heads, breadwinners, guardians and care providers.

While life-prolonging treatments have become available, women and girls do not have enough access to prevention and treatment options. Unfortunately, female controlled prevention method is not widely available. Even though female condoms provide protection for women; they still require greater amount of negotiation and male agreement and inhibited by cost and cultural factors.

### 3. What is TRIPS

When people talk of Intellectual property rights, they refer to the rights given to people over the creations of their minds. IPRs give the innovator an exclusive right over the use of his/her creations for a certain period of time. Traditionally, the IPRs are traditionally divided into two main categories:

- *Copyright and rights related to copyright:* Rights granted to authors of literary and artistic works, and the rights of performers, producers of phonograms and broadcasting organizations. The main purpose of protection of copyright and related rights is to encourage and reward creative work; and
- *Industrial property:* This includes (1) the protection of distinctive signs such as **trademarks and geographical indications**, and (2) industrial property protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), **industrial designs and trade secrets**.

#### 3.1 Components of the TRIPS Agreement

The WTO TRIPS Agreement recognizes that the development of international trade can be adversely affected if the standards adopted by countries to protect intellectual property rights (IPRs) vary widely from country to country.

Part I of the Agreement reaffirms the basic GATT principle of national-treatment under which nationals of

Six multinational corporations – <i>Aventis, Dow, Du Pont, Mitsui, Monsanto and Syngenta</i> - are buying up the local seed markets in the developing world. They now control: <ul style="list-style-type: none"><li>▪ 98% of the global market for patented genetically modified (GM) crops</li><li>▪ 70% of the global pesticide market</li><li>▪ 30% of the global seed market</li></ul>
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<sup>4</sup> Ibid

<sup>5</sup> UNICEF and UNAIDS, 2003

other members must be given treatment no less favourable than that accorded to a member's own nationals with regard to the protection of intellectual property. It also contains the most-favoured nation [MFN] clause under which any advantage a member gives to the nationals of another member must normally be extended to the nationals of all other members.

Part II of the Agreement addresses different kinds of intellectual property rights and how to protect them. The purpose is to ensure that adequate standards of intellectual property protection exist in all member countries, taking as a starting point the substantive obligations of the main pre-existing conventions of the World Intellectual Property Organization (WIPO). The agreement adds a significant number of new or higher standards where the existing conventions were silent or thought inadequate, these include copyrights, trademarks, industrial designs, patents, layout designs of integrated circuits, undisclosed information and trade secrets, etc.

### 3.2 Critical Issues under TRIPS

Farming is the main source of livelihood for three quarters of the world's population living in rural areas. In developing countries, small farmers dominate food production and using traditional agricultural practices, meet the food requirements of around 66% of the world's population. The introduction of intellectual property rules on plants and seeds under WTO's Agreement on TRIPS could damage the livelihoods of these 1.4 billion farmers worldwide and undermine food sovereignty and food security.

Before the WTO's Uruguay Round, intellectual property laws were a matter for domestic policy. But the introduction of the TRIPS Agreement made it mandatory for all WTO members to provide for internationally acceptable and enforceable patent protection for new inventions in all areas of technology. TRIPS is forcing developing countries, for the first time, to extend intellectual property rights to plant varieties and seeds, with consequent impacts on agriculture.

Patents effectively block competition for 20 years and enable the patent holder to set the market price for the product. Six multinationals control around 70% of the patents held on staple food crops. The use of patented seeds, plants and genetically modified animals would make small farmers dependent on the corporations that own the patents. In turn, this could lead to fundamental changes in the way agriculture is practiced in developing countries by facilitating the growth of agri-business and the decline of small farms and biodiversity. In addition, if the use of patented seeds became the norm, private corporations would dominate the world's food supply.

Resultantly;

*(i) Farmers are criminalised*

Hundreds of farmers are being sued in the United States and Canada for the infringement of intellectual property rights. Independent family farms are under threat and their owners are being turned into criminals by the application of Intellectual Property Rights (IPRs) in agriculture. As the TRIPS Agreement universalises intellectual property laws it will be increasingly easy for the big seed corporations to enforce their intellectual property rights in developing countries. Where it is not practical or cost effective to sue individual small farmers, they could employ controls on exporters, as they are in Brazil, or prevail upon their governments to pursue non-violation complaints against entire countries.

*(ii) Corporate control of the seed sector threatens the very livelihood of the poor*

Patents on genetic resources for food and agriculture accelerate corporate control of the seed sector. Patents promote the consolidation of global seed and agro-chemical businesses, concentrating power over seeds and seed choices in a very few hands.

Multinational corporations are acquiring local seed companies in developing countries in anticipation of monopoly rents once TRIPS is fully enforced. Seed is the first link in the food chain. Whoever controls seed controls the food supply. The top 10 seed companies control approximately 33% of the \$23 billion seed trade worldwide. DuPont and Monsanto together control 73% of the U.S. seed corn market.<sup>6</sup> 40% of U.S. vegetable seeds come from a single source. The top five vegetable seed companies control 75% of the global vegetable seed market.

(iii) MNCs *dominate 'life' patents and agricultural research*

Agricultural biotechnology multinationals have filed thousands of patents on plant varieties<sup>7</sup>. By manipulating just one gene of a living organism, a company can be declared the sole owner of an entire plant variety, and sometimes an entire species. For small farmers patenting their seeds and plant varieties is not a possibility since the cost of patenting an invention ranges from around \$5000 - \$23,000.

Multinational companies claim that IPRs stimulate investment, research and innovation in agricultural and food products. By requiring IPR protection and mandatory breeders' rights for new plant varieties, TRIPS provides incentives to 'innovate' amongst those who have the considerable financial resources necessary to pursue these rights. There are no similar incentives for plant conservation or breeding amongst indigenous farming communities. Furthermore, while patent protection has stimulated research amongst the largest corporations it has had the opposite effect on public research bodies and small companies.

#### 4. Provisions under the WTO Rules

Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organisation, signed in Morocco on 15 April 1994.

Unlike the other agreements, TRIPS are said to be *positively proscriptive* i.e. prescribe what countries should do. The rest of the WTO rules describe what the member countries should NOT do. Intellectual Property Rights extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.<sup>8</sup> IPRs apply to patents,

Part II of the agreement stipulates what member countries should do with *Copyright and related rights, trademarks, Geographical Indications, Industrial Designs, Patents, Layout - designs (topographies) on integrated circuits, protection of undisclosed information and Control of Anti-competitive practices in contractual licenses*. The agreement also provides in part III for ways and means of enforcements of IPR.

The biggest issues under TRIPS are around access to essential medicine for public health, establishment of a multilateral system of notification and registration of geographical indications for wines and spirits and others as provided for in article 23 of TRIPS agreement, and also relationship between the TRIPS agreement and the Convention on Biological Diversity, protection of traditional knowledge and folklore.

The agreement states that after expiration of transitional period the council shall review

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<sup>6</sup> Hope Shand. Intellectual Property Enhances Corporate Monopoly and Bioserfdom, July 2002.  
<http://www.mindfully.org/GE/GE4/Intellectual-Property-MonopolyJul02.htm>

<sup>7</sup> TRIPS states that plant varieties must be protected either through patents or sui generic systems

<sup>8</sup> Article 9 (2) of TRIPS Agreement

implementation every 2 years (article 71.1)

Article 65 provides for transitional arrangements as follows: 1 year for all members from 1994, and 4 years for developing members. Least developed countries were exempted for a period of 10 years from the date of application. Controversies arise however from the fact that Article 66 (2) calls on developed country members to "provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country members in order to enable them to create a sound and viable technological base" without further elaboration.

Very little, if any, progress has been made. Five years of implementation saw the 4MC (Doha Declaration) agree "to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the 5<sup>th</sup> session of the Ministerial conference."<sup>9</sup> This never happened, with the collapse of the talks in Cancun. Unfortunately the Hong Kong 6MC simply repeated the call in para 29

*"We take note of the report of the Chairman of the Special Session of the Council for TRIPS setting out the progress in the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, as mandated in Article 23.4 of the TRIPS Agreement and [paragraph 18 of the Doha Ministerial Declaration](#), contained in document [TN/IP/14](#), and agree to intensify these negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations that were foreseen in the Doha Ministerial Declaration."<sup>10</sup>*

## 5. Issues On the Road to Hong Kong

As has been indicated above, the issue of procrastinating conclusion of the TRIPS and Public Health to facilitate access to essential medicines has been tabled several times before. Technology is an important determinant part of economic development. Thus effective transfer and dissemination of technology at fair and reasonable cost to developing countries is very important if trade rules are to prove developmental. But affordability varies across countries; hence the pressing request before the 6MC for flexibility for each country to design its optimal intellectual property system.

In the run up to the 6<sup>th</sup> Ministerial Conference of December 13 to 18 2006 in Hong Kong, China, several issues of critical importance to SADC and other developing parts of the world were tabled.

### TRIPS and Public Health

TRIPS and Public Health issues remain high priority for SADC and least developed countries given the HIV/AIDS and other epidemic disease in the region.

Access to essential medicines has been Sub-Saharan Africa's biggest concern on TRIPS. This part of the globe is in emergency period. HIV/AIDS, Malaria and other killer diseases are terrorizing the region and urgently need attention. Article 31 of TRIPS agreement (*Other use without authorization of the right holder*) calls for "authorization for the supply of the domestic market of the member authorizing such use." The Decision on Implementation of Para 6 on TRIPS and Public Health adopted in August 2003 temporarily waived the obligations under Article 31 (f) above for exporting members supplying medicines to countries with insufficient or no manufacturing capacities. Some countries namely Norway, Canada, and India - none in SADC) amended their domestic legislation to utilize the August 2003 decision to enhance access

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<sup>9</sup> Para 18 (18) of Doha Declaration, 2001

<sup>10</sup> Para 29, Ministerial Declaration: 18 December 2005

to generic drugs. However no country ever used the waiver, mainly due to costly and cumbersome procedures for both producers and users of the drugs. The deadlines set for amending Article 31(f) were extended several times, trying to bridge the gap on critical differences i.e.

- i. The legal form of the amendment - should it be a footnote or additional paragraphs, and
- ii. Whether and how to translate the Chairman's statement attached to the August 2003 Decision.

The challenge and concern of many were mainly the urgency of the response - on humanitarian reasons and predictability as amidst negotiating process of finding the satisfactory solution, both in terms of content and relationship with other negotiating areas.

In a Shakespearean drama-looking operation, propositions were exchanged between the developed and developing countries. Developing countries were against inclusion of the chairman's text and that amendment must be selectively based on the key areas of the August 2003 decision. The draft text by the African group was very clear on this. On the other hand developed countries contended that the amendment should refer to the 30 August solution in its entirety. Civil Society and other governments<sup>11</sup> proposed conclusion of the stand off before any other TRIPS plus talks are in effect. Some have in fact said the best solution would be to remove the sections out of the WTO.<sup>12</sup> A standoff thus insured, and the threat of delay and /or lack of access to essential medicines to address HIV/AIDS and other pandemics was apparent. A prompt solution to this was needed urgently.

#### TRIPS and the Convention on Biological Diversity (CBD)

Another stand-off was on the relationship between TRIPS and the Convention on Biological Diversity (CBD). Developing countries called for TRIPS to be in line with the CBD, while developed countries wanted that the two must be interpreted as complementary and mutually supportive. As time approached the Hong Kong Ministerial, developing countries came up with proposals for inclusion of amendments of the TRIPS agreement to incorporate new requirements related to origin of disclosure, prior informed consent and benefit sharing in the Hong Kong Ministerial Conference Package. Specifically the Africa Group submitted proposals on *patentability or sui-generis system* and also patentability of life forms. Special mention and stress was made towards for disclosure of *Source and country of origin* of biological resource used in invention (IP/C/W/429); *evidence of prior informed consent (PIC)* under national regime (IP/C/W/438); *evidence of fair and equitable sharing of benefits (ABS)* from use of genetic resources (IP/C/W/442) and *Suggestions for preventing poor -quality patents and Biopiracy (Peru, IP/C/W/441)*. Switzerland and the US responded immediately but these only raised more questions than solutions e.g. on mandates and which fora.

The European Commission made scathing submissions under **geographical indications**. Three tracks could be identified:

- Negotiation issue around a *multilateral register of GI* for wine and spirits
- Implementation issue around *Extension of GI protection* to products other than wines and spirits. The implication here was that existing trademarks would not be affected, and the scheme would only be forward looking; and
- The "*claw-back list*" (prohibiting use of generic names i.e. those used by producers other than the rights holders in country of origin. By implication, the 41 products whose names had so far not been protected were to become GI-protected under this

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<sup>11</sup> SADC Trade Ministers meeting, 21-23 September 2005

<sup>12</sup> Para 15 of Civil Society Statement to Trade Experts Meeting preparing for the Meeting of the Ministers responsible for trade in Least Developed Countries, Livingstone, Zambia, 25 June 2005

“clawback” provision, with the protection retrospective so that the production of items using these names elsewhere would have to be halted.

It must pointed out that the EC made the above submissions on October 28 2005 as its key priority in the agriculture package and were offering improvements in the GI protection in return for cuts in its agriculture sector. Interestingly discussions around the foregoing exposed more divisions among developed countries (north-north) other than the North-South. The same divisions were seen when like the EC proposal of June 2005 for example was seen by Us, Canada and others to have implications beyond the mandate of TRIPS Council, and effectively creating TRIPS plus standards.<sup>13</sup>

#### **TRIPS and Non-Violation Complaints**

On **TRIPS and Non-Violation Complaints**, the issue set out in Article 64, paras 2, 3 (Applicability of the N-V remedy in the TRIPS context) was long overdue, despite the fact that a large majority of the members (and academics) rejected the application of N-V-disputes in the TRIPS. At that time, a moratorium for initiating dispute was in effect, but need was on maintaining moratorium in the MC6. Cases at hand were the US-Cotton and EU Sugar (scheduling of commitments, status of modalities, relationship between domestic and export subsidies), Arbitration Award on EU banana tariffs, US-Gambling and Mexico-Telecom (mode 1, classification and scope and coverage of commitments - need for careful scheduling), EC-Geographical Indications issue, US-Anti-dumping cases (methodology for calculating dumping margins) just to mention a few.

#### **Extension of the Waiver**

Using the provisions of Article 66.1 of the TRIPS agreement, LDCs submitted joint request for extension, based on their special needs and requirements: economic, financial and administrative constraints and also need for flexibility to create a viable technological base - thus asking that TRIPS provisions should not apply until a solution is found. The decision was fast tracked in order to avoid taking the issue to Hong Kong lest it is taken as a major concession to the LDC group when infact Article 66.1 of the TRIPS agreement provided for such extensions to be granted to LDCs.

#### **Permanent Solution to the TRIPS and Public Health Waiver**

Meanwhile members stressed the need for transposing the 30<sup>th</sup> August 2003 decision on TRIPS and Public Health into a permanent solution. The new outbreak of Bird Flu for example was taken as a blessing in disguise and was used to explain the dilemma of developing countries in public health and to put pressure on the WTO to simplify the rules under which governments can import, and producers export, generic copies of drugs under patent. Campaigners (such as Medecins Sans Frontieres) argued that easing the rules would encourage more producers to manufacture generic drugs under compulsory licensing. Tamiflu, produced by Switzerland's Roche Holding AG, for example, lobbyists stated, is the only drug likely to be effective in the event of human to human outbreak of bird flu and needed to be more and widely available should the virus change to pass easily between humans. The same with HIV/AIDS and other pandemic diseases.

#### **Geographical Indications**

Four propositions were made prior to the 6MC by as follows: (a) Hong Kong, China's proposal, (b) the Joint Proposal of Argentina, Australia, Canada, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico, New Zealand, Paraguay, Chinese Taipei (c) the United States and (d) the European Community. All the proposals were different and no common grounds were reached, particularly on the following key areas:

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<sup>13</sup> See IP/C/W/448



- the extent to which legal effects at the national level should be consequent on the registration of a geographical indication for a wine or a spirit in the system;
- the question of participation, including whether any legal effects under the system should apply in all WTO Members or only in those opting to participate in the system.
- on questions of costs and administrative burdens for WTO Members, in particular for developing countries. It was apparent that the first two above held keys to progress on the later, together with other details of the mechanism to be established.

## 6. Outcomes of 6MC: Another Raw Deal

The differences on interests around TRIPS and Public health kept on till the Hong Kong Ministerial. The Chairman of the Special Session of the Council for TRIPS, whose report was adopted by the 6MC, confesses that *“despite the active engagement of delegations and the detailed discussion of the proposals, it is a matter of concern that the level of convergence in these negotiations has not significantly expanded in the period since the last Ministerial Conference.”*<sup>14</sup> Consequently the Ministerial Conference did not perform miracles. The following were the only areas that were referred to:

### Moratorium of TRIPS complaints

The 6MC gave temporary relief on complaints under the TRIPS agreement as requested by LDCs in line with Article 66 of TRIPS:

*“It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.”*<sup>15</sup>

However, on finding permanent solutions, only cosmetic notice was made of progress made and the Ministerial merely authorized further negotiations and expect recommendations in the next Ministerial

*“ We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to [paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns](#) and [paragraph 1.h of the Decision adopted by the General Council on 1 August 2004](#), and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to our next Session.”*<sup>16</sup>

### Negotiations on multilateral system and Geographical Indications

According to para 18 of the Doha Declaration (14 November 2001), the arrangement for multilateral trading system was expected to be negotiated around by the 5<sup>th</sup> Ministerial Conference of 2003. It kept being postponed. Unfortunately, this time again, the 6MC only took notice as per Chairman’s request and hoped for the future:

*“We take note of the report of the Chairman of the Special Session of the Council for TRIPS setting out the progress in the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, as mandated in Article 23.4 of the TRIPS Agreement and [paragraph 18 of the Doha Ministerial Declaration](#), contained in document [TN/IP/14](#), and agree to*

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<sup>14</sup> Para 5, Special Session of the Council for TRIPS Report, by Ambassador Manzoor Ahmad to the Trade Negotiations Committee

<sup>15</sup> Para 45 of Ministerial Declaration: 18 December 2005

<sup>16</sup> Para 45, Ministerial Declaration: 18 December 2005

*intensify these negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations that were foreseen in the Doha Ministerial Declaration.”<sup>17</sup>*

#### **TRIPS, Public Health and Extension of Public Health Waiver**

The Ministerial confirmed amendment of TRIPS agreement to provide for expediency to respond to issues of public health

*We reaffirm the importance we attach to the [General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health](#), and to an amendment to the TRIPS Agreement replacing its provisions. In this regard, we welcome the work that has taken place in the Council for TRIPS and the [Decision of the General Council of 6 December 2005 on an Amendment of the TRIPS Agreement](#)<sup>18</sup>*

#### **TRIPS and the Convention on Biological Diversity (CBD)**

No agreement was reached on TRIPS and the Convention on Biological Diversity (CBD)

### **7. Implications and Conclusions**

The expectations of SADC and its people were that the 6MC would solve its impasse in the face of health crisis. In its declaration of September 23 2005, SADC said “The TRIPS and Public Health issue remain a priority for SADC given the HIV/AIDS and other epidemic diseases in the region. Two years after the adoption of the decision providing for a temporary waiver, no progress has been made in finding a permanent solution as provided for by paragraph 11 of the 30 August 2003 Decision.” SADC concluded: “The issue should be resolved before the Hong Kong Ministerial Conference.”

Now that no permanent solutions was made at the Ministerial, it stands to maintain the status quo of our HIV/AIDS and Public Health woes that we had before 6MC. Unless we follow amendment of domestic legislation like what Norway, Canada, and India did, (which they declared to be costly and cumbersome procedures for both producers and users of the drugs), AND build strong capacity to be able to utilize the August 2003 decision to enhance access to generic drugs, SADC and other developing countries should brace for more failures in the fight against HIV/AIDS and other epidemic diseases.

SADC, whose 70% of the population are small scale subsistence farmers, will face the biggest blow. But we all know of the strength and power of the people. SADC and other parts of the world fought colonialism like it never was. Africa is not poor, but the people are, so it is common knowledge. There is need to raise local people’s awareness on the need to protect the traditional knowledge and plant and animal species. At policy level we need to influence decision makers and researchers to ensure that farmers are protected by the government and law from the blatant, adverse and unjust effects of the WTO. We must also encourage and lobby our governments to have the TRIPS agreement pulled out of the WTO.

As it has been shown above, the 6MC can be said, without question, therefore to be an expensive way of declaring the developed countries’ unwillingness and/or inability to find solutions to the woes of poor countries.

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<sup>17</sup> Para 29 of Ministerial Declaration: 18 December 2005

<sup>18</sup> Para 40, Ministerial Declaration: 18 December 2005

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