



Lausanne, 20<sup>th</sup> June 2005

## DÉCLARATION DE BERNE

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Mr. Paul Hunt  
Special Rapporteur of the Commission on  
Human Rights on the right to the highest  
attainable standard of physical and mental  
health  
c/o  
Office of the High Commissioner for  
Human Rights  
United Nations Office at Geneva  
8-14, Avenue de la Paix  
1211 Geneva 10  
Switzerland

### **RE: Request for an urgent appeal to stop EFTA Member States (Switzerland, Norway, Iceland and Liechtenstein), from imposing TRIPS-plus rules in a free trade agreement (FTA) with Thailand**

Dear Sir,

We would like to alert you that Switzerland, Norway, Iceland, Liechtenstein, as members of the European Free Trade Association (EFTA) are at risk of imposing strict intellectual property (IP) rules on Thailand that could push Thailand to violate the right to health.

EFTA has announced that it will shortly begin negotiations for a free trade agreement (FTA) with Thailand. Based on evidence from previous EFTA bilateral and regional trade agreements we have strong cause for concern that the IP rules requested could undermine Thailand's ability to ensure access to affordable medicines, an inherent part of the right to health.

Switzerland, Norway, Iceland and Liechtenstein are parties to the International Covenant on Economic, Social and Cultural Rights. Under the Covenant, State parties are obliged to take steps «individually or through international assistance and cooperation» towards the full realization of Covenant rights (article 2(1), as interpreted by CESCR General Comment No. 3 (1990)). In relation to the right to health, this includes the obligation to respect the enjoyment of the right to health in other countries, to give due attention to the right to health in international agreements and to take steps to ensure that these instruments do not adversely impact upon the right to health (article 12, as interpreted by CESCR General Comment No. 14 (2000)).<sup>1</sup>

Your help is urgently needed to ensure that EFTA member states, take into account their human rights obligations when negotiating a FTA with Thailand.

We therefore urge you to send urgent appeal communications respectively to the Governments of Switzerland, Norway, Iceland and Liechtenstein, calling on them to take into account their human right obligations under the right to health when negotiating with Thailand.

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<sup>1</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14 (2000), The right to the highest attainable standard of health*, E/C.12/2000/4, 11 August 2000.

## **1. EFTA's requests in an FTA with Thailand must respect the right to health**

EFTA Member States have made requests for IP rules in their previous trade agreements that go beyond the WTO TRIPS Agreement. The most damaging «TRIPS-plus» rules have particularly focused on requirements of data exclusivity that will delay access to generic medicines, even if a drug is no longer on-patent<sup>2</sup>. If this type of requirement is imposed on Thailand in the FTA negotiations, there is a high risk that Thailand will have to take legislative measures that will constitute a move away from ensuring its people's right to health, and thus violate its core obligations under the right to health, notably the obligation to take all appropriate measures to prevent, treat and control epidemic and endemic diseases and the obligation to provide access to affordable drugs.

This is particularly important in view of the serious HIV / AIDS epidemics faced by Thailand. Today there are around 700'000 people living with HIV in the country. The HIV prevalence rate among the adult population is above 1%. According to WHO estimations 50'000 persons are receiving antiretroviral treatment while 114'000 people need it.

It is therefore crucial to remind all EFTA members of their obligation to respect the enjoyment of the right to health in other countries and to ensure that trade agreements do not adversely impact upon the right to health.

## **2. Lack of access to information and consultation in FTA negotiations**

Switzerland, Norway, Iceland and Liechtenstein's negotiations for bilateral and regional trade agreements, including EFTA agreements, are secretive and negotiating proposals and texts are not available to the public.

In view of these concerns, Switzerland, Norway, Iceland and Liechtenstein must be reminded to ensure greater access to information and participation of the public and of public-interest civil society organizations in trade decision-making processes that affect the realization of the right to health. This would comply with Switzerland, Norway, Iceland and Liechtenstein's obligation to ensure freedom to seek, receive, and impart information on matters affecting health according to article 12 CRC, as interpreted by General Comment No. 14 (2000), as well as its obligations under general human rights principles of accountability, access to information, and participation, including articles 19 and 25 of the International Covenant on Civil and Political Rights.

## **3. Action requested**

On 12 May 2005 the EFTA secretariat officially announced that the negotiations for an FTA with Thailand will shortly begin. The first round of negotiations will take place in September in Thailand..

It is therefore urgent that all members of EFTA be reminded of their human rights obligations under the right to health, especially the need to respect the enjoyment of the right to health in other countries and to take steps to ensure that trade agreements do not adversely impact on the right to health.

Moreover, it is crucial that Switzerland, Norway, Iceland and Liechtenstein, take into account your recommendation that «wealthy countries should not pressure a developing country to implement 'TRIPS-plus' legislation, unless reliable evidence confirms that such legislation will enhance the enjoyment of the right to health in the developing country.»<sup>3</sup>

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<sup>2</sup> See EFTA-Chile FTA from 26 March 2003 (Annexe XII, article 4.2); EFTA-Lebanon FTA from 24 June 2004 (Annexe V, article 4); EFTA-Tunisia FTA from 17 December 2004 (Annexe V, article 4).

<sup>3</sup> Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur, Paul Hunt, Mission to the World Trade Organization*, E/CN.4/2004/49/Add.1, 1 March 2004.

We therefore urge you to submit urgent appeal communications to Switzerland, Norway, Iceland and Liechtenstein, calling on them not to request TRIPS-plus rules in an FTA with Thailand without having undertaken a thorough human rights impact assessment of these rules on access to affordable medicines in Thailand.

It is also fundamental to call upon all EFTA members, to ensure access to information on the planned FTA, and consult with civil society throughout the negotiations.

We would like to inform you that we are planning to make this letter public and available to the media in order to ensure that citizens from Switzerland, Norway, Iceland and Liechtenstein are aware of the need for greater accountability, transparency and human rights consistency in the trade negotiations of their respective countries.

We thank you in advance for heeding our request and appealing to the Governments of Switzerland, Norway, Iceland and Liechtenstein.

Yours sincerely,



Julien Reinhard  
Secrétaire permanent  
**Déclaration de Berne /**  
**Berne Declaration**  
(Switzerland)



Regula Mosberger  
Geschäftsführerin  
**Liechtensteinische Gesellschaft**  
**für Umweltschutz LGU**  
(Liechtenstein)

The undersigned organizations are endorsing that letter:

Liechtenstein:

- Regula Mosberger, Geschäftsführerin, **Liechtensteinische Gesellschaft für Umweltschutz LGU**
- Robert Allgäuer, Präsident, **Aktion: Wir teilen. Das alternative Fastenopfer**
- Gerda Bicker, Präsidentin, **Verein Welt und Heimat**

Norway:

- Patrice Vastel, General Director, **Leger Uten Grenser / Médecins Sans Frontières (MSF) - Norway**

Switzerland:

- Julien Reinhard, Secrétaire permanent, **Déclaration de Berne / Berne Declaration**
- Gerhard Bärtschi, Programme Officer & CEO, **TearFund**
- Anna Bertoglio, Présidente, **Fédération Suisse des Personnes Vivant Avec (FSPVA)**
- Anne-Dominique Bitschnau, **Antenne Sida du Valais romand**
- Irene Bush, REPSSI Regional Program Advocacy Coordinator, **terre des hommes schweiz**
- Svend Capol, Président, **SolidarMed**
- Christian Captier, Directeur général, **Médecins Sans Frontière (MSF) - Suisse**
- Patricia Grigolin, Directrice, **SID'Action**
- Linus G. Jauslin, Generalsekretär, **Aids & Kind**
- David Perrot, Directeur, **Groupe sida Genève**
- Stefan Siebenhaar, **Bethlehem Mission Immensee**
- Amos Winteler, Leiter Kommunikation, **World Vision Schweiz**
- Helena Zweifel, Co-Geschäftsführerin, **Medicus Mundi Schweiz**