

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest
attainable standard of physical and mental health**

REFERENCE: AL Health (2002-7)
USA 13/2011

19 July 2011

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/22.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning According to the information received:

Since March 2010 several rounds of negotiations on the Trans Pacific Partnership (TPP) agreements have been held among the Governments of Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States and Vietnam. Intellectual property rights, including provisions for patents and the protection of regulatory test data on medical inventions, are reportedly on the agenda of the TPP negotiations.

It is alleged that the TPP negotiations have been conducted behind closed doors, without providing opportunities for persons, potentially affected by the TPP, to participate effectively and influence the outcome of the negotiations. Yet numerous entities from the private sector were allegedly provided with access to that information and could contribute to the negotiations.

Despite the alleged secrecy of the TPP negotiations, some information about the content of those negotiations was reportedly leaked. Accordingly, key parties to the negotiations proposed to eliminate 'pre-grant opposition' procedures. Those procedures are considered to be an important tool to prevent patent applicants from gaining patent monopolies based on weak or erroneous information, improve the quality and efficiency of patent office examinations, safeguard access to medicines and allow broad participation from civil society and other groups. It is alleged that alternative proposals discussed at the negotiations may not ensure the above-mentioned requirements and may limit the ability of developing countries to set patentability standards.

It is alleged that according to the negotiated TPP agreements parties would be required to provide ex officio border measures with respect to in-transit goods that are suspected of using 'confusingly similar' trademarks (a separate category from counterfeit products). In that context, it is alleged that differences in national policies on the standards for trademarks infringement involving medicines and geographically diverse trademark registrations would cause difficulties for legitimate generic manufacturers.

It is also alleged that some of the TPP's intellectual property provisions would strengthen monopolies for life-saving medicines and create barriers for access to medicines. It is further alleged that new intellectual property standards would not only result in high prices for medicines but could also negatively impact the ability of developing countries to take positive steps towards ensuring the enjoyment of the right to health of their citizens.

While I do not wish to prejudge the accuracy of these allegations, I wish

I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person(s) are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is my responsibility under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victim or the family of the victim.

I would appreciate a response within sixty days. I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health