



**AFRICAN GROUP & THE TRIPS
AND PUBLIC HEALTH
NEGOTIATIONS: RECOLLECTIONS
OF A FORMER NEGOTIATOR.**

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PRESENTATION STRUCTURE

1. Why we did,
2. What we did.
3. And how we did it.



2. WHY AFRICAN GROUP LED PROCESS

- heavy disease burden on the African continent
- lack of manufacturing capacity
- pharmaceutical companies suit against South Africa
- conflicted others



3. AFRICAN GROUP REQUEST FOR TRIPS COUNCIL SPECIAL SESSION

- African Group request for a TRIPS Council Special Session on access to medicines

(in IP/C/M/30)



ZIMBABWE, ON BEHALF OF THE AFRICAN GROUP: (IP/C/M/30)

“...the African Group would like to bring into the TRIPS Council an issue that has aroused public interest and is being actively debated outside the WTO, but one which the Council cannot afford to ignore especially given the need to clarify the role of intellectual property rights protection in dealing with pandemics such as the one caused by AIDS and other life-threatening diseases.

.....

However, we wish to state categorically that, through the proposal that the African Group is going to make, the African countries neither intended to be accusatory or deliberately provocative.”



AFRICAN GROUP REQUESTS TRIPS COUNCIL SPECIAL SESSION (IP/C/M/31)

○ CITED:

- crisis of public perception about role of the TRIPS Agreement
- legal challenges by the pharmaceutical industry and some Members in national law and under the DSU
- need for legal clarity



4. AFRICAN GROUP PROPOSED WAY FORWARD AT SPECIAL SESSION (IP/C/M/31)

- issue a special declaration on the TRIPS Agreement and access to medicines at the Ministerial Conference in Qatar:
 - affirming that nothing in the TRIPS Agreement should prevent Members from taking measures to protect public health
 - extending the transition period for the implementation of TRIPS for developing countries, with respect to patents
 - adopting a dispute settlement moratorium to allow Members to take measures to protect public health



5. SUPPORTING CAST

- Other developing countries
- NGOs
- Other individuals
- Other members



6. WATCHING FROM THE SIDE-LINES

- Big Pharma



7. AFRICAN GROUP/OTHER DEVELOPING COUNTRIES SPLIT

- **African Group proposal** (IP/C/W/351)
 - amend Article 31 to allow exports of drugs produced under CL, including regional exports; exception under Article 30; moratorium

- **Brazil et al. proposal** (IP/C/W/355)
 - interpret article 30 to allow government authorisation for exports, under certain safeguards



WHY AFRICAN GROUP PREFERRED AMENDMENT

- best way to attain TRIPS objectives/principles
- best way to take into account TRIPS and Declaration flexibilities
- amendment of equal or comparable weight to the problem
- effective solution to insufficiency or lack of manufacturing capacity



AFRICAN GROUP PROPOSAL CRITICISED

- mention of the moratorium would encourage other delegations to focus only on the moratorium
- the idea of a draft decision was premature and strategically wrong
- proposal raised too many options and would not help the discussion
- amendment would take too long



WHY AFRICAN GROUP AGAINST AUTHORITATIVE INTERPRETATION OF ARTICLE 30

- article 30 is self-executing
- could prejudice application of Article 30, and undermine any future proposals
- envisaged Article 31 type procedures, which could not be imported into Article 30
- created an exception to allow only exports, didn't address tech transfer



8. AFRICAN FOOTPRINTS IN THE DECISION (WT/L/540)

- TRIPS amendment
- para 6(f): “(i) where a developing or least-developed country WTO Member is a party to a regional trade agreement ...”
- para 7: ”Members recognize the desirability of promoting the transfer of technology and capacity ...”



**THANK YOU FOR LISTENING
(INCLUDING THOSE WHO WERE SLEEPING!)**

