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Health Action International (HAI) Europe, Oxfam and Action against AIDS Germany

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EU-Thailand FTA Negotiations: What Fate for Access to Medicines?

This week, from March 4 to 6, the Prime Minister of Thailand and her negotiating team visit Brussels to meet with EU officials and officially launch negotiations on a new Free Trade agreement (FTA) between the EU and Thailand. Based on our experience with earlier EU FTA negotiations, we have serious concerns over the repercussions this FTA will have on access to medicines in Thailand and the region. *“The EU’s position on intellectual property protection in previous FTAs, including the earlier failed negotiations between the EU and ASEAN, suggests that we can expect that the EU will push for intellectual property standards in the EU-Thailand FTA that go beyond Thailand’s WTO obligations under TRIPS and will limit access to medicines.”* Tessel Mellema, HAI Europe.

Overreaching IP protection and enforcement restricts and delays legitimate competition from generic manufacturers, thereby sustaining market monopolies, high monopoly prices, and significantly affecting access to affordable treatment. Stringent TRIPS-plus intellectual property (IP) provisions in earlier negotiated EU and US FTAs have reduced the availability of generic medicines, leading to an increase in medicines prices.ⁱ The EU’s initial demands in the EU - India trade negotiations have sparked great opposition from international agencies, developing country governments and civil society. The EU Parliament also recently rejected strong IP enforcement measures in the Anti-Counterfeiting Trade Agreement (ACTA), an agreement that would also have hindered generic competition.

Moreover, public health NGOs, the European Parliament, UNAIDS, the UN Development Programme, the UK Commission on Intellectual Property Rights and Development Policy, the UN Commission on HIV/AIDS and the Law, international IP academics, and also the World Health Organization (WHO) all recognise the link between TRIPS-plus IP provisions that disproportionately favour rights-holders, and poor access to medicines.ⁱⁱ

Further, we are concerned that the EU is likely to introduce investor-state dispute provisions in the FTA. Under such provisions pharmaceutical companies can claim that the government’s health regulations undermine enjoyment of their IP-related “investments”. This could lead pharmaceutical companies to sue the government of Thailand, arguing that the government’s measures to promote access to medicines, for example the issuance of compulsory licenses, will negatively affect their IP investments in Thailand. This may seriously threaten the possibility

for the government of Thailand to take measures to reduce the costs of medicines: the World Bank has estimated that if Thailand uses compulsory licensing to reduce the cost of second-line antiretroviral therapy to treat people living with HIV/AIDS by 90%, the government would reduce its future budgetary obligations by US\$3.2 billion discounted to 2025.ⁱⁱⁱ



The past weeks, civil society organisations and citizens in Thailand have taken to the streets and alerted their government to their concerns on how this comprehensive trade package with the EU will affect the prices of medicines, seeds and agricultural products in Thailand. They have also complained that the consultation with civil society on these FTA negotiations organized by the Parliament of Thailand was largely flawed. Last week more than 1,500 citizens

and activists gathered outside Government House in Bangkok to voice their concerns (see *picture*).^{iv}

The EU should refrain from demanding IP provisions that go beyond TRIPS as well as investment provisions and not misuse the instrument of an FTA to support the commercial interests of the pharmaceutical industry, while damaging the opportunities for innovation and access to medicines in Thailand.

“The EU should ensure that its trade policy is in line with its development objectives, including specifically enhancing access to medicines. It must consider the broader context and effects of its IP demands, not only for public health, but also for socioeconomic development. Erecting more monopoly barriers will only sustain the status quo of inequity in health and development that exists between citizens in developed, emerging, and developing countries.” Leila Bodeux, Oxfam International

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Endnotes

ⁱ All costs, no benefits: How TRIPS - plus intellectual property rules in the US-Jordan FTA affect access to medicines, Oxfam International (2007), http://www.oxfam.org.uk/resources/issues/health/downloads/bp102_trips.pdf. A Trade Agreement's Impact on Access to Drugs' (2010), Ellen R. Shaffer and Joseph E. Brenner, CPATH, www.healthaffairs.org; IFARMA. Impact of the EU Andean Trade Agreements on Access to Medicines in Peru. November 2009. HAI Europe. <http://haieurope.org/wp-content/uploads/2010/12/11-Nov-2009-Report-IFARMA-Impact-Study-on-EU-Andean-Trade-Agreement-in-Peru-EN.pdf>.

ⁱⁱ UNDP, UNAIDS Issue BRIEF 2012, The Potential Impact of Free Trade Agreements on Health, available at: <http://www.undp.org/content/dam/undp/library/hivaids/Issue%20brief%20-%20Potential%20impact%20of%20free%20trade%20agreements%20on%20public%20health.pdf>; Report of the UK Commission on Intellectual Property Rights, "Integrating Intellectual Property Rights and Development Policy", London September 2002, available at: http://www.iprcommission.org/papers/pdfs/final_report/CIPRfullfinal.pdf; World Health Organization Briefing Note: Data Exclusivity and Other TRIPS plus Measures (2006), Global Commission on HIV/AIDS and the law, Chapter 6, available at: <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>; Report of the Commission on IPRs, Innovation and public health, <http://www.who.int/intellectualproperty/documents/thereport/ENPublicHealthReport.pdf>; UN Human Rights Council, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover, 31 March 2009, A/HRC/11/12, available at: <http://www.unhcr.org/refworld/docid/49faf7652.html>; Resolution WHA61.21 (GSPoA) on public health innovation and intellectual property http://apps.who.int/gb/ebwha/pdf_files/A61/A61_R21-en.pdf; European Parliament resolution of July 12, 2007 on the TRIPS Agreement and access to medicines (P6_TA(2007)0353), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0353+0+DOC+XML+V0//EN>; European Parliament resolution of 8 May 2008 on trade and economic relations with the Association of South East Asian Nations (ASEAN) (P6_TA(2008)0195), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0195&language=EN>; EU Council Conclusions on the EU role in Global Health, Brussels 10 May 2010, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/114352.pdf

ⁱⁱⁱ http://www.bangkokpost.net/breaking_news/breakingnews.php?id=116803; p169, 'The Economics of Effective AIDS Treatment', Conference Edition, World Bank, Washington, 2006.

^{iv} A selection of news articles on concerns expressed by civil society in Thailand on the upcoming EU-Thailand FTA negotiations: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0195&language=EN>; <http://infojustice.org/archives/27058>; <http://www.nationmultimedia.com/business/HIV-patients-urge-caution-on-EU-FTA-talks-30190825.html>; <http://www.bangkokpost.com/news/local/315183/dept-probes-drug-access-fears>; <http://www.bdo-thaitax.com/bdo/in-the-news/4633>; <http://www.bangkokpost.com/opinion/opinion/324396/no-plus-for-patients-as-eu-deal-trips>; <http://www.nationmultimedia.com/national/NGOS-WARN-AGAINST-EXTRA-PATENT-PROTECTION-30195540.html>; <http://www.bangkokpost.com/news/local/338225/eu-trade-talks-offer-poor-deal>; <http://www.bangkokpost.com/news/local/338223/civic-groups-warn-against-pact-with-eu>.