

To,  
Mr. Suresh Prabhu,  
Minister of Commerce & Industry  
Government of India

**Subject: RCEP trade negotiations and its impact on access to medicines**

Dear Mr. Prabhu,

We are writing to you as concerned people living with HIV and civil society organizations working on the issues of intellectual property (IP), trade, and access to medicines to express our serious discontent over the IP provisions in the ongoing negotiations of the Regional Comprehensive Economic Partnership (RCEP). These provisions in RCEP are referred to as TRIPS-plus, and go way beyond India's obligations under the World Trade Organization's Agreement on Trade Related Aspect of Intellectual Property Rights (TRIPS). We call on the Government of India to protect the flexibilities available under TRIPS agreement in larger public interest.

We are aware that these sensitive issues will be considered by the RCEP ministers before the leaders' summit in Singapore next week. We fear that the governments of Japan and South Korea are trying to push towards a TRIPS-plus regime, which would expand and extend monopolies, leading to exorbitant prices of medicines. If they are successful and the proposed provisions are accepted, it will be a major setback for the public health safeguards existing under Indian patent laws. It will, in effect, restrict timely entry of generic medicines and keep them unaffordable for millions of patients across India and other developing countries.

We would specifically like to draw your attention to the following TRIPS-plus IP provisions that could possibly have an adverse impact on public health and access to medicines in India—

- **Patent Term Extension:** Extending pharmaceutical patent term beyond the TRIPS mandated 20 years, which will further delay generic entry;
- **Data Exclusivity:** Granting additional monopolies by prohibiting the drug regulatory authority from relying on clinical trial data to grant market approval to lower priced formulations of lifesaving medicines, sometimes even when patents on that drug have expired or do not exist;
- **IP Enforcement Measures:** A range of IP enforcement provisions which go beyond the requirement of the World Trade Organization's TRIPS Agreement, which could put the entire generic sector, including third parties such as treatment providers at a risk of litigation;
- **Investment chapter:** The investor-state dispute settlement allows pharmaceutical corporations to sue governments like India for applying TRIPS flexibilities to protect the right to health.

It is important that India categorically reject all the above mentioned proposed provisions that go beyond TRIPS so as to ensure that the final RCEP trade agreement is in line with India's

public health commitments. Since, failure to do so would severely restrict or block generic competition, the only proven mechanism for reducing the prices of medicines, which, in turn, would severely undermine access to affordable generic medicines in India.

India is called the pharmacy of the developing world for being a leading supplier of affordable generic medicines including for HIV, TB, malaria and other infectious diseases - across the world. In the past decade, India has utilized provisions under its patent laws to curtail abusive practices such as 'evergreening' of known medicines and protected generic competition as a matter of public policy. More importantly, through this, it is leading by example for other developing countries, which have incorporated stricter patentability standards into their laws.

We acknowledge that India in the past has resisted to proposals that could impose greater restrictions on generic medicines than that required under TRIPS. We urge India to continue maintaining its stand and insist that TRIPS-plus intellectual property provisions be excluded from the RCEP agreement, which would help bring down barriers to access to essential life-saving medicines.

Sincerely,

Delhi Network of positive People (DNP+)  
Community Network for Empowerment (CoNE), Manipur  
All India Drug Action Network  
Initiative for Health and Equity in Society  
Lawyers Collective  
Sikkim Drug Users' Forum  
Alwyn D'Souza, Head, Human Rights and Training Unit, Indian Social Institute, Bengaluru  
Dr Gopal Dabade, President, Drug Action Forum - Karnataka  
A Shankar, Empower India  
Eldred Tellis, Executive Director, Sankalp Rehabilitation Trust  
Jyotsna Singh, Health Writer  
Dr Mira Shiva  
Radha Holla Bhar  
Arul George Scaria, IP researcher and teacher  
Ganesh Acharya, TB Survivor, TB/HIV Activist, Mumbai  
Samir Banik, TB Survivor, Tripura  
Francis Joseph, Drug User activist and HCV survivor