



February 9, 2012

Respected Prime Minister,

Networks of people living with HIV, health groups and public interest groups are closely following the free trade agreement (FTA) negotiations between the EU and India because of the demands on intellectual property being made by the European Commission (EC). The EC's demands are aimed at undermining the production, registration and availability of generic medicines to people in India and to millions in developing countries.

Last year, we were heartened by the announcement from your office that India would not accept any provisions in the EU-India FTA that are beyond "TRIPS/domestic law." In the last few months, however, we have seen the increase in pressure on the Indian government to accept the various demands of the European Commission in the EU-India FTA negotiations. The EU ambassador to India has said now stated that - **"a political decision on the trade-offs has to be taken"**, at the upcoming **India-EU summit on February 10.**

We strongly assert that there can be NO POLITICAL TRADE-OFF on the ability of India to produce low cost generic medicines. As you are aware, millions rely on generic medicines produced in India for the treatment of HIV, cancer, heart disease, mental illness and many other diseases and conditions.

We request the Indian government to **reject all harmful provisions** in this trade deal, **particularly those related to intellectual property (IP) that will impact access to medicines and the right to health of millions in India and across the developing world. Specifically, we ask you to reject the following provisions:**

IP ENFORCEMENT MEASURES such as:

BORDER MEASURES, as they will deny medicines to patients in other developing countries with custom officials seizing generic medicines in transit.

INJUNCTIONS, as they undermine the independence of the Indian judiciary to protect the constitutional right to health of patients over private IP rights of pharmaceutical companies.

OTHER IP ENFORCEMENT MEASURES, as they put third parties like treatment providers at risk of police actions and court cases.

INVESTMENT PROVISIONS: We would also like to draw your attention to the negotiations on the investment provisions. As negotiations are likely to pick up pace on the investment chapter, we specifically **request the Indian government to not extend the definition of investment to include intellectual property, to exclude the investor-state dispute mechanism from the investment chapter and assess the impact of other provisions in the investment chapter on the ability of the Indian government to protect the right to health.** If included in the trade deal, the EU will be further expanding and supporting a mechanism for multinational companies including drug, tobacco and chemical companies to sue the Indian government - outside of domestic courts in secret arbitration for millions of dollars - when it regulates health and environment in public interest. As a result of the above mentioned provisions on investment in FTAs and Bilateral Investment Treaties, several such investment disputes have already been filed in secret arbitration by companies against governments to force a reversal of policies aimed at protecting public health (Phillip Morris vs. Uruguay), and environment (Dow Chemicals vs. Canada), which the companies claim lead to so called "expropriation" of their investments and profits.



Last year, the EC publicly stated that it will no longer push for '**patent term extensions**' and '**data exclusivity**', two of the most harmful provisions in the IP chapter of the trade deal that threaten access to affordable generic medicines for people living with HIV in India and the rest of the developing world. We ask the Indian government to ensure that the EC is not successful in bringing these back into the discussions (directly or indirectly) with the Indian negotiators and its ministers. **Specifically we would like to point out that data exclusivity is a TRIPS-plus measure.**

Finally, we trust that the Indian government will not accept ANY provisions in the trade deal that undermine India's ability to comply with any of its obligations under international human rights treaties, **especially the right to life and health.**

With the continuing seizures of generic medicines in Europe and the signing of the secretly negotiated IP enforcement treaty ACTA by the EU, it is evident that the European Commission is placing corporate profits before peoples' lives. **We ask the Indian government to send a clear signal to the European Commission at the EU-India Summit on the 10th of February 2012 that the Indian Government will not trade away the lives of patients in India and across the developing world.**

So many lives depend on it worldwide.
Sincerely,

Silvia Casas
Directora General