

10 February 2012

To
Karel de Gucht
European Commissioner for Trade
European Commission
Directorate General for Trade
1049 Brussels, Belgium

**Re: EU-India Free Trade Agreement
and
Re: Immediate withdrawal of ALL provisions impacting access to medicines
and right to health**

Mr de Gucht,

For the past several years, health and public interest groups around the world have been asking the European Commission (EC) to stop promoting dangerous trade policies that threaten the health and lives of millions across the developing world.

With ongoing negotiations on the EU-India FTA leading to the scheduled EU-India summit in February 2012, we, the undersigned, call upon you to desist from seeking the inclusion of provisions relating to intellectual property in the EU-India free trade agreement as they will adversely impact access to affordable medicines for millions of patients in India and across the developing world.

India – the lifeline for millions in the developing world

As you are well aware, India is one of the largest producers of generic medicines in the world. The importance of generic medicines from India is underscored by the fact that in 2008 of the 100 countries, 96 countries purchased generic ARV medicines from Indian generic makers. It is indisputable that the availability of affordable, quality generic anti-HIV medicines from India resulted in rapid scale up of HIV treatment in many countries, saving thousands of lives. Millions rely on India for medicines for HIV, cancer, heart disease, mental illness and other diseases.

As a member of the World Trade Organization, India amended its domestic laws to comply with its obligations under the Agreement relating to Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) in 2005. Amongst other provisions, it reintroduced product patent protection for medicines. At the

same time, India has made use of flexibilities available to it under the TRIPS Agreement and introduced public health safeguards in order to attempt to protect and promote public health. Health groups have been using these health safeguards to ensure that generic production continues from India.

EU's TRIPS-plus demands will undermine access to medicines

However, all this could change because of the EU-India FTA. It is evident from leaked negotiation texts of the EU-India FTA that the EU has been negotiating TRIPS- plus intellectual property provisions with India. While the proposed text proclaims respect for the Doha Declaration, the provisions actually militate against it. In the long run, these will whittle down India's capacity to continue to remain a producer of generic medicines. For instance, we understand that the EU still continues to demand that India provide **data exclusivity – a well known TRIPS-plus demand**.

We also understand that the EU is seeking **higher intellectual property enforcement standards**, which include border measures, facilitating the obtaining of court orders of injunction against suspected infringers and **inclusion of investment provisions**. Each of these would allow multinational pharmaceutical companies – the very same companies who historically priced medicines out of the reach of those who need them – to sue the Government of India and Indian generic companies, in a bid to restrict the policy space available to India to take measures to protect public health and to deter generic competition.

We are also dismayed at the signing of the secretly negotiated **Anti-Counterfeiting Trade Agreement (ACTA)** by the European Union that has been severely criticized by public interest and health groups who are concerned that ACTA could harm public health.

EU's trade policies are undermining human rights

The EU has always held itself out as a promoter of human rights and an advocate of developmental goals of poverty reduction and sustainable development. Yet, its trade negotiations with developing countries belie these claims. The United Nations, the World Health Organisation, the Global Fund on AIDS, TB and Malaria and UNITAID have all warned against developing countries, particularly India, being forced to adopt exactly the sort of demands that the European Commission is making in this FTA.

We also understand that your negotiating stand is also contrary to European Parliament resolutions. For instance, in 2007, the European Parliament adopted a resolution on the TRIPS Agreement and access to medicines calling on the Council to “meet its commitments to the Doha Declaration and to restrict the Commission's mandate so as to prevent it from negotiating pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, such as data exclusivity, patent extensions and limitation of grounds of compulsory

licences, within the framework of the EPA negotiations with the ACP countries and other future bilateral and regional agreements with developing countries.”

We, therefore, once again call upon you to demonstrate that the EU’s commitments to human rights are not mere protestations.

We call upon you to drop your demands for ANY and ALL provisions in the EU-India FTA and all other FTAs with developing countries that will adversely impact access to medicines.

Access to medicines is a right for ALL and not a privilege for only those who can afford to pay the exorbitant prices.

In solidarity,

Action against AIDS Germany, Germany
Advocacy Disabling Brain Illnesses, India
AIDS ACCESS Foundation, Thailand
AIDS Foundation of Chicago, USA
AIDS Law Project, Kenya
All India Drug Action Network (AIDAN), India
All-Ukrainian Network of PLWHIV, Ukraine
Alternative Agricultural Network, Thailand
Asia Pacific Network of People Living with HIV/AIDS (APN+)
Bangalore HIV/AIDS Forum (BHAF), Karnataka, India
Cancer Patients Aid Association (CPAA), India
Centre for Trade and Development (CENTAD), New Delhi, India
Central Michigan University chapter of the Universities Allied for Essential Medicines (UAEM), USA
Council of People living with HIV/AIDS in Kerala (CPK+), India
“DARY”, the Korean young medical progressives, Korea
Delhi Network of Positive People, India
Drug Study Group, Thailand
Drug System Monitoring and Development Program, Thailand
East Europe and Central Asia Union of PLWHA (ECUO)
Ecological Alert and Recovery – Thailand (EARTH), Thailand
Eurasian Coalition on Male Health
Foundation for AIDS Rights, Thailand
Foundation for Consumers, Thailand
FTA Watch, Thailand
Harvard chapter of Universities Allied for Essential Medicines (UAEM)
Health and Development Foundation, Thailand
Health Consumers Protection Program, Thailand
Health GAP (Global Access Project)
HIV Prevention Justice Alliance
Indian Network for People Living with HIV/AIDS (INP+), India

Intellectual Property Left, Korea
International Treatment Preparedness Coalition (ITPC)
Karnataka Network of Positive People, India
Kenya Legal and Ethical Issues Network on HIV/AIDS (KELIN), Kenya
Kenya Treatment Access Movement (KETAM), Kenya
Korean Gay Men's Human Rights Group 'Chingusai'
Korean Pharmacists for Democratic Society
Korean Progressive Network Jinbonet
Korea Progressive Academy Council
Lawyers Collective HIV/AIDS Unit, India
Milana Family Support Network for People Living with HIV/AIDS, Bangalore, India
MIT Chapter, Universities Allied for Essential Medicines
Network of Zambian People Living with HIV/AIDS, Lusaka
Positive Malaysian Treatment Access and Advocacy Group (MTAAG+)
Progressive Strategy Council, Korea
Public Pharmaceutical Center, Korea
Responsable du Service Plaidoyer et communication du RAME
Rural Doctor Society, Thailand
Rural Doctors Foundation, Thailand
Rural Pharmacists Foundation, Thailand
Sama – Resource Group for Women & Health, New Delhi, India
Sankalp Rehabilitation Trust, India
SECTION27, South Africa
Sex Work Project, Zambia
Social Pharmacy Research Unit, Chulalongkorn University, Thailand
Solidarity for HIV/AIDS Human Rights Nanuri+, Korea
Solidarity for Lesbian Gay Bisexual Transgender Human Rights of Korea
SPECWATCH KOREA
Thai Holistic Health Foundation, Thailand
Thai NGO Coalition on AIDS, Thailand
The Humsafar Trust (Sanjeevani), Mumbai, India
Thai Network of People living with HIV/AIDS, Thailand
Third World Network (TWN)
Torchbearers, New Delhi, India
Udaan Trust, Mumbai, India
University of Alberta Chapter, UAEM
Uttar Pradesh Network for People Living with HIV/AIDS (UPNP+)
Adriana Benedict, Harvard Law School, USA
Andrew Feinstein, Friends of Treatment Action Campaign (FoTAC), UK
Aria Ilyad Ahmad, Chair University of Toronto Chapter of UAEM
Professor Brook K. Baker, Boston, USA
Chris Lipp, University of Calgary Medicine Class of 2013, Canada
Dr Christiane Fischer, BUKO Pharma-Kampagne
Christina Laird, University of Florida Universities Allied for Essential Medicines
Dr Devaki Nambiar, New Delhi, India

Diane Singhroy, Universities Allied for Essential Medicines McGill and McGill
AIDS center
Eldred Tellis, Director, Sankalp Rehabilitation Trust, Mumbai, India
Geoff Heavyside, Honorary Director, Brimbank Community Initiatives Inc,
Australia
Gloria Tavera, Universities Allied for Essential Medicine
Imraana Quadeer, retired professor, New Delhi, India
Ms Jashodhara Dasgupta, International Initiative on Maternal Health and Human
Rights
Jaya Iyer, Zinda Dilli, New Delhi, India
Joshua Christian, Central Michigan University UAEM
Manisha Gupte, Pune, India
Max Bender, Universities for Essential Medicines Germany (UAEM
GERMANY)
Dr SL Pawar, Haveri, India
Ms Sandhya Y. K., National Alliance for Maternal Health and Human Rights
Ms Tithi Nandy, Healthwatch Forum Uttar Pradesh
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Coalition
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Sonja Babovic, UAEM
Sunil Babu Pant, Member of Parliament, Nepal
Tendayi Westerhof, Public Personalities Against AIDS Trust, Zimbabwe
Unni Gopinathan, Medical Student, University of Oslo
Yang, Hae-Rim. Chungnam National University, Korea