

TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE
CONSUMER DIALOGUE DES CONSOMMATEURS

Mr Günter Verheugen
European Commissioner for Enterprise and Industry
European Commission
Directorate General Enterprise and Industry
Rue de la Loi, 200
1049 Bruxelles - Belgium

Cc: Mr Martin Terberger, Head of Unit Pharmaceuticals
Ms Sabine Atzor, Policy Officer - Unit Pharmaceuticals

9 February 2009,

Dear Commissioner,

According to a number of reports, Dutch customs authorities have seized several shipments of generic drugs from India generic manufacturers that were temporarily stored in the Netherlands as goods in transit to developing country markets. TACD is concerned that this action undermines the trade liberalization provisions of the WTO and the WTO TRIPS accord, as they relate to the necessary freedoms to transport legitimate goods to legitimate markets, in a world where territorial patent rights could otherwise present barriers to trade.

TACD notes that in the 2001 Doha Declaration, as members of the WTO, the members of the European Union recognized "the gravity of the public health problems afflicting many developing and least-developed countries," and stressed "the need for the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems." In Paragraph 4 of that Declaration, WTO members agreed that "the [TRIPS] Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all."

TACD also notes that the members of the European Union have supported the 2008 World Health Organisation resolution WHA61.21, which states that "international negotiations on issues related to intellectual property rights and health should be coherent in their approaches to the promotion of public health," and calls upon member states to "take into account, where appropriate, the impact on public health when considering adopting or implementing more extensive intellectual property protection than is required by the Agreement on Trade-Related Aspects of Intellectual Property Rights."

TACD would appreciate a clarification of Dutch and EU policy toward the treatment of patent rights for goods in transit, including but not limited to medicines that are in transit to developing country markets. TACD also asks the Commission to disclose and explain the proposals the Commission has been negotiating in the context of the European Partnership Agreements (EPAs), Free Trade Agreements (FTAs), Association Agreements, The Anti-Counterfeit Trade Agreement (ACTA), and other trade agreements on the topic of border measures, provisional measures, and goods in transit.

Finally, to what extent has the EU consulted with the public health community and legitimate generic drug suppliers to determine if current EU rules and practices are consistent with the policy of facilitating access to medicines?

We also respectively ask for clarification with DG Trade, DG Taxation and Customs, and DG SANCO.

Sincerely,

TransAtlantic Consumer Dialogue (TACD) Working Group on Intellectual Property
European Co-Chair Jill Johnstone, ConsumerFocus
US Co-Chair James Love, Knowledge Ecology International (KEI)

cc: Cynthia Vogeler, Consumentenbond
Sophie Bloemen, Health Action International (HAI)