

# TACD

TRANS ATLANTIC  
CONSUMER DIALOGUE

DIALOGUE TRANSATLANTIQUE  
DES CONSOMMATEURS

Baroness Catherine Ashton  
European Commissioner for Trade

European Commission  
Directorate General for Trade  
Rue de la Loi, 200  
1049 Bruxelles - Belgium

Cc: Mr Peter Balas, Deputy Director General  
Mr Luc Pierre Devigne, Head of Unit Public Procurement, intellectual property  
Mr Pedro Velasco Martins, Policy Officer, Unit Public Procurement, intellectual property

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 Enterprise and Industry, 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)