

HANDS OFF OUR MEDICINES!

7-12-11

Karel De Gucht
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Dear Mr. Gucht,

Re: India-EU FTA negotiations - provisions that affect access to affordable generic medicines

The 14th round of negotiations on the EU-India FTA is being held in New Delhi (5 – 9 December) between officials from the European Commission and the Indian Government. DNP+ would like to raise key concerns regarding the status of negotiations on Intellectual Property (IP) and investment provisions in the negotiations with India.

The EC has reportedly handed an ultimatum over to the Indian government to complete negotiations on the FTA in the next three months or it would be off the table. DNP+ is concerned that the EC is pushing India to start compromising on key issues including on IP provisions that affect our access to affordable generic medicines produced in India.

This 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 hope that the EC will stand by its position and promises made publicly to people living with HIV and not try to bring these back into the discussions (directly or indirectly) with the Indian negotiators and its ministers in the next 3 months.

DNP+ also requests the EC to take other harmful IP provisions out of this trade deal, particularly IP enforcement measures such as:

1. **BORDER MEASURES**, as it will deny medicines to patients in other developing countries with custom officials seizing generic medicines in transit.
2. **INJUNCTIONS**, as it undermines the independence of the Indian judiciary to protect the constitutional right to health of patients over private IP rights of pharmaceutical companies.
3. **OTHER IP ENFORCEMENT MEASURES**, as it puts 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 EC to not extend the definition of investment to include intellectual property and to exclude the investor-state dispute mechanism**. If included in the trade deal, the EC will be further expanding and supporting a mechanism for multinational companies including drug, tobacco and chemical companies to sue developing countries like India - 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

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vs. Uruguay), and environment (Dow Chemicals vs. Canada), which the companies claim lead to so called “expropriation” of their investments and profits.

SECRET NEGOTIATIONS: As indicated by the Indian Department of Commerce, the EC has consistently demanded that India keep the process and content of the FTA negotiations secret. This conduct of the EC in relation to FTA negotiations is inconsistent with human rights. These include the obligation to respect access to information (article 19 of ICCPR); to ensure every citizen’s right to participate in the conduct of public affairs (article 25 of ICCPR). We hope that the EC will change this policy in the coming months leading to greater transparency and debates among experts, law makers and civil society in India.

Finally, we trust that the European Union recognized for its respect for human rights, will not push India to accept IP provisions in the trade deal that undermine India’s ability to comply with any of its obligations under the International Covenant on Civil and Political Rights (ICCPR), especially the right to life and health.

So many lives depend on it worldwide.

Awaiting a response to our concerns,

Sincerely,

A handwritten signature in black ink, appearing to read 'Vikas Ahuja', with a horizontal line underneath.

Vikas Ahuja
President
DNP+