



Mr. Pascal Lamy
Member of the European Commission
European Commission
200, rue de la Loi

B – 1049 Brussels

12th December 2002

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Dear Commissioner Lamy,

I write on behalf of BEUC, the European Consumers Organisation, to express our grave concern at the evolution of the negotiations in Geneva on access to medicines.

Apart from the substantive issue involving the welfare of millions, the negotiations seem to be proceeding to an outcome that may seriously affect BEUC's trust in the entire WTO negotiation process. I say this on behalf of an organisation that supported the Uruguay Round despite our reservations about the TRIPS agreement at the time.

If the outcome of the current discussions on the paragraph 6 of the Doha declaration on TRIPS and Public Health does not keep faith with the original TRIPS agreement and with the DOHA Declaration, why should we trust any agreement that might be reached in the current global negotiations?

While hard information is difficult to come by, we are concerned about the following possible (and, according to some sources, more or less likely) outcomes:

- A limitation of the agreement to certain diseases such as HIV/AIDS, TB and malaria.
- The exclusion of vaccines and certain medical devices from the scope of the agreement.
- The placing of unreasonable restrictions on the production and export of essential medicines including, but not confined to, a requirement of prior notification and /or approval on a case by basis.

- The potential involvement of the WTO secretariat in the micro-management of trade rules involving issues of public health.
- A limitation on exports from manufacturers in developing countries to any developed country that invokes the compulsory licensing provisions of the TRIPS agreement.
- Demanding commitments from developing countries not to avail fully of the provisions of Par 7 of the DOHA declaration.

These outcomes would not keep faith with the original TRIPS agreement. They would be in flat contradiction of the DOHA Declaration. They would give priority to the political and economic pressures of the pharmaceutical industry over the lives and well-being of millions of people. (They would also contradict the position taken recently by the European Parliament in the context of the revision of the pharmaceutical directives.)

These outcomes would also deal a heavy blow to any possibility of gaining sufficient public support within the EU for the current global round of trade negotiations.

When BEUC was considering what position to take on the proposed Marrakech agreement, we were concerned about TRIPS in particular. Among other worries we feared that it would place a heavy burden on developing countries and might be used to force them to give priority to enforcing patent rights when they could not provide the most basic needs of shelter, sustenance and security to their people. In discussion with the Commission we were assured that our fears were groundless and that there was sufficient room for manoeuvre in the TRIPS agreement for developing countries to tackle public health needs.

The Commission gave those assurances in good faith but it is now clear that they were naïve.

Whatever its original intention or meaning, the TRIPS agreement was (mis)used and (mis)applied in the interests of rich countries and powerful political and economic forces. The US government and the US pharmaceutical industry were the most active in this context but the record of the European pharmaceutical industry and the EU itself, notably during Commissioner Brittan's time, is also a sorry one.

The current EU negotiating position in Geneva would not fulfil the promise of the DOHA declaration. It seeks to place so many restrictions and conditions on access to medicines as to jeopardise the exercise of the rights it purports to promote.

Whatever international agreements may say, powerful economic and political interests can in very large measure determine how they are interpreted, implemented and applied afterwards in practice. To mitigate this factor, the current negotiations should give developing countries clear, unambiguous and ample freedom of manoeuvre to access the medicines that are needed (among

many other things) to save the lives of millions. They were supposed to have been able to do that under the original TRIPS agreement and they were promised they could do it under the DOHA Declaration.

Even at this late stage we urge the EU to join the developing countries to press for a much wider, simpler and clearer implementation of the DOHA declaration - noting also that such an approach would be in line with that proposed by the European Parliament.

The issue of access to medicine is the substantive and important issue here. I repeat, however, that a bad outcome to the current negotiations could jeopardise public support in the EU for the entire global trade negotiations.

Finally it would be helpful if we could have an opportunity to discuss these issues with you or with relevant colleagues before final decisions are taken in Geneva.

Yours sincerely,



Jim Murray
Director

CC President Romano Prodi
Commissioner Neilson
Commissioner Byrne
Commissioner Liikanen
Danish Presidency