



Karel De Gucht
Commissioner for Trade
Directorate General Trade
European Commission
Rue de la Loi 200
BE-1049 Brussels

16 May 2012

Dear Commissioner De Gucht,

In anticipation of the World Health Organization (WHO) World Health Assembly (WHA) in Geneva on 21-26 May 2012, we would like to reiterate to you our serious concerns regarding tabled proposals for a binding R&D treaty.

We welcome your response to our 12 January 2012 letter on this issue that an international health-related R&D tool is not the appropriate tool to modify the existing international IPR system. However, developments at the WHO are moving rapidly. The Consultative Expert Working Group (CEWG) on Research and Development released on 5 April 2012 a report calling for negotiation of a binding treaty to regulate the financing and coordination of research and development (R&D). If WHO Member States were to agree on the desirability of an R&D treaty, the Assembly could in effect authorize the beginning of a treaty negotiation process.

In particular, the CEWG report details worrying proposals suggesting open approaches to R&D that would involve flexible use of IPRs, which could require companies to make public information that they typically hold in confidence or undermine a market-based approach of innovation. If IPRs are weakened or curtailed, important innovations in health technologies that would greatly benefit emerging markets may never occur, and European industry may lose critical competitive advantage.

Such an R&D treaty could risk undermining intellectual property rights protection (IPRs) a key driver of innovation, economic growth and job creation for Europe's health products and technologies. At the same time, IPR protection also benefits developing markets now more than ever, as products and technologies are being both developed for use and often engineered in developing countries, via public private partnerships. In addition, a WHO R&D treaty could also set a dangerous precedent of IPR erosion with a possible spill-over effect to other sectors.

Despite these concerns, it appears that the WHO Secretariat overseeing the CEWG process supports the idea of a binding treaty, as proposed by the CEWG report that could also be endorsed by Member States such as China, Brazil and India.



For these reasons, we urge you to oppose any effort at the WHA to form a consensus that would enable negotiation of a binding R&D treaty to commence. If treaty negotiations begin, it could prove difficult to challenge particularly detrimental to IPR protection proposals in any resulting treaty. We are convinced that sustained innovation is most likely when it is led by the private sector, driven by market needs, and supported by strong IPR protection.

We remain at your disposal to discuss our concerns further.

A similar letter is being sent to Commissioner Dalli.

Yours sincerely,

Handwritten signature: Philippe de Buck

Philippe de Buck