



EUROPEAN COMMISSION
Directorate-General for Trade

The Director General

Brussels, **26 OCT. 2010**
C3/AG/ D(2010)

Mr Taavi Tillmann
taavi@eg24health.org

Subject: Your email of 23 September 2010 on the EU-India FTA

Dear Mr Tillmann,

Thank you for your email expressing concern about the potential impact of the EU-India FTA on access to generic medicines. I appreciate that your stay with a hospital in Kerala has left a lasting impression.

I am fully conscious that India is an important source of generic medicines which the world's poorest heavily depend on. Also, I can reassure you that this is duly taken into account in the bilateral trade negotiations for a trade agreement between the EU and India.

First of all, I would like to be very clear that nothing in this agreement will prevent India from using compulsory licensing for manufacture and export of medicines to other developing countries in need. To this effect, the Commission has already proposed an explicit reference to the Doha Declaration on the TRIPS Agreement and Public Health so as to ensure that the flexibilities granted by the TRIPS Agreement, especially as regards patents on medicines, can be fully used by India. Moreover, the Commission has proposed a provision stating that "nothing in this Agreement shall be construed as to impair the capacity of the Parties to promote access to medicines".

Furthermore, your email also refers to the detainment of generic medicines in transit. I would like to recall that there were only a few isolated incidents of detention of consignments of generic medicines in transit through the EU, all of which date back to 2008. The Commission took these incidents very seriously and continues to do so. You will have noticed that following these incidents, the Commission took measures to prevent their reoccurrence. Furthermore, the Commission is currently engaged in consultations with India and Brazil to find a long term solution in the context of the ongoing review of the relevant customs regulation that would clarify the applicable EU legislation and thereby ensure the smooth flow of generic medicines which are not destined for the EU market, but are merely transiting through it. Any agreed solution would also be reflected in the EU-India FTA, which will not contain commitments that would lead to blocking trade in generics.

As regards the extension of patent protection term, let me reassure you that this issue is no longer under discussion with India.

With respect to counterfeit, let me assure you that the Commission does not make any confusion between generics and counterfeit medicines. In this respect, a definition of "counterfeit medicines" is currently being discussed at the international level in the context of the World Health Organization (WHO) and there is no intention to include a specific definition in the EU-India FTA.

I hope this will reassure you that we are very conscious of the importance of Indian generic medicines for poor countries and will ensure that the FTA under negotiation with India will not impair access to affordable generic medicines in the world's poorest countries.

Yours sincerely,

A handwritten signature in black ink, appearing to read "D. Sullivan", written in a cursive style.

David O'Sullivan