Open letter to the High Commissioner to India for South Africa from TAC and SECTION27

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Mr Virendra Gupta
High Commissioner for India to South Africa
852, Schoeman Street
Arcadia ? 0083 Pretoria
By fax: +27 (012) 342 5310

6 February 2012

Dear Mr Gupta

RE: Urgent concerns with final negotiations for the EU-India Free Trade Agreement

The Treatment Action Campaign and SECTION27 would like to request a meeting with you prior to the EU-India Summit, to be held on 10 February 2012. In the meeting, we would like to discuss provisions for the scale up of intellectual property, pushed by the European Union, in the impending EU-India Free Trade Agreement (FTA) and the impact of these provisions on the health of people across the developing world.

Affordable antiretroviral medicines (ARVs) coming from India have been critical to the rollout and scale up of ARVs for people living with HIV across Africa. A recent study of ARV purchases between 2003 and 2008, found that India supplied over 80% of antiretroviral medicines for the treatment of HIV in the developing world.[1] Beyond HIV, India is a vital supplier of affordable generic medicines to treat all diseases. The International Dispensary Association, for example, procures over 75% of its medicines from India for the treatment of all diseases.[2]

We are therefore deeply concerned that the impending trade agreement between India and the EU could undermine India?s ability to continue to supply medicines to the developing world.

On 1 July 2010, the TAC wrote to the former High Commissioner to South Africa, Mr Bhatia, highlighting our concerns with provisions in draft versions of the FTA.[3] Most of these concerns remain urgent today as the EU continues to push many of these provisions in the final stages of negotiations, including data exclusivity and enforcement measures.

Data exclusivity is a tool the EU is pushing to delay the registration and sale of generics ? even in cases where the originator company does not hold a patent in the country of sale. During the period of data exclusivity, generic

companies cannot use clinical trial data of the originator company to register their products for sale. In most cases generic producers are unable to repeat the clinical trials of the originator company as it would be unethical to carry out a trial on human subjects for a medicine already proven effective, in addition to the cost and time constraints of carrying out such trials.

The EU is also pushing for strict enforcement measures in the FTA, including border measures to allow customs officials to seize medicines in transit for alleged patent or trademark disputes. Additionally the EU is pushing for an ?investor-to-state dispute mechanism? in the investment chapter of the FTA. This would allow pharmaceutical companies to sue the Indian government through arbitration mechanisms outside of India?s judicial system. For instance, this would allow a pharmaceutical company to sue the Indian government for instituting a pro-public health policy in a tribunal that does not uphold the country?s constitutional right to health.

Measures pushed by the EU in the FTA would effectively block India from producing and exporting many medicines ? resulting in higher prices for and reduced access to medicines across the developing world.

During negotiations with the EU, India has resisted provisions to scale up intellectual property protections pushed by the EU. We urge India to retain this stance throughout the final stages of the negotiations by rejecting the inclusion of any intellectual property provisions as well as border and enforcement measures in the EU-India trade agreement.

We would like to request a meeting to discuss our concerns further.

Yours respectfully,

Nonkosi Khumalo
Acting General Secretary of the Treatment Action Campaign

Mark Heywood
Director of SECTION27

[1] B Waning et al. A lifeline to treatment: the role of Indian generic manufacturers in supplying antiretroviral medicines to developing countries. JIAS 2010 http://www.jiasociety.org/content/13/1/35
[2] M Khor. Global Trends. 9 January 2012. Available at http://donttradeourlivesaway.wordpress.com/2012/01/09/poser-over-medicine-suppliesglobal-trends/
[3] TAC, Letter to the High Commissioner for India to South Africa. 1 July 2010 http://www.tac.org.za/community/node/2896
