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Open letter to: Working Group members
AMLAT
C133
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Brussels, 23 April 2009

Subject: Grave concerns about Intellectual Property Rights in the CAN-EU Association Agreement and its impact on Access to Medicines

Dear Sir/Madam,

The third round of negotiations between the European Union and Peru, Colombia and Ecuador will take place in Brussels from 4 to 9 May. On behalf of a wide constituency of non-governmental organisations representing European and Andean civil society, we would like to express our grave concerns with respect to these agreements that will have a negative impact on access to medicines through the inclusion of overreaching Intellectual Property Rights provisions.

The European Commission (EC) failed to demonstrate flexibility when the Andean Community (CAN) countries could not reach a consensus on contentious issues in the initial Association Agreement, such as intellectual property rights. Instead of promoting a pro-development platform by accepting and incorporating progressive proposals by Ecuador and Bolivia, the EC pressured the Andean countries. What started as an Association Agreement between the European Union and the CANⁱ is now proceeding in the form of bilateral agreements. Without a coalition, the CAN countries are more likely to accede to European demands that do not sufficiently take into account the public interest.

A number of the EC's proposed IP provisions create barriers to access to essential medicines. As the main supranational regulation that the CAN possesses is their common regime on IP, the negotiations with the EC on IP could also contribute to further ruptures within the Andean Community regional bloc. This thoroughly undermines the EU's commitment to foster regional integration.

The European proposal contains:

- Overreaching IP regulations that will restrict and delay generic competition and therefore sustain high medicines prices. Generics play a vital role in raising public health standards as their prices are on average only one third of branded medicine;
- An IP chapter that has been exclusively formulated to protect the rights of IP holders. It includes TRIPS *plus*, TRIPS *extra* and EC *extra* provisions and inhibits interpretation from a public interest or health perspective.ⁱⁱ

- IP enforcement standards that go far beyond TRIPS obligations. The standards include the border measures provision on in-transit goods, which has recently been rejected by members of the WTO and the international public health community. The recent cases of Dutch seizures of generic medicines in-transit are a dire warning of things to come if these enforcement provisions are featured in trade agreements with developing countries.
- Provisions on patent law and data exclusivity that will inflate health costs and decrease the ability to pay for medicines for poor people in the Andean region.

Preliminary findings from impact studies¹ show that the extension of the patent period by 5 years in Peru would increase the price of medicines by up to 26%. In Colombia, data exclusivity provisions would increase the annual medicines spending to 217 million dollars (see annex 2).

Aside from the damaging public health consequences, the European position is alarmingly incoherent with other EU policy. The inclusion of TRIPS *plus* provisions are inconsistent with the recommendations handed down by the European Parliament and with prior EC commitments in other multilateral forums, such as the World Health Assembly (WHA)ⁱⁱⁱ, Doha and the commitments of all the EU Member States in international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights.^{iv}

Protecting the European knowledge economy is a legitimate aim. Yet, the current EC approach of imposing overreaching IP standards in trade agreements with developing countries is not acceptable and does not protect or improve the European knowledge economy. There is a profound asymmetry in EC policy towards developing countries: the EC refuses to assume new commitments (for instance to enable technology transfer to developing countries), while simultaneously imposing heavy burdens on developing countries to protect intellectual property at the expense of the public interest and public health. Pursuing overreaching IP standards is a consistent part of the EC's trade policy.^v However, Policy Coherence for Development provisions contained in EU treaties^{vi} should compel the EC to recognise the Member States' commitment to support development and avoid IP regulations that run counter to that commitment.

The signatories of this letter respectfully request that the Council puts pressure on the European Commission to curb its IP demands in these agreements, thereby granting the CAN countries their legitimate flexibilities to protect public health.

Yours sincerely,

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¹ Interim results from impact studies conducted by researchers at IFARMA are expected to be completed in June. The methodology was developed by a consortium of organisations including WHO, PAHO, the World Bank Institute and the International Centre for Trade and Sustainable Development (ICTSD). For more info see www.haiweb.org



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ⁱ The CAN is composed of Bolivia, Colombia, Ecuador and Peru.

ⁱⁱ See Annex (fact sheet)

ⁱⁱⁱ WHA Resolution 62.21, Global Strategy on Public Health, Innovation and Intellectual Property, 2008.

^{iv} ICESCR, United Nations GA, 1966.

^v Strategy for Enforcement of Intellectual Property Rights in Third Countries. EC, DG TRADE

^{vi} Treaty on the European Union; Title I, Article 3, Treaty establishing the European Community; Article 177, 178