



Open letter to:  
European Commissioners  
Members of the European Parliament  
ENVI Committee  
INTA Committee  
DEVE Committee  
Press

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9th February, 2009

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

Dear Sir/Madam,

On behalf of a wide constituency of non-governmental organisations representing European and Latin American civil society organisations, we would like to express our grave concern with respect to agreements under negotiation between the EU and Andean Community countries (CAN), especially as these agreements will impact access to medicines in the Andean region through the inclusion of strict Intellectual Property Rights provisions.

The Association Agreement under negotiation between the European Commission and the Andean Community (CAN)<sup>i</sup> will proceed in the form of bilateral agreements - country by country- under the name of a 'regional platform'. The European Commission failed to demonstrate flexibility when CAN countries could not reach a consensus on certain contentious issues, including intellectual property rights in the Agreement. The EU, in lieu of promoting a pro-development platform by accepting and incorporating progressive proposals by Ecuador and Bolivia, instead forcefully pressured Latin American countries until the group fell apart. CAN countries, without a coalition, are more likely to accede to EU demands that will not take into account the public interest and will instead weaken the on-going needs of people in Latin America.

Rigid and overly ambitious Intellectual Property (IP) provisions contained in the EU proposal have been one of the most significant obstacles to a consensus within the CAN. The intellectual property provisions, depending on their content, could constitute a serious barrier to access to essential medicines in the Andean Community countries. The EU proposal contains:

- Rigid IP regulations, which 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 those of branded medicines;
- Provisions on patent law and enforcement, which could inflate Andean governments health budgets and, in the private sector, restrict the ability of low-income citizens to pay for their medicines.

- Sections on IP that have been exclusively formulated to protect the rights of IP holders; these include TRIPS *plus, extra* and EC *extra* provisions and impede interpretation from a public good or health perspective.<sup>ii</sup>

Apart from these direct concerns on the impact on health the EC is also overstepping the boundaries as:

- The inclusion of TRIPS *plus, extra* and EC *extra* provisions are inconsistent with the recommendations handed down by the EP and with prior EC commitments in other multilateral forums, such as the World Health Assembly (WHA)<sup>iii</sup> and 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<sup>iv</sup>
- The overall emphasis on enforcement of IP rights stands out – the proposal foresees IP protection standards even more stringent than those adopted within European community law.

In May 2008, the EC committed itself to the *Global Strategy & Plan of Action on Public Health, Innovation and Intellectual Property (GSPA)*, at the World Health Assembly.<sup>v</sup> This resolution devotes considerable attention to IPRs and their impact on public health, singling out the worrying practice of including far-reaching IPR protection clauses in bilateral trade agreements. The demands in the EC's proposed text with the CAN countries are in contradiction with this resolution as well as with an earlier resolution of the European Parliament on TRIPS Plus and Access to Medicines in July 2007.<sup>vi</sup>

Protecting the European knowledge economy is a legitimate aim. Yet, the current EC approach of imposing increasingly rigid 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 upon developing countries to protect intellectual property at the expense of the public interest and public health. Pursuing high IP standards is a consistent part of the EC's trade policy.<sup>vii</sup> However, Policy Coherence for Development provisions contained in EU treaties<sup>viii</sup> should compel the EC to recognise the Member States' commitment to support development and avoid stringent IP regulations that run counter to that commitment.

The rigid IP standards demanded by the EC will severely damage access to medicines for people in the Andean region. The signatories of this letter respectfully request that the European Commission adapt its demands on intellectual property rights contained in these agreements, thereby granting the CAN countries their legitimate flexibilities, as laid down in previous multilateral forums. In particular, the negotiated text on IP should be coherent with, and refer to the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, WHA Resolution 62.21.

Yours sincerely,

Health Action International, Europe  
 EU Coherence, Evert Vermeer Foundation  
 European Public Health Alliance (EPHA)  
 Oxfam International

# EU★COHERENCE

EU POLICY COHERENCE FOR DEVELOPMENT

The EU Coherence Programme, a joint initiative of the Evert Vermeer Foundation and CONCORD. European policies that affect development objectives in a harmful way should be avoided. This is called Policy Coherence for Development. The EU Coherence programme identifies incoherent EU policies, bring these to the attention of the European policymakers and suggest remedies.

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<sup>i</sup> The CAN is composed of Bolivia, Colombia, Ecuador and Peru.

<sup>ii</sup> See Annex (fact sheet)

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

<sup>iv</sup> ICESCR, United Nations GA, 1966.

<sup>v</sup> WHA Resolution 62.21, Global Strategy on Public Health, Innovation and Intellectual Property, 2008.

<sup>vi</sup> European Parliament, P6\_TA(2007)0353, July 12.

<sup>vii</sup> Strategy for Enforcement of Intellectual Property Rights in Third Countries. EC, DG TRADE

<sup>viii</sup> Treaty on the European Union; Title I, Article 3, Treaty establishing the European Community; Article 177, 178