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Peter Mandelson
European Commissioner for Trade
Paris, august the 22th

Object: To call for a clarification of the European Commission's position regarding compulsory licensing in Thailand.

Reference: Letter by Commissioner P. Mandelson to the Thai Government on July, 18th, 2007.

Sir,

As French organizations of people living with AIDS, or people concerned by it, who advocate for universal access to HIV/AIDS treatments, we have consistently supported the positions of the Thai Network of Positive People (TNP+). In recent years, TNP+ has urged the Thai government to authorize the production of generic versions for all medications (including Antiretrovirals) which might be needed by AIDS patients. TNP+'s claims were finally heard on the eve of 2007, when the Thai government issued compulsory licenses for three drugs, two antiretroviral and an antithrombotic.

It is thus that we are extremely shocked by the letter you sent to the Thai government on July, 18th. In this letter, you called into question the Thai government's health policy with respects to compulsory licensing, a measure

aimed at offering broader access to generic medicines. The position you have decided to endorse is clearly contradictory to that of the European Commission on this crucial topic.

You wrote: « *Neither the TRIPS Agreement nor the Doha Declaration appear to justify a systematic policy of applying compulsory licenses wherever medicines exceed certain prices.* » This is in complete contradiction with the TRIPS agreement, which claims that “Each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted”.

May we also remind you that the internal law of the European Union makes it clear that excessive pricing is an explicit reason for State members to issue compulsory licenses when public health is of concern. (See, for instance, the L613-16 of the French Law Code on Intellectual Property, which reads “*Patents can be placed under the regime of Compulsory Licenses by State as soon as the product they protect is delivered either with a quality or a quantity that is insufficient, or that the pricing is abnormally high*”). Hence, your recent remarks to the Thai government have no legitimate legal basis. By making the statements that you have made, you give the impression that you are rewriting the international law in the interest of the brand pharmaceutical industry, regardless of the consequences this has on the patients.

You further encouraged Thailand to negotiate with the pharmaceutical companies that own the patents. Nothing in the TRIPS agreement nor in the Doha Statement, makes it compulsory for a government to act this way in case of a major health crisis. Once again, it seems that you want to rewrite the international law. In addition to that, your remarks appear even less justified when we go into the detail of your argumentation. May we remind you that the Thai government negotiated during two years with the drug companies before it resorted to the compulsory licenses, even though it had no obligation to do so?

You also wrote that the decision of the Thai government « *risks forcing more drug companies to abandon their patents and could lead to the isolation of Thailand from the global biotechnology investment community* ». This sounds like a veiled threat. Albeit a legal decision, the American drug company Abbott decided in February to deprive Thai patients from any therapeutic innovation as a mean of retaliation against issuance by the Thai government of compulsory licenses. You could have condemned this decision which imperils dozens of thousands of peoples, but you did not. By qualifying such profit motivated practices as “normal”, and by blaming Thailand alone for Abbott’s decision, you give the impression that you actually support these sorts of threats. It is extremely shocking to see a European Commissioner adding to the already unbalanced relationships of power between developing countries and drug companies. Willingly or not, you’re supporting the hostage taking policy led by Abbott.

Lastly, the European Parliament adopted a resolution on July, 12th, 2007 which called the European commission to back up the countries which, like Thailand, would like to resort to the flexibilities mentioned in the TRIPS agreement and in the Doha Declaration. Concretely, what are you planning to do regarding this resolution? Your letter to the Thai government, which is clearly in a complete contradiction with the Parliament's resolution, leads us to believe that you are totally indifferent to the Parliament's suggestions. Can you prove to us that this is not the case?

Each and every day 10,000 people die from AIDS due to a lack of treatment. This outcome is not inevitable. The AIDS pandemic is before everything a human one. Given that you seem to defend the rights of the companies against the lives of patients, your pressure on the Thai government could make you an objective ally of the pandemic.

That's why we ask you to correct your mistakes and approximate statements. We also ask you to clearly recall that the Thai politics is in agreement with the international law on intellectual property. We request that you support – along with the European Parliament – the countries that resort to the flexibilities mentioned in the TRIPS agreement and in the Doha statement. If you choose not respond to this request in a timely fashion, we will be forced to take action and to publicly condemn your position.

Sincerely,

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