



15 OCT. 2018

CH-3003 Bern, GS-EAER, JSA

Mr.
Patrick Durisch
Public Eye
Dienerstrasse 12
Postfach
8021 Zürich
Switzerland

Bern, October 9, 2018

Your letter regarding the IP provisions in a future free trade agreement with Indonesia

Dear Mr. Durisch,
Ladies and Gentlemen,

Thank you for your letter dated September 11, 2018, in which you express your concern regarding the inclusion of provisions going beyond the minimum legal standard set by the members of the World Trade Organisation (WTO) in the TRIPS Agreement in a future EFTA-Indonesia free trade agreement. In particular, you raise the concern that the inclusion of such provisions could negatively affect Indonesian patients' access to medicines.

Access to quality medical products is a complex health and development challenge. It depends on the physical availability and financial affordability of a product as well as its geographical accessibility and acceptability. At the same time, access is subject to both supply and demand. Whether a patient gains access to a product depends on many factors and is different depending on disease and product.

We share your view that it is often the poorest who suffer most and do not have adequate access to quality medical products. Increasing countries' prosperity may help to improve health systems, in particular for the benefit of the poorest. To put in place a health system that provides citizens with relevant prevention, treatment and care is among the primary responsibilities of governments around the world. One way of improving health finance and extending health systems is by increasing prosperity. Free trade agreements promote economic growth and can thus contribute to increase resources states have at their disposal to realise the right to health, for instance by investing more in their public health systems.

In addition to lowering tariffs, free trade agreements provide legal certainty. Their provisions help to clarify multilateral standards by reflecting each other's common legal protection level, which may go beyond the multilateral minimum standards. Considering the ever-growing share of goods and services entailing an intellectual property right, including provisions on intellectual property protection in free trade agreements is important. Intellectual property protection provides incentives for investment



into research and development of new medicines and thus promotes the availability of medical products and contributes to the realisation of the right to health.

In the negotiations with Indonesia EFTA seeks to achieve a comprehensive and balanced outcome for the benefit of all countries involved. A future agreement should add value in all areas under negotiation for all parties, thereby leading to a deepening of bilateral trade relations. The EFTA free trade agreements therefore also seek to achieve mutually agreeable protection of intellectual property rights. This should improve the protection level as compared with the minimum standards created by the 1994 TRIPS agreement and treaties administered by the World Intellectual Property Organisation. Most countries provide for such additional standards in their national law, which can be reflected in a free trade agreement.

The negotiations with Indonesia are ongoing and we still have to overcome substantial challenges. Please be assured that in all their negotiations the EFTA states give special consideration to the development concerns of the partner countries and their respective national legislation. As you are aware, there is the possibility for exemptions to safeguard public health interests, as agreed under the WTO Doha Declaration on TRIPS and Public Health of 14 November 2001. Those possibilities are not called into question by free trade agreements. On the contrary, EFTA usually proposes in its negotiations their explicit confirmation.

You also raise the issue of the transparency of free trade negotiations. Both Norway and Switzerland have internal mechanisms in place that allow for a regular exchange between the negotiation teams and interested civil-society actors. Within those frameworks, the negotiators inform about the state of the negotiations and stakeholders have the possibility to ask specific questions. It is, however, in the very nature of free trade negotiations that the discussions themselves are confidential.

We hope that these explanations help to clarify our position with respect to the important public-health issues you mention. Rest assured that we are taking your concerns with regard to improving access to medicines into account in our negotiations. We would be grateful if you could share this answer with all the other signatories of your letter.

Yours sincerely,

Johann N. Schneider-Ammann
Federal Councillor