



Mr Karel De Gucht
Commissioner for Trade
European Commission
200 rue de la Loi
1049 Brussels

1 September 2011

Dear Commissioner De Gucht,

On the eve of a September 5-9 UNFCCC (United Nations Framework Convention on Climate Change) mini-Ministerial meeting in Pretoria, and in light of the upcoming UNFCCC meetings in Panama City and full Ministerial in Durban in December, we would like to reiterate our strong concerns regarding any efforts to weaken existing global Intellectual Property Rights (IPR), as laid down in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). We also wanted to thank you once more for your active support on these issues thus far and, in light of the upcoming meetings, urgently ask that you continue to take a strong stance.

South Africa, the incoming COP17 Presidency, has proposed an agenda for the upcoming Pretoria mini-Ministerial that focuses on financing, transitional arrangements, and the means of implementation for adaptation and mitigation actions, as agreed in Cancun. We would like to ask that you support such a more limited agenda and reject any calls for IPR issues to be reintroduced.

At the same time, we urge you to continue to reject calls by some countries that IPR be weakened under the guise of development or climate change concerns, and that you oppose efforts, by China and India in particular, to reintroduce the IPR issue onto the UNFCCC agenda either in general, in the context of technology mechanisms and centers, or in any other way, as well as in the context of the WTO environmental goods and services negotiations (*Cf.* our letter of April 2011).

Intellectual Property Rights are a key driver of private sector investment. They allow investors and manufacturers to capture the value of innovation, and to engage in the kind of long-term planning necessary for commercial actors to make long-term decisions. They are a critical part of our global trade and investment regime. From an environmental perspective, active private sector involvement is key to achieving global climate change goals. Two-thirds of green innovation is financed by private companies and the private sector plays a central role in technology development, deployment and dissemination.

Effective protection of clean technology IP rights is also vital to allow countries around the world to attract the investment and commercial funding needed to build and operate the relevant energy-related infrastructure and to enable the broad deployment and use of innovative, more energy-efficient or lower-emission technology solutions. IPR protection encourages and enhances technology dissemination and deployment, rather than preventing it or making it more costly.



Finally, IPR protection is essential from a competitiveness, employment and economic development perspective. In both Europe and the U.S., the clean technology sectors are key drivers of employment and growth. The same is true in China and India, where local companies are already at the forefront of global clean technology markets, and massive industrial policy actions are taken in their support. Brazil's biofuels sector and its recent policy reforms in support of alternative energy sources are another key example. In many instances, these major emerging economies are rapidly leaping ahead.

In the least developed world, government financing, regulatory environments that encourage and enable foreign direct investment and an increased interest from emerging market private equity funds are critical. Strong fundamentals are often in place: solar energy opportunities in the Sahara; biomass and hydro energy; light-weight, standalone solar and wind solutions throughout whole countries, regions or continents; and a lack of pre-existing energy infrastructure which, in some instances, can actually be an advantage. The rapid uptake of mobile technology in much of sub-Saharan Africa is a prime example of how this can play out.

Special assistance is of course critical for these and other least developed countries. IPRs, however, are not the problem and weakening them is not the solution. Instead, a real commitment to development and climate financing is needed (to be disbursed under fair, transparent and non-discriminatory procedures and rules), combined with focused and effective capacity building; reducing and eliminating tariff and non-tariff barriers on environmental goods, services and investment; real support for lower-emission infrastructure; and fixed, predictable rules.

We once again urge you to focus on these positive actions that can and should be pursued, and that you continue your strong opposition to any demands that IPR be weakened or otherwise put back in play.

We look forward to continue working with you and your services on these key issues and remain at your disposal to discuss any of this in further detail. Please note that we have sent a similar letter to Commissioner Hedegaard.

Yours sincerely,

Philippe de Buck