



Karel De Gucht  
Commissioner for Trade  
Directorate General Trade  
European Commission  
B-1049 Brussels

5 December 2011

Dear Commissioner De Gucht,

*BstG Karel,*

In the context of the ongoing UNFCCC climate negotiations, we are concerned by calls, from India and other countries, that Intellectual Property Rights of European companies be severely weakened and compulsory licensing or other forms of misappropriation of climate change-related technologies and innovation officially allowed. These calls have been around for several years but were voiced again strongly during the negotiations this week in Durban, South Africa.

By creating value and allowing businesses to commercialize the fruits of their innovative efforts, Intellectual Property Rights play a key role in promoting future economic growth, exports and revenue, and they help position European business in an increasingly innovation-driven global economy.

In international forums, EU negotiators have consistently pushed back against any efforts to weaken Intellectual Property Rights. We urge that you and your negotiators maintain this strong position in favour of protecting Intellectual Property Rights and that you reject any efforts to weaken EU technology protection, or to add the issue of weakening Intellectual Property Rights to the UNFCCC agenda, in any way or form. Any other approach would provide negotiating leverage to other UNFCCC countries, cause gridlock in the negotiations and hurt EU interests as well as global innovation in low-carbon technologies.

I would also like to draw your attention on another issue, namely the upcoming expiration of the so-called Trade Related Aspects of Intellectual Property (TRIPs) "Non-Violation Moratorium" on "Non-Violation Nullification and Impairment" disputes in the area of intellectual property. This issue will be discussed during the December 15-17 World Trade Organisation (WTO) Ministerial Meeting in Geneva. Such disputes could be a powerful additional tool in the intellectual property area to help address challenges against the value of EU innovation and technology around the world ("indigenous" innovation programs in China and elsewhere are a key example).



The moratorium was originally foreseen to be in place for no more than five years. We believe it is time to end it, as after fifteen years the moratorium has already been extended twice. Removing an entire legal claim in disputes with other industrialised and major emerging economies from the WTO Agreements would harm European business (Least Developed and Low Income Developing Countries are obviously exempt). We urge, therefore, that you withhold EU consensus and allow the moratorium to expire, once and for all.

Technology and intellectual property rights are critical to European business and its ability to create value, jobs, exports and growth.

We look forward to continue working with you and your negotiators towards these common goals.

Yours sincerely,

*Mercadeu de groot,*

*Philippe*

Philippe de Buck