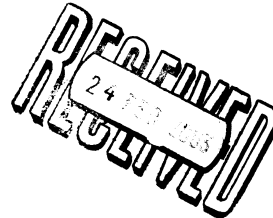


EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

FEB 10 2003

Mr. James Love
Co-Chair TACD IP-workinggroup
TACD Secretariat
24 Highbury Crescent
UK-London N5 1RX



Dear Mr. Love:

Thank you for your letter regarding the discussions in the World Trade Organization on paragraph 6 of the Doha Declaration on TRIPS and Public Health. We welcome your comments. Given the pace of work on this topic, I regret that it was not possible to provide you with a substantive reply sooner.

Through the Doha Declaration on the TRIPS Agreement and Public Health, the United States joined others in acknowledging the serious public health crises -- especially those resulting from HIV/AIDS -- afflicting Africa and other developing and least-developed countries.

As you know, paragraph 6 of this declaration recognized that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement in order to address these health crises; it also instructed members to find an expeditious solution to this problem before the end of the year. Throughout the ensuing negotiations to develop such a solution, the United States has remained committed to the Doha Declaration and has worked intensively to find a solution that will provide life-saving drugs to those truly in need.

As the negotiations drew to a close we became particularly concerned about two issues. First, bearing in mind that the paragraph 6 solution was intended to benefit developing and least developed countries with insufficient or no manufacturing capacity in the pharmaceutical sector, we found it difficult to support proposals that would have made the solution available to almost any country, including some OECD Members. Second, it also became clear to us that some sought to expand the scope of disease beyond that intended at Doha to allow countries to override drug patents to treat a wide range of public health concerns, including obesity, asthma, cancer, diabetes, among others -- even including the use of Viagra.

The combination of the vast expansion of eligible importing countries, plus an unbounded scope of diseases to be addressed by the solution, would have served to create an exception that would have significantly undermined the fundamental rules established in the TRIPS Agreement. We

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recognize that some would have welcomed this outcome. However, we were seriously concerned that this approach could substantially undermine incentives for the development of new pharmaceutical products.

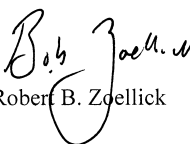
I recently visited Africa where I had the opportunity to discuss this issue directly with African leaders. They expressed concern that others have taken an issue of great concern to Africa and steered it in a direction that would serve other less noble ends. This would be truly unfortunate.

We will continue to work with other WTO Members to try to find a solution within the WTO. However, in the meantime, because we take seriously our pledge at Doha and our responsibility to ensure that those countries most in need have access to medicines to treat infectious epidemics, we have made an additional commitment: the United States will not challenge any WTO Member that exports such medicine, produced under compulsory license, to a country in need.

We have notified the WTO of the provisions of our moratorium, the key elements of which include a commitment not to pursue dispute settlement against a Member that notifies the TRIPS Council of its intention to issue a compulsory license to permit the production and export of a patented pharmaceutical product or HIV/AIDS test kit to eligible importing economies. Eligible importing economies will be those economies, other than those classified by the World Bank as "high income economies," that: (1) are facing a grave public health crisis associated with HIV/AIDS, malaria or tuberculosis or other infectious epidemics of comparable scale and gravity, including those that may arise in the future; (2) have no or insufficient production capacities in the pharmaceutical sector; and (3) have so notified the TRIPS Council. The moratorium will also include measures to guard against product diversion, including to ensure that the product can be easily identified and a requirement that all countries, to the extent of their ability, act to ensure that the drugs are not diverted from countries in need to wealthier markets.

We are prepared to continue to work on an effort to construct a multilateral solution and welcome your thoughts on how best to move the process forward. We hope, in the interim, that this moratorium will assist those poor countries that paragraph 6 of the Doha Declaration was supposed to reassure and that other WTO Members will join us.

Sincerely,


Robert B. Zoellick