

The Trans-Pacific FTA's Threats to Public Health

The Trans-Pacific Free Trade Agreement (FTA) is trade pact for the Pacific Rim currently under negotiation between the United States, Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam — with bilateral negotiations currently under way for entry by Canada, Japan and Mexico. The pact is also intended as a “docking agreement” that would theoretically be open for any country in the Pacific Rim to join over time. The United States is pushing for completion by the end of 2012.

NEGOTIATIONS ARE HEADED IN THE WRONG DIRECTION ON PUBLIC HEALTH

A roll back from the Bush administration. Leaked U.S. proposals for several chapters in the Trans-Pacific FTA reveal that U.S. trade negotiators have reversed hard-won reforms designed to enhance access to affordable medicines that were made during the George W. Bush administration. In addition to pushing for increased monopoly rights for drug companies, the U.S. is also demanding new rights for pharmaceutical firms to challenge pricing and other drug formulary policies used by many countries to keep down health care costs.

PACT WOULD REDUCE ACCESS TO GENERIC MEDICATION BY EXTENDING DRUG PATENTS

Access to generic medicine is critical to saving lives. The first generation of HIV drugs has come down in price from roughly \$10,000 per patient per year to just \$120 thanks to increased access to generic medications. This reduction in price has helped to dramatically scale up the number of people throughout the world who are now receiving treatment. The Global Fund to Fight AIDS, Tuberculosis and Malaria, the President's Emergency Plan for AIDS Relief, UNITAID and UNICEF all rely heavily on access to quality generic medications. For millions of people throughout the globe, delaying access to generic medications means delaying access to treatment.

The U.S. proposal would grant new monopoly patent rights, reducing access to generic medicine. If finalized and implemented, the leaked U.S. intellectual property proposal would roll back access to generic medicine for people in developing countries and throughout the world. Specifically, the U.S. proposal would broaden the scope of patentability by making it easier for pharmaceutical companies to patent new uses and minor variations of old medicines; slow the production of new generics when patents expire by expanding “data exclusivity” over clinical trials forcing either the timely and costly replication of such trials or an additional three-year delay (beyond the current five) before such “exclusivity” ends; constrict safeguards against patent abuse by making it harder for public health advocates to challenge unjustified new patents; require new forms of drug patent policing; and mandate that



countries allow patents on plants, animals and surgical methods. The U.S. is expected to also request extensions beyond existing 20-year drug patents to “compensate” drug companies for time spent in regulatory approval processes.

International public health advocates are speaking out. According to Doctors Without Borders/Medecins San Frontieres: “Access to affordable lifesaving medicines will be threatened where they are needed most — in parts of the developing world — if the U.S. insists on implementing restrictive intellectual property policies in the Trans-Pacific Partnership trade agreement... The leaked USTR position paper, now available to the public, reveals that the U.S. is pushing its trade partners, including developing countries, to effectively lower the bar for granting patents, limit the capacity to challenge patents, and impose new forms of intellectual property enforcement — all measures that delay the introduction of more affordable generic drugs.”

EMPOWERING DRUG COMPANIES TO ATTACK COST-SAVING DRUG FORMULARIES

Governments use cost-saving drug formularies keep drug prices in check. Governments use formularies to control health costs by listing medicines approved for government purchase or reimbursement, and negotiating with drug firms to obtain the lowest prices. Among the current Trans-Pacific FTA countries, such formularies are most associated with New Zealand’s Pharmaceutical Management Agency (PHARMAC) and Australia’s Pharmaceutical Benefits Scheme (PBS), but they are also used by other governments, including a number of federal and state-based programs in the United States.

The U.S. proposal seeks to restrict cost-saving drug formularies. The leaked U.S. proposal for a pharmaceutical pricing chapter restricts the use of such formularies, by requiring that countries set up new administrative and judicial appeal systems to help determine whether government programs “appropriately recognize the value” of drug patents in their reimbursement proposals. In Australia, the only country yet to implement such systems under a trade agreement, the result has been higher drug prices.

NEGOTIATIONS HAVE BEEN TAKING PLACE IN THE SHADOWS

The Trans-Pacific FTA negotiations have not been transparent. Access to medicine has received the attention it has because the U.S. proposals for intellectual property and pharmaceutical pricing chapters for the pact have been leaked. Neither of these, nor any other negotiating texts, has been officially released. This is completely undemocratic, and also outside the norm for many international negotiations, including those at the World Trade Organization, where draft negotiating texts are regularly published. This excessive secrecy makes it extremely difficult for civil society to comment on the negotiations in a productive way while the pact is still under negotiation and such comments could be valuable.

The Dracula Strategy

Besides a stake to the heart, what’s the best way to kill a blood-sucking vampire? Exposing it to the light of day.

Organizers have repeatedly stopped secretive trade negotiations over the years by dragging them out of the shadows and into public scrutiny:

- 1998: The Multilateral Agreement on Investment (MAI)
- 1999: The “Millennial Round” of the World Trade Organization (WTO)
- 2003: The Free Trade Area of the Americas (FTAA)

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