

**PRIORITIZING HEALTH  
IN U.S. TRADE POLICY:  
A CASE EXAMPLE**

# 2004 Political Crisis: Pharmaceuticals

- Public outcry about high drug prices
  - U.S. pays highest prices in the world
  - Reimportation proposals in U.S. Congress

# Pharma Political Strategy: Trade Agreements

A. Protect high prices in US market

- Block reimportation (“parallel importation”)

B. Maintain Intellectual Property structure in regional trade agreements with low/middle-income countries

- “TRIPS-Plus” trade rules extend patents
- Restrict production and sale of generics
- Market to small number of wealthy individuals

# Australia Trade Agreement

## CPATH 2004: Caution Needed

### Analysis – U.S. Australia FTA:

- Could block reimporting lower priced drugs into US
- Challenges effective methods for controlling drug prices in Australia
- Could affect popular US drug price programs for VA, Medicaid, Medicare

# Education & Outreach

## 2004 U.S.-Australia FTA

- U.S. Trade Representative
  - Meetings/correspondence regarding specific provisions
- U.S. Congress
  - Testimony before House Ways and Means Committee
  - Meetings with Congressional Trade and Health staff
  - Congressional Committees on Health, V.A.
- Civil Society
  - Widely disseminated analysis to national and local domestic organizations which focused on increasing access to affordable medicine in U.S.

# Senator Clinton Town Hall – N.Y.

“Is the Senator considering supporting the Australia Free Trade Agreement, which could prohibit drug reimportation into the United States?”

Senior, Constituent



# Congress Objects

- FTA achieves corporate policy agenda without public debate
- Kennedy, Schumer, McCain, Gutknecht: Get public health representation!
- Bob Graham, Strickland, Evans: Protect VA!
- Allen, Rangel, Levin: Never again!



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**Provision in U.S.-Australia FTA could block  
re-importation of affordable drugs**

June 25, 2004

Dear Colleague:

During Ways and Means Committee consideration of the U.S.-Australia Free Trade Agreement (FTA), the U.S. Trade Representative's (USTR) office confirmed that a provision in the agreement would effectively block the re-importation of prescription drugs from Australia. If included in future trade agreements, this provision could nullify future domestic law to allow re-importation from Canada and elsewhere.

Article 17.9.4 of the U.S.-Australia FTA grants a patent holder (like a pharmaceutical company) the right to block re-importation of its patented product into the U.S. by contract or other means. By contrast, S. 2328, the Dorgan-McCain re-importation bill, contains provisions designed to prevent drug companies from restricting the ability of pharmacists or wholesalers to import drugs from approved countries (the bill lists Australia). The Senate re-importation bill, if enacted, could thus be challenged as inconsistent with trade law. The U.S. could be found to be in violation of obligations under the U.S.-Australia FTA, and subject to sanctions until the re-importation law is repealed.



# Rep. Ted Strickland

- I would like to call attention to information which was recently published by [The Center for Policy Analysis on Trade and Health](#).
- CPATH's report explains that because chapter 15 of the U.S.-Australia Free Trade Agreement applies to Federal agencies like the Department of Veterans Affairs that procure pharmaceuticals, drug companies would have the right to challenge VA procurement decisions.  
..based on technical specifications, timing, process, or any number of other disagreements.

## Sen. Charles Schumer

- It has become clear in recent weeks that the pharmaceutical industry has not only done everything in its power to thwart drug reimportation legislation before this Congress, but now they have hijacked the trade agreement negotiation process as well. That practice has to end.
- The provision is nothing more than a backdoor opportunity to protect the big pharmaceutical companies' profits and keep drug prices high for U.S. consumers

July 13, 2004

## **CONNECT THE DOTS**

**A VOTE FOR THE U.S.-AUSTRALIA FTA**

**IS A VOTE AGAINST AFFORDABLE**

**PRESCRIPTION DRUGS**

The pharmaceutical industry is at it again, attempting to undermine U.S. efforts to secure cheaper prescription drugs for millions of Americans.

First, the Medicare bill passed this year specifically prohibited the U.S. government from negotiating lower drug prices for America's seniors and consumers. Then the pharmaceutical industry punished American consumers by restricting the volume of prescription drug inventories in Canada to prevent importation to the U.S.

Now, the United States Trade Representative and the administration have included language in the U.S.-Australia Free Trade Agreement (FTA) that would enable pharmaceutical companies to prevent prescription drug importation to the detriment of American consumers. And you can bet these provisions will be in all future Free Trade Agreements negotiated by this administration. USTR and its pharmaceutical allies are doing all they can to drive up drug prices for Americans and the rest of the world...

If you support re-importation of affordable prescription drugs, think twice before casting a vote for the U.S.-Australia FTA. A vote for the U.S. Free Trade Agreement is a vote against American consumers and against re-importation.

Sincerely,

**SHERROD BROWN**  
Member of Congress

**MARCY KAPTUR**  
Member of Congress

**BERNIE SANDERS**  
Member of Congress

**TIM RYAN**  
Member of Congress

**TED STRICKLAND**  
Member of Congress

**PETE STARK**  
Member of Congress

July 13, 2004

## Australia Free Trade Agreement

### *Did you know?*

Dear Colleague:

As we debate the Australia Free Trade Agreement this week, let's keep in mind who had a seat at the table during the drafting of the patent provisions in the Australia Free Trade Agreement.

- At least 15 of the 25 panel members are associated with the pharmaceutical industry.
- Not one senior group or importation advocate was included on the panel.

The committee members are listed on the back of this sheet for your review. Do they represent the views of your constituents?

Sincerely,

Gil Gutknecht  
Member of Congress

Rahm Emanuel  
Member of Congress

# U.S. Trade Policy Change

- Australia: Congress draws line in the sand
- Vitter/Stabenow/Northup/DeLauro bills
  - Ban using trade agreements to address drug reimportation
  - Call for consumer representatives in policy
- U.S. ceases to propose trade rules banning drug importation

# Vital Human Services for Sale

“Some kinds of public policy choices should be decided by democratically elected governments, not by unelected trade bureaucrats.”

U.S. Senator Jon Corzine (D-NJ)

# Elements for Change

## ■ Transparency

- Publicly accessible analysis and debate of trade proposals

## ■ Accountability

- Communication with Congressional decision-makers, including in their districts linking trade and health

## ■ Opportunity and Timing

- Public attention and national debate on the issue (in this case affordability of drugs in U.S.)



# FTAA: Free Trade Area of the Americas - DEFEATED

- Launched in 1994. Negotiating deadline: 2005
- NAFTA for all 34 countries in North, Central, South America and the Caribbean (except Cuba)
- Most comprehensive proposed trade agreement in history, would have affected more than 800 million people