Unions Demand Fair Trade Now!

TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT

INTELLECTUAL PROPERTY AND PUBLIC HEALTH

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The intellectual property rights (iprs) should strike the right balance between appropriate protection of patents that allow for r&d and the production of new pharmaceuticals and access to medicines. However, the patent protection established in many recent free trade agreements far exceed the international standards for patent protection established in the wto agreement on trade-related aspects of intellectual property rights (trips). Provisions that go beyond the trips commitments jeopardise peoples' access to affordable medicines, particularly in developing countries.

Consumers and public health departments should not pick up the tab for patent protection that exceeds existing protection in each country

Some recent trade agreements require parties to grant a new patent for new uses or forms (e.g., Liquid instead of tablet) of existing patented medicines without allowing parties to require a proof that the new form is a substantial improvement. On the one hand, a new method of use or form of medicine can add value for the patient, but on the other hand, it delays generics' entry into the market and may grant companies additional years of monopoly rights on drugs without any real innovation. Competition generated from generics' entry into the market brings down prices for consumers. Also, generic drug producers can sometimes come on the market much faster if they are able to obtain marketing approval before the patent on an existing drug expires, but a brand-name pharmaceutical manufacturer can use free trade agreements to make this as difficult as possible.

Some free trade agreements also deny generic drug producers access to the results of the tests that demonstrate the safety of a drug. These tests are a crucial step in order to ensure safety in bringing a drug to market. Trips require protection of test data against unfair competition, but leaves flexibility for governments to provide access to generic manufacturers. In contrast, some free trade agreements oblige parties to grant exclusive rights for at least five years after a patent expires, further delaying competition.

Some free trade agreements also allow the use of drug registration procedures to give any entity claiming a pharmaceutical patent the power to stop competitors from reaching the market.

We say no to strengthening patent protection of pharamceuticals beyond existing standards in each country, which would impede more affordable, generic drugs from entering the market, particularly in developing countries

As if the ipr provisions were not enough, some recent trade agreements have included provisions that undermine public pharmaceutical benefit schemes. The korea-us fta, for example, requires a country to "appropriately recognize the value of the patented pharmaceutical product or medical device in the amount of reimbursement it provides". It contains a "transparency" mechanism that allows pharmaceutical companies greater access to the government committees that decide whether to fund new pharmaceuticals. It also establishes an "independent review process" that allows corporations to appeal public pricing decisions. Many people are concerned that excessive political influence of large pharmaceutical corporations pushes up the price of medicines and results in excessive profits for these corporations. The impact of these provisions is clear: a drug price remains high, and access to affordable medicine is reduced. Negotiators are considering similar language in the TPPA.