JO ANN EMERSON
MEMBER OF CONGRESS
8TH DISTRICT, MISSOURI

COMMITTEE:
APPROPRIATIONS

SUBCOMMITTEES:
AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION AND RELATED AGENCIES
ENERGY AND WATER
HOMELAND SECURITY

E-Mail and Web Page:
http://www.house.gov/emerson

Congress of the United States
House of Representatives
Washington, DC 20515–2508

OFFICES:
SUITE 2440
RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4404

THE FEDERAL BUILDING
339 BROADWAY
CAPE GIRARDEAU, MO 63701
(573) 335-0101

612 PINE
ROLLA, MO 65401
(573) 364-2455

22 EAST COLUMBIA
FARMINGTON, MO 63640
(573) 756-9755

November 14, 2005

The Honorable Rob Portman
United States Trade Representative
600 17th Street NW
Washington, DC 20506

Dear Ambassador Portman, Rob

I remain deeply concerned regarding the increased intellectual property (IP) protections and lack of provisions to ensure access to affordable generic medicine in the ongoing U.S.—Andean Free Trade Agreement (FTA) negotiations and in previous FTAs. The FTA being negotiated this week presents USTR with the perfect opportunity to reverse this harmful trend and achieve the right balance between innovation and access. For the good of public health in both America and the Andean nations, I urge you to negotiate terms in FTA that are identical to U.S. law and to send abroad a balanced system that has proven to encourage innovation while supporting access to affordable medicine.

The United States has constructed a solid health care system by balancing the protection of intellectual property of pharmaceuticals with measures that promote access to affordable medicines. Yet, recent FTAs and ongoing negotiations with the Andean countries seem to disregard this balance. Specifically, recent FTAs can be construed to provide greater intellectual property rights to brand companies than those provided under current U.S. law. For example, patent extension provisions in recent FTAs would be one such example. These provisions provide for unlimited patent extensions to any modified version of an already approved drug product. This overly broad patent protection is in direct contrast to U.S. law which limits patent extensions to only new chemical entities (NCEs) (novel medicines) and imposes a five year cap on their duration. In addition, while data protection provisions in the U.S. law provide for a five-year market exclusivity period for NCEs and three year period for new conditions of use, these agreements allow for *"at least"* five years for NCEs and for *"at least"* three years for *"a same or a similar" product*, opening the door to enhanced brand IP protection.

The U.S. system strongly encourages innovation in the pharmaceutical market, while also making access to the innovations affordable—our success in both endeavours proves the value of a balanced system. A system that neglects such a balance will result in tremendous harm to the public welfare of that country. Now is your chance to reach the ajoining goals of greater innovation and affordable access. The terms of this FTA must lay a foundation – one that places access on the same footing with innovation.

Thank you for your serious attention to these concerns.

Sincerely,

Jo Ann

JO ANN EMERSON
Member of Congress