Intellectual Property in the Trans-Pacific Partnership

How the TPP Endangers Access to Affordable Medicines

The Trans-Pacific Partnership (TPP) is a proposed free trade agreement among twelve Pacific Rim countries. It includes an array of binding rules that, if enacted, will tie the hands of national legislatures, restricting their ability to advance public interest policies regarding important issues like food safety, environmental protection and public health.

The TPP includes measures harmful to access to affordable medicines that have not been seen before in U.S. trade agreements. Its provisions aim to transform countries' laws on patents and medical test data, and include attacks on government medicine formularies.

The TPP would strengthen, lengthen and broaden pharmaceutical monopolies on cancer, heart disease and HIV/AIDS drugs, among others, in the Asia-Pacific region. With its increased pharmaceutical monopolies, the TPP would bring higher treatment costs, leading to treatment rationing and many going without the medicine they need to stay alive.

Seven years of closed-door negotiations over the TPP and its pharmaceutical provisions concluded last October. The final TPP text officially published in November confirms that the Office of the U.S. Trade Representative (USTR) abandoned the 2007 May 10 Agreement template, which made some pharmaceutical rules in U.S. trade agreements optional for developing countries in an effort to recognize access to medicines concerns. Conversely, the TPP allows only short transition periods for developing countries to adopt virtually all of the TPP's provisions that impede access to medicines.

Despite the aggressiveness of its proposals, USTR was successful in pressuring other countries to accept many harmful rules highlighted by critics after numerous Intellectual Property Chapter leaks. The TPP would:

- Create new drug monopolies by expanding the scope of patent protection and requiring patents be made available for minor variations on old medicines.
- Delay availability of affordable treatments for cancer and other cutting-edge biologic medicines by requiring at least five years of marketing exclusivity and mechanisms for USTR and pharmaceutical companies to pressure countries for more. The May 10 Agreement did not include any added exclusivity period for biologic medicines.
- Lengthen drug monopolies by requiring countries to extend patent terms if review at the patent office or regulatory authority exceeds a certain period – even for low-quality patents that should not have been filed or granted. This clearly exceeds the bounds of the May 10 Agreement.
- Extend commercial control over regulatory information (expand marketing exclusivity) by providing at least five years exclusivity for new products and either a) three years of additional exclusivity for new uses, forms and methods of using old drugs, or b) five years of exclusivity for new combination products utilizing old compounds. The added three- and five-year exclusivity periods go beyond May 10.
- Expose domestic policies to challenges by foreign corporations in extrajudicial tribunals through special investor privileges. Consistent with the 'reasonable investment-backed expectations' of the investor, a breach of the IP chapter can contribute to a violation of the Investment chapter. Pharmaceutical company Eli Lilly is currently demanding $500 million from Canada under NAFTA's investment chapter for using patent standards that have resulted in the invalidation of Eli Lilly patents.
- Threaten drug cost containment by imposing new procedural rules on how governments decide formularies coverage and reimbursement decisions.

Public Citizen's Global Access to Medicines Program

Website:
www.citizen.org/access

E-mail:
medsaccess@citizen.org

Twitter:
@PCMedsAccess

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