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MEMO TO REPORTERS

***LEAKED NEW ZEALAND PAPER CHALLENGES PAST U.S. FTA MODELS IN TRANS-PACIFIC TRADE NEGOTIATIONS***

***ACCESS TO MEDICINES AT STAKE***

December 4, 2010

Civil society groups have obtained a confidential paper presented by New Zealand to the parties to the Trans-Pacific Partnership Agreement (TPPA) on the subject of intellectual property. The position New Zealand articulates could incorporate terms of the controversial Anti-Counterfeiting Trade Agreement (ACTA), and still poses some risks for access to medicines. But it also represents a significant improvement over the status quo advanced in many developed country free trade agreements over the past 15 years and a direct challenge to the monopoly interests of major pharmaceutical corporations. Meanwhile, the U.S.-based pharmaceutical industry today requested the U.S. government push for “the highest possible” intellectual property protections and changes to New Zealand’s Pharmaceutical Management Agency (PHARMAC) through the TPPA.

Regional access to medicines depends in great part on the ability of generic competition to reduce medicine prices over time and of government programs to procure cost-effective treatments. For example, over the past 10 years, generic competition has played a key role in reducing the costs of first-line HIV/AIDS treatment by 99 percent, enabling 5.2 million people worldwide to access lifesaving treatment.

But many free trade agreements (FTAs) involving the United States have sought to obligate countries to adopt stricter intellectual property (IP) standards than those required by the World Trade Organization’s Agreement on Trade Related Aspects of Intellectual Property (WTO’s TRIPS). These “TRIPS-plus” provisions facilitate stronger, longer and more common pharmaceutical monopolies, raise health care costs and limit access to medicines.

In contrast, the leaked New Zealand paper states the parties “should be cautious about moving beyond TRIPS standards under [the] TPP,” noting that “there is a tendency towards overprotection of IP in all our societies, particularly in the areas of copyright and patents.” New Zealand proposes an alternative “TRIPS-aligned” structure, focusing on operational coherence and enforcement, and capacity-building in developing countries. There are dangers in each of New Zealand’s proposed focus areas, including considerably increasing the bias of IP enforcement policy toward rights holders, revealing the risks inherent in negotiating any intellectual property chapter in the TPPA. But New Zealand’s proposal could also preserve TPPA member countries’ rights to pursue intellectual property policies that protect and promote regional access to lifesaving medicines.

The leaked paper is *available at*: <http://www.citizen.org/documents/NZleakedIPpaper-1.pdf>. A new note from Public Citizen and Third World Network analyzes the leaked paper, including its connection to ACTA, in further detail, and is *available at*: <http://citizen.org/Page.aspx?pid=4685&frclid=1>.

Meanwhile, the Pharmaceutical Research and Manufacturers of America (PhRMA) and major U.S. business partners today submitted a paper to the Office of the United States Trade Representative, demanding that the TPPA “seek the highest possible IP protections from TPP negotiating parties.” These groups also seek the inclusion of a pharmaceuticals chapter modeled after provisions in the US FTAs with Korea and Australia that would place restrictions on public health authorities (such as New Zealand’s PHARMAC and Australia’s Pharmaceutical Benefits Scheme or PBS) that negotiate prices with brand-name manufacturers. The recent U.S.-Australia FTA includes a pharmaceuticals chapter placing just such restraints on Australia’s Pharmaceutical Benefits Scheme. A new note from the Program on Information Justice and Intellectual Property at American University analyzes the risks of the TPPA to evidence-based pricing programs including PHARMAC and PBS, *available at*: <http://wcl.american.edu/pijip/go/palmedo12042010>.

The U.S.-Peru Trade Promotion Agreement, the most recent U.S. trade agreement to be ratified and implemented, reversed a decade-long trend of increasingly severe intellectual property provisions under a deal known as the May 2007 agreement. But the U.S.-Peru FTA still imposed intellectual property costs on public health, and the TPPA must do better.

A new study from the Peruvian Network for Globalization with Equity analyzes the effects of the U.S.-Peru Trade Promotion Agreement, and is *available at*: [http://www.redge.org.pe/sites/all/files/alerta\\_urgente\\_medicamentos\\_0.pdf](http://www.redge.org.pe/sites/all/files/alerta_urgente_medicamentos_0.pdf). The study finds that a key promised benefit of the agreement – reduced medicines costs through the reduction of tariffs – has failed to materialize, reducing public revenues while pharmaceutical companies increased their profits, rather than passing on savings to consumers or public programs. The agreement has also already led to clinical trial data exclusivity for six new medicines, meaning these medicines will be monopolized in Peru for at least five years.

The shortcomings of the May 2007 agreement and leaked New Zealand paper suggest the

best result for many parties to the Trans-Pacific Partnership Agreement would be no intellectual property or pharmaceuticals provisions at all. Nevertheless, New Zealand's proposal is a better starting point for regional IP negotiation than the U.S.-sponsored TRIPS-plus status quo. The leaked paper reflects growing awareness of the dangers of TRIPS-plus measures and rigid exclusive rights in many countries, making explicit reference to controversies within New Zealand over the content and secrecy of these negotiations. It poses a direct challenge to the demands PhRMA expects the United States to pursue in the forthcoming negotiations.

The parties to the TPPA have touted the agreement as a new model and a high-quality "21st century" agreement. A 21st century agreement must not accept harmful 20th century terms. Public Citizen congratulates New Zealand for introducing an alternative vision. Any future proposals for IP provisions in the TPPA should improve upon New Zealand's proposal and limit the intellectual property protections required by various trade agreements in the region to levels no higher than those established by the WTO's TRIPS Agreement.

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