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Briefing Memo

Chile and the Trans-Pacific Partnership Agreement

Access to Medicines Risks & Continued Bullying from USTR

New from Public Citizen: "*Dangers for Access to Medicines in the Trans-Pacific Partnership Agreement: Comparative Analysis of the U.S. Intellectual Property Proposal and Chilean Law.*" The complete table is available at: <http://www.citizen.org/chile-country-page>.

In the years since the U.S.-Chile Free Trade Agreement (FTA, 2004), the Office of the United States Trade Representative (USTR) and the Pharmaceutical Research and Manufacturers of America (PhRMA) have harassed Chile and insisted on policy changes to favor the interests of the giant pharmaceutical companies. This week in Santiago, closed negotiations continue for an intellectual property chapter to the proposed Trans-Pacific Partnership Agreement (TPP): <http://pubc.it/hpnSg>. Leaks reveal aggressive U.S. demands to further change Chilean law and expand pharmaceutical monopoly power.

USTR has placed Chile on its Special 301 "Priority Watch List" – a bullying tactic for IP maximalist demands -- every year since 2007, citing expectations for patent linkage and exclusive control over pharmaceutical test data. USTR pressed these issues again at an August meeting of the U.S.-Chile Free Trade Commission. But notably, Chilean law appears to comply with the terms of the U.S.-Chile FTA on both points. (See our table analysis.) Nevertheless, PhRMA has demanded USTR place Chile on the Priority Watch List once more in 2012.

Last year, the administration of Chilean President Sebastián Piñera formed an interagency project to revise Chilean law and satiate USTR. The proposed revisions face tough debate in Chile, including questions regarding the constitutionality of patent linkage. Several months ago, Inside U.S. Trade reported that according to a U.S. business source, "getting the changes the U.S. is seeking through the Chilean Congress would be difficult because the government's party is not in control of the legislature." Reportedly, support is not at all uniform in the President's party either. But through the TPP -- more than twenty chapters of multi-sector economic rules comprising many hundreds of pages – a vote would come only after negotiations are already complete, and then on the entire agreement, largely avoiding the particularized congressional debate and scrutiny that would otherwise attend Big Pharma's demands. The TPP represents a USTR end-run around Chile congressional and democratic process, to win the concessions long demanded by the patent-based U.S. pharmaceutical corporations.

In implementing the FTA, Chile has sought to protect consumer interests including public health. USTR's TPP demands go far beyond the provisions of the U.S.-Chile FTA, and would:

- **Expand pharmaceutical patenting and create new drug monopolies.** The U.S. proposal would require patent protection for new uses, forms, and methods of using older known medicines, undermining Chilean restrictions on the same. The U.S. proposal would also require patents for diagnostic, surgical and therapeutic methods of treatment, which Chile excludes from patentability today, and gut Chile's industrial application requirements.

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- **Risk facilitating patent abuse** by imposing new requirements linking marketing approval to patent status. Under patent linkage, even spurious patent claims can serve as barriers to generic drug registration. Chilean law professor Jose Luis Cardenas has argued that patent linkage would violate equal treatment guarantees in the Chilean Constitution, providing special treatment to pharmaceutical patent holders without reasonable and objective cause.
- **Extend exclusive control over pharmaceutical test data**, including information that is in the public domain, and through an extra three years of data exclusivity for new uses of known products. PhRMA has complained about Chilean data standards that protect public health.
- **Eliminate safeguards against patent abuse**, including the right of third parties to challenge patent applications (pre-grant opposition).
- **Lengthen drug monopolies** by expanding the circumstances and classes of patents eligible for patent extensions.

Today, public interest groups, academics, and the prominent Chilean Senator Ricardo Lagos (considered to be a possible candidate for the Chilean presidency) will challenge IP maximalist demands in the TPP at a public event at the Catholic University in Santiago: <http://infojustice.org/archives/9433>.

More information on Chile and the TPP, including our complete table comparing USTR's demands to Chilean law on patents, test data and medicines, is available here: <http://www.citizen.org/chile-country-page>.

More news and analysis on the TPP is available at: <http://www.citizen.org/TPPA>.