

September 16, 2010

The Hon. Ron Kirk  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Kirk:

State officials have repeatedly warned your office, and that of the previous administration, about the harm to U.S. health programs that will follow from the continuation of an ill-conceived agenda to use trade policy to restrict foreign and domestic medicine pricing programs. We call on you to renounce support for inclusion of a pharmaceutical pricing chapter in the TPP negotiations and prohibit any future use of trade agreements and pressures to push pharmaceutical pricing policies abroad that we do not follow here at home.

As we have explained to you previously, U.S. federal government agencies and state governments negotiate drug prices in similar ways as foreign governments, and they pay similar prices.<sup>1</sup> Some of the most important tools used by over 40 state Medicaid programs are open formularies known as Preferred Drug Lists (PDLs). PDLs are substantially similar to the programs in other countries that USTR and industry criticize as unreasonable price controls.

Two recent trade agreements, Australia and Korea, included pharmaceutical chapters that imposed restrictions on foreign programs. In each of these instances, state officials criticized the agreements as promoting new standards that, if applied to Medicaid and other state programs, would cripple our ability to control rapidly escalating medicine prices.<sup>2</sup> Last April, the interagency Special 301 Committee chaired by USTR staff heard public testimony on the topic from Maine State Rep. Sharon Treat, Vermont Commission on International Trade and State Sovereignty Counsel Robin Lunge, and Forum on Democracy and Trade Counsel Sean Flynn, as well as letters from the Governors of Maine and Vermont.<sup>3</sup> Despite these serious concerns, your office released a Special 301 report in April that continued to criticize foreign pharmaceutical pricing programs that are indistinguishable from the preferred drug lists used by nearly every state Medicaid program in the country. At a recent public event, your staff refused to declare whether the U.S. endorses the inclusion of pharmaceutical pricing restrictions in the Trans Pacific Partnership agreement that would be modeled on the Australia and Korea FTAs as well as your Special 301 complaints.

We vehemently oppose the inclusion of pharmaceutical price regulatory restrictions in the TPP or any other FTA. It is not in the best interest of the United States to promote limitations on the types of evidence based drug pricing used by private companies, US state governments, the US Department of Veterans affairs – and by foreign governments – to control runaway pharmaceutical prices. At a time

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<sup>1</sup> 2004 Annual Report of the West Virginia Pharmaceutical Cost Management Council:  
<http://www.wvc.state.wv.us/got/pharmacycouncil/>.

<sup>2</sup> *For a history of interventions from state representatives, see* Sean Fiil-Flynn. Submission of U.S. State Health Organizations to the U.S. Trade Representative in the Matter of 2010 Special 301 Review, February 18, 2010. At footnote 14.

<sup>3</sup> Testimony from state groups available at <http://forumdemocracy.net/article.php?id=550>

when health budgets everywhere are strapped, your office should not be promoting a new global regulatory agenda that would attack the most effective tools we have to combat excessive medicine prices in our health programs. Please publicly commit to opposing the inclusion of pharmaceutical pricing chapters in TPP or any future free trade agreement.

Sincerely,



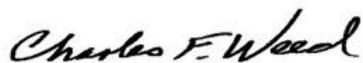
Sharon Anglin Treat  
Executive Director, National Legislative Association on Prescription Drug Prices  
Rep. ME House, Hallowell



Ginny Lyons  
Co-Chair, Vermont Commission on International Trade & State Sovereignty  
Rep., VT House, Chittenden



Kathleen C. Keenan  
Co-Chair, Vermont Commission on International Trade & State Sovereignty  
Rep., VT House, Franklin



Charles F. Weed  
Co-Chair, New Hampshire Citizens Trade Policy Commission  
Rep. , NH House, Cheshire



Peggy Rotundo  
Co-Chair, Maine Citizen Trade Policy Commission  
Sen., ME Senate, Androscoggin County