

March 12, 2018

The Honorable Robert Lighthizer
United States Trade Representative
Executive Office of the President
600 – 17th Street, NW
Washington DC 20508

His Excellency Minister Kim Hyun-chong
Minister for Trade
Ministry of Trade, Industry and Energy
402 Hannuri-daero
Sejong-si, 30118
Republic of Korea

RE: Prioritizing Patient Needs and Public Health in Trade Policy

Dear Ambassador Lighthizer and Minister Kim:

We, the undersigned nongovernmental organizations from the Republic of Korea and the United States, write to you regarding the need to prioritize the needs of patients in the context of trade policy concerning our two countries. Specifically, we condemn the recommendations of the Pharmaceutical Research and Manufacturers of America (PhRMA) pertaining to medicines and medical technologies in its submission to the United States Trade Representative Special 301, and request that none of their recommendations be tabled in the KORUS renegotiation.

The PhRMA submission calls for Korea to be designated a Priority Foreign Country, a particularly remarkable request considering that South Korea has not been on the watch list since 2008. PhRMA takes aim at, among other things, issues concerning patent term restoration, patent enforcement, and Korea's recent pricing reforms under the Drug Expenditure Rationalization Plan (DERP) that include pharmaco-economic analysis and the use of single-payer price negotiations. PhRMA asserts that such measures violate TRIPS and KORUS for failing to "appropriately recognize the value of the patented pharmaceutical product."

The association's complaints are at odds with the objectives stated under TRIPS Article 7 regarding the need for a "balance of rights and obligations" in the protection and enforcement of IP, and conflict with the rights of Members to "adopt measures necessary to protect public health" and to act against excessive drug prices as an "abuse of intellectual property rights" under Article 8 of TRIPS. These rights are further supported and clarified by the Doha Declaration on TRIPS and Public Health, which specifies that, "the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health..." and "can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all."

PhRMA seeks the right for pharmaceutical companies to set prices without limit, and without concern for the detrimental impact of high prices on patients and on finite health budgets. The United States is currently experiencing the pains of high drug prices that many countries around the world have faced and continue to face, and there are a large number of drug pricing reforms being debated both domestically within the United States and in international fora. PhRMA's arguments and recommendations would have a destructive impact on the public health of Korea, and would hinder the ability of the United States to enact any similar policies on drug pricing.

In addition, TRIPS-plus provisions of KORUS, upon which PhRMA relies, bring about a conflict with human rights obligations of both countries. Under the International Covenant on Economic, Social and Cultural rights, states have a human rights obligation not to support, adopt or accept TRIPS-plus provisions that would impede states from using exclusions, exceptions and flexibilities (Report to the General Assembly of UN, A/70/279 (4 August 2015), ¶ 104).

We call on you to prevent trade policy from overriding the needs of public health, and urge you to ensure that no provisions be tabled in KORUS renegotiation that would restrict the ability of either country to aggressively protect public health through legal measures designed to lower drug prices. Instead, we ask you to discuss revision of TRIPS-plus provisions of KORUS in a way to reconcile them to the human rights obligations, especially the right to health and the right to science and culture.

Finally, we request a civil society session in subsequent renegotiation rounds of KORUS to discuss this matter further.

Sincerely,

United States

Franciscan Action Network

Health GAP

Knowledge Ecology International (KEI)

NETWORK Lobby for Catholic Social Justice

People of Faith for Access to Medicines (PFAM)

Union for Affordable Cancer Treatment (UACT)

Korea

Association of Korea Doctors for Health Rights

Association of Physicians for Humanism

Center for Health and Social Change (CHSC)

IPLeft

Knowledge Commune

Korea Dentists Association for Health Society

Korean Federation of Medical Groups for Health Rights (KFHR)
Korean Pharmacists for Democratic Society
Korean Progressive Network/Jinbonet
Solidarity for Worker's Health