

Congress of the United States

Washington, D.C. 20515

February 28, 2018

The Honorable Donald J. Trump
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Trump:

As a candidate and now as President you have repeatedly stated your support for efforts to lower the exorbitant price of prescription drugs and to craft trade deals that protect working families and the middle-class. We are writing to ask that those priorities be reflected in ongoing negotiations on the North American Free Trade Agreement (NAFTA) and that you reject calls by the pharmaceutical industry to increase their monopoly powers through U.S. trade policy.

We have been very concerned about reports that the NAFTA negotiations may include the same types of monopoly protections that the Obama Administration pushed for during the Trans-Pacific Partnership (TPP) negotiations. Those proposals would have risked the lives of many people who depend on access to lifesaving affordable generic medicines (including biosimilars). Knowledgeable sources have indicated that your administration's proposals in NAFTA negotiations reflect the agenda of patent-based pharmaceutical corporations, which have been actively promoting provisions to further restrict generic competition and to impose more restrictive transparency rules that limit governments' rights to set formulary, reimbursement and pricing policies.

We believe that the balance between pharmaceutical monopoly profits and public health needs in current trade policies is already tipped toward industry. Inclusion of additional provisions in NAFTA to block access to generic drugs or provide new tools for pharmaceutical corporations to extort high prices would result in an even greater imbalance. Provisions designed to prevent other countries from making needed medicines affordable would not only harm consumers in Canada and Mexico and set standards for future trade negotiations, they would have a direct impact on U.S. health care consumers. Rules established in trade negotiations would restrict your Administration, Congress and states from implementing new policies designed to make prescription drug coverage affordable. At a time when you have pledged to lower prices, you and Congress should not be locked into patent, exclusivity or reimbursement terms negotiated in NAFTA, such as a possible 12-year exclusivity period for biosimilars.

We are aware some argue that raising prescription drug prices in other countries will result in lower prices for American consumers. That argument requires a belief that pharmaceutical corporations have established fixed target profit levels that they will not exceed – that if they earn greater profits from foreign consumers they will lower them here at home. There is no evidence to suggest that is the case but there is ample evidence to show that pharmaceutical companies will maximize profits wherever and whenever

they can. Recent reports show that industry profits alone exceed their total investments in R&D.^[1] In short, there is absolutely no reason to believe that trade policies designed to raise prescription drug prices overseas will result in equivalent or any decreases in prices in the United States. Instead, those policies would impair the ability of governments to address excessive prescription drug prices overseas while making it more difficult to stop price abuse here at home.


The trade associations of those corporations also are pushing to maintain NAFTA's investor-state dispute settlement mechanism that allows multinational corporations to challenge federal, state and local government decisions designed to lower the cost of needed medications before a panel of three private lawyers, and seek unlimited sums of taxpayer money if the tribunal deems their NAFTA investor rights have been violated. We have heard reports that the U.S. position in the NAFTA negotiations thus far has been to opt out of any ISDS mechanism and to drastically roll back ISDS coverage. We encourage you to continue to insist on that position.

We hope that you will reject the calls by the pharmaceutical industry to put its profits ahead of fair trade policies and public health needs. We urge you to reject measures that go beyond NAFTA to provide greater industry protections for patentability standards, data and market exclusivity, mandatory patent term extensions, and patent/registration linkage. We also urge you to rollback ISDS provisions in NAFTA.

We stand ready work with you on enacting effective and meaningful measures to reduce the cost of medicines and hope that you will ensure that your trade policies support those goals.

Thank you for your attention to our request.

Sincerely,



JAN SCHAKOWSKY
Member of Congress



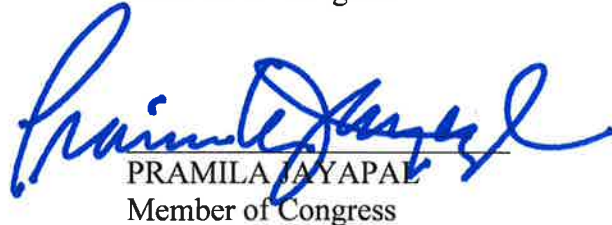
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^[1] "Pharmaceutical Industry Profits Exceed Industry's Self-Reported R&D Costs, Public Citizen, March 31, 2017. "R&D Costs for Pharmaceutical Companies Do Not Explain Elevated US Drug Prices," Nancy Yu, Zachary Helms, and Peter Bach. Health Affairs, March 7, 2017.