

Coalition Letter of NGOs to the U.S.T.R.

March 24th, 2006

Ambassador Rob Portman
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508
United States of America

Subject: Korean and US NGOs Position Paper on Public Health and IPR in the Korea-US FTA Negotiation

Dear Ambassador Rob Portman,

We, Korean and US NGOs undersigned here, would like to submit written comments on the Korea-US FTA negotiation.

We are deeply worried about the Korea-US FTA negotiations especially on the issues of public health and Intellectual Property Rights(IPR). Considering the FTA that the US negotiated with other countries and what the US has been demanding from the Korean government thus far, we assume that US will request IPR protection similar to or stronger than the US IPR laws. And US has also requested many policies to threaten the right for people to their health from Korean government. We think it will bring about dangerous situations, for example, to destroy Korean people's public health.

Below material includes our detailed opinions on the issues of public health and IPR. We honestly request that our important opinions should be considered very carefully.

Thank you for your consideration.

Sincerely Yours,

[NGOs]

Christian Medical Association for People Health (Korea)

Dasan Human Rights Center (Korea)

Essential Action (US)

Health Global Access Project (GAP) (US)

Health Right Network (Korea)

Intellectual Property Left 'IPLeft' (Korea)

Korean Progressive Network Jinbonet (Korea)

Korea Social Insurance trade Union (Korea)

Korean Peasants League (Korea)

Korean Advanced Farmers Federation (Korea)

Korean Federation of Medical Groups for Health Rights:

Association of Physicians for Humanism (Korea),

Association of Korea Doctors for Health Rights (Korea),

Korea Dentists Association for Health Society (Korea),

Korea Health and Medical Workers Union (Korea),

Korean Pharmacists For Democratic Society (Korea),

Solidarity for Worker's Health (Korea)

LaborNet in South Korea (Korea)

Media Center Mediac (Korea)

Nanuri+, HIV/AIDS Human Rights Advocacy Group of Korea (Korea)

Patients not Patents (US)

People before Profit (Korea)

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Korean and US NGOs Position Paper on Public Health and IPR in the Korea-US FTA Negotiation

- Free Trade Agreements (FTAs) increase medical bills, aggravate health inequalities, and destroy people's health!
- Stop Korea-US FTA negotiations now!

1. We can not approve the prior action to initiate the Korea-US FTA negotiation.

Workers and people of Korea were furious at the result of the Korea-US pharmaceutical negotiation. The meeting was a pre-condition to initiate Korea-US FTA negotiation. According to the CRS report, Mr. Portman, who was the representative of USTR, announced in 2005 that Korea-US FTA negotiations would not be launched without progress on pharmaceutical issues. At the October 2005 trade action agenda meeting, the South Korean government (SKG) agreed that no new drug reimbursement pricing policies would be introduced in the near future, and that it would set up an independent mechanism under which drug reimbursement decisions could be appealed. The SKG also concurred to clarify the reasons why the Korean Food and Drug Administration (KFDA) required drug manufacturers of large amounts of proprietary data for the drug approval. It obviously means that the SKG would abandon the right to decide its own pharmaceutical medicine policy. By acknowledging these conditions, the SKG is trying to negotiate for the Korea-US FTA at the expenses of Korean people's health and well-being. We, undersigned organizations, can not approve this situation and the FTA.

2. US should stop pressuring on South Korean pharmaceutical and health policy.

Through the annual publication of "National Trade Estimate Report on Foreign

Trade Barriers", the US Government has been asking and coercing the SKG to amend health-related regulations such as the level of Korean Intellectual Property protection, pharmaceutical policies and the protection of information regarding pharmaceutical R&D. The US Government claims for differential acknowledgement for pharmaceutical products from the US drug companies. It also insists that SKG change its pharmaceutical pricing policy in accordance to that of the US. In addition, simplification of required clinical trial and safety test procedures and increase protection of intellectual property right and exclusive rights to R&D information were demanded so that US pharmaceutical companies can access the South Korean market readily.

As the result, Korean pharmaceutical price will soar, and health insurance budget could go bankrupt. What is more important is that the Korean people would not have any rights over the decision making process over the drug pricing.

One representative case is the one in 1999 when US called for the change in regulation regarding the pricing of innovative drugs. According to the US government's opinion, price of these drugs should be in accordance with average factory price in 7 wealthiest countries (A-7: US UK Germany France Italy Japan Switzerland). As a result, the US government succeeded and the SKG accepted the proposal.

Korean Leukemia patients suffered directly from this policy. They had to pay about 2,500~6,300 thousand won (\$2,500~6,300) per month to Novartis to take the anti-leukemic drug called "Glivec". Since this price was too high, they struggled against Novartis for 2 years insisting for the disclosure of actual manufacturing price and the reduction of the retail price. Despite the struggle, the patients, and the SKG which reimbursed part of the drug cost, still had to pay much money to costly the drug due to formerly mentioned A-7 pricing system. All that was left to the leukemia patients was the reality of death due not to lack of treatments, but of lack of money. Korean health policy and system should be decided neither by US government nor by pharmaceutical companies, but by people of Korea.

3. 'Transparency' for whom? For people of Korea or the US pharmaceutical companies?

US insist that Korean patients want to take US pharmaceutical products but can

not because of the corruption in Korean drug pricing and health insurance regulation. However, the transparency called for by the US, should be exercised by the US pharmaceutical companies. They request extraordinary price for new products making use of their exclusive intellectual property rights on innovative new drugs, without revealing the manufacturing cost. The US government insists that high drug price is necessary for the compensation of R&D cost, but they never disclose the actual cost for the manufacture and how much of it was appropriated from the public fund such as tax money. In addition, the concept and policy of 'transparency' is based on standards in the US.

Pharmaceutical policies differ by country because countries' pharmaceutical infrastructure, policy decision processes, cultural backgrounds and/or other relevant conditions vary. Therefore, forcing the US legal and health policy processes onto other countries is irrational.

We think that the 'corruption' or 'transparency problem' claimed by the US is its strategy to intercept Korean generic drug companies' development, while US pharmaceutical company reap large profits from highly fixed drug prices. We want effective and affordable drugs. Moreover, we want them to be produced domestically. We are opposed to the reality where pharmaceutical products are regarded to be 'profitable goods'. Drugs should be for 'patients' lives'.

4. Heightened patent protection compelled by the US threatens patients' lives

We can expect what the US would claim to Korea, based on previous US's agreements with Central America, Singapore, Australia, and Thailand. Through the "Glivec struggle" Korean people now know that the TRIPS(Trade-Related aspects of Intellectual Property rights) Agreement threaten public's right to healthy lives.

However, the US tried to extend the protection period granted through the patentsystem, limit the conditions under which compulsory licenses (CL) can be granted and to intercept market entrance of generic products by putting forward the exclusive rights on information. On November 4th, 2001, 4th WTO Ministerial Conference adopted the "Declaration on the TRIPS Agreement and Public Health". The Doha Declaration stated, "The TRIPS Agreement does not and should not prevent Members from taking measures to protect public health". What is proclaimed in the Doha Declaration is against current US

government's practice in Korea. The Doha Declaration made it clear that right to (healthy) lives should be valued over (intellectual) property rights when they crash.

The reason why Thai HIV/AIDS patients are opposing US-Thailand FTA is because this would destroy access to medicine. The US is demanding the Thai government to stop supplying cheaper and affordable HIV/AIDS drugs that are domestically produced including the Government Pharmaceutical Organization (GPO).

Last year in Korea, we pushed for the amendment of patent law which would allow 'compulsory licensing for public interest' and 'compulsory licensing for exportation'. We will persistently look for various methods in order for everyone to enjoy the right to their health. The US must not interfere with the effort to improve people's health all around the world by being selfish and by putting the US pharmaceutical manufacturer and insurance company's profits in priority. The US must not damage the idea of DOHA declaration. The right to people's health and lives belong to people, not to pharmaceutical companies.

5. Medicine policy and health insurance system are not subjects of trading negotiation.

Medicine policy and health insurance system are respective country's sovereignty, not subjects of trade. Previous agreements or progressing negotiations show well about what the US wants. The US demands stronger protection of patent than that of TRIPs or the US law. However, that's not all. The US is trying to demolish anything that might be an obstacle that gets in their way of generating profits by including health care issue which is strongly related to people's lives.

In the process of reaching an agreement of the US-Australia FTA, Bush administration demanded the destruction of Pharmaceutical Benefits Scheme of Australia. An Australian patient said "we're going to get the money from old, sick, and poor Australians and give them to American pharmaceutical companies, CEOs and stockholders. Those that are poor in Australia won't be able to afford medicine just like the ones in America." We will decide ourselves about the medicine policy and health insurance system for Korean patients. We strongly insist to exclude these terms from the negotiation just like when they

were excluded in the Canadian-US free trading pact.

6. American style medical service will demolish public health system of South Korea.

The US requested Korea to apply American rules in investment in the notification of Korea-US FTA negotiation. The US also strongly urged Korean government to permit private health insurance through AMCHAM. Demanding the protection of investment by American standard will become concrete to allow private corporation and private health insurance will be embodied to private health insurance of the US.

This will make the hospital corporations and hospitals will no longer put their priority in caring for patients but instead they will try their best to earn money. Also the American style private insurance policy will destruct the national public health care system of Korea. South American countries that have imported and applied the US style of medical service in search for the foreign investment had faced low level of national health, severe complains about inequality in health and inefficiency without exception. WHO recently evaluated and ranked Chile's medical system at 169 out of 191 countries. In case of Mexico, those who are not working are uninsured, and there aren't enough facilities for them to be taken care of. On the other hand, US private insurance companies are generating a lot of profit from it. We strongly argue that Korean medical system must be more publicized. Therefore, Korea-US FTA which will bring the business industrialization in the medical field, must not be signed.

7. US must stop the pressuring Korea to import Beef that might be infected with mad cow disease.

The US forced Korea to import American beef as one of the terms in pre-negotiation of Korea-US FTA. We want to make it clear that we do not want to import American beef. No one should be exposed to the danger of eating beef that has the possibility of causing Creutzfeldt-Jakob disease. Many countries in Europe prohibit animal feed to their livestock and WHO is also suggesting the same. However, the US is permitting animals other than ruminants to eat animal feed. And the US is not prohibiting every type of animal feed to cow. As long as this problem continues, American beef are not free from the infection of mad

cow disease. This fact is well proven by the discoveries of cows that are infected in the state of Texas, Washington, and also in Alabama.

Nevertheless, at the USTR hearing which was held on March 14th, Ranchers-Cattlemen Action Legal Fund complained about the fact that Korean government decided to reopen imports of boneless beef from cattle aged up to 30 months but left the door closed for bone-in beef on January, and they claimed that the first FTA negotiation shouldn't be held unless Korean government decides to import whole beef including bone-in beef.

Their inspection system is also a problem. Infected beef was found in Japan and it was revealed that the company which exported was from New York. Another problem was found in Hong Kong recently and the exporting company was from Colorado. According to the report about the inspection of mad cow disease in the US which was announced in Feb. 1st, 2006, the management of controlling the hazards was inappropriate, there were one out of every six companies that processed the meat even though the cows were suspicious of being infected, and it also revealed that only 5~10% of the visual inspection was done. According to the report from Government Accountability Office in Feb. 25th, 2005, 2,800 out of the total of 14,800 stock farms were never even audited for the imperfect stock feed regulations. We are strongly against the Korea-US FTA which will sell out the public national health of Korea for the rapacity of American government.

We're so well aware of the fact that there has been no country that improved their people's health, economy, or the quality of the lives of their nation among the ones that agreed to sign FTA with the US. Instead for those countries that signed FTA with the US experienced the downfall of economy, forced to lean on the US, the right for people to their health was demolished and poverty was increased. We know that this is what the US wants. Therefore, we oppose Korea-US FTA agreement.

March 24th, 2006

Endorsement

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