Over 100 Organizations Concerned with Health Sign Open Letter to Canadian, Mexican and U.S. Ministers of Health and Trade Urging That the NAFTA Renegotiation Not Undermine Access to Affordable Medicines

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José Narro Robles, Mexican Secretary of Health
Ildefonso Guajardo Villarreal, Mexican Secretary of Economy
Ginette Petitpas Taylor, Canadian Minister of Health
François-Philippe Champagne, Canadian Minister of International Trade
Robert Lighthizer, U.S. Trade Representative
Eric D. Hargan, U.S. Acting Secretary and Deputy Secretary of Health and Human Services

Dear Ministers:

As organizations concerned with health issues domestically and globally, we urge you to ensure that any renegotiation of the North American Free Trade Agreement (NAFTA) does not undermine access to affordable medicines.

We have heard troubling reports that the negotiating parties are considering changes to NAFTA's intellectual property (IP) chapter that would further expand the monopoly protections of prescription drug corporations and thus thwart market competition from generic products that is often essential to bring down consumer prices. Similarly, we understand that the pharmaceutical industry is calling for the United States to demand so-called transparency rules that would restrict governments' rights to control prices of medicines and set reimbursement and formulary policies. Finally, there are pressures from business lobbies to maintain investor-state dispute settlement, including with respect to IP-related investments, which undermines sovereign authority and allows unreviewable private arbitration claims by foreign investors against public interest laws and regulations. All of these measures would contribute directly to escalating consumer prices and worse access to treatment in Canada, Mexico and the United States.

Already, one in five people in the United States fail to fill prescriptions due to their cost. The impact on the U.S. economy of cost-related non-adherence to prescription drugs was estimated to be more than 100 billion dollars in 2012, due to complications that worsen health outcomes and require treatments that are more expensive than the medicines.[1] One in five Canadians also report that a member of their household cannot afford the medications being prescribed to them.[2] Millions of Canadians (between 10 and 20% of the population) are compensating by not filling their prescription at all or taking measures to make their prescription last longer, such as skipping doses and splitting pills.[3]

Already, Canadians pay some of the highest drug prices in the world and spending on pharmaceutical products is one of the three largest elements of overall health-care

spending, year after year.[4] Meanwhile, in the absence of a national, universal pharmacare plan, available evidence indicates that a significant percentage of Canadians experience the cost of medication as a barrier to proper health care. Prescription drug expenses during the previous two years were the largest reported medical expense by a sample of people who had filed for bankruptcy (74.3) in Canada.[5] A renegotiated NAFTA must support, and not further complicate, the already challenging task of developing universal, equitable pharmacare coverage across the country.[6]

Generic competition has often proven the most effective means of reducing prices and ensuring prices continue to fall over time. In the U.S., generic medicines have saved more than $1.6 trillion in health care costs in the past decade.[7] Internationally, generics have played a critical role in responding to the AIDS epidemic, saving millions of lives and enabling people living with HIV to still realize their potential.

U.S. residents recently ranked prescription drug prices as their top priority among salient issues before the U.S. Congress. Seventy-five percent favor shortening the length of monopoly granted on prescription drugs so that cheaper generic drugs are made available sooner.[8]

During the Trans-Pacific Partnership (TPP) negotiations, the U.S. Trade Representative insisted on expanding monopoly protections for pharmaceuticals. That choice was universally unpopular; criticized by observers from the Vatican to The Economist magazine and fiercely resisted by negotiators from other TPP countries, ultimately dragging out the TPP negotiation for years and contributing directly to its failure. In the TPP-11 negotiations underway now absent the United States, the remaining countries have excised many controversial intellectual property provisions that would have reduced access to medicines.

All three NAFTA countries have incorporated into their domestic laws World Trade Organization as well as NAFTA patent and data protection rules, which already heavily favor the patent-based corporations by requiring signatory nations to provide various monopoly protections that shield them from competition. In the years since NAFTA's signing, corporations have radically increased medicine prices and have gamed existing intellectual property rules to maximize their profits. Any changes to NAFTA should rebalance the agreement's terms in favor of competition and access to affordable healthcare, for instance by eliminating NAFTA's intellectual property chapter altogether, meaning the NAFTA countries' obligations would be those under the WTO TRIPS agreement, and eliminating investor-state dispute settlement from NAFTA. Certainly no new monopoly protections should be added, such as the biologics exclusivity terms that pharmaceutical firms seek or new "transparency" provisions affecting pharmaceutical price controls and reimbursement or formulary powers.

Whatever other goals the Canadian, Mexican and U.S. governments have for NAFTA's renegotiations, it is critical to do no further harm with respect to the health and access to affordable medicines of North America's approximately 500 million people. Thus, it is vital that the NAFTA party governments reject any provisions that would expand or strengthen pharmaceutical monopolies and enforcement at the expense of access to affordable medicines.

If a revised NAFTA is to include an IP chapter, it should not include NAFTA-plus standards affecting pharmaceuticals or medical technologies. It should avoid greater monopolies related to:

- Patentability standards and patent disclosure
- Data/market exclusivity (small molecules and biologics)
- Patent/registration linkage
- Mandatory patent term extensions
- Enforcement, including rules on damages, injunctions and border controls.

In addition, there should be no ISDS provision in any investment chapter, nor any transparency or other restrictions — including so-called "transparency measures" — on a country's authority to regulate or negotiate drug prices or to list medicines in an approved formulary or for reimbursement.

This is not only a matter of the immediate impact of extending new NAFTA-plus rules and monopolies. Rather, locking in such policies in the context of NAFTA would greatly restrict the three countries' policy space in the future to regulate drug prices and to revise domestic rules to serve domestic health interests and to rebalance IP rules as needed. As well, a renegotiated NAFTA might well become a template for other trade agreements, including with developing countries whose concerns about high drug prices are even more dire than the NAFTA parties.

Signed:

International

1. Oxfam
2. Global Network of People Living with HIV (GNP+)
3. Health and Trade Network (HaT)

United States

4. Doctors Without Borders/Médecins Sans Frontières USA
5. American Federation of Labor- Council of Industrial Organizations (AFL-CIO)
6. Consumers Union

7. Social Security Works
8. American Federation of Teachers (AFT)
9. Alliance for Retired Americans
10. Public Citizen
11. NETWORK Lobby for Catholic Social Justice
12. People of Faith for Access to Medicines
13. Presbyterian Church, U.S.A. (PCUSA)
14. Health Global Access Project (GAP)
15. Universities Allied for Essential Medicines
16. American Medical Student Association
17. Student Global AIDS Campaign
18. Bailey House, Inc.
19. Prescription Justice
20. Foundation for Integrative AIDS Research
21. Global Justice Institute
22. American Federation of State, County and Municipal Employees
23. AIDS Healthcare Foundation
24. Treatment Action Group
25. Project Inform
26. Knowledge Ecology International
27. United Church of Christ, Justice and Witness Ministries
28. Metropolitan Community Churches
29. Maryknoll Office for Global Concerns
30. Council for Global Equality
31. Connecticut Alliance for Retired Americans
32. Housing Works, Inc.
33. ACT UP Philadelphia AIDS Coalition To Unleash Power
34. Northwest Coalition for Responsible Investment
35. Adrian Dominican Sisters
36. Center for Policy Analysis on Trade and Health (CPATH)
37. Prevention Access Campaign
38. AIDS Action Baltimore
39. MSMGF (the Global Forum on MSM & HIV)
40. Salud y Farmacos
41. Cancer Families for Affordable Medicine
42. Socially Responsible Investment Coalition
43. Positive Women's Network
44. Breast Cancer Action
45. Partners In Health
46. Global Network of Black People working in HIV - GNBPH

Canada

47. Réseau québécois sur l'intégration continentale (RQIC)
48. Common Frontiers
49. National Congress of Black Women Foundation
50. Dignitas International
51. Canadian Treatment Action Council (CTAC)
52. Canadian Aboriginal AIDS Network
53. ACCKWA
54. Carmichael Outreach Inc.
55. HIV & AIDS Legal Clinic Ontario
56. Sunshine House Inc
57. Action Canada for Sexual Health and Rights
58. Rainbow Health Network
59. AIDS Committee Newfoundland & Labrador
60. Interagency Coalition on AIDS and Development (ICAD)
61. Turning Point Society of Central Alberta
62. International Centre for Science in Drug Policy (ICSDP)
63. AIDS Vancouver Island
64. PharmaWatch Canada
65. Faces of Pharmacare
66. Tapestray
67. Maison Fraternité
68. Grandmothers Advocacy Network
69. Canadian HIV/AIDS Legal Network
70. Faculty Health Sciences, Simon Fraser University
71. Afro-Canadian Positive Network Of BC
72. REL8 Okanagan
73. P.A.N.
74. Canadian Positive People's Network
75. Realize
76. FrancoQueer
77. Pacific AIDS network
78. CATIE
79. Canadian Harm Reduction Network
80. Hospital Employees' Union
81. APTS (Alliance du personnel professionnel et technique de la santé et des services sociaux)
82. AIDS Committee of Toronto
83. Canadian Centre for Policy Alternatives

Mexico

84. Red Mexicana de Personas que Viven con VIH/SIDA A.C.
85. Comunik AC
86. Kinal Antzetik Distrito Federal A.C.
87. International Community of Women with HIV (ICW-Mexico)
88. Salud y Género Querétaro A.C.
89. Karina Salud y Desarrolló, A.C.
90. Centro Hermanas Mirabal de Derechos Humanos A.C.
91. GayLatino and AVE de México
92. COINCIDES A.C.
93. Balance A.C.
94. Grupos de Investigación para América y África Latinas (GRAAL)
95. Movimiento Mexicano de Ciudadanía Positiva, A.C.
96. Centro de Investigaciones en Salud de Comitan A.C
97. Grupo Multisectorial en VIH/sida e ITS de Veracruz
98. Inspira Cambio A.C.
99. Project on Organization, Development, Education and Research (PODER)
100. Movimiento Transgenero Morelos A.C.
101. ZADEC A.C.
102. Movimiento de Trabajo Sexual de México
103. International Treatment Preparedness Coalition Latin American & Caribbean (ITPC-LATCA)
104. Red de Personas Afectados por VIH (Repavih) A.C.

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