

Congress of the United States

Washington, DC 20515

November 13, 2001

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Zoellick:

As Congress prepares to consider fast track, or Trade Promotion Authority (TPA), we are writing to express our concern that the Thomas TPA bill (H.R. 3005) could make it more difficult for developing nations to gain access to affordable medicines essential for their populations. We are also concerned that the Thomas bill, which is supported by the Bush Administration, contradicts recent Administration policy statements on this issue.

In response to criticism from developing countries and others that U.S. policies at the World Trade Organization (WTO) would limit access to essential medicines, you recently announced U.S. support for a 10 year extension for least developed countries to comply with the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement, and for a moratorium on WTO challenges to the actions of sub-Saharan African nations as they address their HIV/AIDS crises. This follows a decision by the Bush Administration earlier this year to maintain flexibility on trade policies that affect health.

We are concerned that the Thomas TPA bill, if enacted, would reverse these policies by directing U.S. trade negotiators to restrict the flexibilities in patent policies provided under TRIPS. Specifically, our concerns are:

- H.R. 3005 calls for "accelerated" implementation of TRIPS -- the opposite of your offer to least developed nations that they be allowed to defer full implementation of their TRIPS agreements until 2016 in order to meet urgent health needs. If forced to accelerate implementation, as directed by the Thomas bill, the world's poorest countries would be compelled to pay higher prices for needed drugs without adequate time to find ways to afford them.
- H.R. 3005 makes no mention of developing countries' public health needs and thus fails to direct U.S. negotiators to consider access to essential medicines in trade negotiations. By contrast, the Rangel-Levin fast track bill (H.R. 3019) specifically clarifies that "WTO members are able to adopt measures necessary to protect the public health and respond to situations of national emergency or extreme urgency, including by taking actions that have the effect of increasing access to essential medicines and medical technologies."

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● H.R. 3005 calls for "the elimination of government measures such as price controls and reference pricing which deny full market access for United States products." This provision could enable an inappropriate assault on the health systems of the many countries that use such methods to keep drugs affordable for their populations. On the other hand, the Rangel-Levin fast track bill clarifies that trade policy should not be used to challenge any reference pricing classification system in a developing country or any legitimate reference pricing system in a developed country that does not discriminate against innovative pharmaceutical products.

While we welcome your recent announcement on TRIPS implementation, we remain concerned that the policy is selective. The moratorium on WTO actions challenging certain uses of patented pharmaceuticals products in the treatment of pandemics extends only to sub-Saharan Africa, but not to developing nations in other regions, where nearly nine million people are infected with AIDS. Further consideration should be given to the advisability of extending this policy to other regions.

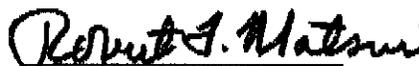
Furthermore, it is important that the flexibility built into the TRIPS Agreement and elaborated upon in any WTO Ministerial Declaration be reflected in the U.S. negotiating position in other trade agreements, particularly the U.S.-Chile Free Trade Agreement and the Free Trade Area of the Americas Agreement (FTAA). The summary of the U.S. negotiating position on the FTAA suggests that the U.S. is advocating a different level of patent protection for our FTAA partners than it is supporting for developing nations at the WTO.

Before the House votes on Trade Promotion Authority, we respectfully request your responses to these concerns to give Members a better understanding of the Administration's trade policies, and the provisions in the Thomas TPA bill, as they affect access to essential medicines.

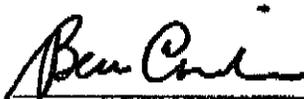
Sincerely,



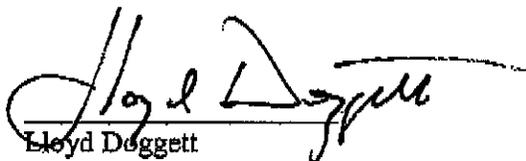
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