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Anthrax scare shows value of "compulsory licensing"

Thomas TPA bill could prevent U.S. from buying sufficient quantities of anthrax antibiotics to meet demand

- Same concerns raised over access to AIDS drugs in Third World -

October 17, 2001

Dear Colleague:

The anthrax scare has seen exponential demand for the only approved oral treatment, the antibiotic Cipro. The manufacturer of Cipro is Bayer, which holds the patent through 2003. Bayer has greatly increased production of the antibiotic, but some public health officials are worried that this sole source supply may be insufficient if the need grows.

To meet this demand, the U.S. could buy the generic version of Cipro, called ciprofloxacin, which is produced overseas by a variety of foreign drug companies. Purchasing ciprofloxacin would require the government to issue a "compulsory license" to get around the domestic Bayer patent. Bayer would be compensated with a royalty payment. Sen. Schumer has called on HHS to issue a compulsory license to assure an ample supply of anthrax antibiotics.

Compulsory licensing is legal under current international trade rules (TRIPS, or the Trade Related Aspects of Intellectual Property Rights), and is designed to allow countries to gain access to essential medicines to meet serious health needs if there is an insufficient domestic supply - the very case that the U.S. is facing with anthrax.

Disturbingly, the Thomas Trade Promotion Authority (TPA) bill promotes trade policies that would severely limit compulsory licensing. The Bush Administration negotiating position on the Free Trade with the Americas Agreement (FTAA), for which TPA is sought, advocates restricting compulsory licenses for non-public sector use. If implemented through domestic legislation to be FTAA compliant, **the Bush policy would likely prevent the U.S. government from issuing a compulsory license so that American consumers could get access to the foreign-produced generic anthrax antibiotic.** Concerned Americans would be stuck with the limited supply of the Bayer patented drug, at whatever price Bayer chose to sell it at a time of public distress.

The restrictions sought by the Bush Administration have long worried those working to address the Third World AIDS epidemic, who see compulsory licensing as an essential tool to promote access to affordable HIV/AIDS medications. The Cipro case demonstrates that compulsory licensing is in our domestic interest as well. Congress should not approve the Thomas TPA bill until the Bush Administration agrees to drop its effort to restrict compulsory licensing in the FTAA and other trade agreements. If the Administration decides that the anthrax scare merits a compulsory license for the generic drug, it would be difficult to argue that a dozen or two U.S. exposures to anthrax justify compulsory licensing, but that more than 30 million AIDS deaths in the developing world do not.

Sincerely,

Tom Allen
Member of Congress